



Mayor: Alan Galbraith
Vice Mayor: Peter White
City Council: *Sharon Crull
Paul Dohring
Greg Pitts

**Councilmember Crull will be participating via phone from:
The Mauna Kea Resort
62-3600 Amaui Drive #M101
Kamuela, HI 96743*

ST. HELENA CITY COUNCIL
REGULAR MEETING
JANUARY 12, 2016

**4:30 PM CLOSED SESSION SPECIAL MEETING
CITY HALL CONFERENCE ROOM,
1480 MAIN STREET, ST. HELENA**

**6:00 PM REGULAR MEETING
VINTAGE HALL BOARD ROOM – SECOND FLOOR
465 MAIN STREET, ST. HELENA**

PLEASE NOTE: Any person who wishes to speak regarding an item on the agenda or make a comment under the “Oral Communication” portion of the agenda may voluntarily complete a “Speaker Card” and submit it to the City Clerk **BEFORE** that portion of the agenda is called. Speaker cards are available on the table in back of the room. **Please observe the time limit of three minutes.**

1. PUBLIC COMMENTS PERTAINING TO THE CLOSED SESSION

2. CLOSED SESSION

- a. CONFERENCE WITH LEGAL COUNSEL-- SIGNIFICANT EXPOSURE;
pursuant to paragraph (2) of subdivision (d) of Government Code § 54956.9, (one potential case)
- b. CONFERENCE WITH LABOR NEGOTIATORS -- pursuant to
Government Code § 54957.6
City Negotiator: City Manager
Negotiations with Mid-Managers and Executive Staff

3. CALL TO ORDER

4. PLEDGE OF ALLEGIANCE

5. ROLL CALL

6. **PUBLIC FORUM:** Members of the public are entitled to speak on matters of municipal concern not on the agenda during Public Forum. Each person's comments shall be limited to 3 minutes. Each person is entitled to speak on any non-agendized item only once at any meeting. Brief questions by Councilmembers for clarifications may be posed and answered, and Councilmembers may make requests that items be placed on future agendas, but in accordance with state law, no substantive discussion or action may take place unless and until the matter properly appears on the agenda.
7. **REPORTS BY STAFF AND CITY COUNCIL, FUTURE AGENDA ITEMS, and AB 1234 REPORTS:** Reports by staff and/or Councilmembers on items of general interest. Brief questions for clarification may be posed and answered, and Councilmembers may request that items be placed on a future agenda. Except under certain circumstances, the Brown Act prohibits any other discussion or action by the City Council.

STAFF BRIEFING

8. Monthly water wise update presented by Jennifer Tuell, Water Conservation Coordinator

PRESENTATIONS AND PUBLIC RECOGNITIONS

9. Presentation – Napa County Corrections update and future plans presented by Napa County Supervisor Diane Dillon and Director of Corrections Lenard Vare
10. Proclamation – December 19, 2015 National Arbor Day presented to Parks Supervisor / Building Supervisor/ City Arborist Jim Haller

CONSENT ITEMS: Members of the Council or the public may ask that any items be considered individually for purposes of considering alternative action, for extended discussion, or for public comment. Unless that is done, one motion may be used to adopt all recommended actions. (Roll Call Vote)

11. Consideration and proposed approval of a Resolution Approving an Employment Agreement with William Imboden to serve as the City's Police Chief
CEQA Status: Not a CEQA Project
Lead Staff: Jennifer Phillips, City Manager
Recommendation: Adopt
12. Consideration and proposed approval of a resolution approving a budget adjustment to the Martin Trust Funds for professional services with BMI Imaging Systems, Inc. (BMI) in the amount of \$9,422.00 for the St. Helena Start Digitization Project
CEQA Status: Not a CEQA Project
Lead Staff: April Mitts, Finance Director
Chris Kreiden, Library Director
Recommendation: Adopt

13. Consideration and proposed approval of a resolution approving a Professional Services Agreement with Kleinfelder Incorporated in the amount of \$90,695 for Geotechnical and Seismic Analysis of the St. Helena Lower Dam, Capital Improvement Project W-108

CEQA Status: Categorically Exempt, Section 15301 and 15304, Existing Facilities, and Minor Alteration to Land

Lead Staff: Tobias Barr, Public Works Project Manager
Steven Palmer, PE, Director of Public Works/City Engineer

Recommendation: Adopt

14. Consideration and proposed approval of a resolution accepting the work and directing the filing of the Notice of Completion for the Valley View Bike Lane Project, CIP No. R-75

CEQA Status: Categorically Exempt, Section 15301, Existing Facilities

Lead Staff: Steven Palmer, PE, Director of Public Works/City Engineer

Recommendation: Adopt

15. Consideration and proposed approval of a resolution approving a proposal to expand the restaurant-cap for an approved restaurant at 1414 Main Street

CEQA Status: The project is Categorically Exempt from the requirements of CEQA under a Class 31 and Class 1 Categorical Exemption under Sections 15331 and 15301

Lead Staff: Noah Housh, Planning and Community Improvement Director

Recommendation: Adopt

16. Second reading and consideration to adopt by title only an ordinance authorizing the City to implement and carry out a community choice aggregation program within the City of St. Helena through membership inclusion with Marin Clean Energy (MCE)

CEQA Status: Not a CEQA project as defined in accordance with CEQA Guidelines, Section 15378

Lead Staff: Kathy Robinson, Operations Manager

Recommendation: Conduct second reading and adopt by title only

17. Consideration and Proposed Approval of a Resolution Authorize the City Manager to Execute an Agreement between Pacific Gas and Electric Company and the City of St. Helena for a Clothes Washer Rebate program, rescind Resolution No. 2004-32B, and authorize a budget adjustment of \$2,200 to account 561-2330-0000

CEQA Status: Categorically Exempt, Sections 15301-Existing Facilities, and 15304-Minor Alterations to Land

Lead Staff: Jennifer Tuell, Water Conservation
Steven Palmer, PE Director of Public Works/City Engineer

Recommendation: Adopt

18. Consideration and Proposed Approval of a Resolution Authorizing the City Manager to Execute a Memorandum of Understanding – Bay Area Proposition 84 Round 2 Integrated Regional Water Management (IRWM) Grant Conservation Group- Napa County Agencies

CEQA Status: Categorically Exempt, Sections 15301-Existing Facilities, and 15304-Minor Alterations to Land

Lead Staff: Jennifer Tuell, Water Conservation
Steven Palmer, PE Director of Public Works/City Engineer

Recommendation: Adopt

19. Consideration to adopt resolution accepting CaliforniaFIRST program amended and restated report relating to Financing the Installation of Seismic Strengthening Improvements, Electric Vehicle Charging Infrastructure and Other Authorized Improvement and Other Related Matters; and acknowledge that the City Council does desire for the CaliforniaFIRST to effect financings with respect to the Additional Authorized Improvements.

CEQA Status: Categorically Exempt from CEQA pursuant to section 15061(b)(3)

Lead Staff: Kathy Robinson, Operations Manager

Recommendation: Adopt

20. Consideration to adopt a resolution approving a Professional Services Agreement with Interwest Consulting Group in the amount of \$59,625 for the ADA Evaluation and Transition Plan

CEQA Status: Not a CEQA Project

Lead Staff: Steven Palmer, PE, Director of Public Works/City Engineer
Tobias Barr, Project Manager

Recommendation: Adopt

21. Consideration and proposed approval of a resolution approving addendum #2 to the approved Contract with Kaizen InfoSource LLC for Records and Information Management services for an additional one time cost of \$30,000 to conduct vital onsite records services for each department, training and provide various policies. Total contract not to exceed \$70,000, funds for Addendum #2 in the amount of \$30,000 will come from General Fund Assigned Reserve

CEQA Status: Not a CEQA Project

Lead Staff: Cindy Black, City Clerk

Recommendation: Adopt

PUBLIC HEARING:

22. 1) Introduction and First Reading of Proposed Modifications to the St. Helena Municipal Code Chapter 2.48 to repeal sections authorizing a private Fire Department Corporation, and establish the Fire Department as a City Department;

2) Consideration of resolution rescinding resolution No. 2012-60 and transitioning pay-per-call firefighters to part time employees with an hourly rate of \$25.00 for a cost of \$60,000 for the remainder of FY 2015-16. Total cost for FY 2016-17 is estimated at \$120,000.

CEQA Status: Not a CEQA Project

Lead Staff: Jennifer Phillips, City Manager and

John Sorenson, Fire Chief

Recommendation: Open/close Public Hearing, introduce by title only

23. Introduction and first reading of an Ordinance amending Title 17 of the Municipal Code relating to cottage food operations in dwellings

CEQA Status: Categorically Exempt Pursuant to CEQA Guidelines Section 15301, 15305, and 15061(b)(3)

Lead Staff: Noah Housh, Planning and Community Improvement Director
Aaron Hecock, Senior Planner

Recommendation: Open/close Public Hearing, introduce by title only

24. Introduction and first reading of an Ordinance adding Chapter 17.126 to the St. Helena Municipal Code to prohibit marijuana cultivation, dispensaries and deliveries within the City of St. Helena, subject to limited exceptions, and repealing St. Helena Municipal Code Chapter 9.18

CEQA Status: The Ordinance is exempt from CEQA pursuant to Guidelines Sections 15061(b)(1), 15061(b)(2), and specifically, the "General Rule" Section 15061(b)(3), where it can be seen with certainty that the proposed action will have no significant effect on the environment. Moreover, the adoption of this Ordinance is further exempt from CEQA because the Ordinance does not change, but instead codifies existing City law and practice.

Lead Staff: Noah Housh, Planning and Community Improvement Director

Recommendation: Open/close Public Hearing, introduce by title only

25. Introduction and First Reading of Proposed Amendments to the City's Purchasing Ordinance, St. Helena Municipal Code Chapter 3.04.175, Procurement Process for Declared Emergencies

CEQA Status: Not a CEQA Project

Lead Staff: April Mitts, Finance Director
Tracey Perkowsky, Grants Manager

Recommendation: Open/close Public Hearing, introduce by title only

NEW BUSINESS:

26. Consideration and proposed approval of a resolution approving amendment number 1 to an agreement with Our Town St. Helena for the sale of public property known as 684 McCorkle Avenue

CEQA Status: The sale of the McCorkle Property is exempt from review under the California Environmental Quality Act ("CEQA") pursuant to a categorical exemption under 14 CCR 15332, which exempts from review specified "in-fill development projects."

Lead Staff: Jennifer Phillips, City Manager

Recommendation: Adopt

27. Consideration and proposed approval of a resolution approving a two year Memorandum of Understanding (MOU) between the City of St. Helena and the St. Helena Employee Association and authorize the City Manager to Execute the MOU and approve a mid-year budget adjustment not to exceed \$64,520 from the Assigned General Fund, Water, Sewer and Other Fund Reserves

CEQA Status: Not a CEQA Project

Lead Staff: Jennifer Phillips, City Manager
Recommendation: Adopt

28. Consideration and Proposed Approval of a Resolution approving a City of St. Helena Volunteer Policy & Procedures Handbook

CEQA Status: Not a CEQA Project
Lead Staff: Mari Martinez, St. Helena Public Library Volunteer Coordinator
Chris Kreiden, St. Helena Public Library Director
Recommendation: Adopt

29. Appeal by Gott's Roadside of Administrative Decision for billing of Sewer Base Rates and Sewer Commodity Rates at 933 Main Street from June 2013 to July 2015

CEQA Status: Not a CEQA Project
Lead Staff: April Mitts, Finance Director
Recommendation: Option 1 to deny the appeal by Gott's Roadside

30. 2016 City Council assignments to various City and Napa County Boards and Commissions

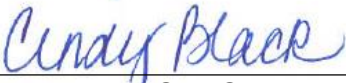
CEQA Status: Not a CEQA Project
Lead Staff: Cindy Black, City Clerk
Recommendation: Affirm or recommend appointments

31. Status Update of Reissuance of National Pollution Discharge Elimination System Permit and Issuance of Cease and Desist Order for the Wastewater Treatment and Reclamation Plant

CEQA Status: Not a CEQA Project
Lead Staff: Steven Palmer, PE, Director of Public Works/City Engineer
Recommendation: Adopt

ADJOURNMENT The next Regular City Council meeting is scheduled for January 26, 2016, at 6:00 p.m. in the Vintage Hall Board Room located at 465 Main Street.

This agenda was posted at City Hall, 1480 Main Street, and at Vintage Hall, 465 Main Street, St. Helena, California on January 8, 2016.



Cindy Black, City Clerk

CHALLENGING DECISIONS OF CITY ENTITIES

The time limit within which to commence any lawsuit or legal challenge to any quasi-adjudicative decision made by the City of St. Helena is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitation period is specified by any other provision, including without limitation Government Code section 65009 applicable to many land use and zoning decisions, Government Code section 66499.37 applicable to the Subdivision Map Act, and Public Resources Code section 21167 applicable to the California Environmental Quality Act (CEQA). Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred. Government Code section 65009 and 66499.37, and Public Resources Code section 21167, impose shorter limitations periods and requirements, including timely service in addition to filing.

If a person wishes to challenge the above actions in court, they may be limited to raising only those issues they or someone else raised at the meeting described in this notice, or in written correspondence delivered to the City of St. Helena, at or prior to the meeting. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.

SUPPLEMENTAL MATERIAL RECEIVED AFTER THE POSTING OF THE AGENDA

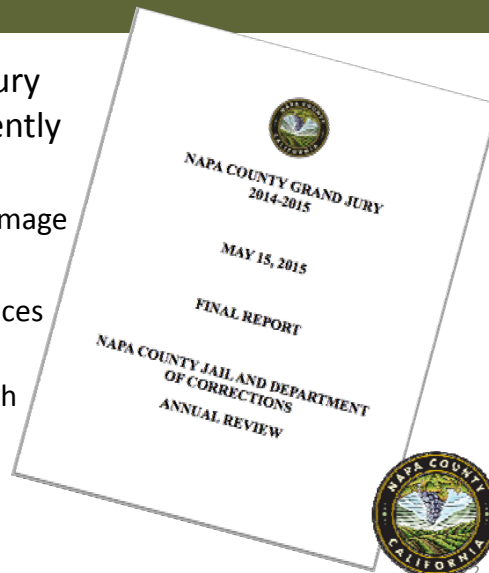
Any supplemental writings or documents distributed to a majority of the City Council regarding any item on this Agenda, after the posting of the Agenda, will be available for public review in the City Clerk's Office located at 1480 Main Street, St. Helena, California, during normal business hours. In addition, such writings or documents will be made available on the City's web site at <http://cityofsthenana.org> and will be available for public review at the respective meeting.

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Napa County Grand Jury: New Jail Needed

- In May 2015, Grand Jury declared new jail urgently needed:
 - Severe earthquake damage
 - Severe overcrowding
 - Need to Improve services & programming
 - 40-Year old facility with aging infrastructure



Aging, Deteriorating Old Downtown Jail

- Old jail built in 1976; expanded in 1989
- No beds added in 25 years
- Limited facilities to provide mental health & rehabilitation services

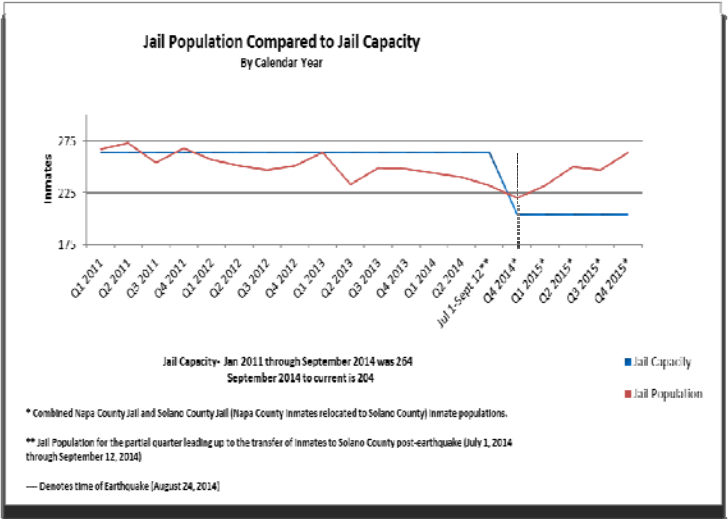


2014 Earthquake Damaged the Jail and Created Conditions for Overcrowding

- Over 25% of available inmate space lost
- Overcrowding leads to early release, creates dangerous conditions
- Jail lost valuable space for skills, training and treatment programs

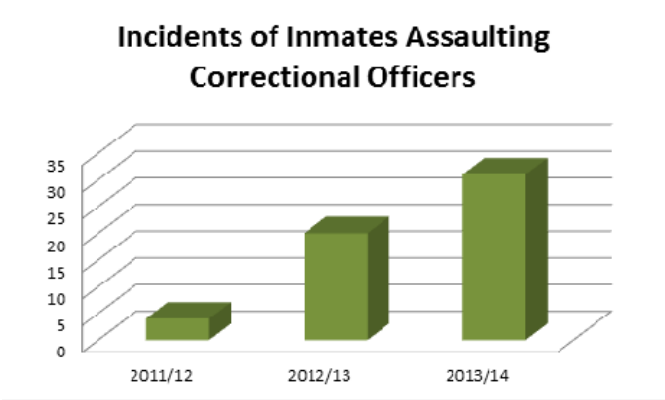


Earthquake Damaged the Jail and Created Conditions for Overcrowding: Inadequate Space for Inmates



5

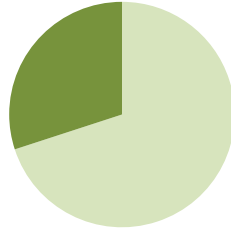
Changing Inmate Profile Threatens Officer and Inmate Safety



6

Better Corrections: Enhanced Mental Health and Addiction Counseling

**Over 30% of Inmates have a Diagnosed
Mental Health Issue requiring
medication and/or specialized housing**



- New facility expand include individual and group therapy, alcohol and drug treatment and education
- Break the cycle of crimes



Better Corrections: Inmate Education and Job Training

- Employment stability reduces the rate of re-offense
- Educational and job training facilities help close the revolving door
- Effective training was offered prior to the Earthquake, but limited by the facility design
- New facility would offer multiple classroom spaces
- Focus on successful transitions to community



Better Corrections: Helping Young Offenders

- Critical to reach young adult offenders aged 18-25 and provide a pathway out of the criminal justice system
- Coordinate with school districts, social services and local law enforcement
- Help those who start as juvenile offenders, including many formerly in foster care or child protective services, get their lives on the right track



Better Corrections: Veterans Services

- Old jail lacks facilities and programs needed by military veterans from recent conflicts as well as Desert Storm and Vietnam
- Specialized mental health counseling, including PTSD & trauma treatment is needed
- A new facility offers opportunities for partnership with the County Veterans Services Office to help inmates to help access Veterans Administration benefits and local resources
- Make connections with Veterans Groups



10

Close the Revolving Door

- Napa County's state-leading programs prevent inmates from returning to jail:
 - Recidivism Rate of less than 15% among felony offenders.
 - Statewide, more than half of all prisoners return to prison within 3-years
 - Data-driven programs with proven success since 2004
- New facility will allow Napa County to be a leader in closing the Revolving Door



11

Getting the Jail out of Downtown Napa



12

Status Quo Not An Alternative

- The County of Napa is continuing to work to find funding from multiple sources.
- Qualified for \$17m in outside jail construction funding to go towards total project costs
- Contracting bed option could cost up to an average of \$5m more annually than the construction of new local facility
- A bond is a possible source of funding.
- Lack of funding source will require the county to use funds from other services provided to the community



We Want To Hear From You

- Have questions or comments?

Please contact:

Principal Management Analyst Liz Habkirk
(707) 253-4826

liz.habkirk@countyofnapa.org

<http://countyofnapa.org/BetterCorrections/>



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City of St. Helena PROCLAMATION

ARBOR DAY

WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and Arbor Day is now observed throughout the nation and the world, and

WHEREAS, trees reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife, and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and

WHEREAS, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal, and

WHEREAS, the City of St. Helena has been recognized as a Tree City USA by The National Arbor Day Foundation and desires to continue its tree-planting practices

NOW, THEREFORE, let it be known that the City of St. Helena declared the day of December 19, 2015 as Arbor Day and held tree plantings in recognition of Arbor Day for the purpose of expressing our support for efforts to protect our trees and woodlands.

Dated: January 12, 2016

Alan Galbraith, Mayor
City of St. Helena

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**Report to the City Council
Council Meeting of January 12, 2016**

Agenda Section: New Business

Subject: Consideration and proposed approval of a Resolution Approving an Employment Agreement with William Imboden to serve as the City's Police Chief

CEQA Status: Not a project

Prepared By: Jennifer Phillips, City Manager

Approved By: Jennifer Phillips, City Manager

DISCUSSION

Since July 1, 2015, Acting Chief Imboden has been serving as the City's Police Chief and has been providing strong leadership and high quality customer service to our community. After serving 14 years with the Hercules Police Department, Acting Chief Imboden joined the St. Helena Police Department in 2007, and was promoted to Lieutenant in January 2014. In addition, Acting Chief Imboden has completed the POST Management Course, POST Executive Development Course, FBI Law Enforcement Executive Development Academy, and FBI National Academy class 258.

Following the lay-off of Chief Rubin, Bill was promoted to Acting Chief and the Lieutenant position has remained vacant as a cost savings measure.

FISCAL IMPACT

Funding for this position is included in the FY 2015-16 Adopted Budget and is funded by the General Fund.

RECOMMENDED ACTION

Approve an Employment Agreement with William Imboden

ATTACHMENTS

1. Employment Agreement
2. Resolution

EMPLOYMENT AGREEMENT FOR POLICE CHIEF

Between

CITY OF ST. HELENA AND WILLIAM IMBODEN

THE EMPLOYMENT AGREEMENT (the Agreement) is entered into as of January 13, 2016, between THE CITY OF ST. HELENA, a municipal corporation (City), and WILLIAM IMBODEN (Police Chief or Employee), collectively “the Parties.”

RECITALS

WHEREAS, City desires to employ William Imboden as Police Chief for the City of St. Helena.

WHEREAS, William Imboden desires to serve as Police Chief of the City of St. Helena beginning on January 13, 2016.

WHEREAS, William Imboden has the necessary education, experience, skills and expertise to serve as the City’s Police Chief; and

WHEREAS, the City Manager, as appointing power, and William Imboden desire to agree in writing to the terms and conditions of William Imboden’s employment as Police Chief;

NOW, THEREFORE, in consideration of the above recitals, promises and conditions contained herein, the Parties agree as follows:

AGREEMENT

1. Powers and Duties of the Police Chief

(a) Police Chief shall have the powers and shall perform the functions and duties specified in state and federal law, the St. Helena Municipal Code, and the ordinances and resolutions of City, and to perform other legally permissible and proper duties and functions as City Manager may from time to time assign.

(b) Police Chief shall perform his duties to the best of his ability in accordance with the professional and ethical standards of the profession and shall comply with the laws of the State of California, the Municipal Code of the City, and Ordinances and Resolutions of the City, and as they may be amended.

(c) Police Chief shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under

Attachment 1

California law. Prior to performing any services under this Agreement and annually thereafter, Employee must complete disclosure forms required by law.

(d) Police Chief shall report to the City Manager who has authority to dismiss, discipline, and give direction to the Police Chief.

(e) Police Chief shall devote full time to the performance of his duties; the Police Chief shall notify the City Manager of any outside employment, which employment shall not interfere with the Police Chief's job duties, pose a conflict of interest, or be inappropriate for a City employee.

(f) Police Chief shall maintain a valid California Driver's License as a condition of his employment unless it is not possible because of a documented medical reason.

2. Term

This Agreement is effective January 13, 2016, and will continue in effect until terminated as provided herein.

3. At-Will Employment

(a) The Parties recognize and affirm that: (1) the Police Chief is an "at will" employee whose employment may be terminated by the City Manager at any time with or without cause, (2) there is no express or implied promise made to the Police Chief for any form of continued employment and (3) upon termination of this Agreement, the Police Chief understands that he has no right to any further employment, in any capacity, with the City. This Agreement is the sole and exclusive basis for an employment relationship between the Police Chief and the City.

(b) Termination for cause means termination based upon a breach of any of the terms of this Agreement, malfeasance of any nature occurring during the course and scope of the Employee's duties as Police Chief; or a conviction, plea bargain, or personal adverse State or federal determination against Employee individually involving any felony, intentional tort, crime of moral turpitude, violation of statute or law constituting forfeiture of office, misconduct in office for personal gain, misuse of public funds for personal benefit, abuse of office as defined in Government Code § 53243.4, conflict of interest resulting in conviction, or any other incompatible activity or conflict of interest.

4. Termination of Agreement

This Agreement may be terminated as follows:

(a) **By Mutual Agreement.** The City Manager and Police Chief may terminate this Agreement at any time by mutual written agreement.

(b) **Termination by City.** The City Manager may, in his or her sole and unrestricted discretion, terminate this Agreement with or without cause at any time upon written notice to the Police Chief.

(c) **Severance.** If the City Manager terminates this Agreement without cause while the Police Chief is still willing and able to perform the duties of Police Chief, the Police Chief shall be entitled to four (4) months' base salary, less applicable deductions, plus applicable accrued leaves as provided in this Agreement together with any extension of benefits required under California and federal law. No time served by the Police Chief after notice of the termination shall be debited from the period of severance pay. However, in the event the Police Chief is terminated for cause, the Police Chief shall be entitled to only the compensation earned and accrued and such other termination benefits and payments as may be required by law. Police Chief shall not be entitled to any severance benefits. Any severance received by the Police Chief, must be fully reimbursed to the City if the Police Chief is convicted of a crime involving an abuse of his office or position, as defined in Government Code § 53243.4.

(d) **Resignation by Police Chief.** Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Police Chief to resign at any time from his position as Police Chief. Police Chief may terminate this Agreement by submitting written notice of his resignation to City. As a courtesy, Police Chief shall give the City thirty (30) days written notice of his intention to resign.

(e) **Rights and Remedies of Police Chief upon Termination.** Nothing in this Agreement is intended to, or does, confer upon Police Chief any due process right to a hearing or other administrative process pertaining to termination, before or after a decision by the City to terminate his employment, unless Police Chief is entitled to a name clearing hearing under California or federal law. Police Chief may appeal a determination of for cause termination to the City Council for the sole purpose of qualifying for severance pay; the City Council shall not have the authority to overturn the termination.

(f) **Resignation in Lieu of Termination.** If the Police Chief is terminated without cause, the Police Chief shall have the opportunity to resign in lieu of being terminated. In such an event, any public announcement issued by the City will state that the Police Chief resigned.

(g) **Administrative Leave.** The City Manager may place the Police Chief on administrative leave with or without pay pending investigation of any allegations of misconduct. Any paid administrative leave provided to the Police Chief pending an investigation must be fully reimbursed to the City if the Police Chief is convicted of a crime involving an abuse of his office or position, as defined in Government Code § 53243.4.

5. Compensation and Benefits.

(a) **Compensation.** Effective January 12, 2016, the City agrees to pay Police Chief for his services rendered an annual salary of \$131,216, payable in installments at the same time as other employees of City are paid and subject to all applicable payroll taxes and withholdings. Such salary may be adjusted from time to time at the sole discretion of the City Manager. The Police Chief shall be an “exempt” employee under all applicable state and federal labor laws, including, but not limited to, the Federal Labor Standards Act and the regulations of the California Industrial Welfare Commission.

(b) **Performance Review.** The City Manager shall evaluate the Police Chief’s performance by July 1, 2016 and at least annually thereafter.

(c) **CalPERS.** Employee shall be included in the City’s Safety Plan with the California Public Employees’ Retirement System (“CalPERS”) as a Classic Member, and continue to be enrolled in the 3% at age 50, highest year average program. Employee shall contribute the total “employee contribution” in the amount of 9%.

(d) The City participates in Social Security; the employee contribution (6.2%) will be deducted from the Police Chief’s gross pay.

(e) **Benefits.** Police Chief shall be entitled to all benefits, rights and privileges accorded to Department Heads as set forth in the St. Helena Employees’ Handbook, and any compensation resolution applicable to unrepresented employees of the City, as each may be amended from time to time, except as otherwise provided in this Agreement or as they may conflict with the Police Chief’s status as an “At-will” employee. If there is any conflict between this Agreement and any resolution or policy fixing compensation and benefits for City Department Heads or other unrepresented employees, this agreement shall control.

(f) **Accrual.** Police Chief shall receive accruals based upon his original hire date of September 10, 2007. As of the dates of this Agreement, the Police Chief accrues vacations at a rate of (18) days paid vacation each year. The Police Chief shall continue to accrue vacation in accordance with the accrual rate provided to Department Heads. The maximum vacation that

Attachment 1

may be accrued by the Police Chief is twenty (20) days per year. The maximum amount of accrued vacation may not exceed 380 hours.

(g) **Holiday and Executive Leave.** Police Chief shall receive five (5) days of paid floating holidays awarded January 1st of each full year of employment. Police Chief shall receive five (5) days of executive leave awarded January 1st of each full year. Floating holidays and executive leave must be used in the year accrued or the time shall be forfeited. For purpose of calculating Vacation accruals and Floating Holidays; time shall be based on the Police Chief's initial date of hire with the City, which is September 10, 2007.

(h) **Sick Leave.** Police Chief shall be entitled to twelve (12) days sick leave each year.

(i) **Vehicle Allowance.** Police Chief will receive an unmarked Police Vehicle to drive in lieu of Vehicle Allowance of \$200 per month.

(j) **Deferred Compensation.** Police Chief will receive a matching contribution of up to \$200 per month towards his deferred compensation account.

(k) **Communications.** Police Chief will have the use of a City cellular phone and iPad pursuant to policies established by the City.

(l) **Professional Development and Training.** City shall pay for Police Chief's annual training and membership to essential professional associations.

(m) **Hours of Work.** The Police Chief is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the Police Chief position. If mutually agreed to between the City Manager and the Police Chief, the Police Chief may have a modified work schedule, such as 4/10 or 9/80 or have the opportunity to telecommute as deemed appropriate by the City Manager.

(n) **Uniform Allowance.** Consistent with the uniform allowance provided to other sworn personnel, the Police Chief shall receive an annual uniform allowance in the amount of \$750.00 paid twice a year in December and June, in equal amounts.

6. Return of City Property

In the event of termination, any City equipment or property will be promptly returned to the City. In addition, any and all finished and unfinished documents, data, reports and materials are the property of the City and shall be promptly delivered to the City Manager. Police Chief shall keep all information acquired through his position in the strictest confidence.

7. Indemnification

In accordance with the terms, conditions, and limitations of the Government Claims Act (Gov't Code §§ 810 et seq.), City shall defend, save harmless, and indemnify the Police Chief against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Police Chief's duties as Police Chief. City will determine whether to compromise and settle any such claim or suit and the amount of any settlement or judgment rendered thereon. Any funds provided to the City for the legal criminal defense of the Police Chief must be fully reimbursed to the City if the Police Chief is convicted of a crime involving and abuse of his office or position, as defined in Government Code § 53243.4.

8. Attorney's Fees

In the event of any mediation, arbitration or litigation to enforce any of the provisions of this Agreement, each party shall bear its own attorney's fees and costs.

9. Jurisdiction and Venue

This Agreement shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in Napa County, California.

10. Notices

Any notices required by this Agreement shall be in writing and either given in person or by first class mail with postage prepaid and addressed as follows:

TO CITY: City Manager
 City of St. Helena
 1480 Main Street
 St. Helena, CA 94574

TO EMPLOYEE: William Imboden
 City of St. Helena
 1480 Main Street
 St. Helena, CA 94574

11. Entire Agreement

This Agreement is the final expression of the complete agreement of the parties with

Attachment 1

respect to the matters specified herein and supersedes all prior oral or written understandings. However, the Agreement may be amended or altered by the City Manager at any time. Any such amendments or alterations must be in writing, signed by Police Chief and the City Manager and approved by the City Council.

12. Severability

If any provision of this Agreement is found to be unenforceable by judgment or court order, the remainder of the Agreement shall remain in full force and effect, as if the unenforceable provision had never been included.

13. Assignment

Police Chief may not assign or transfer any rights granted or obligations assumed under this Agreement.

14. Informed and Voluntary Agreement

Police Chief acknowledges that he has had the opportunity to receive legal representation and advice in connection with this Agreement and that he voluntarily enters in to his Agreement fully informed about the rights and obligations he assumes and waives by entering into his Agreement.

IN WITNESS WHEREOF, City and the Police Chief have entered into and executed this Agreement as of the 12th day of January 2016.

CITY OF ST. HELENA
A Municipal Corporation

POLICE CHIEF

By: _____
Jennifer Phillips
City Manager

By: _____
William Imboden

Approved as to Form:

By: _____
Thomas B. Brown
City Attorney

**CITY OF ST. HELENA
RESOLUTION NO. 2016-____**

**APPOINTING A CHIEF OF POLICE
AND APPROVING AN EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF ST HELENA AND WILLIAM IMBODEN**

RECITALS

- A. William Imboden has served with the City of St. Helena's Police Department since 2007; and
- B. Since July 1, 2015, Acting Chief Imboden has been serving as the City's Police Chief and has been providing strong leadership and high quality customer service to the community.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena hereby resolves as follows:

- 1. Approve and authorize the City Manager to enter into an employment agreement effective January ____, 2016 with William Imboden as the Chief of Police of the City of St. Helena.

Approved at a Regular Meeting of the St. Helena City Council on January 12, 2016 by the following vote:

Mayor Galbraith:	_____
Vice Mayor White:	_____
Councilmember Crull:	_____
Councilmember Dohring:	_____
Councilmember Pitts:	_____

APPROVED:

ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk

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Report to the City Council
Council Meeting of January 12, 2016

Agenda Section: Consent Calendar

Subject: Resolution approving a budget adjustment to the Martin Trust Funds for professional services with BMI Imaging Systems, Inc. (BMI) in the amount of \$9,422.00 for the St. Helena Start Digitization Project.

CEQA Status: Not a Project

Prepared By: April Mitts, Finance Director

Chris Kreiden, Library Director

Approved By: Jennifer Phillips, City Manager

BACKGROUND

The FY 2014/15 Library budget allocated funds from the Martin Trust (Fund 382) for a project that would digitize the St. Helena Star. Formalizing the contract with BMI Imaging Systems, Inc. (BMI) for the digitization project took longer than expected and the contract was fully executed on July 14, 2015, in FY 2015/16.

DISCUSSION

Staff is requesting a budget adjustment of \$9,422.00 for the costs associated with the digitization of the St. Helena Star project. The funds for the project were not spent in FY 2014/15 and the funding is available in the Martin Trust Fund.

FISCAL IMPACT

The fiscal impact to the City of St. Helena shall not exceed \$9,422.00 for the project and the funds are available in #382-4600-2145 and were allocated for this project in FY 2014/15.

RECOMMENDED ACTION

Staff recommends approval of the Resolution approving a budget adjustment to the Martin Trust Funds of \$9,422.00 for professional services in connection with the St. Helena Start Digitization Project.

ATTACHMENTS

Attachment A – Resolution Approving a budget adjustment to the Martin Trust Funds of \$9,422.00 for professional services in connection with the St. Helena Start Digitization Project.

CITY OF ST. HELENA
RESOLUTION NO. 2016-_____

**APPROVING A BUDGET ADJUSTMENT TO THE MARTIN TRUST FUNDS OF \$9,422.00
FOR THE ST. HELENA STAR DIGITIZATION PROJECT**

RECITALS

- A. The City has entered into a contract with BMI Imaging Systems, Inc. (BMI) for professional services for the St. Helena Star Digitization Project; and
- B. The FY 2014/15 budget allocated funds from the Martin Trust for this project; and
- C. The contract with BMI was not fully executed until July 15, 2015; and
- D. It is requested a budget adjustment for this project for FY 2015/16 be made to the Martin Trust as the funds were not spent in FY 2014/15 as originally anticipated.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

- 1. The City Council approves the budget adjustment to the Martin Trust Funds of \$9,422.00 for the St. Helena Start Digitization Project.

Approved at a Regular Meeting of the St. Helena City Council on January 12, 2016 by the following vote:

Mayor Galbraith:	_____
Vice Mayor White:	_____
Councilmember Crull:	_____
Councilmember Dohring:	_____
Councilmember Pitts:	_____

APPROVED:

ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk



Report to the City Council
Council Meeting of January 12th, 2016

Agenda Section: Consent Calendar

Subject: Resolution approving a Professional Services Agreement with Kleinfelder Incorporated in the amount of \$90,695 for Geotechnical and Seismic Analysis of the St. Helena Lower Dam, Capital Improvement Project W-108

CEQA Status: **Categorically Exempt, Section 15301 and 15304, Existing Facilities, and Minor Alteration to Land**

Prepared By: Tobias Barr, Public Works Project Manager
Steven Palmer, PE, Director of Public Works/City Engineer

Approved By: Jennifer Phillips, City Manager

BACKGROUND

The Lower York Creek Reservoir was constructed in 1878. The dam at the Lower York Creek Reservoir, known as the St. Helena Lower Dam, was subsequently raised and modified. In 1939, a new spillway was built, which provided the current configuration and capacity of the reservoir. Once the City's primary water supply, the facility has not been used for potable water since the Louis Stralla Water Treatment Plant was commissioned. The reservoir currently supplies raw water to Spring Mountain Vineyard, Robert Louis Stevenson Middle School and a raw water filling station located at Spring Mountain Road and Elmhurst Ave. Given the current drought conditions across California, surface water storage facility such as Lower York Creek Reservoir provide significant value and water security to the City of St. Helena. Additionally the Lower York Creek Reservoir facility could be potentially be used for future water storage for recycled water or expanded raw water system. Additionally, the area has the potential to be a future park and recreation area for the city which would provide additional value for St. Helena residents.

The St. Helena Lower Dam, like all municipally owned dams in the state, is regulated under the jurisdiction of the State Water Resources Divisions of Safety of Dam (DSOD). DSOD regularly inspects St. Helena Lower Dam as well as Bell Canyon Dam and keeps extensive records on both facilities. Under the regulatory program, DSOD has presented a number of concerns to the City of St. Helena for approximately over the last

10 years. Concerns include the stability of the St. Helena Lower Dam during a seismic event. DSOD believes that under a seismic event, the St. Helena Lower Dam could be subject to liquefaction and experience a catastrophic failure. As such the DSOD has restricted the amount of water storage capacity the City is permitted to store in the Lower York Creek Reservoir and directed the city to perform a geotechnical analysis. If the city continues to not address DSOD's concerns, they can further restrict storage capacity and levy other requirements on the City if necessary.

Previously in 1989, the city attempted to address the stability concerns. During this time Taber Drilling was hired to drill boring samples to assess the condition of the dam's earth fill embankment. While Taber Drilling report found the stability of the dam to be sufficient, an extensive DSOD review found the data within the Taber Report to be inconclusive. DSOD then assumed values for the data which it questions and determined the dam was subject to liquefaction during a seismic event. Due to the sampling quality of the data collected by Taber Drilling, Taber Drilling and the City's Engineer could not adequately defend the report or address DSOD's concerns. As such DSOD has requested the city adequately address their concerns and continues to restrict the reservoir.

Recently, DSOD has also requested that the City review piezometer data that has been collected at the Bell Canyon Dam. This work will include an evaluation of the performance of the dam based on piezometer data, and an identification of any unusual data.

DISCUSSION

Due to the concerns of both DSOD and the City of St. Helena, project funding was identified to perform the assessment of the dam's stability in the five year Capital Improvement Projects program. As such the Public Works Project Manager, working with the Director of Public Works released a Request for Proposal for geotechnical and seismic evaluation of St. Helena Lower Dam on September 18th 2015. The RFP was advertised on the City's website, regional and state bidding clearing houses, and was also emailed to an extensive list of geotechnical consultants provided by DSOD. City Staff held preproposal meeting on September 30th 2015 at City Hall and then moved the meeting to Lower York Creek Reservoir so perspective consultants could see the facility. The preproposal meeting was attended by over fifteen different geotechnical engineering firms. Proposals were due on October 16th 2015 by 3:00 PM. This gave perspective consultants 20 working days to complete and submit proposals. The city reviewed five (5) of the seven total proposals. Two of the proposals received were disqualified because they were received after the 3:00 PM deadline. A committee of four City Staff persons reviewed all five eligible proposals and scored them based on the predetermined criteria outlined in the RFP. Of the five proposals, the proposals from GEI and Kleinfelder were scored the highest. City Staff then scheduled one hour interviews with each consultant. Both consultants are highly qualified and performed well during the interviews. Because Kleinfelder had reviewed the history of the dam and

the Tabor Drilling Report from 1989 extensively, they were able to provide superior answers and guidance to City Staff during the interview process. As such, City Staff found Kleinfelder to be the best qualified consultant to perform the work.

This work is exempt from CEQA. The work is being performed at an existing City facility, and the work involves only minor alteration to the land in the form of subsurface drilling,

FISCAL IMPACT

The project is listed under the City's five year Capital Improvement Program. The total cost of the contract is \$90,695 and will be paid from the Water Utility Fund. Currently \$100,000 is budgeted for the project under capital improvement project W-108.

RECOMMENDED ACTION

Adopt attached resolution authorizing the City Manager to execute a Professional Services Agreement with Kleinfelder Incorporated in the amount of \$90,695 for the geotechnical and seismic analysis of St Helena Lower Dam.

ATTACHMENTS

1. Resolution
2. Professional Services Agreement

CITY OF ST. HELENA

RESOLUTION NO. _____

**APPROVING A PROFESSIONAL SERVICES
AGREEMENT WITH KLEINFELDER INCORPORATED IN
THE AMOUNT OF \$90,695 FOR GEOTECHNICAL AND
SEISMIC ANALYSIS OF THE ST. HELENA LOWER
DAM, CAPITAL IMPROVEMENT PROJECT W-108**

RECITALS

- A. The Division of Safety of Dams has directed the City of St. Helena to address safety and stability concerns and perform a geotechnical and seismic analysis at the St. Helena Lower Dam; and
- B. City Staff conducted a competitive solicitation to attract highly qualified geotechnical engineering consultants; and
- C. Of the five proposals reviewed, Kleinfelder Incorporated was scored in the top two; and
- D. During the Interview process Kleinfelder Incorporated demonstrated the level of experience, competence, staffing, and other qualifications necessary for exceptional performance of the services required and described in the scope of work; and
- E. The project is funded under Capital Improvement Project W-108.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

1. The City Manager is authorized to execute the Professional Services Agreement with Kleinfelder Incorporated in the amount of \$90,695 for geotechnical analysis and seismic evaluation of the St. Helena Lower Dam.

Approved at a Regular Meeting of the St. Helena City Council on January 12, 2016 by the following vote:

Mayor Galbraith: _____

Vice Mayor White: _____

Councilmember Crull: _____

Councilmember Dohring: _____

Councilmember Pitts: _____

APPROVED:

ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on January 12th, 2016, 2015 by and between the City of St. Helena, located in the County of Napa, State of California (City), and Kleinfelder Incorporated (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as St. Helena Lower Dam Geotechnical and Seismic Evaluation.

B. Consultant has represented that Consultant has the necessary expertise, experience, and qualifications to perform the required duties.

NOW, THEREFORE, in consideration of the mutual premises, covenants, and conditions herein contained, the parties agree as follows:

SECTION 1 – BASIC SERVICES

Consultant agrees to perform the services and work (together, “services”) set forth in **Exhibit A, “Scope of Services”** and made part of this Agreement.

SECTION 2 – ADDITIONAL SERVICES

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or **Exhibit A, “Scope of Services”**, unless such additional services and compensation are authorized in advance and in writing by the City Council or City Manager of the City.

SECTION 3 – TIME FOR COMPLETION

The time for completion of services shall be as identified in **Exhibit A, “Scope of Services”**.

SECTION 4 – COMPENSATION AND METHOD OF PAYMENT

A. Subject to any limitations set forth in this Agreement, City agrees to pay consultant the amount specified in **Exhibit B, “Compensation”**, attached hereto and made a part hereof. Total compensation shall not exceed \$90,695.00, unless additional compensation is approved in accordance with Section 2.

B. Consultant shall furnish to City an original invoice for all services performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories if applicable: labor (by sub-category), travel, materials, equipment, supplies, subconsultant contracts, and miscellaneous expenses. City shall independently review each invoice submitted to determine whether the services performed and expenses incurred are in compliance with the provisions of this Agreement. If no charges or expenses are disputed, the invoice shall be approved and City will use its best efforts to cause Consultant to be paid within

30 days of receipt of invoice. If any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. If the City reasonably determines, in its sole judgment, that the invoiced charges and expenses exceed the value of the services performed to date and that it is probable that the Agreement will not be completed satisfactorily within the Agreement price, City may retain all or a portion of the invoiced charges and expenses. Within thirty (30) days of satisfactory completion of the project, City shall pay the retained amount, if any, to Consultant. In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in Consultant's invoice.

C. Payment to the Consultant for services performed pursuant to this Agreement shall not be deemed to waive any defects in services performed by Consultant.

SECTION 5 – STANDARD OF PERFORMANCE

Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

SECTION 6 – INSPECTION AND FINAL ACCEPTANCE

City may inspect and accept or reject any of Consultant's services under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's services within sixty (60) days after submitted to City, unless the parties mutually agree to extend such deadline. City shall reject services by a timely written explanation, otherwise Consultant's services shall be deemed to have been accepted. City's acceptance shall be conclusive as to such services except with respect to latent defects and fraud. Acceptance of any of Consultant's services by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, the sections pertaining to indemnification and insurance.

SECTION 7 – INSURANCE REQUIRED

Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by the Consultant, its agents, representatives, or employees, as indicated:

- A. Minimum Scope of Insurance. Coverage shall be at least as broad as:
1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
 2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
 3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

B. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations, as applicable. If Commercial General Liability Insurance or other form with a General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$2,000,000 per accident for bodily injury or disease.

C. Professional Liability Insurance. When Consultant under this Agreement is duly licensed under California Business and Professions Code as an architect, landscape architect, professional engineer, or land surveyor ("design professional"), Consultant shall maintain at least \$2,000,000 of professional liability insurance.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions of \$25,000 or greater must be declared to and approved by the City.

E. Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its agent, officers, officials, employees, and volunteers are to be covered as additional insured as respects: liability arising out of services or operations performed by the Consultant or Consultant's subconsultants; or automobile owned, leased, hired or borrowed by the Consultant.
2. For any claims related to Consultant's conduct while performing the services of this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its agents, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its agents, officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subsection (b) of Section 2782 of the Civil Code.

F. Waiver of Subrogation. The workers compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its agents, officers, officials, employees and volunteers for losses paid under the terms of this policy which arises from the services performed by the named insured for the City.

G. The Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

H. Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on forms that conform to City requirements. All certificates and endorsements are to be received and approved by the City before services commence. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SECTION 8 – INDEMNIFICATION

A. Consultant shall indemnify and hold harmless City, its agents, officers, officials, employees, and volunteers from any and all claims, demands, suits, loss, damages, injury, and/or liability (including any and all costs and expenses in connection therewith), incurred by reason of any negligent or otherwise wrongful act or omission of Consultant, its officers, agents, employees and subcontractors, or any of them, under or in connection with this Agreement; and Consultant agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against City, its agents, officers, officials, employees and volunteers, or any of them, arising out of such negligent or otherwise wrongful act or omission, and to pay and satisfy any resulting judgments.

B. When Consultant under this Agreement is a design professional, the provisions of this section regarding Consultant's duty to defend and indemnify apply only to claims that arise out of or relate to the negligence, recklessness, or willful misconduct of the design professional.

C. If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Consultant has agreed to indemnify Indemnitees as provided above, Consultant, upon notice from City, shall defend Indemnitees at Consultant's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to Indemnification in order to be so indemnified. The insurance required to be maintained by Consultant shall ensure Consultant's obligations under this section, but the limits of such insurance shall not limit the liability of Consultant hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

D. The provisions of this section do not apply to claims to the extent occurring as a result of the City's sole negligence or willful acts or misconduct.

SECTION 9 – INDEPENDENT CONTRACTOR STATUS

A. Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Consultant shall have no authority to bind City in any manner, nor to incur an obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

B. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as

set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, employees or agents of City.

C. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

SECTION 10 – CONFLICTS OF INTEREST

A. Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City Manager. Consultant agrees to at all times avoid conflicts with the interests of City in the performance of this Agreement.

B. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is aware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

SECTION 11 – OWNERSHIP OF DOCUMENTS

A. All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Consultant in the course of providing any services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Consultant. When requested by City, but no later than three years after project completion, Consultant shall deliver to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

B. All copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, improvements, developments, works of authorship, or other products developed or created by Consultant during the course of providing services (collectively the "Work Product") shall belong exclusively to City. The Work Product shall be considered a "work made for hire" within the meaning of Title 17 of the United States Code. Without reservation, limitation, or condition, Consultant hereby assigns, at the time of creation of the Work Products, without any requirement of further consideration, exclusively and perpetually, any and all right, title, and interest Consultant may have in the Work Product throughout the world, including without limitation any copyrights, patents, trade secrets, or other intellectual property rights, all rights of reproduction, all rights to create derivative works, and the right to secure registrations, renewals, reissues, and extensions thereof.

SECTION 12 – CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION

A. All information gained or Work Product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or Work Product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

B. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the services performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided consultant gives City notice of such court order or subpoena.

C. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or Work Product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant’s conduct.

D. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the services performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite such response.

SECTION 13 – SUSPENSION OF SERVICES

City may, at any time, by ten (10) days written notice suspend further performance by Consultant. All suspensions shall extend the time schedule for performance in a mutually satisfactory manner and Consultant shall be paid for services performed and reimbursable expenses incurred prior to the suspension date.

SECTION 14 – COMPLIANCE WITH LAW

Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Consultant to comply with this section.

SECTION 15 – COMPLIANCE WITH CIVIL RIGHTS

During the performance of this Agreement, Consultant agrees as follows:

A. Equal Employment Opportunity. In connection with the execution of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, ancestry, age, sexual orientation, physical handicap, medical condition, marital status, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training including apprenticeship.

B. Nondiscrimination Civil Rights Act of 1964. Consultant will comply with all federal regulations relative to nondiscrimination to federally-assisted programs.

C. Solicitations for Subcontractors including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations, made by Consultant for services to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by Consultant of Consultant's obligations under this Agreement and the regulations relative to nondiscrimination.

SECTION 16 – RECORDS

A. Records of Consultant's direct labor costs, payroll costs, and reimbursable expenses pertaining to this project covered by this Agreement will be kept on a generally recognized accounting basis and made available to City if and when required for a period of up to 3 years from the date of Consultant's final invoice.

B. Consultant's records and design calculations will be available for examination and audit if and as required. The cost of any reproductions shall be paid by City.

SECTION 17 – COOPERATION BY CITY

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the services as outlined in the Exhibit A, "Scope of Services", shall be furnished to Consultant in every reasonable way to facilitate, without undue delay, the services to be performed under this Agreement.

SECTION 18 – NOTICES

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by facsimile or first class mail, addressed as follows:

To City: City Manager
1480 Main Street
St. Helena, California 94574

To Consultant: William V. McCormick
2240 Northpoint Parkway
Santa Rosa, California 95407

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or, if mailed, three (3) days after deposit in the custody of the U.S. Postal Service.

SECTION 19 – TERMINATION

A. City may terminate this Agreement, with or without cause, at any time by giving ten (10) days written notice of termination to Consultant. If such notice is given, Consultant shall cease immediately all services in progress.

B. If either Consultant or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Consultant, or City may terminate this Agreement immediately upon written notice.

C. Upon termination of this Agreement by either Consultant or City, all property belonging to City which is in Consultant's possession shall be delivered to City. Consultant shall furnish to City a final invoice for services performed and expenses incurred by Consultant, prepared as set forth in this Agreement.

SECTION 20 – ATTORNEY FEES

If litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be entitled. In addition, any legal fees, costs and expenses incurred to enforce the provisions of this Agreement shall be reimbursed to the prevailing party.

SECTION 21 – ENTIRE AGREEMENT

This Agreement, including the attached Exhibits, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Consultant and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 22 – SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties. However, this Agreement shall not be assigned by Consultant without written consent of the City.

SECTION 23 – CONTINUITY OF PERSONNEL

Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff assigned to perform the services required under this Agreement, prior to any such performance.

SECTION 24 – DEFAULT

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any services performed after the date of default and may terminate this Agreement immediately by written notice to Consultant.

SECTION 25 – WAIVER

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 26 – LAW TO GOVERN; VENUE

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Napa. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in San Francisco.

SECTION 27 – SEVERABILITY

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

SECTION 28 – SPECIAL PROVISIONS

This Agreement is subject to the following special provisions: none.

IN WITNESS WHEREOF, the parties hereto have accepted, made, and executed this Agreement upon the terms, conditions, and provisions above stated, the day and year first above written.

Consultant:

City:

By: 

By: _____

Name: William V. McCormick

Name: Jennifer Phillips

Title: Senior Associate

Title: City Manager

Approved as to Form:

By: _____

Name: Thomas B. Brown

Title: City Attorney

Exhibit A-1

Scope of Services

Task 1: Project Work Plan (PWP)

Prior to field mobilization, the proposed subsurface investigation program will be described in a Project Work Plan (PWP) to be submitted and approved by DSOD. We are familiar with DSOD's requirements for PWP, having recently completed a PWP for both Lake Wohlford Dam and San Clemente Dam Removal Project last year. As described above, we believe the key to a successfully approved PWP is early interactions with DSOD prior to commencement of the PWP to discuss the project and proposed field and laboratory investigation. We will develop the plan with the City of St. Helena that can be approved by DSOD.

The PWP contain the following as a baseline:

- Project description and objectives of the study
- Review of DSOD file data and summary of construction history
- Plan drawing of proposed boring locations
- Detailed description of drilling and sampling procedures, including drilling methods, field testing and logging procedures
- Piezometer Installation Details
- Laboratory Test Program

Additionally the PWP may include:

- Site plan drawing showing existing boring and other items of interest from our review of existing available information
- Geologic Cross Sections along the upstream/downstream profile and along the crest of the dam

The final PWP may include additional items requested by DSOD. Consultant shall accommodate additional items that are reasonable and fall within the scope of the general project.

Task 2: Geotechnical Investigation

2.1 Office Research and Review

We will review published geologic and seismic mapping (including faulting, historic seismicity and anticipated ground motions) from both the City's files, DSOD's files, and available published literature and documents, including information within Kleinfelder's files. We will coordinate and schedule the site exploration with the City of St. Helena and DSOD.

In addition to the scope proposed by the City, we suggest that after our review of the existing information, we provide a summary of our review to the City and DSOD. This meeting will allow all parties to understand the collective data obtained to-date and to provide a baseline for further required investigation and engineering analyses work.

2.2 Site Exploration

As suggested in the RFP, we propose to drill 3 borings – two along the dam’s crest and one at the downstream toe of the dam. The depths of the 2 crest borings will extend through the dam embankment and about 20 feet into the foundation materials, which is a total depth of approximately 60 to 70 feet. The boring at the downstream toe will be drilled about 20 ft deep. The main focus of our investigation is to assess the liquefaction potential of the embankment soils including colluvial fill and alluvium given the underlying foundation material is rock (volcanic tuff), which is not subjected to liquefaction. This limited field investigation program is consistent with the budget planned by the City and will provide a minimum, but adequate, exploration of the soil properties and conditions within the dam and foundation.

Borings will be drilled and cased using mud rotary drilling equipment (casing advancer method). Although mud rotary may cost slightly more than other drilling methods (e.g. hollow stem auger drilling), the quality of data obtained is higher, which is needed for the assessment of the potential for liquefaction. Our experience with DSOD on past projects also indicates that DSOD prefers the mud rotary with casing advancer method over hollow stem auger drilling method.

Additional field investigation tools which may be considered during our discussions with the City and DSOD would include cone penetration tests (CPTs), exploratory test pits, sonic drilling, and geophysics. However, as stated in the RFP, the final number, depths and locations will be determined as part of the project Work Plan described above.

We will continuously sample one of the crest borings in order to provide a consistent record of the embankment/foundation conditions. The other two borings will be sampled at approximately 5-foot intervals. All sampling will be performed with California (2.4” I.D.) in cohesive soils and “Standard Penetration Test” (1.4” I.D.) drive samplers in granular material using a calibrated automatic hammer (as per ASTM D1586).

Samples will be carefully transported to Kleinfelder’s laboratory for their review of classification and evaluation for geotechnical laboratory testing.

We will install open standpipe piezometers at each of the 3 proposed boring locations (2 at crest and one at toe) to evaluate the free water profile through the dam. The City has requested the piezometers be single-tube standpipes consisting of 1-inch diameter, slotted PVC pipe, with locking caps. We have included the cost for these open standpipe piezometers in our cost estimate. An alternative to the open standpipe would be to use a vibrating wire piezometers. Vibrating wire piezometers are relatively easy to install and can be connected

to an automatic data logger for 24/7 monitoring. This alternative piezometer installation and monitoring element will be explored during our initial kickoff meeting with the City.

2.3 Laboratory Testing

We propose to perform the following laboratory tests on select soil samples collected during our field drilling program. The number of tests proposed is shown in brackets after each noted test:

- Moisture Content (ASTM D2216) and Unit Weight (ASTM D2937) [15 tests]
- Triaxial Shear Strength (ASTM D4767), including
 - Unconsolidated-Undrained (UU) [3 tests] and
 - Consolidated-Undrained (CU) with pore pressure measurements [2 tests]
- Sieve Analysis (ASTM D422) [15 tests]
- Atterberg limits (ASTM D4318) [15 tests]
- Maximum Dry Density (ASTM D698) [2 tests]

The significance of the number of tests proposed for moisture content, sieve analysis, and Atterberg Limits is to gain sufficient data on the embankment soil fines characteristics in order to perform an appropriate analysis of the liquefaction potential of the embankment and foundation.

Task 3: Engineering Analysis and Geotechnical Report

Based on the results of our data compilation, review of existing data, our field investigation and laboratory testing program, and our interactions with the City and DSOD, we will perform engineering analysis for soil liquefaction potential and embankment stability analyses. We will also consider other analyses if deemed necessary by the City and DSOD. For cost estimating purposes, we have estimated our proposed cost on the assumed engineering analyses proposed below.

3.1 Seismic Hazard and Stability Analyses

In developing the scope for this task, we have reviewed the RFP and the Memorandum of Design Review for Seismic Stability by Kristen Martin of DSOD dated October 21, 2013. DSOD performed seismic hazard and stability analyses and results were presented in this memorandum. However, due to incomplete nature of data, many inputs in the analysis were based on assumptions. The objective of this task is the development of acceleration response spectrum using the deterministic seismic hazard analysis (DSHA) approach based on the DSOD ground motion criteria (Fraser and Howard, 2002). We plan to use the 2014 Next Generation of Attenuation West 2 (NGA-West 2) ground motion prediction equations (GMPE) if approved by DSOD. Ground motion parameters developed in this task will be used in liquefaction and stability analyses of the dam.

3.1.1 Technical Approaches

Exhibits A1 & B1

St. Helena Lower Reservoir Geotechnical and Seismic Evaluation

A project-specific seismic source model will be developed based on the results of a review of available literature and the geologic characterization of the site. We understand based on the DSOD memorandum, that there are some data gaps in previous studies in terms of material properties in order to properly address the liquefaction potential of the embankment and the foundation. These studies will be carefully reviewed to consider their applicability to the proposed analysis and avoid duplication of effort.

The analysis will involve performing deterministic seismic hazard analyses (DSHA) to estimate the median and 84th percentile motions consisting of peak ground acceleration (PGA) and the design response spectrum for the site. The analysis will use the seismic parameters of the dominant seismic source(s) and the applicable NGA-West 2 GMPEs. Appropriate values of V_{s30} (average shear wave velocity in the upper 100 feet), $Z_{1.0}$ (depth in meters to a shear wave velocity, V_s , of 1,000 m/s), and $Z_{2.5}$ (depth in km to a V_s of 2,500 m/s), which are needed as inputs in the GMPEs, will be estimated based on the available geologic information about the subsurface conditions and our field investigations and laboratory tests. In addition, a probabilistic seismic hazard analysis (PSHA) will be performed to estimate the return period of the PGA estimated from DSHA. Arias Intensity will be estimated as well.

Based on the review of the DSOD memorandum, it seems that Idriss and Boulanger (2008) method is the method preferred by DSOD for the liquefaction assessment. Our liquefaction analysis on the previous and new borings will be based on this method. Residual strengths of liquefied materials will be estimated using Idriss and Boulanger (2008) procedure.

Post-earthquake static stability analysis using residual strengths for liquefiable materials will be performed on one cross section to assess the potential of flow failure of the upstream and downstream slopes. In case the embankment is stable under post-earthquake conditions, a pseudo-static analysis will be performed per DSOD criteria to assess the seismic stability of the upstream and downstream slopes at the same cross section. Water surface elevations reflecting full reservoir and restricted elevation will be used. Yield accelerations will be assessed for the same cross section and for the two reservoir water levels. Using simplified methods, an estimation of deformations will be made using the Newmark Method.

3.2 Liquefaction Analysis

We will conduct a liquefaction assessment of the embankments and foundation materials based on data obtained during the field investigation. If results of the assessments do not indicate a potential for liquefaction, we will calculate the yield acceleration of the dam to evaluate if large deformations could potentially occur under the seismic load. If the potential for deformation is identified, a simplified Makdisi-Seed analysis and a Newmark sliding-block analysis will be performed to evaluate if the deformation falls into the small, moderate, or large category. We will also conduct a pseudo-static stability analysis. Cases to be considered are earthquake loading (upstream and downstream) represented by a pseudo-static coefficient. Undrained strengths may be reduced as appropriate for this analysis.

3.3 Seepage and Static Stability Analyses

Exhibits A1 & B1

St. Helena Lower Reservoir Geotechnical and Seismic Evaluation

We will conduct seepage, and limit equilibrium, static stability analyses of the selected embankment cross-section. We have assumed one cross section will be developed for these analyses. In general, steady-state seepage using drained strength parameters will be considered. An upstream rapid drawdown analysis will be evaluated considering three-stage analysis based on drained and undrained strength parameters. We anticipate using commercially-available programs (SEEP/W and SLOPE/W) developed as part of GeoStudio 2012, developed by GEO_SLOPE International Ltd. of Calgary, Alberta, Canada.

3.4 Civil Recommendations for DSOD Compliance and Geotechnical Engineering Report

Based on the results of our engineering analyses, we will provide DSOD civil engineering recommendations for required compliance, if the results of our geotechnical analyses indicate the dam does not currently meet seismic standards.

The results of our tasks performed above will be detailed in a geotechnical engineering report. A draft version of the report will be provided to the City and DSOD for their respective review. Our final report will incorporate the comments from DSOD and the City, as appropriate. We have assumed one round of review.

Task 4: Analysis of Piezometer Data at Bell Canyon Reservoir

We understand readings from piezometer and open monitoring wells have been collected since 1988 and that there are a total of 25 piezometers installed at Bell Canyon Dam. Additionally, toe and groin runoff data has been collected. As part of our scope of the work, we will review the August 2005 through June 2015 instrumentation data report and provide an analysis and conclusion on the results of the data, specifically, the water level within the dam embankment (phreatic surface) as indicated by the 25 piezometers. We have assumed for cost estimating purposes that the data collected is available in an Excel or similar database that can be easily graphed and used for assessing trends. We understand that manually entry of data and/or creating a database is not being requested. The position of the phreatic surface within the dam is a key factor in assessing the stability (hence safety) of Bell Canyon Dam. It is therefore important that the piezometer data be accurate and representative of the actual conditions. We will assess the data to see if false or inaccurate readings are being obtained from these instruments and will consider the impact of those findings during assessment of the phreatic surface. We will use this information to assess the stability of the Bell Canyon Dam.

Exhibit B-1

Compensation

For the scope of work indicated in Exhibit A-1, including all caveats, Kleinfelder Incorporated will not exceed ninety thousand six hundred and ninety five dollars (\$90,695.00) unless additional compensation is approved in accordance with Section 2.

LABOR FEE									
St. Helena Lower Dam Geotechnical and Seismic Evaluation									
LABOR CATEGORY	13 - Senior Project Manager	12 - Principal Professional	10 - Project Professional	9 - Staff Professional II	8 - CADD Operator	7 - Project Controls Specialist I	7 - Project Administrator I	TOTAL HOURS	TOTAL TASK FEE
<i>Labor Factor</i>	<i>Regular Time</i>	<i>Regular Time</i>	<i>Regular Time</i>	<i>Regular Time</i>	<i>Regular Time</i>	<i>Regular Time</i>	<i>Regular Time</i>		
<i>Billing rate (\$ hr)</i>	\$220.00	\$220.00	\$140.00	\$120.00	\$115.00	\$125.00	\$35.00		
Task 1 - Project Work Plan	2	8	16		4			30	\$4,900.00
Task 2A - Research and Review	2	4	12					18	\$3,000.00
Task 2B - Site Exploration (3 borings from 20-70 feet in depth - see proposal for details)	4	4	63					71	\$10,580.00
Task 2C - Laboratory Testing	2	4	8					14	\$2,440.00
Task 3 - Engr. Analysis & Geotech Report (assumes one cross section analyzed)	4	20	80		8	4	2	118	\$18,070.00
Task 3.1 Seismic Engineering Analyses		24	60					84	\$13,680.00
Task 4 - Analysis of Piezometer Data, Bell Canyon		4		16			2	22	\$2,970.00
LABOR HOURS	14	68	239	16	12	4	4	357	
LABOR FEE	\$3,080	\$14,960	\$33,460	\$1,920	\$1,380	\$500	\$340		\$55,640

TASK	HOURS	LABOR BUDGET	REIMB. EXPENSE BUDGET	LAB BUDGET	SUB BUDGET	TOTAL
Task 1 - Project Work Plan	30	\$4,900.00	\$0.00	\$0.00	\$0.00	\$4,900.00
Task 2A - Research and Review	18	\$3,000.00	\$0.00	\$0.00	\$0.00	\$3,000.00
Task 2B - Site Exploration (3 borings from 20-70 feet in depth - see proposal for details)	71	\$10,580.00	\$260.00	\$0.00	\$24,200.00	\$35,040.00
Task 2C - Laboratory Testing	14	\$2,440.00	\$0.00	\$10,595.00	\$0.00	\$13,035.00
Task 3 - Engr. Analysis & Geotech Report (assumes one cross section analyzed)	118	\$18,070.00	\$0.00	\$0.00	\$0.00	\$18,070.00
Task 3.1 Seismic Engineering Analyses	84	\$13,680.00	\$0.00	\$0.00	\$0.00	\$13,680.00
Task 4 - Analysis of Piezometer Data, Bell Canyon	22	\$2,970.00	\$0.00	\$0.00	\$0.00	\$2,970.00
TOTALS	357	\$55,640.00	\$260.00	\$10,595.00	\$24,200.00	\$90,695.00

Exhibits A1 & B1

St. Helena Lower Reservoir Geotechnical and Seismic Evaluation

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**Report to the City Council
Council Meeting of January 12, 2016**

Agenda Section: Consent Calendar

Subject: Consideration and Proposed Approval of a Resolution Accepting the Work and Directing the Filing of the Notice of Completion for the Valley View Bike Lane Project, CIP No. R-75

CEQA Status: Categorically Exempt, Section 15301, Existing Facilities

Prepared By: Steven Palmer, PE, Director of Public Works/City Engineer

Approved By: Jennifer Phillips, City Manager

BACKGROUND

The 2015-2020 Capital Improvement Plan included a budget of \$70,000 for the Valley View Street Bike Lane Project, R-75.

The City and State codes do not require public bidding for construction contracts less than \$45,000, and allow for contracts to be negotiated. On August 19, 2015, the City Manager executed a construction contract with Chrisp Company in the amount of \$29,445 for the Valley View Bike Lane Project, CIP No. R-75.

Chrisp Company has completed all work required by the contract, and the Project is ready for acceptance and filing of the Notice of Completion (NOC).

DISCUSSION

The original contract amount was for \$29,445 and the Public Works Director issued one change order for the Contract. This change order was a final change order to reflect actual quantities installed. The change order resulted in a decrease of \$3,867.00.

FISCAL IMPACT

The total construction contract amount including all change orders is \$25,578.00. The Project is funded through the Capital Improvement Project Valley View Street Bike Lane Project, R-75 with total project budget of \$70,000.00.

The Project Expenditure summary is provided in the table below:

Phase	Amount
Original Contract	\$ 29,445.00
Contract Change Orders	\$ 3,867.00
TOTAL	\$ 25,578.00

The total Project CIP cost of \$25,578.00 is within the current project budget of \$70,000.00 and there is no need for budget adjustment.

RECOMMENDED ACTION

Approve the attached Resolution to accept the work and direct the filing of the Notice of Completion for Valley View Street Bike Lane Project, R-75.

ATTACHMENTS

1. Resolution
2. Notice of Completion

CITY OF ST. HELENA
RESOLUTION NO. 2015-_____

**Accepting the Work and Directing the Filing of the
Notice of Completion for the Valley View Street Bike
Lane Project, R-75**

RECITALS

- A. As allowed by City and State codes, City staff negotiated a contract for the Valley View Bike Lane Project, R-75; and
- B. On August 19, 2015, the City Manager executed a construction contract with Chrisp Company in the amount of \$29,445 for the Valley View Bike Lane Project, CIP No. R-75; and
- C. The Public Works Director approved one deductive change order in the amount of \$3,867.00; and
- D. Chrisp Company has completed the work in accordance with the contract documents for the project.

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

- 1. The work performed by Chrisp Company under the subject contract is accepted as complete.
- 2. The Public Works Director/City Engineer is authorized to prepare a Notice of Completion and the City Clerk is directed to file a Notice of Completion with the Napa County Recorder.

Approved at a Regular Meeting of the St. Helena City Council on January 12, 2016, by the following vote:

Mayor Galbraith:	_____
Vice Mayor White:	_____
Councilmember Crull:	_____
Councilmember Dohring:	_____
Councilmember Pitts:	_____

APPROVED:

ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk

Recording Requested By:

City of St Helena
 1480 Main Street
 St Helena, CA 94574

**Exempt From Recording Fees Per
Government Code Sec. 27383****When Recorded Mail To:**

City Clerk
 City of St Helena
 1480 Main Street
 St Helena, CA 94574

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

NOTICE OF COMPLETION**NOTICE IS HEREBY GIVEN THAT:**

- 1 The undersigned is an owner of an interest of estate in the hereinafter described real property, the nature of which interest or estate is: fee simple.
- 2 The full name and address of the undersigned owner and of any and all co-owners are:

Name	Street and No.	City	State
City of St Helena	1480 Main Street	St Helena	CA

- 3 On the 22nd day of September, 2015, there was completed upon the hereinafter described real property a work of improvement as a whole and described as follows: **Valley View Bike Lane Project, CIP No. R-75.**

- 4 The name of the original contractor for the work of improvement as a whole was: **Chrisp Company.**
- 5 The real property herein referred to is situated in the City of St Helena, County of Napa, State of California, and described as follows: **Valley View Street between Grayson and Birch.**
- 6 The street address of the property is: **Valley View Street-Grayson to Birch, St. Helena CA, 94574.**

By: _____
 Owner's Authorized Agent's Signature – Sign Before Notary
 Steven Palmer, Public Works Director/City Engineer

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is
true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

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Report to the City Council
Council Meeting of January 12, 2015

Agenda Section: Consent Calendar

Subject: Consideration and proposed approval of a resolution approving a proposal to expand the restaurant-cap for an approved restaurant at 1414 Main Street.

CEQA Status: The project is Categorically Exempt from the requirements of CEQA under a Class 31 and Class 1 Categorical Exemption under Sections 15331 and 15301.

Prepared By: Noah Housh, Planning and Community Improvement Director

Approved By: Jennifer Phillips, City Manager

UJH

BACKGROUND

On December 1, 2015, the Planning Commission approved a new 52-seat restaurant with outdoor seating located at 1414 Main Street. The site had recently been approved to open and operate a Tasting Room, however the owner chose not to implement this approval and pursued a restaurant at the site in its place.

Zoning Code Section 17.48.090 C. limits the total number of food and beverage establishments within St Helena, to 30. Any new restaurant above and beyond the 30 restaurant cap (incorporated into the same Code section) must gain City Council approval for the operation to be allowed.

DISCUSSION

The applicant requested and was unanimously granted (by the Planning Commission) Use Permit and Design Review approval to operate a 52-seat restaurant, with outdoor seating and construction of an approximately 300 square foot addition to incorporate a kitchen into the existing Historic building. The project site does not have any on-site parking however, the applicant proposed, and was approved to, utilize a combination of in-lieu parking payments (\$14,000-2 spaces) and off-site parking in keeping with zoning Code Sections 17.124, to meet the parking requirements of the proposed restaurant use.

In granting this approval, the Commission conditioned the project to go before the City Council for approval for a new restaurant, given the restaurant limitation identified in

Code Section 17.48.090. Given this condition, the project is before the City Council for approval.

FISCAL IMPACT

No fiscal impacts beyond the slight increase in sales taxes associated with a new restaurant have been identified by staff.

RECOMMENDED ACTION

It is recommended by the Planning Commission and the Department of Planning and Community Improvement, that the City Council approve the proposed increase in the number of restaurants to allow a new 52-seat restaurant to open and operate at 1414 Main Street.

ATTACHMENTS

1. Council Resolution approving the Restaurant Increase
2. Planning Commission Resolution Approving the Use Permit and Design Review
3. Design Rendering of front façade of restaurant

CITY OF ST. HELENA
RESOLUTION NO. 2016-_____

**RESOLUTION OF THE COUNCIL OF THE CITY OF ST. HELENA AUTHORIZING AN
INCREASE IN THE NUMBER OF RESTAURANTS BEYOND THE CURRENT
LIMITATION OF THIRTY (30) ESTABLISHED BY ZONING CODE SECTION
17.48.090**

RECITALS

- A. Whereas the Planning Commission, considered the project, staff report, and all testimony, written and spoken, at a duly noticed Public Hearing on December 1, 2015, and approved a Use Permit and Design Review to allow a 52-seat restaurant to operate at 1414 Main Street in the Central Business District, and
- B. Whereas, this approval was subject to approval of an increase beyond the limitation of 30 food and beverage establishments established in the Zoning Code; and
- C. Whereas, the City desires to expand on the range and style of food establishments serving the citizens of St Helena; and

RESOLUTION

Now, Therefore, the City Council of the City of St. Helena hereby resolves as follows:

1. The City Council approves the operation of a 52-seat restaurant above and beyond the food-establishment limitation of thirty (30), established by Zoning Code Section 17.48.090 C., and
2. The City Council approval is subject to the project applicant demonstrating compliance with all conditions and requirements established by Planning Commission Resolution PC2015-025.

Approved at a Regular Meeting of the St. Helena City Council on (date), by the following vote:

Mayor Galbraith:	_____
Vice Mayor White:	_____
Councilmember Crull:	_____
Councilmember Dohring:	_____
Councilmember Pitts:	_____

APPROVED:

ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk

CITY OF ST. HELENA PLANNING COMMISSION

RESOLUTION PC2015-047

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ST. HELENA
GRANTING APPROVAL OF A USE PERMIT AND DESIGN REVIEW
TO ALLOW THE OPERATION OF A 52-SEAT RESTAURANT, WITH OUTDOOR
SEATING AND CONSTRUCTION AN APPROXIMATELY 300 SQUARE FOOT
ADDITION TO INCORPORATE A KITCHEN INTO THE BUILDING LOCATED AT 1414
MAIN STREET**

PROPERTY OWNER: Antonio Castellucci

APN: 025-160-006

Recitals

- A. Whereas**, Antonio Castellucci submitted applications for Use Permit and Design Review to construct and operate a restaurant with outdoor seating at 1414 Main Street in the Central Business Zoning District; and
- B. Whereas**, the Planning Commission of the City of St. Helena, State of California, considered the project, staff report, and all testimony, written and spoken, at a duly noticed public hearing on December 1, 2015.
- C. Now, therefore** let it be found that, the Planning Commission approves the requested Use Permit and Design Review on the following basis:

Resolution

- A.** The Planning Commission hereby finds that this project qualifies for a Class 31 and Class 1 Categorical Exemption pursuant to Sections 15331 and 15301, of the California Environmental Quality Act (CEQA).
- B.** The Planning Commission makes the following Use Permit findings pursuant to Municipal Code Section 17.168.050:
1. That the proposed use would not generate odors, fumes, dust, light, glare, radiation or refuse that would be injurious to surrounding uses or to the community.
 2. That the proposed use would not generate levels of noise that adversely affect the health, safety, or welfare of neighboring properties or uses.
 3. That the proposed use would not generate traffic noise in excess of the "normally acceptable" range identified in the General Plan.

4. That the proposed use would not make excessive demands on the provision of public services including water supply, sewer capacity, energy supply, communication facilities, police protection, and fire protection.
5. That the proposed use would provide adequate ingress and egress to and from the proposed location.
6. That allowing the proposed use would not conflict with the City's goal of maintaining the economic viability of a local serving economy.
7. That the proposed use would be compatible with surrounding land uses and would not conflict with the purpose established for the district within which it would be located.
8. That the proposed use would not be in conflict with the City's General Plan.
9. That the proposed use would not be injurious to public health, safety, or welfare.
10. That granting the use permit would not set a precedent for the approval of similar uses whose incremental effect would be detrimental to the City or would be in conflict with the General Plan.
11. That, as demonstrated on a detailed plan submitted by the applicant, adequate off-street parking to accommodate the long term parking needs of employees and business owners and customers is available.
12. That the capacity of surrounding streets is adequate to serve the automobile and delivery truck traffic generated by the proposed use.
13. That the location of the project site accommodates and encourages walking rather than driving to the restaurant, supporting the parking as proposed.

C. The Planning Commission has considered the Design Review design criteria identified in Municipal Code Section 17.164.030 to support the motion to approve the Design Review given that the project has been found to demonstrate:

1. Consistency and compatibility with applicable elements of the general plan;
2. Compatibility of design with the immediate environment of the site;
3. Relationship of the design to the site;
4. Determination that the design is compatible in areas considered by the board as having a unified design or historical character;
5. Whether the design promotes harmonious transition in scale and character in areas between different designated land use;
6. Compatibility with future construction both on and off the site;

7. Whether the architectural design of structures and their materials and colors are appropriate to the function of the project;
8. Whether the planning and siting of the various functions and buildings on the site create an internal sense of order and provide a desirable environment for occupants, visitors and the general community;
9. Whether the amount and arrangement of open space and landscaping are appropriate to the design and the function of the structures;
10. Whether sufficient ancillary functions are provided to support the main functions of the project and whether they are compatible with the project's design concept;
11. Whether access to the property and circulation systems are safe and convenient for pedestrians, cyclists and vehicles;
12. Whether natural features are appropriately preserved and integrated with the project;
13. Whether the materials, textures, colors and details of construction are an appropriate expression of its design concept and function and whether they are compatible with the adjacent and neighboring structure and functions;
14. In areas considered by the board as having a unified design character or historical character, whether the design is compatible with such character;
15. Whether the landscape design concept for the site, as shown by the relationship of plant masses, open space, scale, plant forms and foliage textures and colors create a desirable and functional environment and whether the landscape concept depicts an appropriate unity with the various buildings on the site;
16. Whether plant material is suitable and adaptable to the site, capable of being properly maintained on the site, and is of a variety which is suitable to the climate of St. Helena;
17. Whether sustainability and climate protection are promoted through the use of green building practices such as appropriate site/architectural design, use of green building materials, energy efficient systems and water efficient landscape materials.

D. Now, therefore be it resolved that the Planning Commission, in keeping with Zoning Code Section 17.92.050, identifies that the requested Design Review meets the requirements for modification of structures within the -Historic Preservation (-HP) Overlay District and finds that:

18. That the alteration is compatible with the architectural style of the existing structures;

19. That the alteration does not eliminate elements that are required to maintain the essential form and character of the structure;
20. That the alternation is compatible with adjoining structures and the use of such structures.

E. Now therefore be it further resolved that, the Use Permit and Design Review for the above described project is granted subject to compliance with all applicable provisions of the Zoning Code subject to each of the following conditions. Permit shall be in conformance with all City ordinances, rules, regulations and policies in effect at the time of issuance of a building permit. The conditions noted below are particularly pertinent to this permit and shall not be construed to permit violation of other laws and policies not so listed.

1. The Use Permit and Design Review shall be vested within one (1) year from the date of approval. A building permit for the use allowed under this approval shall have been obtained within one (1) year from the effective date of the Use Permit and Design Review decision or these approvals shall expire; provided however that the approved Use Permit and Design Review may be extended for up to two (2) one-year periods pursuant to the St. Helena Municipal Code, Section 17.08.030, Extension of Permits and Approvals.
2. This permit is valid for this use and design only. New permits must be applied for any change in use. These permits will expire if the use is discontinued pursuant to then existing ordinances and regulations.
3. This approval is subject to City Council approval of an expansion of the Restaurant Seat Cap/Food and Beverage Establishment limitations established in Zoning Code Section 17.42.090.
4. The Use Permit and Design Review shall not become effective until fourteen (14) calendar days after approval, providing that the action is not appealed by the City Council or any other interested party within that 14 day period.
5. Any request for an extension of the Use Permit or Design Review must be justified in writing and received by the Planning Department at least thirty (30) days prior to expiration.
6. All required fees, including planning fees, development impact fees, building fees, retrofit fees, and St. Helena Unified School District fees (as applicable) shall be paid prior to issuance of a building permit.
7. Compliance with all permit conditions shall be clearly identified on all plans submitted for building permit approval, shall occur in accordance with specific regulations but in all cases no later than prior to occupancy or initiation of use unless another time is set by law or by this approval. Occupancy or final inspection of a project may be withheld if all conditions, including payment of fees for services rendered by the City, are not met.

8. The applicant will defend and indemnify and hold the City, its agents, officers, and employees harmless of any claim, action or proceedings to attack, set aside, void or annul an approval so long as the City promptly notifies the applicant of any such claim, action, or proceedings and the City cooperates fully in the defense of the action or proceedings.
9. Provided they are in general compliance with the approved Use Permit and Design Review, minor modifications found to be in substantial conformance with the approved design and use may be approved by the Planning Director.
10. This Use Permit and Design Review shall run with the land and shall be binding upon all parties having any right, title or interest in the real property or any part thereof, their heirs, successors and assigns, and shall inure to their benefit and benefit of the City of St. Helena.
11. The primary purpose of this review is for compliance with the General Plan and Zoning Ordinance. The owner/applicant is responsible for meeting with the Building Official / Fire Inspector to review compliance with Building and Fire Codes, including fire protection systems and the accessibility standards of Title 24.
12. Construction documents shall be in compliance with approved plans and exhibits.
13. No signs are approved as a part of this action. Separate sign Permit approval is required prior to any sign construction and/or installation.
14. Applicant is required to record a reciprocal parking agreement providing off-site parking for the proposed use with the property located at 111 Main Street.
15. Applicant is further required to provide payment into the Parking Mitigation fund to cover the cost of providing two (2) parking spaces. The total amount of this contribution is \$14,000 (or \$7,000 per space).
16. For those restaurants that wish to establish outdoor seating for dining on a sidewalk, the following will be required:
17. A one-and-one-half-foot "recovery zone" from the edge of curb must be kept free of obstructions (CalTrans requirement).
18. A four-foot clear path of travel along the sidewalk must be maintained to provide disabled access.
19. Tables and chairs must be brought indoors when the restaurant is closed.
20. Entertainment shall not be allowed on the sidewalk as part of the restaurant service.
21. An encroachment permit must be obtained from the city of St. Helena for all activities in the public right-of-way. Application must include documentation of required liability insurance. The city of St. Helena maintains the preeminent right to

use the sidewalk and suspend the right to encroach whenever the city needs use of the sidewalk for other public use or for repair.

22. Sidewalk dining permits are revocable at the will of the city, and such revocations do not result in a taking of the owner's property (i.e., a taking of the restaurant).
23. No more than twenty percent (20%) of a total restaurant seating may be located on the sidewalk or other public property.
24. The color scheme and paint color for the building shall be historically appropriate and compatible with the architecture, as recommended in the Historic Resource Report.
25. This action approves the sale and service of beer, wine and spirits from this location, subject to approval by and compliance with all requirements of the California Department of Alcohol Beverage Control.

Public Works Department Conditions of Approval

26. Approval of this project shall be subject to the requirements of, and all improvements shall be designed and constructed in accordance with, the most current version at the time of improvement plan submittal, Caltrans Standards and Specifications, the City of St. Helena Municipal Code, the St. Helena Water and Sewer Standards, the St. Helena Street, Storm Drain and Sidewalk Standards, and all current federal, state and county codes governing such improvements.
27. An encroachment permit shall be required for any work performed in, or use of, the public right of way.
28. Improvement plans shall incorporate all grading, drainage, and utilities shown on the approved Use Permit package, those improvements agreed to in public hearings, the requirements of these conditions of approval, and those improvements required by any codes in effect at the time of plan submittal.
29. Where increased impervious surfaces are proposed, the applicant shall submit a drainage and hydrology analysis for the project impact, including downstream erosion potential, to the City of St. Helena Public Works Department with the Improvement Plan submittal in accordance with City of St. Helena, Napa County and State of California codes in effect at the time of improvement plan submittal. On-site stormwater detention/retention/infiltration facilities are encouraged and may be required in accordance with current City, County, State, and Federal law.
30. As applicable, stormwater treatment shall be designed and constructed in accordance with the most current State of California standards and City of St. Helena Post Construction Stormwater Standards.
31. The applicant shall be required to submit to the requirements for annual inspections of food/beverage service establishments and businesses that handle hazardous

wastes for illicit stormwater discharges as required by the State National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges. The annual stormwater illicit discharge inspections are performed and invoiced to the applicant by Napa County Department of Environmental Management.

32. The applicant shall install an approved backflow device behind the existing water meter prior to Certificate of Occupancy. Any new and modified existing water laterals, meters and backflow prevention devices shall be required and constructed in accordance with the current requirements of the City of St. Helena's Water Standards and the California Department of Health Standards. Existing meter boxes located within a driveway shall be retrofitted with a traffic-rated box. New laterals shall be located perpendicular to the water main and outside any driveway/drive aisle.
33. Remodels or new construction which requires fire sprinklers shall install an appropriately-sized water service with appropriate backflow and meter devices prior to Certificate of Occupancy. Fire system calculations shall be submitted with the Grading and Drainage Plan to verify fire service lateral and meter sizing. Deferred submittals are not accepted.
34. The existing sewer lateral shall be abandoned and replaced with a new 6-inch sewer lateral and cleanout in conformance with the City of St. Helena Water and Sewer Standards.
35. The applicant shall install an appropriately sized grease trap/interceptor as described in the City's Grease Trap Guidelines. As designed with 48-58 seats, a 90-100 lb grease trap would meet the guidelines.
36. Trash areas, dumpsters and recycling containers shall be enclosed and roofed per State and County standards to prevent water run-on to the trash area and water runoff from the area, to contain litter and trash so that it is not dispersed by the wind or run-off during waste removal. An area drain connected to the sanitary sewer shall be installed in the enclosure area and a structural control such as an oil/water separator or sand filter shall be included. No other area shall drain into the trash enclosure. A sign shall be posted prohibiting the dumping of hazardous materials into the sanitary sewer.
37. New sidewalk may be required in the public right-of-way to maintain and connect the current path of travel as determined by the Public Works Director.
38. Any missing or broken curb, gutter and/or sidewalk along the project frontage shall be installed and/or replaced per City specifications prior to Certificate of Occupancy, extent to be determined by the Public Works Department.
39. Any existing driveway approach not connected to a driveway shall be replaced with sidewalk, curb and gutter, as applicable and as directed by the Public Works Department, prior to Certificate of Occupancy being granted.

40. The applicant shall repair all public improvements that are damaged by the construction process in accordance with the City Water/Sewer/Street/Storm Drain/Sidewalk Standards prior to Certificate of Occupancy.
41. Existing streets being cut by new utility services will require edge grinding and an A.C. overlay per City standards, extent to be determined by the Public Works Department.
42. The applicant shall incorporate water conservation practices into the proposed project and off-site, as described in the Water Neutrality Analysis by Applied Civil Engineering, dated August 31, 2015. The on-site and off-site water neutrality requirements shall be replicated in full on the building plan permit set. Off-site water neutrality improvements are required prior to certificate of occupancy.
43. Consistent with St. Helena Municipal Code Article IV, Water Conservation Section 18.44, New Development, the applicant shall be required to retrofit one (1) single family dwelling unit and one (1) second dwelling unit, both located at 760 Zinfandel Lane, prior to receiving a certificate of occupancy. Appeals to this requirement may be made pursuant to Article IV, Section 18.46. The exact number of retrofits may change dependent upon final floor area submitted for the building permit.
44. Evidence that the required retrofit has been completed is required to be submitted and accepted by the City prior to occupancy of the project site.
45. The proposed project must be connected to the City of St. Helena water system.
46. Landscape plans shall comply with Ordinance 92-20, Water Efficient Landscape Standards and Procedures, and with the Industrial District Regulations (Article 13.05 (g)). Plans shall be designed and verified by a landscape professional and shall include drought tolerant landscaping and low water irrigation systems. Landscaping shall not block vision from exits or at street intersections. If the landscape area is 2,500 square feet or greater, a landscape water flow meter shall be installed for verification of the amount of water being used for landscaping.
47. Plant materials shall be purchased from a source that verifies they have been inspected for glassy winged sharpshooter to ensure that they will not contribute to the spread of Pierce's disease to the surrounding vineyards.
48. The applicant shall provide for the enclosed storage of trash and separated recyclable materials. The design of the trash storage and recycling area shall be reviewed and approved by the Planning Director.

Fire Department Conditions of Approval

49. Fire equipment shall be inspected annually by the Fire Department.
50. Installation of a rapid entry Knox Box system, is required on any locked gates or fencing blocking Fire Department access to a property unless waived by the Fire Chief.

- 51. Installation of approved interior fire sprinkler system is required, unless waived by the Fire Chief.
- 52. One hour minimum fire resistant construction on all exterior walls within 10' of property boundary. Fire resistant construction of interior walls shall be determined by type of occupancy.

Building Department Conditions of Approval

- 53. The building permit application package may require a geotechnical report, and shall be reviewed and approved by the Building Official prior to issuance of a building permit.
- 54. A drainage and grading plan shall be submitted for review and approval by the City Engineer prior to the issuance of a building permit.
- 55. To reduce disturbance of residents in the project vicinity, construction activities which generate noise that can be heard at the property line of any parcel of real property within the City limits shall be limited to 8:00 a.m. to 5:00 p.m. Monday through Saturday. Delivery of materials/equipment and cleaning and servicing of machines/equipment shall be limited to 7:00 a.m. to 6:00 p.m. Exceptions to these time restrictions may be granted by the Public Works Director for one of the following reasons: (1) inclement weather affecting work, (2) emergency work, or (3) other work, if work and equipment will not create noise that may be unreasonably offensive to neighbors as to constitute a nuisance. The City Engineer must be notified and give approval in advance of such work. No construction activities shall occur on Sundays or federal or local holidays that generate noise that can be heard at the property line of any parcel of real property within the City limits.
- 56. Napa County Environmental Management for compliance with regulations pertaining to food storage, health and safety.
- 57. For those restaurants that wish to serve alcohol outside, the licensee must obtain approval for premises expansion from the California Department of Alcoholic Beverage Control.
- 58. All entrances and emergency exits shall be kept free of obstructions to ingress and egress.

I HEREBY CERTIFY that the foregoing Use Permit and Design Review was duly and regularly approved by the Planning Commission of the City of St. Helena at a regular meeting of said Planning Commission held on December 1, 2015, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Sarah Parker
Chair, Planning Commission

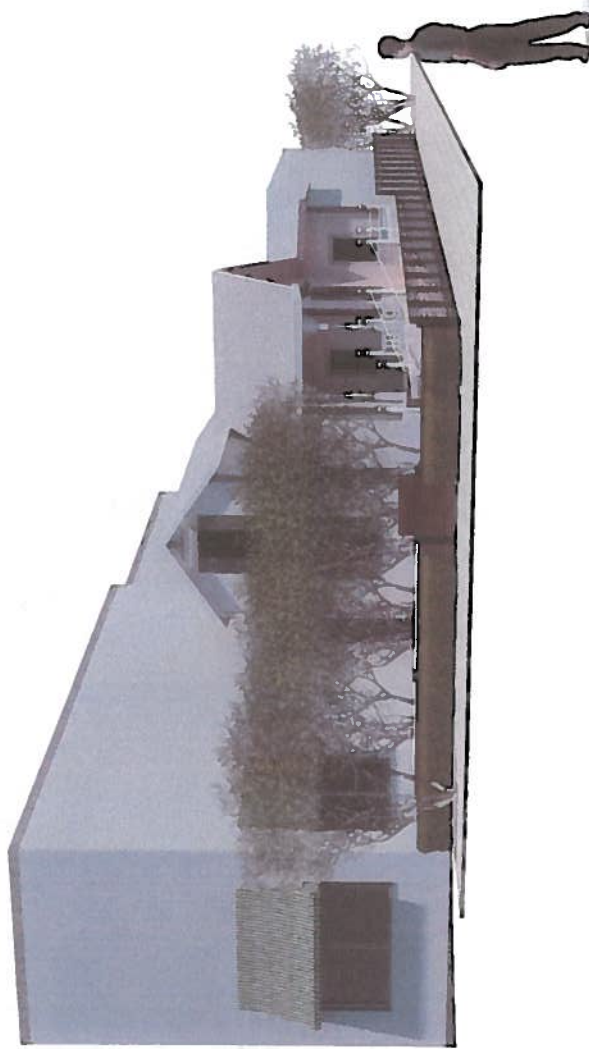
ATTEST:

Noah Housh,
Planning Director

RECEIVED
PLANNING DEPARTMENT
SEP 10 2015
City of St. Helena



EXISTING



PROPOSED



**Report to the City Council
Council Meeting of January 12, 2016**

Agenda Section: Consent

Subject: Second reading and consideration to adopt by title only an ordinance authorizing the City to implement and carry out a community choice aggregation program within the City of St. Helena through membership inclusion with Marin Clean Energy (MCE)

CEQA Status: Not a CEQA project as defined in accordance with CEQA Guidelines, Section 15378

Prepared By: Kathy Robinson, Operations Manager

A handwritten signature in black ink, appearing to be "Kathy Robinson", written over a horizontal line.

Approved By: Jennifer Phillips, City Manager

A handwritten signature in blue ink, appearing to be "Jennifer Phillips", written over a horizontal line.

BACKGROUND

On July 28, 2015, the City Council received a presentation from Marin Clean Energy (MCE), a public, not-for-profit electricity provider that focuses on maximizing the use of renewable energy sources in addition to lower energy rates. It is the intent of MCE to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar and wind energy production at competitive rates for customers. Following MCE's presentation, City Council directed staff to pursue a non-binding letter of interest to join MCE.

On August 7, 2015 the City Manager submitted a letter to MCE requesting consideration as a member. On September 21, 2015 the City received a letter from MCE informing that the MCE Board has approved a six-month "inclusion period" that would allow no-cost consideration if our application was completed on or before March 31, 2016. A copy of the letters and application process are attached (Attachment 1).

At the December 8, 2015 City Council meeting the Council adopted resolution 2015-150 requesting membership in Marin Clean Energy, authorized the Mayor to sign a request for confidential load data from PG&E, authorized the execution of a Memorandum of Understanding regarding MCE membership and held a public hearing to introduce and first reading by title only of the ordinance.

DISCUSSION

City staff has reviewed the application process and is prepared to move forward. The following is an outline of the application process:

- Adopt resolution requesting membership in Marin Clean Energy (Attachment 2).
- Introduction of attached ordinance that approves the implementation of a Community Choice Aggregation program within the City of St. Helena's jurisdiction by and through the City's participation in MCE and authorizes the Mayor to execute the MCE Joint Powers Agreement (Attachment 3).
- Execution of attached Memorandum of Understanding regarding MCE membership consideration (Attachment 4).
- Authorization for the Mayor to sign attached request for confidential load data from PG&E (Attachment 5).

As City Council directed staff to pursue a non-binding letter of interest to join MCE, it is of significance to note that City Council's adoption of this resolution and ordinance, not only authorizes the City to submit an application to the MCE Board for membership approval and authorizes MCE staff to conduct an economic feasibility analysis, adoption effectively authorizes the City to join MCE should the results of the feasibility analysis come back positive.

Additionally, further City obligations required in the draft MOU, upon MCE Board approval of the City's membership, are as follows:

- Agreement to publicize and share information about MCE within its community during the six-month enrollment period. Publicity options include, but are not limited to, website, social media, public events, community workshops, and newsletter announcements (where feasible), as well as distribution of flyers and handouts provided by MCE at City offices.
- Agreement to provide desk space for up to two MCE staff members during the six-month enrollment period, and agreement to consider ongoing desk space availability if needed for effective and efficient outreach.
- Designation of a City staff person to serve as a liaison to MCE to support and facilitate communication with other City staff and officials, as well as provide input and high-level assistance on community outreach.

Napa County is already an MCE member and all of the other Napa County jurisdictions have received similar notifications from MCE about their letters of membership interest. The City of Calistoga and American Canyon have adopted resolutions and had their first reading of ordinances on October 20 and November 3, respectively. If the City so chooses to streamline communication and policy setting, MCE allows any participating cities and towns in the same county the option to select one shares representative and one alternate

to serve on the MCE as a voting member. Should this option be chosen, the selected representative would have a weighted vote based on the combined load of all participation cities and towns with the county.

FISCAL IMPACT

There is no financial impact to the City as the six month "inclusion period" allows for consideration of the City's membership application if it is completed by March 31, 2016. The feasibility analysis fee is waived and thus cost-covered by MCE under the inclusion period.

RECOMMENDED ACTION

Conduct second reading and adopt by title only an ordinance authorizing the City to join Marin Clean Energy.

ATTACHMENTS

1. Correspondence letters, application process
2. Resolution 2015-150
3. Ordinance
4. Memorandum of Understanding
5. Request for confidential load data from PG&E



City of St. Helena

*"We will conduct city affairs on behalf of our citizens
using an open and creative process."*

Attachment 1

1480 Main Street
St. Helena, Ca 94574
Phone: (707) 967-2792
Fax: (707) 963-7748
www.sthelenacity.com

August 7, 2015

Dawn Weisz, Chief Executive Officer
Marin Clean Energy
1125 Tamalpais Avenue
San Rafael, CA 94901

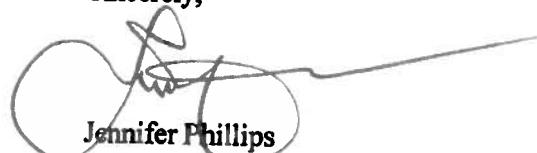
Dear Ms. Weisz:

The City of St. Helena would like to thank you and your staff for the presentation of the Marin Clean Energy (MCE) program to our City Council Meeting on July 28, 2015. The Council found the presentation insightful and directed staff to consider the possibility of bringing a similar Community Choice Aggregation (CCA) program to St. Helena.

The City of St. Helena understands that municipalities within Napa County have also expressed interest in joining the CCA program. Therefore, we request that you authorize your staff to conduct exploratory analysis to determine if St. Helena would benefit by partaking in the MCE program. If the research determines that St. Helena utility users will benefit from participating in the MCE program, then we understand that a more formal action by the City Council will be necessary to request membership in the Napa County Community Choice Aggregation (CCA) program.

We look forward to hearing from you. Please feel free to contact me, Jennifer Phillips, City Manager at 707-968-2744 or jenniferp@cityofsthelena.org, to discuss this further.

Sincerely,



Jennifer Phillips
City Manager

cc: Cindy Black, City Clerk
Steve Palmer, Director of Public Works
Noah Housh, Director of Planning & Community Development
April Mitts, Director of Finance



September 21, 2015

Kathrin Sears, Chair
County of Marin

Tom Butt, Vice Chair
City of Richmond

Bob McCaskill
City of Belvedere

Alan Schwartzman
City of Benicia

Sloan C. Bailey
Town of Corte Madera

Greg Lyman
City of El Cerrito

Barbara Coler
Town of Fairfax

Kevin Haroff
City of Larkspur

Garry Lion
City of Mill Valley

Brad Wagenknecht
County of Napa

Denise Athas
City of Novato

Carla Small
Town of Ross

Ford Greene
Town of San Anselmo

Genoveva Calloway
City of San Pablo

Andrew McCullough
City of San Rafael

Ray Withy
City of Sausalito

Emmett O'Donnell
Town of Tiburon

Marin Clean Energy
1125 Tarnalpais Avenue
San Rafael, CA 94901

1 (888) 632-3674
mceCleanEnergy.org

Jennifer Phillips, City Manager
City of St. Helena
1480 Main Street
St. Helena, CA 94574

Dear Ms. Phillips:

We are in receipt of your letter, dated August 7, 2015, expressing interest in exploring membership with MCE and are happy to consider your request. We are pleased to inform you that our Board has approved a six-month "inclusion period" that would allow no-cost membership consideration if your membership application is completed on or before March 31, 2016.

Membership application requirements are attached here and include the following:

- Adoption of a resolution requesting membership
- Adoption of the ordinance required by the Public Utilities Code Section 366.2(c) (10)
- Executed Memorandum of Understanding
- Signed request for load data from PG&E
- Designation of a staff person from your city to serve as a liaison to MCE

If you are interested in submitting a membership application please notify Allison Hang, MCE's Community Development Manager, and she will assist you with any questions you may have as you complete the checklist. You can reach Allison by email at: AHang@mceCleanEnergy.org or by phone at: 415-464-6044.

Please note that (1) adoption of your Ordinance to join MCE will be subject to approval by the MCE Board, and (2) MCE will conduct an economic feasibility analysis prior to approving membership. Also, if membership is approved, timing of procurement and customer

enrollment would be determined by the MCE Board. We will remain in close contact with your city about the most likely target dates for each process.

To streamline communications and policy setting, any participating cities and towns in your county may have the option to select one shared representative and one alternate to serve on the MCE Board as a voting member. If you choose this option, the selected representative would have a weighted vote based on the combined customer load of all participating cities and towns within your county.

We are happy to meet with you or your council to answer questions or provide additional information. We look forward to the opportunity to work with you on your membership application for MCE service. Please let me know if we can be of any further assistance.

Sincerely,



Dawn Weisz
Chief Executive Officer

cc: Cindy Black, City Clerk
Steve Palmer, Director of Public Works
Noah Housh, Director of Planning & Community Development
April Mitts, Director of Finance

MCE Membership Application Checklist

- ✓ Request for load data for PG&E signed by Mayor, City Manager, Board president or Chief County Administrator
- ✓ County assessor data for all building stock in jurisdiction
- ✓ Adoption of a resolution requesting membership in MCE
- ✓ Adoption of the ordinance required by the Public Utilities Code Section 366.2(c) (10) to join MCE's CCA program, adopted governing Board, subject to MCE Board approval
- ✓ Executed 'Agreement for Services' or 'Memorandum of Understanding' (if during inclusion period) to cover:
 - Community agrees to publicize and share information about MCE with community during the 6 month enrollment period. Options to publicize include but are not limited to website, social media, public events, community workshops, and newsletter announcements (where feasible), as well as distribution of flyers and handouts provided by MCE at community offices.
 - Community agrees to provide desk space for up to 2 MCE staff during the 6 month enrollment period, and agrees to consider ongoing desk space availability if needed for effective and efficient outreach.
 - Community agrees to assign staff member as primary point of contact with MCE. Assigned staff member will support and facilitate communication with other community staff and officials, as well as provide input and high-level assistance on community outreach.
 - Community agrees to cover of quantitative analysis cost, not to exceed \$10,000; waived under inclusion period.

RESOLUTION NO. XXX

**A RESOLUTION OF THE CITY/TOWN COUNCIL
OF THE CITY/TOWN OF _____ REQUESTING MEMBERSHIP IN
MARIN CLEAN ENERGY**

WHEREAS, the City/Town of _____ has been actively investigating options to provide electric services to constituents within its service area with the intent of achieving greater local involvement over the provision of electric services and promoting competitive and renewable energy.

WHEREAS, on September 24, 2002, the Governor signed into law Assembly Bill 117 (Stat. 2002, Ch. 838; see California Public Utilities Code section 366.2; hereinafter referred to as the "Act"), which authorizes any California city or county, whose governing body so elects, to combine the electricity load of its residents and businesses in a community-wide electricity aggregation program known as Community Choice Aggregation ("CCA").

WHEREAS, the Act expressly authorizes participation in a CCA program through a joint powers agency, and on December 19, 2008, Marin Clean Energy (MCE) was established as a joint power authority pursuant to a Joint Powers Agreement, as amended from time to time.

WHEREAS, on February 2, 2010, the California Public Utilities Commission certified the "Implementation Plan" of MCE, confirming MCE's compliance with the requirements of the Act.

WHEREAS, the City/Town fully supports the mission of MCE, which states that the purpose of MCE is to address climate change by reducing energy related greenhouse gas emissions and securing energy supply, price stability, energy efficiencies and local economic and workforce benefits. It is the intent of MCE to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar and wind energy production at competitive rates for customers.

WHEREAS, the City/Town fully supports MCE's current electricity procurement plan, which targets for more than 50% renewable energy content.

WHEREAS, in order to become a member of MCE, the MCE Joint Powers Agreement requires the City/Town to individually adopt a resolution requesting membership in MCE and an ordinance electing to implement a Community Choice Aggregation program within its jurisdiction.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, by the City/Town of _____ as follows:

1. Based upon all of the above, the Council requests that the Board of Directors of Marin Clean Energy approve the City/Town of _____ as a member of the MCE.
2. The City/Town Manager is hereby directed to forward a copy of this resolution to MCE.

PASSED AND ADOPTED at a regular meeting of the City/Town Council of _____ on this ____ day of ____ by the following vote:

Councilmembers	AYES	NOES	ABSTAIN	ABSENT
Xxx				
Xxx				
Xxx				
Xxx				
Xxx				

MAYOR

ATTEST:

CITY CLERK

ORDINANCE NO. XXX

**ORDINANCE OF THE CITY/TOWN COUNCIL OF _____ APPROVING
THE MARIN CLEAN ENERGY JOINT POWERS AGREEMENT AND
AUTHORIZING THE IMPLEMENTATION OF A COMMUNITY CHOICE
AGGREGATION PROGRAM**

The City/Town Council of the City/Town of _____ ordains as follows:

SECTION 1. The City/Town of _____ has been actively investigating options to provide electric services to constituents within its service area with the intent of promoting use of renewable energy and reducing energy related greenhouse gas emissions.

SECTION 2. On September 24, 2002, the Governor signed into law Assembly Bill 117 (Stat. 2002, ch. 838; see California Public Utilities Code section 366.2; hereinafter referred to as the "Act"), which authorizes any California city or county, whose governing body so elects, to combine the electricity load of its residents and businesses in a community-wide electricity aggregation program known as Community Choice Aggregation.

SECTION 3. The Act expressly authorizes participation in a Community Choice Aggregation (CCA) program through a joint powers agency, and on December 19, 2008, the Marin Clean Energy (MCE) was established as a joint power authority pursuant to a Joint Powers Agreement, as amended from time to time.

SECTION 4. On February 2, 2010 the California Public Utilities Commission certified the "Implementation Plan" of the MCE, confirming the MCE's compliance with the requirements of the Act.

SECTION 5. In order to become a member of the MCE, the Act requires the City of _____ to individually adopt an ordinance electing to implement a Community Choice Aggregation program within its jurisdiction by and through its participation in the MCE.

SECTION 6. Based upon all of the above, the City/Town Council elects to implement a Community Choice Aggregation program within the City/Town of _____'s jurisdiction by and through the City/Town of _____'s participation in the Marin Clean Energy. The Mayor is hereby authorized to execute the MCE Joint Powers Agreement.

SECTION 7. This ordinance shall take effect on the later of (a) the date the Board of Directors of MCE adopts a Resolution adding the City/Town as a member of MCE, or (b) 30 days after its adoption and, before the expiration of 30 days after its passage, a summary of this ordinance shall be published once with the names of the

members of the Council voting for and against the same in the _____, a newspaper of general circulation published in the _____.

The foregoing ordinance was introduced at a meeting of the City/Town Council of the City/Town of _____ held on Date, and adopted at a meeting held on Date, by the following vote:

AYES: Councilmember
NOES: Councilmember
ABSENT: Councilmember

/s/ _____
XXX, Mayor

/s/ _____
XXX, City Clerk

**Memorandum of Understanding between MCE and [City/County]
Exploring Inclusion in MCE**

This Memorandum of Understanding (MOU), regarding MCE membership consideration is entered into by and between MCE and [City/County].

WHEREAS, the [City/County] has expressed interest in exploring membership in MCE, and

WHEREAS, MCE has a Policy to consider new community inclusion, subject to receipt of a complete application and subject to MCE analysis and approval, and

WHEREAS, MCE and [City/County] are collaborating to determine the feasibility of including [City/County] within MCE's Service area and approving the [City/County] application for membership; and

WHEREAS, MCE and [City/County] have a mutual interest in following the guidelines below,

NOW THEREFORE, the parties hereto agree as follows:

1. [City/County] agrees to assign one staff member as primary point of contact with MCE. Assigned staff member will support and facilitate communication with other [City/County] staff and officials, as well as provide input and high-level assistance on community outreach.
2. [City/County] will work with MCE to conduct public outreach about the MCE program to aid in outreach and education and to collect feedback from the community. Options to publicize include, but are not limited to, website, social media, public events, community workshops, and newsletter announcements, as well as distribution of flyers and handouts provided by MCE.
3. [City/County] will complete and submit 'MCE Membership Application' to MCE.
4. After receipt of complete Membership Application MCE will conduct a quantitative analysis to determine feasibility of adding [City/County] to the MCE Service Area, and approve membership if analysis results are positive.
5. Subject to membership approval by the MCE Board, [City/County] agrees to publicize and share information about MCE within its community during the 6 month enrollment period. Options to publicize include, but are not limited to, website, social media, public



**Pacific Gas and
Electric Company***

**DECLARATION BY MAYOR OR CHIEF COUNTY ADMINISTRATOR
REGARDING INVESTIGATION, PURSUIT OR IMPLEMENTATION OF
COMMUNITY CHOICE AGGREGATION**

I, _____ [name], state as follows:

1. I am the mayor or chief county administrator of
_____ [name of city or county].

2. I am authorized to make this declaration on behalf of
_____ [check appropriate box]

☐ a city, or

☐ county,

which is investigating, pursuing or implementing community
choice aggregation as a community choice aggregator as defined by
Section 331.1 of the California Public Utilities Code ("CCA" or
"Potential CCA").

3. I understand that all of the confidential information provided
by PG&E to the city or county indicated above is subject to the terms and
conditions of the Nondisclosure Agreement between these two entities
and is provided for the sole purpose of enabling the city or county to
investigate, pursue or implement community choice aggregation.

I declare under penalty of perjury under the laws of the State of
California that the foregoing is true and correct. Executed this ____ day of
_____, 20____, at _____, _____ [city, state].

_____[Signature]

CITY OF ST. HELENA

RESOLUTION NO. 2015-150

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA,
COUNTY OF NAPA, STATE OF CALIFORNIA, REQUESTING
MEMBERSHIP IN MARIN CLEAN ENERGY (MCE)**

WHEREAS, the City of St. Helena has been actively investigating options to provide electric services to constituents within its service area with the intent of achieving greater local involvement over the provision of electric services and promoting competitive and renewable energy.

WHEREAS, on September 24, 2002, the Governor signed into law Assembly Bill 117 (Stat. 2002, Ch. 838; see California Public Utilities Code section 366.2; hereinafter referred to as the "Act"), which authorizes any California city or county, whose governing body so elects, to combine the electricity load of its residents and businesses in a community-wide electricity aggregation program known as Community Choice Aggregation ("CCA").

WHEREAS, the Act expressly authorizes participation in a CCA program through a joint powers agency, and on December 19, 2008, Marin Clean Energy (MCE) was established as a joint power authority pursuant to a Joint Powers Agreement, as amended from time to time.

WHEREAS, on February 2, 2010, the California Public Utilities Commission certified the "Implementation Plan" of MCE, confirming MCE's compliance with the requirements of the Act.

WHEREAS, the City of St. Helena fully supports the mission of MCE, which states that the purpose of MCE is to address climate change by reducing energy related greenhouse gas emissions and securing energy supply, price stability, energy efficiencies and local economic and workforce benefits. It is the intent of MCE to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar and wind energy production at competitive rates for customers.

WHEREAS, the City of St. Helena fully supports MCE's current electricity procurement plan, which targets for more than 50% renewable energy content.

WHEREAS, in order to become a member of MCE, the MCE Joint Powers Agreement requires the City of St. Helena to individually adopt a resolution requesting membership in MCE and an ordinance electing to implement a Community Choice Aggregation program within its jurisdiction.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, by the City of St. Helena as follows:

1. Based upon all of the above, the Council requests that the Board of Directors of Marin Clean Energy approve the City of St. Helena as a member of the MCE.
2. The City of St. Helena Manager is hereby directed to forward a copy of this resolution to MCE.

PASSED AND ADOPTED at a regular meeting of the City of St. Helena Council on the 24th day of November, 2015, by the following vote:

Mayor Galbraith:

yes

Vice Mayor White:

absent

Councilmember Crull:

yes

Councilmember Dohring:

yes

Councilmember Pitts:

yes

APPROVED:

ATTEST:

Alan Galbraith
Alan Galbraith, Mayor

Cindy Black
Cindy Black, City Clerk



CITY OF ST. HELENA

ORDINANCE NO. 2015-XX

**ORDINANCE OF CITY OF ST. HELENA APPROVING THE MARIN
CLEAN ENERGY JOINT POWERS AGREEMENT AND AUTHORIZING
THE IMPLEMENTATION OF A COMMUNITY CHOICE
AGGREGATION PROGRAM**

The City Council of the City of St. Helena ordains as follows:

SECTION 1. The City of St. Helena has been actively investigating options to provide electric services to constituents within its service area with the intent of promoting use of renewable energy and reducing energy related greenhouse gas emissions.

SECTION 2. On September 24, 2002, the Governor signed into law Assembly Bill 117 (Stat. 2002, ch. 838; see California Public Utilities Code section 366.2; hereinafter referred to as the "Act"), which authorizes any California city or county, whose governing body so elects, to combine the electricity load of its residents and businesses in a community-wide electricity aggregation program known as Community Choice Aggregation.

SECTION 3. The Act expressly authorizes participation in a Community Choice Aggregation (CCA) program through a joint powers agency, and on December 19, 2008, the Marin Clean Energy (MCE) was established as a joint power authority pursuant to a Joint Powers Agreement, as amended from time to time.

SECTION 4. On February 2, 2010 the California Public Utilities Commission certified the "Implementation Plan" of the MCE, confirming the MCE's compliance with the requirements of the Act.

SECTION 5. In order to become a member of the MCE, the Act requires the City of St. Helena to individually adopt an ordinance electing to implement a Community Choice Aggregation program within its jurisdiction by and through its participation in the MCE.

SECTION 6. Based upon all of the above, the City Council elects to implement a Community Choice Aggregation program within the City of St. Helena's jurisdiction by and through the City of St. Helena's participation in the Marin Clean Energy. The Mayor is hereby authorized to execute the MCE Joint Powers Agreement.

SECTION 7. This ordinance shall take effect on the later of (a) the date the Board of Directors of MCE adopts a Resolution adding the City as a member of MCE, or (b) 30 days after its adoption and, before the expiration of 30 days after its passage, a summary of this ordinance shall be published once with the names

Attachment 3

of the members of the Council voting for and against the same in the St. Helena Star, a newspaper of general circulation published in the City of St. Helena.

The foregoing ordinance was introduced at a meeting of the City Council of the City of St. Helena held on November 24, 2015, and adopted at a meeting held on November 24, 2015, by the following vote:

Mayor Galbraith:	_____
Vice Mayor White:	_____
Councilmember Crull:	_____
Councilmember Dohring:	_____
Councilmember Pitts:	_____

APPROVED:

ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk

Memorandum of Understanding between MCE and City of St. Helena Exploring Inclusion in MCE

This Memorandum of Understanding (MOU), regarding MCE membership consideration is entered into by and between MCE and City of St. Helena.

WHEREAS, the City of St. Helena has expressed interest in exploring membership in MCE, and

WHEREAS, MCE has a Policy to consider new community inclusion, subject to receipt of a complete application and subject to MCE analysis and approval, and

WHEREAS, MCE and City of St. Helena are collaborating to determine the feasibility of including City of St. Helena within MCE's Service area and approving the City of St. Helena application for membership; and

WHEREAS, MCE and City of St. Helena have a mutual interest in following the guidelines below,

NOW THEREFORE, the parties hereto agree as follows:

1. City of St. Helena agrees to assign one staff member as primary point of contact with MCE. Assigned staff member will support and facilitate communication with other City of St. Helena staff and officials, as well as provide input and high-level assistance on community outreach.
2. City of St. Helena will work with MCE to conduct public outreach about the MCE program to aid in outreach and education and to collect feedback from the community. Options to publicize include, but are not limited to, website, social media, public events, community workshops, and newsletter announcements, as well as distribution of flyers and handouts provided by MCE.
3. City of St. Helena will complete and submit 'MCE Membership Application' to MCE.
4. After receipt of complete Membership Application MCE will conduct a quantitative analysis to determine feasibility of adding City of St. Helena to the MCE Service Area, and approve membership if analysis results are positive.
5. Subject to membership approval by the MCE Board, City of St. Helena agrees to publicize and share information about MCE within its community during the 6 month enrollment period. Options to publicize include, but are not limited to, website, social media, public events, community workshops, and newsletter announcements (where feasible), as well as distribution of flyers and handouts provided by MCE at City of St. Helena offices.

6. Subject to membership approval by the MCE Board, City of St. Helena agrees to provide desk space for up to 2 MCE staff during the 6 month enrollment period, and agrees to consider ongoing desk space availability if needed for effective and efficient outreach.

IN WITNESS WHEREOF, the parties hereto have executed this MOU.

MCE:

By: _____
Dawn Weisz, CEO Date
MCE

City of St. Helena:

By: _____
Jennifer Phillips, City Manager Date
City of St. Helena



Pacific Gas and Electric Company
San Francisco, California
U 39

Revised
Cancelling Original

Attachment 5
Cal. P.U.C. Sheet No. 31432-E
Cal. P.U.C. Sheet No. 23061-E

Electric Sample Form No. 79-1030

Declaration by Mayor or Chief County Administrator Regarding Investigation Pursuit
or Implementation of Community Choice Aggrega

**Please Refer to Attached
Sample Form**

Advice Letter No: 4009-E
Decision No.

1C10

Issued by
Brian K. Cherry
Vice President
Regulation and Rates

Date Filed March 5, 2012
Effective December 20, 2012
Resolution No. E-4523



**DECLARATION BY MAYOR OR CHIEF COUNTY ADMINISTRATOR
REGARDING INVESTIGATION, PURSUIT OR IMPLEMENTATION OF
COMMUNITY CHOICE AGGREGATION**

I, _____ [name], state as follows:

1. I am the mayor, chief county administrator, or chief executive officer of _____
_____ [name of city, county, or public agency,].

2. I am authorized to make this declaration on behalf of _____
_____ [check appropriate box]

☐ a city, or

☐ a county, or

☐ an eligible public agency

which is investigating, pursuing or implementing community choice aggregation as a community choice aggregator as defined by Section 331.1 of the California Public Utilities Code ("CCA" or "Potential CCA").

3. I understand that all of the confidential information provided by PG&E to the city, county, or public agency indicated above is subject to the terms and conditions of the Nondisclosure Agreement between these two entities and is provided for the sole purpose of enabling the city, county or public agency to investigate, pursue or implement community choice aggregation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this _____ day of _____, 20____, at _____, _____ [city, state].

[Signature]



Pacific Gas and Electric Company
San Francisco, California
U 39

Cancelling Revised
Revised

Cal. P.U.C. Sheet No.
Cal. P.U.C. Sheet No.

32646-E*
32235-E

Electric Sample Form No. 79-1031
Community Choice Aggregator Non-Disclosure Agreement

**Please Refer to Attached
Sample Form**

Advice Letter No: 4221-E
Decision No. 12-11-015
D.12-08-045, D.11-07-056
1C7

Issued by
Brian K. Cherry
Vice President
Regulatory Relations

Date Filed May 2, 2013
Effective May 2, 2013
Resolution No. _____

COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("Agreement") is entered into by and between Pacific Gas and Electric Company ("Utility") and _____

_____, a _____ [name]
_____, a _____ [describe political entity]
_____ ("CCA") as of _____ ("Effective Date"). This Agreement is executed pursuant to California Public Utilities Commission ("CPUC") Order Instituted Rulemaking ("OIR") 03-10-003, California Public Utilities Code ("PU Code") Section 366.2 et seq., and applicable Utility tariffs (as modified hereafter from time to time). As used herein Utility and CCA may each be referred to individually as a "Party" and collectively as "Parties."

The CPUC has determined that CCA/Community may obtain specified confidential customer information from Utility pursuant to Tariff Schedules E-CCAINFO-Information (as modified hereafter from time to time) ("E-CCAINFO") as a community choice aggregator, as defined by PU Code Section 331.1, solely in order to investigate, pursue or implement community choice aggregation pursuant to PU Code Section 366.2, et seq. or confidential customer electric and gas consumption data to implement energy efficiency programs pursuant to PU Code section 381.1. The provisions of this Agreement and E-CCAINFO govern the disclosure of Utility's confidential customer information to CCA/Community ("Disclosure Provisions") under Schedules E-CCAINFO and E-CCA.

The Parties hereby mutually agree that:

1. Subject to the terms and conditions of this Agreement, current proprietary and confidential information of Utility regarding customers of Utility ("Utility Customers") may be disclosed to CCA from time to time in connection herewith as provided by the Disclosure Provisions and solely for the purpose of investigating, pursuing or implementing community choice aggregation pursuant to PU Code Section 366.2, et seq. as a community choice aggregator or to implement energy efficiency programs pursuant to PU Code section 381.1. Such disclosure is subject to the following legal continuing representations and warranties by CCA:
 - (a) CCA represents and warrants that, pursuant to PU Code Section 331.1,
 - (1) it is either (i) a city, county, or other entity as defined in PU Code Section 331.1 whose governing board has elected to combine the loads of its residents, businesses, and municipal facilities in a community wide electricity buyers program or (ii) a city, county, or other entity as defined in PU Code Section 331.1 that intends to actively investigate or pursue delivery of electric service to customers located within the geographic territory of the CCA, and
 - (2) that to investigate, pursue or implement community choice aggregation under PU Code Section 366.2 et seq., or to implement energy efficiency programs pursuant to PU Code section 381.1;



COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT

- (b) CCA represents and warrants that it has all necessary authority to enter into this Agreement, and that it is a binding enforceable Agreement according to its terms;
 - (c) CCA represents and warrants that the authorized representative(s) executing this Agreement is authorized to execute this Agreement on behalf of the CCA; and
 - (d) CCA confirms its understanding that the information of Utility Customers is of a highly sensitive confidential and proprietary nature, and that such information will be used as contemplated under the Disclosure Provisions solely for the purposes of investigating, pursuing or implementing Community Choice Aggregation under PU Code Section 366.2 as a community choice aggregator or to implement energy efficiency programs pursuant to PU Code section 381.1, and that any other use of the information may permit Utility to suspend providing further information hereunder.
 - (e) CCA represents and warrants that it will implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for a secondary commercial purpose not related to community choice aggregation or energy efficiency purposes without the customer's prior consent to that use.
2. The confidential and proprietary information disclosed to CCA in connection herewith may include, without limitation, the following billing information about Utility Customers: Customer-specific information from the current billing periods as well as prior 12 months consisting of: service agreement number, name on agreement, service address with zip code, mailing address with zip code, telephone number, meter number, monthly kWh usage, monthly maximum demand where available, electrical or gas consumption data as defined in PU Code Section 8380, other data detailing electricity or gas needs and patterns of usage, Baseline Zone, CARE participation, End Use Code (Heat Source) Service Voltage, Medical Baseline, Meter Cycle, Bill Cycle, Balanced Payment Plan and other plans, HP Load and Number of Units and monthly rate schedule for all accounts within the CCA's territory. In addition, PG&E will provide the CCA the following additional information regarding customers currently enrolled in its CCA service: current and historical billing information for non-CCA services provided by PG&E or other electric service providers (collectively, "Confidential Information"). Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by CCA or its representatives that are derived from or based on Confidential Information disclosed by Utility, regardless of the form of media in which it is prepared, recorded or retained.



COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT

3. Except for electric and gas usage information provided to CCA pursuant to this Agreement, Confidential Information does not include information that CCA proves (a) was properly in the possession of CCA at the time of disclosure; (b) is or becomes publicly known through no fault of CCA, its employees or representatives; or (c) was independently developed by CCA, its employees or representatives without access to any Confidential Information.
4. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by CCA, or used for any purpose other than to investigate, pursue or implement community choice aggregation under PU Code Section 366.2 et seq. as a community choice aggregator or to implement energy efficiency programs pursuant to PU Code section 381.1 as permitted under this Agreement and the Disclosure Provisions.
5. CCA shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. CCA shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for a secondary commercial purpose not related to community choice aggregation or energy efficiency. Specifically, CCA shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees or representatives of CCA who have a "need to know" such Confidential Information in the course of their duties with respect to the CCA program and who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement, provided, however, that, an Energy Service Provider, agent, or any other entity, including entities that provide both direct access (as codified in Assembly Bill No. 1890, Stats. 1996, ch. 854) and community choice aggregation services shall limit their utilization of the information provided to the purposes for which it has been provided and shall not utilize such information, directly or indirectly, in providing other services, including but not limited to Direct Access services, in order to effectuate the obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, CCA shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree in writing to be bound by the terms of this Agreement by signing the "Non-Disclosure Agreement for CCA Employees or Representatives" form attached as Exhibit A hereto. CCA shall provide Utility with copies of the signed Exhibit A forms at Utility request. CCA shall also provide Utility with a list of the names, titles, and addresses for all persons or entities to which Confidential Information is disclosed in connection herewith ("Disclosure List"). This Disclosure List shall be updated by CCA on a regular basis, and will be provided to Utility once each quarter at a minimum.



COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT

6. CCA shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by Utility directly against such employees or representatives for improper disclosure and/or use. In no event shall CCA or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. CCA shall immediately notify Utility in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by CCA or any of its employees or representatives. However, nothing in this Agreement shall obligate the Utility to monitor or enforce the CCA's compliance with the terms of this Agreement.
7. CCA shall comply with the consumer protections concerning subsequent disclosure and use that are in Attachment B to CPUC Decision No. 12-08-045.
8. CCA acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to Utility and/or Utility Customers, the amount of which may be difficult to assess. Accordingly, CCA hereby confirms that the Utility shall be entitled to apply to a court of competent jurisdiction or the CPUC for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by CCA or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the Utility, in law or equity.
9. In addition to all other remedies, CCA shall indemnify and hold harmless Utility, its affiliates, subsidiaries, parent company, officers, employees, or agents from and against and claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and disbursements) attributable to actions or non-actions of CCA and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.
10. If, at any time, CCA ceases its investigation, pursuit or implementation of community choice aggregation pursuant to PU Code Section 366.2 et seq., CCA shall promptly return or destroy (with written notice to Utility itemizing the materials destroyed) all Confidential Information then in its possession at the request of Utility. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.
11. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties hereto. This Agreement shall not be assigned, however, without the prior written consent of the non-assigning Party, which consent



COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT

may be withheld due to the confidential nature of the information, data and materials covered.

12. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior discussions, negotiations, understandings, communications, correspondence and representations, whether oral or written. This Agreement shall not be amended, modified or waived except by an instrument in writing, signed by both Parties, and, specifically, shall not be modified or waived by course of performance, course of dealing or usage of trade. Any waiver of a right under this Agreement shall be in writing, but no such writing shall be deemed a subsequent waiver of that right, or any other right or remedy.
13. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without reference to its principles on conflicts of laws.
14. This Agreement shall, at all times, be subject to such changes or modifications by the CPUC as it may from time to time direct in the exercise of its jurisdiction.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement as of the Effective Date.

PACIFIC GAS AND ELECTRIC COMPANY

(Customer)

(Signature)

(Type/Print Name)

(Title)

(Date)

(Signature)

(Type/Print Name)

(Title)

(Date)



COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT

EXHIBIT A NON-DISCLOSURE AGREEMENT FOR CCA EMPLOYEES OR REPRESENTATIVES

I, _____, declare under penalty of perjury that

(1) I am employed as _____ (title) at _____
_____ (employer and address); and

(2) I have personally reviewed the attached **COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT** relating to disclosure and use of Confidential Information (as defined therein) and I agree to be bound by its provisions.

Signed: _____

Print Name: _____

Dated: _____

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**Report to the City Council
Council Meeting of January 12, 2016**

Agenda Section: **Consent**

Subject: **Authorize the City Manager to Execute an Agreement between Pacific Gas and Electric Company and the City of St. Helena for a Clothes Washer Rebate program, rescind Resolution No. 2004-32B, and authorize a budget adjustment of \$2,200 to account 561-2330-0000**

CEQA Status: **Categorically Exempt, Sections 15301-Existing Facilities, and 15304-Minor Alterations to Land**

Prepared By: **Jennifer Tuell, Water Conservation** 
Steven Palmer, PE Director of Public Works/City Engineer

Approved By: **Jennifer Phillips, City Manager** 

BACKGROUND

On March 23, 2014, the City Council adopted Resolution No. 2004-32B (Attachment 1) establishing a Clothes Washer Rebate program with a \$250 rebate provided by the City. The program targets one of the three largest indoor residential water uses (toilet, clothes washer and shower/bathing usage). All water saving rebates are currently funded from the City's Water Use Efficiency account. Last fiscal year the City issued 12 clothes washer rebates, totaling approximately \$3,000.

The California Public Utilities Commission ("CPUC") has funded the Mass Market Program with Pacific Gas & Electric Company (PG&E) as a voluntary program which encourages Californians to reduce their household electrical appliance energy demand by providing a monetary rebate to consumers for the purchase of appliances. Through this program PG&E provides a \$50 rebate to the customer and the City would provide a \$100 rebate to the customer on eligible clothes washers. The City can participate in this Program by executing an agreement with PG&E (Attachment 2). This agreement further supports a cooperative initiative with PG&E and would integrate St. Helena into the regional clothes washer rebate program, which includes all other water providers in the County as well as many other Bay Area water utilities. The Program will end on March 1, 2017.

DISCUSSION

The City's current clothes washer rebate program provides \$250 to applicants. Participating in the Mass Market Program with PG&E would decrease the clothes washer rebate from \$250 to \$150, with \$100 of the rebate from St. Helena and \$50 of the rebate from PG&E. In order to participate in this Program, the City is required to follow the funding parameters and rebate amounts identified by PG&E agreement. This joint water and energy rebate program was designed to offer customers of PG&E and participating water agencies a rebate from both utilities with one application. Participating in this program will provide consistency with the other water agencies in the County. The Program will be administered by PG&E. Rebate applications will be submitted by the customer directly to PG&E. After approval by both PG&E and the City, rebates will be paid by to the customer by PG&E. PG&E will invoice the City monthly for the City's share of the rebates, and a \$10 processing fee per application.

An added benefit of the Mass Market Program is that by partnering with PG&E there are marketing and program visibility benefits that enhance consumer interest and program participation. It is anticipated that more customers may take advantage of the program because of the visibility of PG&E's program.

PG&E has established a list of the Energy Star most efficient clothes washers and updates this list regularly and PG&E will process all rebate applications. More information is available at <http://www.waterenergysavings.com>.

This rebate program saves water and energy, and allows the City to comply with state water conservation regulations. In addition, the water savings generated from this program would help meet the City long term water use targets.

In order to execute the agreement and participate in the Mass Market Program, the City needs to rescind Resolution 2004-32B, and adopt a new resolution.

FISCAL IMPACT

Currently the Clothes Washer program is funded by the Water Use Retrofit account - 561-2330-0000 in the amount of \$250 per qualifying clothes washer. The proposed change to the Clothes Washer Rebate program would decrease the overall rebate to customers to a total of \$150. This amount will be split between the City (\$100) and PG&E (\$50). Additionally, the City will pay PG&E a \$10 processing fee for each application, for a total financial commitment by the City of \$110 per rebate. The agreement with PG&E has a \$5,500 not to exceed amount. Current funding for this program is available in 561-2330-000. Rebates will only be issued when there is adequate funding in the account. In FY 2014/15 the City issued a total of 12 clothes washer rebates totaling approximately

\$3,000. Entering into the agreement with PG&E the City estimates 15-20 clothes washer rebates annually with an estimated cost of \$1,650 to \$2,200. If this agreement is approved a budget increase of \$2,200 for account 561-2330-0000 is requested for FY 2015/16.

RECOMMENDED ACTION

It is recommended that the Council adopt the attached resolution authorizing the City Manager to enter into an agreement with PG&E for a clothes washer rebate program, rescind Resolution No. 2004-32B, and approve a budget adjustment for FY 2015/16 for \$2,200 in expenditures from account 561-2330-0000.

ATTACHMENTS

1. Resolution No. 2004-32B
2. Agreement between Pacific Gas and Electric Company and City of St. Helena
 - a. Attachment 1
 - b. Attachment 2
3. Resolution

CITY OF ST. HELENA

RESOLUTION 2004-32B

**ESTABLISHING A PARTNERSHIP WITH
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AND THE DEPARTMENT OF ENERGY TO PROMOTE ENERGY STAR® PRODUCTS
AND
ESTABLISHING GUIDELINES
FOR THE APPLIANCE REBATE PROGRAM
(PART OF THE WATER CONSERVATION AND USE EFFICIENCY PROGRAM)**

RECITALS

1. Water conservation and water use efficiency continue to be priorities of the City due to limited water resources now and in the future;
2. Since 1994, the City of St. Helena required new development to offset its water demand by retrofitting existing residential units with low flow toilets;
3. This program expansion is intended to continue creating long-term water savings by requiring new development served by the City of St. Helena Water Enterprise to offset potable water demand. The update, while keeping the core goals of the program established in 1994 (and amended in 1996 and 1997), expands the requirements to encompass other large water uses.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

1. Authorizes a partnership with the United States Environmental Protections Agency, Energy Star Program, to promote water saving clothes washers and dishwashers within the City.
2. Authorizes the Attached Clothes Washer Rebate Program

Passed and adopted at a regular meeting of the City Council of the City of St. Helena held on 23rd day of March, 2004 by the following vote:

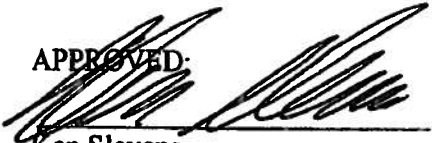
AYES: Councilmembers Potter, Schoch, Savidge, Sklar, Mayor Slavens

NOES: None

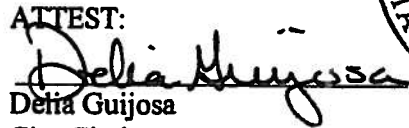
ABSENT: None

ABSTAIN: None

APPROVED:


Ken Slavens
Mayor

ATTEST:


Delia Guijosa
City Clerk





Clothes Washer Rebate Program

Did you know...

- A typical household does nearly 400 loads of laundry per year, using about 40 gallons of water per full load with a conventional washer?
- New water-saving models use 20-25 gallons per load, saving up to 7,000 gallons of water annually per household?

Water use is on the rise in St. Helena. The City of St. Helena would like to help residents take advantage of the considerable water and cost savings associated with the new Energy Star® clothes washers.

You may be eligible to receive a \$250 rebate from the City of St. Helena when you buy a qualified Energy Star® clothes washer.

What are Energy Star® Clothes Washers?

Energy Star® clothes washers have been identified by the Environmental Protection Agency (EPA) as models designed to use less water to get clothes thoroughly clean. These clothes washers also save energy through sensors that identify the load's hot water needs and match the amount of water dispensed.

Two designs are available: front-loading and top-loading. Either design will get clothes cleaner, handle fabrics more gently and use less water and energy than standard washing machines. Front-loading models are similar to Laundromat washers and repeatedly lift and drop clothes, instead of moving clothes around a central axis. Top-loading machines use sensor technology to carefully control the incoming water temperature. To reduce water consumption, these machines spray clothes with repeated high-pressure rinses to remove soap residue rather than soaking them in a full tub of rinse water.

What are the advantages of using an energy star washer?

Replacing a standard clothes washer with a Energy Star® model has a number of advantages:

- Water consumption can be reduced by as much as 50%
- Energy consumption can be reduced by as much as 30 to 40%
- Less wear and tear on clothes
- Bulky items such as blankets fit easily into the super capacity basket
- Better water extraction means less dryer time, equaling further energy savings

How do I select and buy a washer?

When selecting your washing machine, keep in mind that the capacity of the machine can vary from 1.6 to 2.9 cubic feet (most standard machines are 2.7 cubic feet) and that your washer will be most efficient if tailored to the laundry volume needs of your household. More information on the Energy Star® program can be found on the EPA website at www.energystar.gov/products.

A number of local appliance dealers carry Energy Star® models, including:

Napa Sew and Vac
3922 Bel Aire Plaza
Napa, Ca 94558
WalMart
681 Lincoln Avenue
Napa, CA 94559

Harbison's Appliance Service
333 3rd St. Napa, CA 94558
Sears Roebuck & Co.
1745 W. Imola Ave.
Napa, CA 94559

St. Helena Appliance Service
360 McCormick
St. Helena, CA 94574
Home Depot
225 Soscol Avenue
Napa, CA 94559



HOW DO I GET THE REBATE?

Once you purchase and install your new washer, simply complete the form below, attach a copy of your purchase receipt and submit both items to City Hall at 1480 Main Street. If you are a water account customer, you may receive a \$250 credit on your water utility account that will show on your next account statement. If you are not a water account customer and reside within the City limits, the City may mail you a check for a \$250 rebate. (PG&E and Maytag also offering a rebates for a limited lime. Forms for the PG&E program are available by calling 1-800-933-9555 or via the webpage: www.pge.com and

click on the Rebate program. For Maytag rebate information go to: www.maytag.com

What do I do with my old washer?

Residents are responsible for disposing of their old washers. Old washers may be disposed at either:

Clover Flat Landfill

4380 Silverado Trail, North Calistoga

Tel. 963-7988

\$12 disposal fee

Napa Garbage Service

820 Levitin Way, Napa

Tel. 255-5200

\$5 disposal fee

CLOTHES WASHER REBATE FORM

Please complete the following information and return to City Hall with a copy of your purchase receipt. Washer must be installed prior to rebate application submittal. Offer limited to one clothes washer rebate per household.

Name _____ Utility Account No. _____

Address where clothes washer is being replaced _____

Mailing address, if different from above _____

Phone No. _____

Washer brand _____ Model number _____

Date purchased _____ Store name _____

CERTIFICATION

I certify under penalty of perjury that this Energy Star® qualified clothes washer was purchased new at retail price for personal use, not for resale, and that it has been installed at the address listed above. I agree to a sale, delivery and product installation verification by the City of St. Helena.

Signature _____ Date _____

AGREEMENT**Between****Pacific Gas and Electric Company****And****City of St. Helena**

This AGREEMENT ("Agreement") is by and between PACIFIC GAS AND ELECTRIC COMPANY ("PG&E"), and Water Agency "City of St. Helena" (hereinafter each referred to as "PG&E" and "Agency" respectively, and "the Parties" collectively, and shall become effective on the latest date on which this Agreement is signed by the authorized representatives of the Parties (the "Effective Date").

Recitals

WHEREAS, the California Public Utilities Commission ("CPUC") has funded the Mass Market Program ("Program") as a voluntary program which encourages Californians to reduce their household electrical appliance energy demand by providing a monetary rebate to individual consumers for the purchase of household appliances that are listed as ENERGY STAR Most Efficient; and

WHEREAS, PG&E is one entity which has been designated by the CPUC as a distributor of Program rebate funds to Californians who purchase energy-efficient household appliances; and

WHEREAS, the Agency also provides a voluntary rebate program which encourages customers being served by such Agency to conserve water resources by purchasing water-resource-efficient household appliances; and

WHEREAS, the Parties wish to facilitate payments of monetary rebates to customers being served by both the Agency and PG&E, who purchase household appliances that are both energy- and water-resource-efficient (the "Initiative"); and

WHEREAS, the Parties designate PG&E as the entity responsible for administering the Initiative on a day-to-day basis, including the paying out of rebate monies to customers; and

WHEREAS, each Party has designated a Project and/or Program Manager as its representative for this Initiative (each a "Project Manager" for purposes of this Agreement); and

WHEREAS, each of the Parties desire to enter into this Agreement to set forth the rights and responsibilities of each, concerning the funding and conduct of the Initiative to be carried out by PG&E pursuant to the terms and conditions of the Parties' respective programs;

NOW THEREFORE, in consideration of the mutual promises hereinafter set forth

1. Management of the Initiative

- (a) Agency authorizes and appoints PG&E to be the primary point of contact to administer and manage the Initiative as specifically described in Attachment 1 for fees provided in Attachment 2, which are incorporated into this Agreement by this reference.
- (b) In the event of a disagreement or dispute, the Parties will first meet and discuss a mutually agreeable resolution so that the Initiative may continue. Agency and PG&E will first attempt to resolve the dispute through their respective project managers, and if the project managers are unable to resolve the dispute, the discussion will be elevated to Agency's General Manager and PG&E Manager. If the dispute remains unresolved, then Agency and PG&E may pursue other remedies, including termination for default.

2. Approval, Verification and Payment of Agency's Customer Rebates

All of Agency's customers' applications for rebate payments, submitted as a part of the Initiative under this Agreement, will be submitted directly to PG&E. PG&E shall verify with Agency, as part of its administration of the Initiative, the status of the customer's residency within said Agency, according to Attachment 1, Sections 2.2.2 and 2.2.3, attached and incorporated into this agreement by reference. Agency agrees to either confirm or deny each individual customer's status in a timely manner, as described in Attachment 1, Sections 2.2.4, attached and incorporated into this agreement by reference.

3. Program and Initiative Funding

Agency will pay PG&E for administering the Initiative pursuant to Attachment 2, Rates & Charges, which is incorporated into this agreement by reference. PG&E shall invoice Agency monthly within thirty (30) calendar days of the first of each month, during the Term of this Agreement, for reimbursement of customer rebates paid on its behalf and its share of administrative costs incurred by PG&E. Agency agrees to pay all approved PG&E invoices within thirty (30) calendar days.

4. No Warranty

PG&E does not guarantee the number of rebates that will be processed under the Initiative, nor does it guarantee any amount of water-resource savings or reductions in use being realized for the Agency as a result of the Initiative.

5. Confidential and Proprietary Information

PG&E agrees that Agency's data and information may contain confidential or proprietary information including, but not limited to, customer information. Agency agrees to undertake reasonable efforts to mark all confidential information. The Agency hereby agrees that any report or information (including customer data), or any part thereof, may be disclosed to the CPUC upon request of the CPUC, to the extent authorized by law. PG&E shall notify Agency with as

much advance written notice as possible prior to sending any confidential data to the CPUC and describe specifically the data being sent, whenever possible.

6. Intellectual Property

PG&E will maintain the www.waterenergysavings.com website, and Agency may continue to contribute information, and post its name and logo. The Parties may also develop other customer-facing communications relating to the Initiative.

For purposes of this Agreement, “Intellectual Property Rights” means all known (1) rights associated with works of authorship, including copyrights, moral rights, and mask-works; (2) trademark, service mark, trade name, and trade dress rights and similar rights; (3) other intellectual property rights that either party may specifically identify.

The parties acknowledge that they each own certain Intellectual Property Rights prior to entering into this Agreement, and that nothing in this Agreement impacts or changes those pre-existing Intellectual Property Rights.

Each party warrants to the other that Intellectual Property it provides for the Initiative shall not infringe the Intellectual Property rights of any third party, including copyright, trademark, and patent or license infringement.

If either Party solely with its own funds develops new Intellectual Property Rights in connection with its participation in the Initiative that Party will own all rights and title to the Initiative-Related Intellectual Property that it develops. If PG&E develops new Intellectual Property Rights in performing services pursuant to this Agreement that is paid for in whole or in part by Agency, such Intellectual Property rights shall be described as “Initiative-Related Intellectual Property.”

The Party who develops and owns Initiative-Related Intellectual Property hereby grants the other Party a perpetual, non-exclusive, royalty-free, no-charge license to use the Initiative-Related Intellectual Property. The license is non-transferable. Either Party may change, modify, or alter the Initiative-Related Intellectual Property for its own purposes. But neither Party may use modified Initiative-Related Intellectual Property that includes the name or logo of the other Party without first obtaining advance written permission of the other Party.

7. Limitation of Liability

Neither Party shall be liable to the other for any punitive, special, indirect, incidental or consequential damages whatsoever whether in contract, tort (including negligence), strict liability or otherwise, resulting from the Parties’ performance or nonperformance of its obligations under this Agreement, or in the event of the cancellation or termination of this Agreement

In no event shall the total cumulative liability of either Party to the other, arising out of or in connection with confidentiality obligations under this Section 8, exceed the amounts paid out to PG&E’s and Agency’s customers as a part of the Initiative during the Term.

8. Term

This Agreement shall be effective as of the Effective Date, and shall continue in effect through July 31, 2017 in order to complete the services established in Attachment 1 (the "Term") unless earlier terminated in accordance with this Agreement. The Parties may mutually agree to further extend the term of this Agreement for an additional period of one year, under the Terms and Conditions herein specified. The parties agree to review the payment terms annually (at the inception of each new calendar year) and will make any mutually agreeable modifications in writing. This provision makes it an obligation to meet and confer not to modify any terms unless mutually agreed to by the parties.

9. Cancellation and Termination of Agreement

(a) **Cancellation or Termination:** Either party may cancel its participation in this Agreement with or without cause, or upon withdrawal/depletion of either party's funding of its rebate program, upon thirty (30) calendar days written notice to the other party. Either party may terminate for the other party's default on ten (10) days notice if the defaulting party does not cure the default within 10 days written notice of the default. PG&E will inform retailers and post information on the website that rebate applications will be accepted for the cancelling party for 30 calendar days after the notice of cancellation.

(b) **Effect on Continuation of the Initiative:** In the event that the Agency terminates this Agreement, or fails to or is unable to pay its share as provided for, PG&E may, without waiving any other rights, continue honoring its own rebate commitments under the Program and stop paying Agency rebates, without prejudice.

(c) **Effect of PG&E Cancellation or Termination:** In the event that PG&E elects to cancel or terminate its participation in this Agreement prior to the expiration of the Term, with or without cause, or fails to or is unable to make payments on its share as provided for herein, the Agency, at their sole option without waiving any other may elect to continue the Initiative with any or all input data as may have been furnished by PG&E up to PG&E's date of cancellation or termination. The Agency shall reimburse PG&E for all undisputed amounts owed to PG&E by the Agency up to the effective date of PG&E's cancellation or termination, set forth in Section 3. If the Agency desires PG&E to continue to offer rebate processing services, PG&E shall provide those services and charge the Agency the full cost of processing the rebates as described in Attachment 2, Rates & Charges.

10. Governing Law

The laws of the State of California shall govern the construction, validity, performance and effect of this Agreement for all purposes, without regard for its conflict of law principles.

11. Amendments

If either party desires a modification of this Agreement, the party shall, upon reasonable notice of the proposed modification, confer with the other party in good faith to determine the desirability of such modification. Such modification shall not be effective until a written

amendment is signed by the Parties hereto by their representatives duly authorized to execute such amendment.

12. Assignment

Except as otherwise permitted herein, neither this Agreement nor any rights or obligations of either party shall be assigned or otherwise transferred without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.

13. Independent Parties

For the purposes of this Agreement, the Parties are jointly funding the Initiative. The relationship of the Parties is that of independent parties and not as agents of each other or as joint-venturers or partners. The Agency shall maintain sole and exclusive control over its personnel and operations. PG&E shall maintain sole and exclusive control over its personnel and operations.

14. Use of Name or Endorsements

Neither Party shall use the name of the other, on or with regard to any product or service which is not directly related to this Agreement, without the prior written approval of the other Party. By entering into this Agreement, neither Party directly or indirectly endorses any product or service provided, or to be provided, by the other, its successors or assignees.

15. Entire Agreement

This Agreement constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes any prior understanding or written or oral agreement relative to said matter.

16. Counterparts

This Agreement may be executed in any number of identical counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument when each Party has signed one such counterpart.

17. Compliance with Laws

The Parties hereto, in undertaking their obligations hereunder, or any of them, shall comply with all laws and governmental rules and regulations, state, national, or local, or any of them.

18. Non-Discrimination

PG&E shall comply with all applicable federal, state and local laws, rules and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or physical handicap.

IN WITNESS WHEREOF, this Agreement has been duly executed on behalf of the Parties by their respective authorized officers (or respective designee) as of the year and dates written below.

**Pacific Gas and Electric Company, a
California corporation**

City of St. Helena

By: _____
Its: _____
Date: _____

By: _____
Its: _____
Date: _____

ATTACHMENT 1**High Efficiency Cooperative Clothes Washer Rebate Initiative****SCOPE OF SERVICES**

The goal of this Cooperative Initiative (Initiative) is to promote the most water- and energy-efficient clothes washers available. The Initiative is designed to give the customer a single, greater dollar rebate amount, streamline the rebate application experience, and enhance knowledge about the issues surrounding water and energy efficiency.

I. INITIATIVE SCHEDULE**1.1 Initiative Schedule**

1.1.1 PG&E shall provide Initiative Start-Up services upon receipt of a Notice to Proceed by the Agency. Initiative start-up services shall include the initial development and distribution of printed Initiative materials in cooperation with participating Agency, database and database report processes, and the Initiative website development.

1.1.2 PG&E shall process and issue Rebates to Agency customers for equipment purchases made during the Initiative Period from January 1, 2016 to December 31, 2016 (Initiative Period). The parties agree to review the payment terms annually (at the inception of each new calendar year) and will make any mutually agreeable modifications in writing. This provision makes it an obligation to meet and confer not to modify any terms unless mutually agreed to by the parties.

1.1.3 PG&E shall provide Initiative Administrative and Marketing Services to include Rebate processing, record keeping and reporting, funds management, and customer service during the Initiative Period.

1.1.4 PG&E shall process Rebate applications and issue Rebates funded through PG&E and Agency for their respective customer equipment purchases made during the Initiative Period and Rebate applications received through received deadline of March 1, 2017.

1.1.5 PG&E shall provide Initiative Closeout Services to include the final reconciliation, final funds transfer, and records transfer to be provided by July 31, 2017. PG&E shall retain ownership of Rebate applications and data for a period of ten (10) years with Agency right to report and examine.

1.2 Schedule for Deliverables and Rebate Processing

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DRAFT Agreement –2016

1.2.1 PG&E shall perform work within the Schedule for deliverables for each task described in Section II of this Attachment 1. PG&E's Program Manager shall notify Agency's Project Manager or designated Agency staff as soon as possible in the event that a deliverable(s) cannot be completed within its Schedule. PG&E will confer with Agency Project Manager or designated Agency staff regarding the reason for delay, possible remedial actions, and establish a revised schedule for the deliverables).

1.2.2 The total Rebate processing time for all Rebate applications shall be within an eight (8) week period, beginning with PG&E receipt of a completed Agency-customer rebate application form and all supporting documentation. PG&E shall date stamp all applications within one (1) business-day of date of receipt. If a rebate application is incorrect, incomplete, and/or missing required documentation, a "problem letter" will be generated and sent to the customer (See Section 2.2.5). In the event of an issuance of a problem letter, the eight (8) week processing period shall begin when the customer provides all necessary information to PG&E. Once during each week during Initiative period, PG&E shall submit electronic application report(s) to Agency for approval, denial or pending status of individual application records. Agency shall provide an application status for individual application records that were not previously placed in pending status within ten (10) business days. For those applications that were previously placed in pending status, Agency shall provide application status for individual application records within five (5) business days. When Agency returns application report to PG&E, PG&E shall issue rebate payments to customers within an eight (8) week processing period. In the event Agency delays its application approvals, PG&E will issue a PG&E rebate and approved Agency rebate will be paid upon receipt of the verification file and an additional processing cost will be invoked (See Attachment 2, Rates & Charges).

1.2.3 Agency shall pay reduced rebate processing fees to PG&E for rebate applications processed by PG&E outside the eight (8) week rebate timeline per the compensation schedule described herein (See Attachment 2, Rates & Charges).

II. CONTRACTED SERVICES AND SCHEDULE FOR DELIVERABLES

PG&E shall provide the following:

2.1 Initiative Start-up

2.1.1 Provide to Agency a description of verification and validation rules enforced by the database, and descriptions of all standard reports.
Schedule: Within three (3) weeks of Notice to Proceed.

2.1.2 Provide Agency with a test transmittal of all database reports to be delivered to Agency as part of the rebate processing services.

Schedule: Within four (4) weeks of Notice to Proceed.

2.1.3 Print and distribute rebate application forms for the duration of the rebate offer represented on the application form in a quantity sufficient to supply forms to retailers directly, to customer upon request, and to Agency for its own supplementary distribution to retailers and customers. The duration of the rebate offer represented on the application form will average six (6) months but may vary at the discretion of PG&E and Agency.

The Rebate application form shall include PG&E branding and logo and Agency group initiative branding and logo and clearly describe all initiative information in an agreed upon format. PG&E and Agency shall each approve the Rebate application content and artwork prior to printing. If either party fails to provide necessary information required by the deadline dates causing additional costs (i.e., extra drafts, reprints or expedited delivery needed), the party who created the delay will be solely responsible to bear these and any other additional costs.

Production and Delivery Schedule: Eight (8) weeks prior to materials delivery date – provide changes for application and other POP Materials
Seven (7) weeks prior to material delivery date – review first draft
Six (6) weeks prior to material delivery date – changes/additions/deletions due
Five (5) weeks prior to material delivery date – final draft review and approval
Four (4) weeks prior to material delivery date – all material sent to print
Delivery date will be 3 – 5 business days prior to the initiative period for shipping initiative materials to reach all retailers in an Agency's service territory.

2.1.4 PG&E's field team will identify qualifying products by placing program point of purchase material on the product at retailers within participating territory.

2.1.5 PG&E will maintain a customer toll free call center. PG&E and Agency will develop a script to handle water and Initiative related frequent asked questions (FAQs). Agency will provide a contact name and phone number for customer inquiries related to water that PG&E cannot field.

Schedule: During the duration of the Initiative Period. Agency will provide contact name and phone number not later than four (4) weeks prior to the Initiative launch date. Agency will provide updates as necessary. PG&E will update call center within five (5) business days of its receipt of updated information from Agency.

2.1.6 PG&E will work with Agency to develop a list of clothes washer retailers within the Agency water service area where initiative materials are to be faxed or mailed and where site visits will be conducted.

Schedule: Develop cooperatively at least thirty (30) days prior to Initiative start-up.

2.1.7 PG&E will keep the unique domain name registered and server space procured, and will continue to design and update a website to promote and support the Initiative (See Attachment 2, Rates & Charges Section 2.1.7).

2.2 PG&E Rebate Processing

PG&E rebate processing services shall include the following:

2.2.1 Verify product qualification, PG&E customer qualification, completeness of application and the inclusion of required documents with application form. Transmit customer's rebate information to appropriate participating Agency for verification of customer status by Agency.

2.2.2 PG&E shall enter all Rebate application data in an Initiative database. The database will be maintained to include complete records of all received, denied, authorized, and paid rebates, for all rebate applications processed by PG&E during the Initiative Period. If this Agreement is terminated by either party, PG&E agrees to transfer all Agency electronic files pertaining to Agency's customers to Agency or an Agency-designated third party. Such files will include all data pertaining to Agency's customers collected for the duration of the Initiative. PG&E agrees to transfer electronic files in current Microsoft Excel or Microsoft Access format, or in another format agreed by the parties.

Schedule: Agency will verify application data within ten (10) working days of receipt. For customers marked pending by Agency, PG&E will wait another five (5) working days from when the customer record was originally sent in the Weekly Rebate Application Report before PG&E pays the application for the PG&E portion of the rebate.

Schedule: PG&E will verify and enter data within twenty (20) working days of receipt of the Rebate application.

2.2.3 PG&E will prepare and send database report(s) (Weekly Rebate Application Report(s)) once each week to Agency. These Weekly Rebate Application Report(s) will consist of recorded rebate applications with installation address, zip codes within the Agency water service area. These Weekly Rebate Application Report(s) will be forwarded to Agency who shall designate a Project Manager to receive all such database records to via email in current Microsoft Excel or Microsoft Access format, or in another agreed upon format. Database records shall include the following fields: the rebate application number, applicant first and last names, applicant mailing address (e.g., post office box, street, apartment or unit number, city, state, and zip code), clothes washer installation address (street, apartment or unit number, city, state, and zip code), Agency water service account number (if available), applicant telephone number, brand, model number, retail purchase price, retail store, CEE Tier, Modified Energy Factor (MEF) and Water Factor (WF) when available, site inspection, rebate dollar amount, an approved/denied field, a comments field, purchase date, installation date, the date PG&E received the application, and include third party information where

applicable. In the event the applicant does not provide Agency name and/or account number, and the applicant is in a zip code shared by two (2) or more Agencies, PG&E will send applicant information to two (2) or more Agencies, and one will approve, while the other(s) will deny. Only one Agency will approve an application record for rebate. Only the Agency that approves will be charged a rebate and processing fee for the rebate application. In the event that both Agencies disapprove an application, PG&E will review the denial reasons in an attempt to establish customer ownership. If customer ownership cannot be established, the Agency that was the last to respond is responsible for the processing fee.

Schedule: PG&E will forward Weekly Rebate Application Report(s) to the Agency on each Sunday of each week during the Initiative period.

2.2.4 Agency shall review all Weekly Rebate Application Report(s) and assign each customer rebate application record a denied, approved, or pending status. Agency will forward a verified Weekly Rebate Application Report to PG&E. PG&E will update all initiative database records with Agency provided customer information corrections and rebate status. For customers marked pending by Agency, PG&E will pay PG&E's portion of the rebate after fifteen (15) business days from when the customer record is initially sent in the Weekly Rebate Application Report to Agency. If Agency approves their portion of the rebate after the "pending" timeframe (15 days from receipt of Weekly Rebate Application Report) the Agency will be charged a fee for PG&E to mail an additional check with the Agency's rebate portion (See Attachment 2, Rates & Charges Section 2.2.4).

Schedule: Agency will verify all customer rebate application requests on the Weekly Rebate Application Report(s) and will send back a verified Weekly Rebate Application Report(s) within ten (10) working days of its initial receipt.

2.2.5 PG&E will issue rebate applicants who submit incomplete application forms, a letter, called "Problem Letters," which describe and request missing information and/or documentation. Problem letters shall be issued on PG&E letterhead. PG&E and Agency shall prepare a template for Problem Letters for this purpose. Incomplete applications are defined as initiative application forms without information and documentation required to determine applicant eligibility but do not include applications missing only the water service account number. PG&E shall forward to the Agency records of applications with missing Agency account numbers as described above in task 2.2.3. Problem letter shall state that customer must respond to the Problem Letter's request for information within sixty (60) days or the application will be denied.

2.2.6 PG&E will issue letters to applicants who submit ineligible applications, called "Denial Letters," that notify the customer of the denial of their application and state the reason(s) for the denial. Denial Letters for this Initiative shall be issued only for applications with clothes washer installation addresses within the

Agency water service area. PG&E and Agency shall create Denial Form Letter to be used for this purpose. If customer does not respond to problem letter within 60 days, PG&E will mail a denial letter to the customer. Bill Agency on a monthly basis for all “pending” now “denied” application records (See Attachment 2, Rates & Charges Section 2.2).

Schedule: PG&E will issue Denial Letter within five (5) business days from data entry of ineligible applications, within five (5) business days from receipt from Agency of denied application records, and within five (5) days from when application record changes status from “pending” to “now denied” status because customer did not respond to “problem letter” within the required 60 days.

2.2.7 Receive applicant responses to Problem Letters and Denial Letters within a 60 day timeframe as stated in the letter and, as necessary to maintain complete and accurate application records, update application records in Initiative database with applicant provided information, and will notify Agency of the updates that have been made to applications that would affect their records.

Schedule: Ongoing during initiative administration period.

2.2.8 PG&E will issue rebate payments to Agency customers with authorized rebate application records as indicated by status given by Agency in the Weekly Application Report(s). Checks shall be issued to the rebate applicant name and mailing address of Agency-authorized Payment Verification List records. Rebate checks with PG&E logo will include a letter indicating the purpose of the rebate payment and the payment amount from the Agency and from PG&E. The check stub will also indicate the portion of the rebate is attributed to the Agency. PG&E and Agency shall agree upon the wording of the letter to accompany the rebate check.

Schedule: Within five (5) working days of receipt of Agency-validated Weekly Rebate Application Report.

2.2.9 If applicant qualifies for a Agency rebate, but is not a PG&E customer, PG&E will issue a rebate check for the participating Agency and a letter stating the customer does not qualify for a PG&E rebate.

2.2.10 If a rebate check is returned to PG&E as undeliverable by the U.S. Postal Service, PG&E will attempt to locate the customer using PG&E customer database. If unsuccessful, PG&E will retain the check for three (3) years. If the customer contacts PG&E regarding their rebate check after ninety (90) days of return of check to PG&E, PG&E will issue a new check (See Attachment 2, Rates & Charges Section 2.2.10). After three years, those funds that are required to be will be escheated to the State of California per state law. Those funds that need not be escheated to the State will be reimbursed to the Agency.

2.2.11 After rebate issuance, PG&E shall send to Agency via email an electronic file in current Microsoft Excel or Microsoft Access format, or in another agreed

upon format, with information for each rebate issued to Agency customers including the individual rebate application number, the check number and the date of check issuance.

Schedule: PG&E shall issue within ten (10) business days after the end of the previous month for that month's rebate check issuance.

2.3 Administrative Services

PG&E shall provide the following administrative services:

2.3.1 When allowed by the CEC, PG&E will print and fax to retailers the CEE Clothes Washer Qualifying Product List based on regular changes and updates. Fax will include a coversheet with new Initiative information including, but not limited to, changes involving initiative requirements, AGENCY and PG&E rebate levels, AGENCY addition or departure from the Initiative, updates to the CEE Clothes Washer Qualifying Product List, and PG&E and AGENCY group Initiative logo and names.

2.3.2 During the term of this Agreement, PG&E will store all records pertaining to PG&E's administration of the Initiative for the Agency.

2.3.3 PG&E will submit a monthly invoice that itemizes 1) application processing fees and 2) rebates paid. Processing fees shall be assessed for all Agency-approved applications for which PG&E has issued a rebate, all customers denied by Agency and are not a customer of another Agency, and all applications the Agency later decides to pay for customer service purposes previously denied. Schedule: Submit within thirty (30) calendar days after the end of each month during the term of the Agreement. Agency will pay invoices within thirty (30) calendar days.

2.3.4 PG&E will maintain a customer toll free call center during all normal PG&E business hours. PG&E will respond to all written and verbal customer inquiries and refer water questions to the appropriate Agency (see Scope of Services Section 2.1.5). The telephone line shall include a voice mail message service available to callers during all non-business hours during the application-processing period. PG&E shall respond to all voice mail messages received during the application-processing period. PG&E will track the number of phone calls based on specific inquiries for this initiative.

Schedule: Ongoing throughout initiative administration period. Submit phone call tracking data to Agency quarterly within fifteen (15) days of the end of the quarter. Respond to messages left on machine within twenty-four (24) hours during the week.

2.3.5 Reports Schedule

2.3.5a On a monthly basis provide Agency with a report delineating rebates paid by tier as well as rebates rejected.

Schedule: Deliver in electronic format and by direct mail by the thirtieth (30th) calendar day of the following month.

2.3.5b On a quarterly basis, provide Agency with a report aggregating the activities of all participating Agency by rebates paid by tier, those rejected, and those pending, including rebate application number, applicant first and last names, applicant mailing address (e.g., post office box, street, apartment or unit number, city, state, and zip code), clothes washer installation address (street, apartment or unit number, city, state, and zip code), Agency water service account number (if available), applicant telephone number, brand, model number, retail purchase price, retail store, CEE Tier, Modified Energy Factor (MEF) and Water Factor (WF) when available, site inspection, rebate dollar amount, an approved/denied field, a comments field, purchase date, installation date, the date PG&E received the application and include third party information where applicable. In the event the Agency does not want to participate in the aggregated reports, advanced notice should be given to PG&E and activity for Agency will be removed from the report.

Schedule: Deliver additional aggregate reports upon request, up to 2 reports per Agency per year.

2.3.5c On a biannual basis, provide Agency with a report aggregating the marketing costs on an as-spent basis.

Schedule: Bi-Annually

2.3.6 Conduct database and payment file troubleshooting.

Schedule: Respond to Agency about issues within two (2) business days of PG&E receipt Agency inquiry regarding and/or notification of problem.

2.3.7 Monitor and evaluate program participation and market data on at least an annual basis to assess the success of current Program Offering. The Program Offering is defined as the parameters, energy efficiency specifications that qualify a clothes washer to be a Qualifying Machine and the rebate amount that is offered to a customer for purchasing a Qualifying Machine. As a result of this analysis, PG&E will evaluate and institute Program Offering changes as agreed to by the participants.”

2.4 Marketing Services

PG&E and the Agency shall work together to provide the following marketing services:

2.4.1 PG&E and Agency will develop and PG&E will print Initiative application form during the Initiative period. Updates to the application form shall include rebate offer dates, rebate amounts, eligibility criteria, and participation or initiative rules.

Schedule: PG&E will revise and reprint application forms as needed during the initiative period using the following timeframe:

Eight (8) weeks prior to materials delivery date – provide changes, rebate values, etc. for application

Seven (7) weeks prior to material delivery date – review first draft

Six (6) weeks prior to material delivery date – changes/additions/deletions due

Five (5) weeks prior to material delivery date – final draft review and approval

Four (4) weeks prior to material delivery date – all material sent to print

Delivery date will be three to five (3 – 5) days before the start of a new initiative period to allow for shipping time of initiative materials to reach all retailers in an Agency service territory.

2.4.2 PG&E will maintain a website separate from PG&E's to include current initiative eligibility requirements, qualifying products list, rebate status and a link to PG&E's online application function. The Website shall include PG&E branding and logo and Agency branding and logo and clearly describe all initiative information in an agreed upon format by PG&E and Agency. Website information and function will include, but not be limited to, Initiative rules, a downloadable and printable application form, a link to an online application function, link to current CEE product eligibility list and Agency website, and summary of high-efficiency clothes washer technology and the consumer benefits of purchasing eligible products.

Schedule: PG&E will maintain current links to qualifying clothes washer model list, and update eligibility rules or funding amounts. Updates should be posted within three (3) business days of any changes determined by PG&E and Agency or based on CEE List updates.

2.4.3 PG&E will design and print point-of-purchase cling stickers (POP Ads) additional material to be determined with Initiative information. PG&E will arrange for distribution of POP material through field service, mail, and Agency method _____. PG&E will coordinate delivery of Agency's portion to Project Manager via mail. Artwork will be owned and licensed as described in Co-Funding Agreement, Section 8(b).

Schedule: PG&E will print and distribute quantity necessary for Initiative as agreed upon by PG&E and Agency (See Attachment 2, Rates & Charges Section 2.4.3).

2.4.4 PG&E will distribute Initiative application forms to contact persons at appliance retailers and to Agency via U.S. mail or other ground shipment provider as needed to keep appliance retailers supplied with forms (See Attachment 2, Rates & Charges Section 2.4.4).

Schedule: Mail within 3 days of the start of a new Initiative period. Mail within two (2) working days of PG&E receipt of request from appliance retailers or Agency thereafter.

2.4.5 PG&E will provide application forms and POP materials to the Agency for distribution to retailers through Agency field service visits.

Schedule: Ongoing. Mail within two (2) working days of receiving request.

2.5 Initiative Closeout Services

2.5.1 PG&E and Agency will resolve all pending rebates and PG&E will provide a final report accounting of all Initiative activity including the number of application received, number of rebates paid, value of rebates paid, number of applications denied, and a summary of phone call activity. The complete dataset for application records shall be in current Microsoft Excel or Microsoft Access format, or in another mutually agreed upon format.

2016 Agreement Schedule: By March 31, 2017

2.5.2 PG&E and Agency shall update website accordingly including content, artwork and initiative guidelines developed for the Initiative.

2016 Agreement Schedule: Until March 31, 2017

2.5.3 PG&E shall retain all paper records for a period of ten (10) years with Agency right to examination with a prior written request.

**Co-Funding Agreement
Between
Pacific Gas & Electric Company and City of St. Helena**

High Efficiency Clothes Washer Rebate Initiative

ATTACHMENT 2

RATES & CHARGES

Compensation for services provided in Attachment 1, SCOPE OF SERVICES, shall be in accordance with the methods and specific amounts described in this Attachment. **The total amount to be paid under this agreement shall not exceed \$5,500 per year.** Rates and charges are described below:

City of St. Helena shall pay PG&E only the actual costs incurred (administrative and direct), for providing the services set forth in the Agreement, subject to the agreed cost ceiling established below. PG&E certifies that the cost and pricing information used herein are complete, current and accurate. Administrative and per unit rebate processing rates shall not increase regardless of the number of Agencies participating in the Initiative. PG&E acknowledges that it will expend public funds and hereby agrees to use every appropriate method to contain its fees and minimize costs under this Agreement.

Compensation for PG&E services authorized shall be on a cost reimbursement basis and include a combination of per unit fees and reimbursement of direct marketing costs.

A rebate of \$150 (apportioned \$50.00 from PG&E, \$100.00 from City of St. Helena) will be paid for ENERGY STAR Most Efficient machines. City of St. Helena may change the portion of the rebate it pays (i.e., from \$100 or \$50) during the Initiative period.

PG&E shall invoice City of St. Helena monthly within thirty (30) calendar days of the first of each month, during the Term of this Agreement, for customer rebates paid on the behalf of City of St. Helena and its share of administrative costs incurred by PG&E during the preceding month. Invoices shall indicate the administrative costs separately from the rebate reimbursement. City of St. Helena agrees to pay all approved PG&E invoices within thirty (30) calendar days.

Costs to be paid comprise the following:

2.2 Rebate Processing

Rebate processing services will include all aspects discussed in Attachment 1, Section II Contracted Services and Schedule for Deliverables, 2.2 PG&E Rebate Processing.

A) Standard Processing Fees:

For applications related to ENERGY STAR Most Efficient qualifying products, City of St. Helena agrees to pay up to \$10.00 per rebate processed (represents 50% of processing cost, i.e. the number of rebates approved or denied by City of St. Helena).

If PG&E withdraws as a participant, City of St. Helena shall pay the full rebate processing cost of \$20.00 per application (See Co-Funding Agreement, Section 12(c)).

B) Late Processing Fee Due to City of St. Helena Delay:

City of St. Helena shall pay \$20.00 per rebate (100% of processing cost) if City of St. Helena delays its approval beyond the “pending timeframe” (See Attachment 1, Sections 1.2.2 AND 2.2.4).

C) Late Processing Fee Due to PG&E Delay:

City of St. Helena shall pay reduced rebate processing fees to PG&E if PG&E causes the rebate to be processed outside the 8 week timeframe (See Attachment 1, Section 1.2.3). The rebate processing fee will be reduced to \$5.00 per application if the PG&E process causes the rebate to be paid after the 8 week rebate timeframe, but less than 12 weeks. The rebate processing fee will be completely waived if the PG&E process causes the rebate to be paid after a 12 week timeframe.

D) Reprocessing Check Fee

City of St. Helena shall pay \$20.00 per check (50% of cancel, re-process and mail costs) if the customer contacts PG&E regarding their rebate check after ninety (90) days of return of check to PG&E or if a check needs to be cancelled and re-issued for reasons unrelated to processing error (See Attachment 1, Section 2.2.10).

Total Rebate Processing Cost Ceiling: \$5,500

No fee shall be charged for applications submitted for customers who are within the service area of a non-participating water agency.

2.3 Administrative Services**2.3.1 Identification of Qualifying Products**

PG&E’s field team personnel will identify qualifying products of the program by placing program point-of-purchase material on the products at retail outlets within participating regions.

Optional Service Costs

Optional Service Costs are defined as costs for services such as print, radio, or television advertising or other marketing of the Initiative that are not included as Direct Costs. Optional Service Costs shall be negotiated and mutually agreed upon in advance by both PG&E and City of St. Helena.

Total Marketing Cost Ceiling: TBD

Late Entry

If an Agency enters into the Agreement after the Effective Date, that Agency will pay an Initiative fee which will include a flat rate for Initiative Start-Up services and incur other pro-rated Marketing and Administrative costs.

2.5 Programming Services

Agency will pay an Initiative Start-Up fee if they would like to have rebate amount switched after the Effective Date.

Initiative Start-Up Cost Ceiling: \$400

The following services will be provided by PG&E at no charge to City of St. Helena:

2.1 Initiative Start-up

- 2.1.1 Provide description of database business rules and standard reports.
- 2.1.2 Provide test transmittal of all database reports.
- 2.1.4 Print and distribute Consortium for Energy Efficiency Qualifying Washers List
- 2.1.5 Maintain a customer toll free call center.

2.3 Administrative Services

Administrative services will include all aspects discussed in Attachment 1, Section II Contracted Services and Schedule for Deliverables, 2.3 Administrative Services except as outlined above.

2.4 Marketing Services

- 2.4.3 Field Service visits to Retailers

2.5 Initiative Closeout Services

Initiative closeout services will include all aspects discussed in Attachment 1, Section II Contracted Services and Schedule for Deliverables, 2.5 Initiative Closeout Services.

CITY OF ST. HELENA

RESOLUTION NO. 2016-__

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH PACIFIC GAS AND ELECTRIC (PG&E) COMPANY FOR A CLOTHES WASHER REBATE PROGRAM, RESCIND RESOLUTION NO. 2004-32B ESTABLISHING GUIDELINES FOR THE APPLIANCE REBATE PROGRAM, AND APPROVE A BUDGET ADJUSTMENT OF \$2,200 TO ACCOUNT 561-2330-0000

RECITALS

- A. Water conservation and water use efficiency continue to be priorities of the City due to limited water resources now and in the future; and
- B. Resolution No. 2004-32B established a partnership with the United States Environmental Protection Agency and the Department of Energy to promote Energy Star products and established guidelines for the appliance rebate program; and
- C. This program resulted in water saving over time to both the customer and the City of St. Helena Water Department and helps the City to meet its water conservation goals; and
- D. The California Public Utilities Commission (CPUC) has funded the Mass Market Program as a voluntary program which encourages Californians to reduce their household electrical appliance energy demand by providing a monetary rebate to consumers for the purchase of appliances; and
- E. PG&E has been designated by the CPUC as a distributor of Program rebate funds to Californians who purchase energy-efficient appliances; and
- F. The City of St. Helena also provides a voluntary rebate program which encourages retail water customers served by the City to conserve water resources by purchasing water resource efficient clothes washers; and
- G. The City of St. Helena desires to authorize PG&E to facilitate payments of monetary rebates to customers being served by both the City of St. Helena and PG&E, who purchase qualified clothes washers that are both energy and water resource efficient; and
- H. The City of St. Helena wishes to designate PG&E as the entity responsible for administering the Program on a day-to-day basis, including the paying out of energy and water conservation rebate monies to their respective customers; and

I. PG&E represents and warrants that it is qualified to perform the services required by City as set forth under this Contract; and

J. Funds for this agreement are available from Account No. 561-2330-0000 Water Use Efficiency Program.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

1. Resolution No. 2004-32B is hereby rescinded.
2. Authorizes a partnership with the United States Environmental Protection Agency, Energy Star Program, to promote water saving clothes washers within the City.
3. The City Manager is authorized to execute an agreement between the City of St. Helena and PG&E for a clothes washer rebate program.
4. Authorizes a budget adjustment of \$2,200 in expenditures from account 561-2330-0000.

Approved at a Regular Meeting of the St. Helena City Council on January 12, 2016 by the following vote:

Mayor Galbraith:	_____
Vice Mayor White:	_____
Councilmember Crull:	_____
Councilmember Dohring:	_____
Councilmember Pitts:	_____

APPROVED:

ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk

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**Report to the City Council
Council Meeting of January 12, 2016**

Agenda Section: Consent

Subject: Memorandum of Understanding – Bay Area Proposition 84 Round 2 Integrated Regional Water Management (IRWM) Grant Conservation Group- Napa County Agencies

CEQA Status: Categorically Exempt, Sections 15301-Existing Facilities, and 15304-Minor Alterations to Land

**Prepared By: Jennifer Tuell, Water Conservation 
Steven Palmer, PE, Director of Public Works/City Engineer**

Approved By: Jennifer Phillips, City Manager 

BACKGROUND

Since 2004, the City of Napa has participated in San Francisco Bay Area Integrated Regional Water Management (IRWM) planning. One of the benefits of this multi-stakeholder, nine-county effort is improved regional competitiveness for State grant funds. St. Helena, along with several other local water agencies have benefitted from the Proposition 84 IRWM Implementation Grant, with local efforts led by the City of Napa.

In 2014, as part of the Round 2 - Proposition 84 IRWM Implementation Grant Program, the State of California Department of Water Resources (DWR) awarded \$20 million for Bay Area water projects via the Association of Bay Area Governments (ABAG). \$2.7 million of this total is targeted for regional water conservation programs via Solano County Water Agency on behalf of twelve (12) participating agencies in the Conservation Group, including the City of Napa.

DISCUSSION

As a participant in the Conservation Group, the City of Napa has secured \$127,500 in Round 2 grant funds on behalf of the Napa, St. Helena, American Canyon, County of Napa, Calistoga, and Yountville. The funds support two specific customer rebate programs that may be offered by the Napa County agencies. In order to be participate and receive reimbursement from the programs, the City of St Helena must execute the attached Round 2 Memorandum of Understanding (Round 2 MOU). The Round 2 MOU will only provide funding for the two programs listed below:

1. Water-Efficient Landscape Rebate (\$112,500 for all participating organizations) – Often referred to as “Cash for Grass” is a program to incentivize removal of water-intensive lawns with replacement of Low-Water-Use landscaping. The Round 2 grant reimbursement to agencies is \$0.5625 per square foot rebated. Several local agencies, currently offer their customers a rebate of \$1 per square foot. The grant program requires that the City of St Helena provide customers with a minimum rebate of \$0.75 per square foot.

The City of St. Helena does not currently offer a “Cash for Grass” program but, with the approval of the Round 2 MOU City staff will develop program guidelines for consideration at a future Council meeting.

2. Weather-Based Irrigation Controller Rebate (\$15,000 for all participating organizations) – This incentivizes replacement of standard irrigation controllers with self-adjusting “Smart Controllers.” The Round 2 grant reimbursement to agencies is a maximum of \$15 per single-family residential irrigation station rebated and \$22.50 per multi-family or commercial irrigation station rebated. Adoption of this water efficient technology allows irrigation systems to continuously meet the actual water needs of plants using automated weather data and other inputs.

The City of St. Helena currently offers a Smart Yard Program, providing different benefits than the Weather-Based Irrigation Controller Rebate. With the approval of the Round 2 MOU staff will update the program and guidelines for consideration at a future Council meeting.

Customer rebates issued by the City of St. Helena from July 1, 2015 through December 31, 2018 are eligible for Round 2 grant reimbursement until grant funds are depleted.

Execution of the MOU among the Napa County agencies (Attachment 1) will allow the City of Napa to pass through grant reimbursements to the City of St. Helena and other local agencies offering eligible rebate programs as long as funding is available.

FISCAL IMPACT

Currently all water conservation rebate programs offered by the City are funded from the Water Use Retrofit account. These new programs will be managed within the current fund balance. Any additional fiscal impacts will be addressed as part of the adoption of the new program guidelines.

Executing this Round 2 MOU and utilizing Proposition 84 funds will allow the City to leverage local funds to obtain regional funds, thereby improving the overall cost-effectiveness of the City's water conservation program.

RECOMMENDED ACTION

Adopt the attached resolution authorizing the City Manager to execute a Memorandum of Understanding for the Bay Area Proposition 84 Round 2 Integrated Regional Water Management Grant Conservation Group – Napa County Agencies.

ATTACHMENTS

1. Memorandum of Understanding Bay Area Proposition 84 Round 2 Integrated Regional Water Management Grant Conservation Group - Napa County Agencies
2. Resolution

MEMORANDUM OF UNDERSTANDING
Bay Area Proposition 84 Round 2
Integrated Regional Water Management Grant
Conservation Group - Napa County Agencies

This Memorandum of Understanding (hereinafter "Napa MOU") is entered into as of July 1, 2015 (the "Effective Date") by and between the City of Napa, a municipal corporation and California Charter City (hereinafter "City"), and the following public agencies within Napa County (hereinafter "the Agencies"): the County of Napa, a political subdivision of the State of California, the City of American Canyon, a municipal corporation, Town of Yountville, a municipal corporation, the City of St. Helena, a municipal corporation, and the City of Calistoga, a municipal corporation. City and the Agencies may be referred to collectively as "the Parties."

RECITALS

- A.** On behalf of numerous public agencies located in the San Francisco Bay Area, the Association of Bay Area Governments ("ABAG") applied for and received a Proposition 84 Integrated Regional Water Management Grant ("State Grant") from the State of California, Department of Water Resources ("DWR") in the amount of \$20,000,000 to help fund the implementation and operation of various regional water conservation, water recycling, ecosystem restoration, green infrastructure, and flood management-watershed projects ("Projects"). Grant Agreement Number 4600010575 between DWR and ABAG ("State Agreement") is attached hereto and incorporated herein as Exhibit A.
- B.** The State Grant includes \$2,700,000 to fund water conservation programs. On behalf of twelve (12) participating Bay Area agencies including the City ("Conservation Group"), Solano County Water Agency ("SCWA") entered into a Local Project Sponsor Agreement with ABAG ("Implementation Agreement") by which ABAG agrees to disburse funding from the State Grant to SCWA for SCWA to use in administration and performance of eligible Projects. This Implementation Agreement is attached hereto and incorporated herein as Exhibit B.
- C.** As a participant in the Conservation Group, the City secured \$127,500 in State Grant funds for the purposes of supporting two specific water conservation rebates for customers of the City and Agencies. On behalf of the City and Agencies, the City entered into a Memorandum of Understanding with SCWA and the rest of the Conservation Group ("SCWA MOU") by which SCWA agrees to disburse State Grant funds to the City to use in the performance of eligible Projects. The SCWA MOU is attached hereto and incorporated herein as Exhibit C.
- D.** The State Agreement, Implementation Agreement, and SCWA MOU permit the City to pass State Grant funds through to other local agency partners to carry out the purposes of the State Grant. This Napa MOU acknowledges that the City agrees to

disburse State Grant funds to the Agencies to use in the performance of eligible water conservation rebate Projects, and that the Agencies desire to receive State Grant funds and are willing to cooperate in fulfilling the City's obligations under the SCWA MOU.

NOW, THEREFORE, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Term

This Napa MOU will be in effect as long as the SCWA MOU is in effect, terminating on December 31, 2018, or when all obligations under the State Agreement have been fully satisfied, whichever occurs earlier. Notwithstanding the date on which this Napa MOU is executed, Project costs incurred after February 4, 2014, that meet State Grant and State Agreement requirements are eligible for reimbursement.

2. Eligible Projects

To be eligible for State Grant funds, Projects implemented by the City and Agencies must conform to the Work Plan section of the State Agreement (Exhibit A). Pursuant to the SCWA MOU and State Agreement, State Grant funds are available to the City and Agencies for two specific water conservation rebate Projects through December 31, 2018:

A. Project 1 Element 1-4a: Water-Efficient Landscape Rebate Program

This project element promotes environmental sustainability by providing rebates incentivizing residential and commercial sites to remove water-intensive lawns and replace them with water-efficient landscaping, sometimes referred to as a "Cash For Grass" rebate. The minimum rebate is \$0.75 per square foot and the State Grant reimbursement is 75 percent of \$0.75, or \$0.5625 per square foot rebated.

B. Project 1 Element 1-4b: Weather-Based Irrigation Controller Rebate Program

This project element promotes environmental sustainability by providing rebates incentivizing residential and commercial sites to replace standard irrigation controllers with self-adjusting automatic irrigation controllers that utilize current or historical weather data and other relevant factors to meet the actual water needs of plants. These devices are also sometimes referred to as weather-based "Smart Controllers." The State Grant reimbursement for single-family residential rebates is 75 percent of the rebate per irrigation station, with a maximum reimbursement of \$15 per station rebated. The State Grant reimbursement for multi-family and commercial rebates is 75 percent of the rebate per irrigation station, with a maximum reimbursement of \$22.50 per station rebated.

3. Project Participation

City and Agencies are not required to participate in all Projects, or any one specific Project, described in this Napa MOU. Project participation is voluntary and may be based on Agency water conservation goals, budgets, or any other relevant factors. City and

Agencies are responsible for their own Project administrative costs and the portion of the customer rebate that is not covered by the State Grant reimbursement.

4. Grant Funding Allocation

A. By Project

Pursuant to the SCWA MOU, State Grant funds for the City and Agencies are allocated among the two Projects as shown. Funds may not be transferred between projects.

Project	State Grant Funds Available
Water Efficient Landscape Rebate	\$112,500
Weather-Based Irrigation Controller Rebate	\$15,000
Total	\$127,500

B. By Agency

There is no specified allocation of State Grant funds among the City and Agencies. For each Project, each participating Agency shall be reimbursed for eligible rebates reported until State Grant funds allocated for that Project are exhausted. As a Project's funds become depleted, reported rebates will be reimbursed based on earliest date of issue to customer regardless of Agency, until funds are fully exhausted.

C. Unused Funds

If necessary prior to Project completion dates, the City and Agencies shall convene to determine whether to release unspent State Grant funds to or receive redistributed State Grant funds from the Conservation Group, as provided for in the SCWA MOU.

5. Communication

All City and Agency communications relating to State Grant funding for the Projects described in this Napa MOU shall be exchanged between the Project Managers or their Alternates as listed below.

Agency	Project Manager	Alternate
City of Napa	Patrick Costello pcostello@cityofnapa.org (707) 257-9309	Josh Stokes jstokes@cityofnapa.org (707) 257-9497
County of Napa	Deborah Elliott Deborah.Elliott@countyofnapa.org (707) 259-5969	Patrick Lowe Patrick.Lowe@countyofnapa.org (707)259-5937

City of American Canyon	Jennifer Kansanback jkansanback@cityofamericancanyon.org (707) 647-5355	Nicole Scott nscott@cityofamericancanyon.org (707) 647-5327
Town of Yountville	Nathan Steele nsteele@yville.com (707) 944-8851	Preya Nixon pnixon@yville.com (707) 944-8851
City of St. Helena	Jennifer Tuell JenniferT@cityofstheleena.org (707) 967-2792	Mandy Kellogg MandyK@cityofstheleena.org (707) 968-2649
City of Calistoga	Anais Hall ahall@ci.calistoga.ca.us (707) 942-2784	Louise Harrison lharrison@ci.calistoga.ca.us (707) 942-2780

6. Reporting and Invoicing

A. Quarterly Reporting

Pursuant to the SCWA MOU, the City shall provide SCWA with Project data from the City and Agencies on a quarterly basis. Tentative reporting schedule:

Reporting Period	Quarter	SCWA Due Date
7/1/15 to 9/30/15	Q4	10/30/15
10/1/15 to 12/31/15	Q5	2/1/16
1/1/16 to 3/31/16	Q6	4/29/16
4/1/16 to 6/30/16	Q7	7/29/16
7/1/16 to 9/30/16	Q8	10/31/16
10/1/16 to 12/31/16	Q9	1/30/17
1/1/17 to 3/31/17	Q10	5/1/17
4/1/17 to 6/30/17	Q11	7/31/17
7/1/17 to 9/30/17	Q12	10/30/17
10/1/17 to 12/31/17	Q13	1/30/18
1/1/18 to 3/31/18	Q14	4/30/18

4/1/18 to 6/30/18	Q15	7/30/18
7/1/18 to 9/30/18	Q16	10/30/18
10/1/18 to 12/31/18	Q17	1/30/19

In advance of the SCWA due date, the City Project Manager shall make an official request of all participating Agencies to provide their quarterly Project data to the City in electronic form. A reporting template will be provided if applicable. Requested data may include number of rebates issued, dollar amount of rebates, and other rebate documentation needed to meet State Agreement criteria. Notwithstanding the tentative SCWA due dates and data reported prior to this Napa MOU, Agencies agree to submit their quarterly data to the City within five (5) business days of the City Project Manager's official request.

If an Agency does not meet the above-stated reporting deadline, that Agency's data will not be included in the City's quarterly report to SCWA and Agency forfeits the potential State Grant reimbursement for the water conservation rebates affected.

Pursuant to the SCWA MOU, the City may be required to assist SCWA in preparing Project Performance Reports for DWR each year for ten (10) years after the end of the grant period. Agencies agree to work with the City if requested, to provide necessary data for these reports.

B. Invoicing

Pursuant to the SCWA MOU, the City shall invoice SCWA periodically for State Grant funds as they are received by SCWA from ABAG. Concurrent with each invoice to SCWA, City shall provide the Agencies with updated electronic worksheets summarizing rebate and grant reimbursement status by Project and by Agency. Upon receipt of funds from SCWA, the City shall request an invoice from each Agency that specifies the applicable reporting period and corresponding State Grant funds due to the Agency. The City will process payment on each Agency invoice within thirty (30) days of receipt. DWR withholds a minimum of five (5) percent of State Grant funds until Projects are complete and all reporting requirements are met. This DWR withholding percentage will be reflected in City payments to Agencies. The applicable DWR retention will be disbursed to each Agency once the City receives it from SCWA after Project completion.

7. Inspection of Records

Pursuant to the State Agreement, DWR is entitled to inspect and make copies of any records pertaining to the program and the City and Agencies are required to make available for such inspection accurate records of all costs, disbursements, and documentation as necessary to comply with the requirements of the State Agreement.

8. Indemnification

The City agrees to defend, indemnify, hold harmless, and release each Agency, its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, arising out of the negligence or willful misconduct of the City in connection with its performance under this Napa MOU; provided, however, that no Agency shall be entitled to indemnification under this section for any actions, claims, damages, liabilities, or expenses to the extent that they arise out of the negligence or willful misconduct of the Agency in connection with its performance under this Napa MOU.

Each Agency hereby agrees to defend, indemnify, hold harmless, and release the City, its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, arising out of the negligence or willful misconduct of the indemnifying Agency in connection with its performance under this Napa MOU; provided, however, that the City shall not be entitled to indemnification under this section for any actions, claims, damages, liabilities, or expenses to the extent that they arise out of the negligence or willful misconduct of Agency in connection with its performance under this Napa MOU.

9. Dispute Resolution

The parties to this Napa MOU shall meet promptly to address any dispute that may arise and make a good faith effort to negotiate a resolution. The use by any party of any remedy specified herein for the enforcement of this Napa MOU is not exclusive and shall not deprive any party of, or limit the application of, any other remedy provided by law.

10. Governing Law

The interpretation, validity, and enforcement of this Napa MOU shall be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Napa MOU shall be filed and heard in court of competent jurisdiction in the County of Napa.

11. Severability

If any provision of this Napa MOU is held invalid or unenforceable by a court of final jurisdiction, all other provisions of this Napa MOU shall remain valid and in force and be construed in such a manner so as to affect the original intent of the parties to the maximum extent possible.

12. Amendment

No amendment of this Napa MOU shall be valid unless made in writing, signed by all Agencies then party to the Napa MOU.

13. Entire Agreement

This Napa MOU, together with the attachments hereto, constitutes the complete agreement between the parties and supersedes any prior written or oral communications between the parties.

14. Termination

Any Agency may, at any time and without cause, terminate its participation in this Napa MOU by sending a letter to the City notifying it of the same. Notwithstanding any other provision of this Napa MOU, if an Agency terminates its participation, it shall not under any circumstances be responsible or liable for disrupting or discontinuing the disbursement of the State Grant funds simply by reason of exercising its right to terminate its participation in the Napa MOU.

Any Agency terminating its participation in this Napa MOU must continue to comply with any remaining reporting obligations to the City as described in Section 6A.

This Napa MOU will remain in full force and effect as to the Agencies that do not terminate their participation in the MOU.

15. Successors and Assigns

This Napa MOU and all of its provisions shall apply to and bind the successors and assigns of each and every party to this Napa MOU.

16. Counterpart Signatures

This Napa MOU may be executed in counterparts each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

17. Non-Waiver

A party's waiver of any term, condition, or covenant, or breach of any term, condition or covenant stated in this Napa MOU will not be construed as a waiver of any other term, condition or covenant.

18. Exhibits

The following Exhibits are hereby incorporated herein by this reference and made a part hereof as though set forth in full:

Exhibit A: State Agreement

Exhibit B: Implementation Agreement

Exhibit C: SCWA MOU

IN WITNESS THEREOF, this Napa MOU has been executed by the parties hereto:

_____ Date: _____
Jacques R. LaRochelle
Public Works Director
City of Napa

NAPA COUNTY, a political subdivision of
the State of California

By: _____
Diane Dillon, Chair of the Board of Supervisors

"COUNTY"

APPROVED AS TO FORM Office of County Counsel By: <u>Robert C. Martin (By E-Sign)</u> County Counsel Date: <u>October 6, 2015</u>	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ _____ Deputy Clerk of the Board	ATTEST: GLADYS I. COIL Clerk of the Board of Supervisors By: _____
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Date: _____
Jason Holley
Public Works Director
City of American Canyon

_____ Date: _____
Joe Tagliaboschi
Public Works Director
Town of Yountville

_____ Date: _____
Jennifer Phillips
City Manager
City of St. Helena

_____ Date: _____
Michael Kirn
Public Works Director
City of Calistoga

EXHIBIT A

**Grant Agreement No. 4600010575 between the
State of California (Department of Water
Resources) and Association of Bay Area
Governments (ABAG)**

Available online at:

**[http://www.cityofnapa.org/images/publicworks/Water/Prop
%2084%20Round%202%20DWR-ABAG.pdf](http://www.cityofnapa.org/images/publicworks/Water/Prop%2084%20Round%202%20DWR-ABAG.pdf)**

EXHIBIT B

Implementation Agreement (Local Project Sponsor Agreement) between Association of Bay Area Governments (ABAG) and Solano County Water Agency (SCWA)

Available online at:

<http://www.cityofnapa.org/images/publicworks/Water/Prop%2084%20Round%202%20ABAG-SCWA.pdf>

EXHIBIT C

Memorandum of Understanding between Solano County Water Agency (SCWA) and City of Napa, et. al.

Bay Area Proposition 84 Integrated Regional Water Management Grant

Memorandum of Understanding

This Memorandum of Understanding ("MOU") is entered into on December 15, 2014 between Solano County Water Agency ("SCWA") and the following Participating Agencies ("PAs"): Alameda County Water District, Bay Area Water Supply and Conservation Agency, City of Napa, Contra Costa Water District, East Bay Municipal Utility District, Sonoma County Water Agency, Santa Clara Valley Water District, San Francisco Public Utilities Commission, Sonoma Resource Conservation District, Zone 7 Water Agency, and the Alameda County Waste Management Authority (StopWaste).

WHEREAS, on behalf of numerous public agencies located in the San Francisco Bay Area, the Association of Bay Area Governments ("ABAG") applied for and received a Proposition 84 Integrated Regional Water Management Grant (the "State Grant") from the State of California, Department of Water Resources ("DWR") in the amount of \$20,000,000.00 to help fund the implementation and operation of various regional water conservation, water recycling, ecosystem restoration, green infrastructure, and flood management-watershed projects ("Projects"). The grant agreement between DWR and ABAG titled AGREEMENT NUMBER 4600010575 INTEGRATED REGIONAL WATER MANAGEMENT (IRWM) IMPLEMENTATION GRANTS (the "State Agreement") is attached hereto and incorporated herein as Attachment A; and

WHEREAS, the State Grant includes \$2,700,000.00 to fund water conservation programs for SCWA and the following PAs: Alameda County Water District, Bay Area Water Supply and Conservation Agency, City of Napa, Contra Costa Water District, East Bay Municipal Utility District, Sonoma County Water Agency, Santa Clara Valley Water District, San Francisco Public Utilities Commission, Sonoma Resource Conservation District, Zone 7 Water Agency, and the Alameda County Waste Management Authority (StopWaste); and

WHEREAS, SCWA and ABAG have entered into a Local Project Sponsor Agreement dated, July 16, 2014 ("Implementation Agreement"), attached hereto and incorporated herein as Attachment B, by which ABAG agrees to disburse funding from the State Grant to SCWA for SCWA to use in administration and performance of eligible Projects under the State Grant; and

WHEREAS, the State Agreement and Implementation Agreement permits SCWA to pass State Grant funds through to the Participating Agencies to carry out the purposes of the State Grant; and

WHEREAS, SCWA wishes to pass State Grant funds through to the PAs in this MOU to use in the performance of eligible Projects, and the PAs desire to receive State Grant funds, and

are willing to cooperate in fulfilling SCWA's obligations under the Implementation Agreement, all in conformity with the State Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Term

This MOU will be in effect until the Implementation Agreement between ABAG and SCWA terminates on December 31, 2018, or until all of the Parties' obligations under the State Agreement are fully satisfied, whichever occurs earlier. Notwithstanding the date on which this MOU is executed, project costs incurred after February 4, 2014, that meet State Grant program and State Agreement requirements, are eligible for reimbursement under this MOU. Each PA must abide by the State Agreement and the guidelines located therein.

2. Grant Funding Allocation by Participating Agency

2.1 Pursuant to the Implementation Agreement, State Grant funds for eligible water conservation projects are available to PAs in the amounts listed in Table 1, "Participating Agency State Grant Fund Allocations".

Table 1. Participating Agency State Grant Fund Allocations

PARTICIPATING AGENCY	TOTAL GRANT DOLLARS AWARDED
Alameda County Water Agency	\$173,250
Bay Area Water Supply and Conservation Agency	\$195,000
City of Napa	\$127,500
Contra Costa Water District	\$174,375
East Bay Municipal Utility District	\$240,000
San Francisco Public Utilities Commission	\$234,300
Santa Clara Valley Water District	\$490,313
Solano County Water Agency	\$129,376
Sonoma County Water Agency	\$202,500
Sonoma Resource Conservation District	\$195,000
StopWaste	\$200,193
Zone 7 Water Agency	\$188,193
Grant Administration	\$150,000
Total	\$2,700,000

2.2 Each PA will be entitled to receive its allocation of grant funds during the term of the State Agreement.

2.3 SCWA will utilize the services of a consultant, GHD, to aid in the administration of the IRWMP Conservation Grant. As the lead agency for the conservation portion of the State Grant, SCWA is responsible for compliance with all reporting provisions of the State Agreement and shall also be responsible for all management, oversight, compliance, operation, and maintenance associated with the Project. The allocation amount for Grant Administration is intended to reimburse SCWA for any expenses related to management and administration of the conservation portion of the State Grant. Any grant funds remaining after SCWA has been reimbursed may be allocated on a pro rata basis among the remaining PAs for their respective grant administration costs.

2.4 Each PA's grant funding allocation was determined based on a specific number and type of rebate or conservation project activity. A Rebate Spreadsheet, attached hereto and incorporated herein as Attachment C, was developed that lists the number and type of each rebate or water conservation project and the water savings associated with each type of rebate or water conservation project. This information was used as the basis for the State Grant. Pending DWR approval, each PA may increase or decrease the number and type of water conservation rebate or project activity they provide. However, the resulting water savings per grant dollar spent must be equal to or greater than what is specified in the Rebate Spreadsheet.

If necessary, at any time and prior to completion of the Final Quarterly Report and Invoice, the PAs shall convene to determine, consistent with the State Agreement and Implementation Agreement, how unspent, forfeited, or remaining State Grant funds will be redistributed. If the PAs are unable to reach agreement as to how unspent, forfeited, or remaining State Grant funds will be redistributed, the funds shall be redistributed equally among the PAs.

3. Work Plan

To be eligible for State Grant funds, the PAs shall implement conservation projects in accordance with Exhibit A Work Plan of the State Agreement.

4. Reporting and Invoicing

4.1 The PAs have developed a Grant Reporting Template, attached hereto and incorporated herein as Attachment D, which specifies required quarterly reporting data. The Grant Reporting Template shall be used by all PAs when reporting.

4.2 On a quarterly basis, SCWA will prepare a Quarterly Progress Report and Invoice and submit it to ABAG according to the terms of the Implementation Agreement. The PAs will provide SCWA with the required program data for their agency on a quarterly basis in electronic format using the Grant Reporting Template.

4.3 Quarterly Progress Reports and Invoices will be submitted by SCWA to ABAG according to the schedule shown in **Table 2, State Grant Quarterly Progress Report and Invoice Schedule**, and the following process:

- 4.3.1 At the end of a reporting quarter, each PA will submit its data, individual invoices and necessary backup documentation electronically to SCWA within approximately thirty (30) calendar days.
- 4.3.2 Within approximately fifteen (15) calendar days after receipt of the PA data, SCWA will prepare a draft Quarterly Progress Report and Invoice and submit to each PA for review.
- 4.3.3 The PAs will provide written corrections or approval to SCWA within approximately seven (7) calendar days of its receipt of SCWA's draft Quarterly Progress Report and Invoice.
- 4.3.4 Within approximately ten (10) calendar days of receipt of corrections or approval from the PAs, SCWA will incorporate the corrections and submit a final draft of the Quarterly Progress Report and Invoice for approval by the PAs.
- 4.3.5 If a PA does not meet the above-stated reporting deadlines, that PA's data will not be included in the Quarterly Progress Report and Invoice. The PA will be required to wait until the following quarter to submit their agency's data for two consecutive quarters. If the due date falls on a weekend or holiday, the reports will be due either the preceding Friday if the due date is a Saturday or the following Monday if the due date is a Sunday.

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TABLE 2. IRWMP Round 2 Conservation Grant				
Reporting Period	Date Reporting Numbers and Back-up Due to Solano/GHD	Date Draft Invoice Sent to PAs for Review	Date PAs Review Comments Due to Solano/GHD	Date Progress Reports/Invoice Due to ABAG
February 5 to December 31, 2014	1/30/2015	2/13/2015	2/20/2015	3/2/2015
January 1 to March 31, 2015	5/1/2015	5/15/2015	5/21/2015	6/1/2015
April 1 to June 30, 2015	7/31/2015	8/14/2015	8/21/2015	9/2/2015
July 1 to September 30, 2015	10/30/2015	11/16/2015	11/21/2015	12/1/2015
October 1 to December 31, 2015	2/1/2016	2/16/2016	2/22/2016	3/1/2016
January 1 to March 31, 2016	4/29/2016	5/16/2014	5/23/2016	6/1/2016
April 1 to June 30, 2016	7/29/2016	8/15/2016	8/22/2016	9/1/2016
July 1 to September 30, 2016	10/31/2016	11/15/2016	11/21/2016	12/1/2016
October 1 to December 31, 2016	1/30/2017	2/14/2017	2/20/2017	3/1/2017
January 1 to March 31, 2017	5/1/2017	5/16/2017	5/22/2017	6/1/2017
April 1 to June 30, 2017	7/31/2017	8/15/2017	8/21/2017	9/1/2017
July 1 to September 30, 2017	10/30/2017	11/14/2017	11/20/2017	12/1/2017
October 1 to December 31, 2017	1/30/2018	2/14/2018	2/19/2018	3/1/2018
January 1 to March 31, 2018	4/30/2018	5/15/2018	5/21/2018	6/1/2018
April 1 to June 30, 2018	7/30/2018	8/14/2018	8/20/2018	9/4/2018
July 1 to September 30, 2018	10/30/2018	11/14/2018	11/19/2018	12/3/2018
October 1 to December 31, 2018	1/30/2019	2/14/2019	2/19/2019	3/1/2019

4..3.6 Pursuant to the Implementation Agreement with ABAG, SCWA will submit Project Completion Reports and a Grant Completion Report Plan within the time period stipulated in the Implementation Agreement.

4.3.7 SCWA is also required to submit Project Performance Reports directly to DWR each year for ten (10) years after the end of the grant period. The PAs will work with SCWA to provide the necessary data for, and review of, these reports consistent with the schedule and process for the Quarterly Progress Reports.

4..3.8 After SCWA has submitted the Quarterly Progress Report and Invoice to ABAG, PAs that have not already done so shall submit an invoice to SCWA for reimbursement. The invoice shall

reference the activity period and match the activities and costs submitted in that PA's Grant Reporting Template submittal.

4.3.9 SCWA will not reimburse the PAs until it has received the State Grant funds from DWR through ABAG. In addition, pursuant to the terms of the State Agreement, DWR may withhold a percentage of payment on each quarterly invoice until the project is complete and all reporting requirements are met. If this is the case, SCWA may withhold the same percentage from payment on the individual PA invoices. SCWA will process each PA invoice within thirty (30) business days of receipt of State Grant funds from ABAG.

5. Communication

All communications relating to the day-to-day activities of the Water Conservation Projects shall be exchanged between the project managers or their alternates for each PA as shown on Attachment E, Contact Information for BAIRWMP Conservation Grant, which is attached hereto and incorporated herein.

6. Flow Through of Specific Grant Requirements

The PAs will comply with all applicable provisions of the Implementation Agreement, Attachment B hereto, and State Agreement, Attachment A hereto.

7. Inspection of Records

Pursuant to the State Agreement, DWR is entitled to inspect and make copies of any records pertaining to the program and the PAs are required to make available for such inspection accurate records of all costs, disbursements, and documentation as necessary to comply with the requirements of the State Agreement.

8. Indemnification

SCWA agrees to defend, indemnify, hold harmless, and release each PA, its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, arising out of the negligence or willful misconduct of SCWA in connection with its performance under this Agreement; provided, however, that no PA shall be entitled to indemnification under this section for any actions, claims, damages, liabilities, or expenses to the extent that they arise out of the negligence or willful misconduct of the PA in connection with its performance under this Agreement.

Each PA hereby agrees to defend, indemnify, hold harmless, and release SCWA, its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, arising out of the negligence or willful misconduct of the indemnifying PA in connection with its performance under this Agreement; provided, however, that SCWA shall not be entitled to indemnification under this section for any actions, claims, damages, liabilities, or expenses to the extent that they arise out of the negligence or willful misconduct of SCWA in connection with its performance under this Agreement.

9. Dispute Resolution

The parties to this MOU shall meet promptly to address any dispute that may arise and make a good faith effort to negotiate a resolution. The use by any party of any remedy specified herein for the enforcement of this MOU is not exclusive and shall not deprive any party of, or limit the application of, any other remedy provided by law.

10. Governing Law

This MOU, its construction, and all work performed under it shall be governed by the laws of the State of California.

11. Severability

If any provision of this MOU is held invalid or unenforceable by a court of final jurisdiction, all other provisions of this MOU shall be remain valid and in force and be construed in such a manner so as to affect the original intent of the parties to the maximum extent possible.

12. Amendment

No amendment of this MOU shall be valid unless made in writing, signed by the all PAs then party to the MOU.

13. Entire Agreement

This MOU, together with the attachments hereto, constitutes the complete agreement between the parties and supersedes any prior written or oral communications between the parties.

14. Termination

Any PA may, at any time and without cause, terminate its participation in this MOU by sending a letter to all other PAs notifying them of the same. Notwithstanding any other provision of this MOU, if a PA terminates its participation in this MOU, it shall not under any circumstances be responsible or liable for disrupting or discontinuing the disbursement of the State Grant funds simply by reason of exercising its right to terminate its participation in the MOU.

Upon the effectiveness of a PA's termination of its participation in this MOU, that PA's remaining allocation of the grant funds, if any, will be redistributed to the remaining PAs in accordance with Section 2 of this MOU and in conformance with the Implementation Agreement and State Agreement. Any PA terminating its participation in this MOU must continue to comply with the reporting obligations to SCWA, as described in Section 4 of this MOU.

This MOU will remain in full force and effect as to the PAs that do not terminate their participation in the MOU.

15. Term of the MOU

This MOU terminates when all parties' obligations under this MOU, the State Agreement, Attachment A hereto, and Implementation Agreement, Attachment B hereto, have been fully satisfied.

16. Successors and Assigns

This MOU and all of its provisions shall apply to and bind the successors and assigns of each and every party to this agreement.

17. Counterpart Signatures

This MOU may be executed in counterparts each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

18. Non-Waiver

A Party's waiver of any term, condition, or covenant, or breach of any term, condition or covenant stated in this MOU will not be construed as a waiver of any other term, condition or covenant.

19. Attachments

The following Attachments are hereby incorporated herein by this reference and made a part hereof as though set forth in full:

Attachment A: State Agreement

Attachment B: Implementation Agreement

Attachment C: Rebate Spreadsheet

Attachment D: Grant Reporting Template

Attachment E: Contact Information for BAIRWMP Round 2 Conservation Grant.

(signatures to follow on separate pages in counterparts)

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IN WITNESS THEREOF, this MOU has been executed by the parties hereto:



Date:

3/23/15

David Okita
General Manager
Solano County Water Agency

_____ Date: _____

Robert Shaver
General Manager
Alameda County Water District

Date: _____
Jacques R. LaRochelle
Public Works Director
City of Napa

_____ Date: _____

Gary Wolff
Executive Director
StopWaste

_____ Date: _____

Nicole Sandkulla

Chief Executive Officer/General Manager

Bay Area Water Supply and Conservation Agency

Date:

Alexander R. Coate
General Manager
East Bay Municipal Utility District

Date:

Jerry Brown
General Manager
Contra Costa Water District

_____ Date: _____

Beau Goldie

CEO

Santa Clara Valley Water District

_____ Date: _____

Kara Heckert
Executive Director
Sonoma Resource Conservation District

_____ Date: _____

Grant Davis
General Manager
Sonoma County Water Agency

_____ Date: _____

Harlan L. Kelly, Jr.
General Manager
San Francisco Public Utilities Commission

_____ Date: _____

G.F. Duerig
General Manager
Zone 7 Water Agency

ATTACHMENT A: State Agreement

**Grant Agreement No. 4600010575 between the
State of California (Department of Water
Resources) and Association of Bay Area
Governments (ABAG)**

is available online at:

**[http://www.cityofnapa.org/images/publicworks/Water/Prop
%2084%20Round%202%20DWR-ABAG.pdf](http://www.cityofnapa.org/images/publicworks/Water/Prop%2084%20Round%202%20DWR-ABAG.pdf)**

ATTACHMENT B: Implementation Agreement

**Local Project Sponsor Agreement between
Association of Bay Area Governments (ABAG)
and Solano County Water Agency**

is available online at:

<http://www.cityofnapa.org/images/publicworks/Water/Prop%2084%20Round%202%20ABAG-SCWA.pdf>

ATTACHMENT C. REBATE SPREADSHEET

[illegible]

ATTACHMENT D. Grant Reporting Template

High Efficiency Toilet and Urinal Rebate Program

Report Period:																
A	B	C	D	E		F	G	H	I	J	K	L	M	N	O	
Participating Agency	Number of rebates at less than \$100	Total Cost of Rebates at less than \$100 (1)	Number of rebates at \$100 or more	Total Cost of Rebates at \$100 or more	Total number of rebates	Total Cost of all rebates	DWR Portion @ 75 %per Rebate (C X 75%)	DWR Portion of \$75 of per Rebate (D X \$75)	DWR Portion Total (H + I)	Agency Portion of Rebate Costs (G - I)	Other Agency Costs	Total Agency Cost (K + J)	Estimated Annual Water Savings per unit (gal/HET/yr)	Estimated Total Annual Water Savings (gal/yr) (D + O)	Estimated Annual Water Savings (AF/yr)	Phase list any marketing activities conducted during the reporting period (for example: bill inserts, newspaper ads, etc.)
Santa Clara Valley Water District					0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00	5,681	0	0.0	

1) The rebates may be up to this amount, or less, depending on the cost of the toilet. This figure is not directly used in the calculation of the total rebate cost.

High Efficiency Clothes Washer Rebate Program

Report Period:														
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Participating Agency	Number of Rebates Provided		Total Number of Rebates Provided (B + C)	Total Cost of Rebates that were \$75	Total Cost of Rebates for rebates that were \$50	Grand Total Cost of Rebates (E + F)	DWR Portion @ \$37.50 per Rebate (D X \$37.50)	Agency Portion of Rebate Costs (G-H)	Other Agency Costs	Total Agency Cost (rebate portion + other)	Est. Water Savings per unit (gal/ yr)	Total Est. water savings (gal/ yr)	Total Est. Water Savings (AFY)	Please list any marketing activities conducted during the reporting period (for example: bill inserts, newspaper ads, etc.)
Santa Clara Valley Water District			0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00	7,978	0	0	

Water Efficient Landscape Rebate Program

Report Period:												
A	B	C	D	E	F	G	H	I	J	K	L	M
Participating Agency	Number of Reports	Unit Report Cost	Total Cost of Reports (B X C)	DWR Portion @ \$3.00/report	Agency Portion of Rebates (D - E)	Other Agency Costs	Total Agency Cost (F + G)	Total Program Cost (E + H)	Estimated Unit Annual Water Savings (gal/sf/yr)	Estimated Total Annual Water Savings (I X J)	Estimated Annual Water Savings (AF/Yr)	Please list any marketing activities conducted during the reporting period (for example: bill inserts, newspaper ads, etc.)
ACWD			\$0.00	\$0.00	\$0.00		\$0.00	\$0.00	639	0	0	
BAWSCA			\$0.00	\$0.00	\$0.00		\$0.00	\$0.00	639	0	0	
Contra Costa Water District			\$0.00	\$0.00	\$0.00		\$0.00	\$0.00	639	0	0	
EBMUD			\$0.00	\$0.00	\$0.00		\$0.00	\$0.00	639	0	0	
Solano County Water Agency			\$0.00	\$0.00	\$0.00		\$0.00	\$0.00	639	0	0	
Zone-3			\$0.00	\$0.00	\$0.00		\$0.00	\$0.00	639	0	0	
Zone-3			\$0.00	\$0.00	\$0.00		\$0.00	\$0.00	639	0	0	
total	0	NA				\$0.00	\$0.00	\$0.00	NA	0	0	

Note: Participating agencies, enter data into unshaded cells.

Water Efficient Landscape Rebate Program

Report Period:													
A	B	C	D	E	F	G	H	I	J	K	L	M	N
Participating Agency	Number of Rebates	Total Square feet rebated	Total Square feet converted	Unit Rebate Cost (Cost per square foot)	Total Cost of Rebates (C X E)	DWR Portion @ \$-563 / sq. ft. rebated (C X .375)	Agency Portion of Rebates (F - G)	Other Agency Costs	Total Agency Cost (H + I)	Estimated Unit Annual Water Savings (gal/sf/yr)	Estimated Total Annual Water Savings (K X D)	Estimated Annual Water Savings (AE7M)	Please list any marketing activities conducted during the reporting period (for example: bill inserts, newspaper ads, etc.)
BAWSCA				\$1.00	\$0.00	\$0.00	\$0.00		\$0.00	25	0	0.0	
Contra Costa Water District				\$1.00	\$0.00	\$0.00	\$0.00		\$0.00	25	0	0.0	
Napa, City of				\$1.00	\$0.00	\$0.00	\$0.00		\$0.00	25	0	0.0	
Santa Clara Valley Water District (1)				\$2.00	\$0.00	\$0.00	\$0.00		\$0.00	25	0	0.0	
Solano County Water Agency				\$1.00	\$0.00	\$0.00	\$0.00		\$0.00	25	0	0.0	
Sonoma County Water Agency				\$0.50	\$0.00	\$0.00	\$0.00		\$0.00	25	0	0.0	
Zone 7				\$0.75	\$0.00	\$0.00	\$0.00		\$0.00	25	0	0.0	
Total	0	0	0	NA	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	NA	0	0	

Note: Participating agencies, enter data into unshaded cells.

(1) Santa Clara Valley Water District rebate is \$2.00/sq. ft. until further notice

Water Efficient Landscape Rebate Program

Report Period:												
A	B	C	D	E	F	G	H	I	J	K	L	M
Participating Agency	Number of Rebates	Total Square feet rebated	Total Square feet converted	Unit Rebate Cost (Cost per square foot)	Total Cost of Rebates (C X E)	DWR Portion @ \$2.75 / sq. ft. rebated (C X .375)	Agency Portion of Rebates (F - G)	Other Agency Costs	Total Agency Cost (H + I)	Estimated Unit Annual Water Savings (gal/sf/yr)	Estimated Total Annual Water Savings (gal/yr) (K X D)	Estimated Annual Water Savings (AF/Y)
San Francisco Public Utilities Commission	0	0	0	NA	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	25	0	0.0
Total					\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	NA	0	0

Note: Participating agencies, enter data into unshaded cells.

Please list any marketing activities conducted during the reporting period (for example: bill inserts, newspaper ads, etc.)

Weather Based Irrigation Controller Rebate Program for Single Family Customers

Report Period:															
A	B		C	D	E	F	G	H	I	J	K	L	M	N	O
Participating Agency	Number of SF Stations Rebated where rebate was \$20 or less per station	Total Cost of SF Rebates where rebate was \$20 or less per station	Number of SF Stations Rebated where rebate was more than \$20 per station	Total Cost of SF Rebates for rebates where rebate was more than \$20 per station	Total number of Stations Rebated (B + D)	Total Cost of Rebates (C + E)	DWR Portion of Rebates 75% × (D × 15)	Agency Portion of Rebates (G-H)	Other Agency Costs	Total Agency Cost (I + J)	Est. SF Unit Water Savings (gal/unit/yr)	Est. Total SF Water Savings (gal/yr) (L × L)	Est. Total Water Savings (AFY)	Please list any marketing activities conducted during the reporting period (for example: bill inserts, newspaper ads, etc.)	
Napa, City of					0	\$0.00	\$0.00	\$0.00		\$0.00	1,268	0	0.0		
Santa Clara Valley Water District					0	\$0.00	\$0.00	\$0.00		\$0.00	1,268	0	0.0		
Total	0	\$0.00	0	\$0.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	NA	0	0.0		

Note: Participating agencies, enter data into unshaded cells.

1) This number is entered directly rather than calculated, because the amounts of individual rebates varies.

Weather Based Irrigation Controller Rebate Program for Multi Family and CI

Report Period		A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Participating Agency		Number of MIF and CI Stations Rebated where rebate was \$50 or less per station	Total Cost of MIF and CI Stations Rebated where rebate was \$50 or less per station	Number of MIF and CI Stations Rebated where rebate was more than \$50 per station	Total Cost of MIF and CI Stations Rebated where rebate was more than \$50 per station	Total Cost of MIF and CI Stations Rebated where rebate was more than \$50 per station	Total Number of Rebates	Total Cost of Rebates (K x F)	CI Rebates (75% of D x 22.54)	Agency Rebates (I - H)	Other Agency Credits	Total Agency Credits (J + K)	Est. MIF and CI Unit Water Savings (gal/unit-yr)	Est. MIF and CI Total Water Savings (gal/yr) (P x L)	Est. Total Water Savings of all stations (APY)	Please list any marketing activities conducted during the reporting period (for example: bill inserts, newspaper ads, etc.)
Alameda County Water District							0	\$0.00	\$0.00	\$0.00		\$0.00	3,383	0	0.0	
Palo Alto, City of							0	\$0.00	\$0.00	\$0.00		\$0.00	3,383	0	0.0	
Santa Clara Valley Water District							0	\$0.00	\$0.00	\$0.00		\$0.00	3,383	0	0.0	
Zone 7		0	\$0.00	0	\$0.00	\$0.00	0	\$0.00	\$0.00	\$0.00		\$0.00	3,383	0	0.0	
Total		0	\$0.00	0	\$0.00	\$0.00	0	\$0.00	\$0.00	\$0.00		\$0.00	3,383	0	0.0	

Note: Participating agencies enter data into unshaded cells.

1) This number is entered directly rather than calculated, because the amounts of individual rebates varies.

5	1	0
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Sonoma County Water Agency- Water Education

Implementation												
Report Period:												
A	B	C	D	E	G	H	I	J	K	L		
Activity	Number of trainings / events / appointments	Total Number of attendees	Sq Ft of Turf Removed	Total number of registered "actions"	Total Cost of Activity	DWR Portion	Agency Portion of Costs	Estimated Unit Water Savings (gal/sq ft/ year)	Total Est. Annual Water Savings (gal/yr)	Total Est. Annual Water Savings (AFY)		
Qualified Water Efficient Landscaper (QWEL) trainings				NA	\$0			NA	NA	NA		
Community Resilience Challenge		NA			\$0			NA	NA	NA		
Garden Sense		NA		NA	\$0			NA	NA	NA		
Program Administration	NA	NA	NA	NA	\$0			NA	NA	NA		
Total	0	0			\$0.00	\$0.00	\$0.00	NA	0.00	0.00		

Note: Report of trends in sales, summary of surveys, will be included in quarterly report narrative.

Water Conservation and Mobile Water Lab Project

Report Period:											
A	B	C						G	H	L	M
Activity	Number of Workshops	Number of Participants	Cost per Workshop	Cost of Workshops	Cost per Evaluation	Cost of Evaluations	Other Costs	DWR Portion of Costs	Agency Portion of Costs	Estimated Total Annual Water Savings (gal/yr)	Estimated Annual Water Savings (AF/Y)
Workshops			\$0.00	\$0.00	NA	NA	\$0.00	\$0.00	\$0.00	0	0.0
Onsite Evaluations			NA	NA	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	0.0
total	0	0		\$0.00			\$0.00	\$0.00	\$0.00	0	0

StopWaste - Bay Friendly Landscape Training Program

Implementation

Report Period:		A	B	C	D	E	F	G	H	I	J
		Activity	Number of events/ installations	Total Number of attendees/ pocket guides	Cost per training/ workshop installation	Total Cost of Trainings/ Installations / Website surveys	DWR Portion	Agency Portion of Costs	Estimated Unit Water Savings (gal/yr/ person)	Total Est. Annual Water Savings (gal/yr)	Total Est. Annual Water Savings (AFY)
		Landscape professional trainings			\$0	\$0	\$0		NA	NA	NA
		Home Gardener Events			\$0	\$0	\$0		NA	NA	NA
		On-site Nurseries Trainings			\$0	\$0	\$0		NA	NA	NA
		Plant Pocket Guides	NA		\$0	\$0	\$0		NA	NA	NA
		Program Administration	NA	NA	\$0	\$0			NA	NA	NA
		Total	0	0	NA	\$0.00	\$0.00	\$0.00	NA	0.00	0.00

Note: Report of trends in sales, summary of surveys, will be included in quarterly report narrative.

Survey and Analysis

Report Period:		A	B	C	D	E	F	G	H	I	J
		Activity	Number distributed	Number received	Cost per Survey	Total Cost of / Survey Evaluation	DWR Portion	Agency Portion of Costs	Estimated Unit Water Savings (gal/yr)	Total Est. Annual Water Savings (gal/yr)	Total Est. Annual Water Savings (AFY)
		Professional surveys - in class	0	0	NA	\$0	\$0	\$0	NA	NA	NA
		Home gardener survey - post work-shop	0	0	NA	\$0	\$0	\$0	NA	NA	NA
		Nursery survey - quarterly	0	0	NA	\$0	\$0	\$0	NA	NA	NA
		Final professional survey	0	0	NA	\$0	\$0	\$0	NA	NA	NA
		Final home gardener survey	0	0	NA	\$0	\$0	\$0	NA	NA	NA
		Total	0	0	\$0.00	\$0.00	\$0.00	\$0.00	0	0	0

Grant Administration Costs

Report period:					
A	B	C	D	E	F
Participating Agency	Direct staff labor costs	Consultant/contractor costs	Other Administrative costs	Total Administrative Costs	DWR Portion @ 100%
Alameda County Water District				\$0.00	\$0.00
BAWSCA				\$0.00	
Contra Costa Water District				\$0.00	
EBMUD				\$0.00	
Napa, City of				\$0.00	
San Francisco Public Utilities Commission				\$0.00	
Santa Clara Valley Water District				\$0.00	
Solano County Water Agency				\$0.00	\$0.00
Sonoma County Water Agency				\$0.00	
Sonoma Resource Conservation District				\$0.00	
Zone 7				\$0.00	
Total	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Table 1A - Reporting Period Program Monitoring

Report Period:							
No.	Project Name (Task Description)	Agency Costs Current Report Period	Number of rebates	Square feet converted	Stations rebated at SF accounts	Stations rebated at MF and CII accounts	Estimated water savings AFY
1	WEL Rebate						
2	WBIC						
3	HET and HEU Rebate						
5	HEW Rebates						
7	Stopwaste						
Total		\$0.00	.	0	0	0	0.00

Table 1B - Reporting Period Program Monitoring

Report Period:							
No.	Project Name (Task Description)	Agency Costs Current Report Period	Number of landscape workshops	Number of Professional Attendees	Number of Professionals Certified	Number of Residential Workshop Attendees	Total Number of Attendees of Attendees
7	Sonoma Resource Conservation District						
Total		\$0.00	\$0.00	0	0	0	0

ATTACHMENT E

Contact Information for BAIRWMP Round 2 Conservation Grant

AGENCY	PRIMARY CONTACT	SECONDARY CONTACT	ADDRESS	PHONE	E-MAIL
Solano County Water Agency	Andy Florendo	Chris Lee	810 Vaca Valley Parkway, Suite 203 Vacaville, CA 95688	707.455.1111	aflorendo@scwa2.com
Alameda County Water District	Stephanie Nevins	Stephanie Penn	43885 South Grimmer Blvd. P O Box 5110 Fremont 94537	Stephanie N. 510.668.4207 Stephanie P. 510-668-6534	Stephanie.nevins@acwd.com Stephanie.penn@acwd.com
BAWSCA	Andree Johnson	Nicole Sandkulla	155 Bovet Road, Suite 302 San Mateo, CA 94402	650.348.3000	alohnson@bawasca.org
StopWaste	Teresa Eade	Stephanie Stiem	1537 Webster Street Oakland, CA 94612	510.891.6584	nsandkulla@bawasca.org Sstiem@stopwaste.org
Contra Costa Water District	Chris Dundon	Nicole Fratus	P.O. Box 420 Concord, CA 94524	510.891.6515 Chris 925.688.8136 Nichole: 925-688-8105	teade@stopwaste.org cdundon@ccwater.com nfratus@ccwater.com
City of Napa	Pat Costello	Joy Eldredge	PO Box 660 Napa, CA 94559	707.257.9309	pcostello@cityofnapa.org jeldredge@cityofnapa.org
East Bay MUD	Mike Hazinski	Richard Harris	PO Box 24055 Oakland, CA 94623	510.287.1802	mhazinski@ebmud.com
Sonoma Resource Conservation District	Keith Abeles	Kara Heckert	1221 Farmers Lane, Suite F Santa Rosa, CA 95405	707.569.1448	rharris@ebmud.com kheckert@sonomarcod.org
Santa Clara Valley Water District	Jerry De La Piedra	Karen Morway- Koppelt	5750 Amaden Expressway San Jose, CA 95118-3686	408.265.2600	KAbeles@sonomarcod.org gdela piedra@valleywater.org
Sonoma County Water Agency	Carrie Pollard	Claire Nordlie	404 Aviation Boulevard Santa Rosa, CA 95403	Carrie 707.547.1968 Claire: 707-524-1165	kkoppelt@valleywater.org carriep@scwa.ca.gov Claire.Nordlie@scwa.ca.gov
San Francisco PUC	Amanda Dougherty	Julie Ortiz	Water Resources Division, Water Conservation Section 525 Golden Gate Avenue, 10th Floor San Francisco, CA 94102	415.934-5788 415-551-4739	adougherty@sfwater.org jortiz@sfwater.org
Zone 7 Water Agency	Robyn Navarra	Carol Mahoney	100 North Canyons Parkway Livermore, CA 94551	925.454.5065	nnavarra@zone7water.com

CITY OF ST. HELENA

RESOLUTION NO. 2016-____

**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A
MEMORANDUM OF UNDERSTANDING BAY AREA PROPOSITION 84 ROUND 2
INTEGRATED REGIONAL WATER MANAGEMENT GRANT CONSERVATION
GROUP - NAPA COUNTY AGENCIES**

RECITALS

- A. Water conservation and water use efficiency continue to be priorities of the City due to limited water resources now and in the future; and
- B. This program will result in water saving over time to both the customer and the City of St. Helena and helps the City to meet its water conservation goals; and
- C. As part of the Round 2 - Proposition 84 IRWM Implementation Grant Program, the State of California Department of Water Resources (DWR) awarded \$20 million for Bay Area water projects via the Association of Bay Area Governments (ABAG) with \$2.7 million of this total targeted for regional water conservation programs via Solano County Water Agency on behalf of twelve (12) participating agencies in the Conservation Group; and
- D. As a participant in the Conservation Group, the City of Napa has secured \$127,500 in Round 2 grant funds on behalf of the City of Napa, St. Helena, American Canyon, County of Napa, Calistoga, and Yountville; and
- E. The funds support two specific customer rebate programs that may be offered by the Napa County agencies including Water-Efficient Landscape Rebate and Weather-Based Irrigation Controller Rebate; and
- F. The City of St. Helena currently provides a voluntary rebate program which encourages retail water customers to conserve water resources by purchasing smart irrigation controllers; and
- G. Funds for the water conservation programs associated with this agreement are available from Account No. 561-2330-0000 Water Use Efficiency Program.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

1. The City Manager is authorized to execute Memorandum of Understanding Bay Area Proposition 84 Round 2 Integrated Regional Water Management Grant Conservation Group - Napa County Agencies

Approved at a Regular Meeting of the St. Helena City Council on January 12, 2016 by the following vote:

Mayor Galbraith:	_____
Vice Mayor White:	_____
Councilmember Crull:	_____
Councilmember Dohring:	_____
Councilmember Pitts:	_____

APPROVED:

ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk



**Report to the City Council
Council Meeting of January 12, 2016**

Agenda Section: Consent Calendar

Subject: Consideration to adopt resolution accepting CaliforniaFIRST program amended and restated report relating to Financing the Installation of Seismic Strengthening Improvements, Electric Vehicle Charging Infrastructure and Other Authorized Improvement and Other Related Matters; and acknowledge that the City Council does desire for the CaliforniaFIRST to effect financings with respect to the Additional Authorized Improvements.

CEQA Status: Not a CEQA project as defined in accordance with CEQA Guidelines, Section 15378

Prepared By: Kathy Robinson, Administrative Manager

Approved By: Jennifer Phillips, City Manager

BACKGROUND

On October 9, 2012, the City Council adopted Resolution No. 2012-83 approving the City's participation in AB 811 through the CaliforniaFirst program of California Statewide Communities Development Authority (CSCDA), a program first introduced in 2010 which enables property owners to finance renewable energy and water efficiency improvement through voluntary, contractual assessments.

On July 8, 2014, the City Council adopted Resolution No. 2014-43 consenting to the inclusion of properties within the City's jurisdiction to participate in the California Hero Program in order to finance renewable energy sources, energy/water efficiency improvements and electric vehicle charging infrastructure.

On December 4, 2015, the City received a letter from Renew Financial (attachment 1), servicer for CSCDA, informing the City that as a participating CaliforniaFirst community, "Additional Authorized Improvements" were now available to St. Helena residents.

Since 2010, the California legislature has amended AB 811 to expand the list of Additional Authorized Improvements, and the CSCDA reserved the right under its resolution confirming report, program reports, and validations actions relating to the CaliforniaFIRST Program to make any changes to the matters addressed by the CaliforniaFIRST reports,

specifically including the list of the Additional Authorized Improvements, that it determines are appropriate.

The CDCDA ratified the addition of Authorized Improvements on November 19, 2015 to include seismic strengthening improvements and electric vehicle charging infrastructure through a public hearing process and adoption of resolution through their governing body. Through the joint powers agreement adopted in Resolution No. 2012-83, St. Helena property owners will automatically have access to financing with respect to the Additional Authorized Improvements, unless through resolution, City Council requests that the CaliforniaFIRST Program not effect financings with respect to these newly added improvements.

DISCUSSION

When the City joined the CaliforniaFIRST program, it enabled property owners to finance renewable energy and water efficiency improvements with an option for CSCDA to add Additional Authorized Improvements as they became available. In 2014, when the City joined the California Hero Program, this second funding program, while seemingly redundant, did offer a St. Helena property owner additional renewable energy options that were not available through CaliforniaFIRST, and included electric vehicle charging infrastructure. The addition of CSCDA's recent action amending the agreement to add the Authorized Improvements will now allow St. Helena property owners a choice when seeking electric vehicle charging infrastructure improvements, and the ability to seek seismic strengthening improvement not otherwise offered through the Hero Program.

FISCAL IMPACT

There is no financial impact to the City associated with continuing with the CaliforniaFIRST program.

RECOMMENDED ACTION

Staff recommends the City Council of the City of St. Helena adopt resolution accepting CaliforniaFIRST program amended and restated report relating to Financing the Installation of Seismic Strengthening Improvements, Electric Vehicle Charging Infrastructure and Other Authorized Improvement and Other Related Matters; and acknowledges that the City Council does desire for the CaliforniaFIRST to effect financings with respect to the Additional Authorized improvements.

ATTACHMENTS

1. Letter from Renew Financial
2. Resolution 2016-



December 4, 2015

Dear Participating CaliforniaFIRST Community:

You are receiving this letter as one of the many communities that participates in the CaliforniaFIRST property assessed clean energy (PACE) program (the "CaliforniaFIRST Program") of California Statewide Communities Development Authority ("CSCDA"). We are writing to inform you that CSCDA has expanded the list of improvements that the CaliforniaFIRST Program is authorized to finance in accordance with Chapter 29 of the Streets and Highways Code (Sections 5898.10 et seq.), also known as "AB 811," and provide you with the opportunity to request that the CaliforniaFIRST Program not effect financings with respect to those newly added improvements.

When the CaliforniaFIRST Program was introduced in 2010, AB 811 provided public agencies the authority to finance the installation of distributed generation renewable energy sources and energy or water efficiency improvements that are permanently fixed to residential, commercial, industrial, agricultural or other real property ("Authorized Improvements"). Since 2010, however, the California Legislature has amended AB 811 to expand the list of Authorized Improvements to include the following:

- seismic strengthening improvements that are permanently fixed to residential, commercial, industrial, agricultural, or other real property, including, but not limited to, the seismic strengthening of cripple walls and sill plate anchorage of light, wood-framed buildings (collectively, "Seismic Improvements"); and
- electric vehicle charging infrastructure that is permanently fixed to residential, commercial, industrial, agricultural, or other real property ("Electric Vehicle Charging Infrastructure," and together with Seismic Improvements and all other improvements authorized by AB 811 from time to time in the future, "Additional Authorized Improvements").

CSCDA reserved the right under its resolutions confirming report, program reports, and validations actions relating to the CaliforniaFIRST Program to make any changes to the matters addressed by the CaliforniaFIRST Program reports, specifically including the list of the Authorized Improvements, that it determines are appropriate. However, in order to add the Additional Authorized Improvements to the list of Authorized Improvements, the Commission of CSCDA has completed the following additional actions:

- Adopted Resolution No. 15R-59, entitled, "Resolution Declaring Intention to Finance Installation of Seismic Strengthening Improvements, Electric Vehicle Charging Infrastructure and Other Authorized Improvements and Other Related Matters," on October 8, 2015;
- Held a duly noticed public hearing on November 19, 2015, for the purposes of allowing interested persons to object to or inquire about the proposed program for financing of Additional Authorized Improvements; and

- Adopted Resolution No. 15R-60, entitled, "Resolution Confirming Amended and Restated Report Relating to Financing the Installation of Seismic Strengthening Improvements, Electric Vehicle Charging Infrastructure and Other Authorized Improvements and Other Related Matters," on November 19, 2015.

If your legislative body would like to request that the CaliforniaFIRST Program not effect financings with respect to the Additional Authorized Improvements, please let us know by sending a signed resolution to that effect by February 15, 2016 to:

**Jeff Wheeland
c/o Renew Financial
1221 Broadway, 4th Floor
Oakland, California 94612**

If you have any questions, please feel free to contact Joe Livaich at (916) 396-7659, or at jlivaich@renewfinancial.com. Thank you very much!

CITY OF ST. HELENA

RESOLUTION NO. 2016-_____

**RESOLUTION ACCEPTING CALIFORNIAFIRST PROGRAM
AMENDED AND RESTATED REPORT RELATING TO
FINANCING THE INSTALLATION OF SEISMIC
STRENGTHENING IMPROVEMENTS, ELECTRIC VEHICLE
CHARGING INFRASTRUCTURE AND OTHER AUTHORIZED
IMPROVEMENT AND OTHER RELATED MATTERS; AND
ACKNOWLEDGE THAT THE CITY COUNCIL DOES DESIRE
FOR THE CALIFORNIAFIRST TO EFFECT FINANCINGS WITH
RESPECT TO THE ADDITIONAL AUTHORIZED
IMPROVEMENT**

RECITALS

- A. On October 9, 2012 the City of St. Helena adopted Resolution No. 2012-83 approving participation in AB811 joining the CaliforniaFIRST program of California Statewide Communities Development Authority(CSCDA); and
- B. On July 8, 2014, the City of St. Helena City Council adopted Resolution No. 2014-43 approving participation in the Hero Program, another funding program allowing St. Helena residents additional options for renewable energy sources with this one offering electric vehicle charging infrastructure; and
- C. On December 4, 2015 the CDCDA informed CaliforniaFIRST participating communities that the California legislature has amended AB 811 to expand the list of Additional Authorized Improvements, and ratified the addition of Authorized Improvements to include seismic strengthening improvements and electric vehicle charging infrastructure through a public hearing process and adoption of resolution through their governing body.

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

- 1. Approves the resolution accepting CaliforniaFIRST program amended and restated report relating to Financing the Installation of Seismic Strengthening Improvements, Electric Vehicle Charging Infrastructure and Other Authorized Improvement and Other Related Matters; and
- 2. Acknowledges that the City Council does desire for the CaliforniaFIRST to effect financings with respect to the Additional Authorized improvements.

Approved at a Regular Meeting of the St. Helena City Council on January 12, 2016, by the following vote:

Mayor Galbraith:	_____
Vice Mayor White:	_____
Councilmember Crull:	_____
Councilmember Dohring:	_____
Councilmember Pitts:	_____

APPROVED:

ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk



**Report to the City Council
Council Meeting of January 12th, 2016**

Agenda Section: New Business

Subject: Resolution approving a Professional Services Agreement with Interwest Consulting Group in the amount of \$59,625 for the ADA Evaluation and Transition Plan; and increasing the Fiscal Year 2015/2016 Public Works Administration Budget by \$19,625 from General Fund Reserves

CEQA Status: Not a CEQA Project

Prepared By: Steven Palmer, PE, Director of Public Works/City Engineer
Tobias Barr, Project Manager

Approved By: Jennifer Phillips, City Manager

BACKGROUND

The Americans with Disabilities Act (ADA) is a comprehensive civil rights law for persons with disabilities. Under Title II of the ADA, public entities must reasonably modify its policies, practices, or procedures to avoid discrimination against people with disabilities. In order to comply with the ADA and protect the City from legal liabilities from non-compliance issues, the law requires that public entities create an ADA Evaluation and Transition Plan. The evaluation and transition plan identifies policies, programs and physical barriers to accessibility, and provides a road map for the city to facilitate solutions to remove accessibility barriers.

DISCUSSION

While the city has updated existing facilities and extensively verifies new projects for ADA compliance, it is possible that city infrastructure, facilities, programs and activities may not meet the requirements of the ADA. For the city to comply with the law and avoid any liability from noncompliant infrastructure, programs and policies which discriminate, the city is required to complete an ADA Evaluation and Transition Plan. The project will provide a comprehensive evaluation including program and policy review, city infrastructure and facilities review, and a public outreach component. Following the evaluation the project will develop a Transition Plan, which will identify a roadmap for the city to address the noncompliant issues and provides a pathway for the city to reach compliance. The Transition Plan will also outline a schedule to address the deficiencies.

In order to attract proposals from qualified consultants, the City's Public Works Project Manager initiated a Request for Proposal (RFP) on September 4th 2015, and invited three consultants from the Master Professional Services Agreement list to participate in submitting proposals. Two of the three consultants who expressed interest in submitting later provided letters stating they were unable to provide proposals due to availability or expertise constraints. Interwest Consulting Group provided a proposal and worked with the Project Manager to refine the proposal to meet all the requirements of the ADA and the City. Interwest Consulting Group has significant experience executing ADA Evaluations and Transition Plans and City Staff finds Interwest Consulting Group to be highly experienced and qualified to perform the work.

FISCAL IMPACT

The total project cost is \$59,625.00 which will be funded from the Fiscal Year 15/16 Public Works Administration Budget. This is slightly higher than the \$40,000 amount that was estimated during the budget preparation. A budget increase of \$19,625.00 is needed from General Fund Reserves in order to fund this Agreement.

RECOMMENDED ACTION

Adopt a resolution authorizing the City Manager to execute a Professional Services Agreement with Interwest Consulting Group for the ADA Evaluation and Transition Plan, and increase the Fiscal Year 2015/2016 Public Works Administration Budget by \$19,625 from General Fund Reserves.

ATTACHMENTS

1. Resolution
2. Professional Services Agreement

CITY OF ST. HELENA

RESOLUTION NO. _____

**APPROVING A PROFESSIONAL SERVICES
AGREEMENT WITH INTERWEST CONSULTING GROUP
IN THE AMOUNT OF \$59,625 FOR THE EXECUTION OF
THE ADA EVALUATION AND TRANSITION PLAN; AND
INCREASING THE FISCAL YEAR 2015/2016 PUBLIC
WORKS ADMINISTRATION BUDGET BY \$19,625 FROM
GENERAL FUND RESERVES.**

RECITALS

- A. Title II of the Americans with Disabilities Act (ADA) requires public entities to reasonably modify policies, practices, procedures and infrastructure to avoid discrimination against people with disabilities; and
- B. Compliance with the ADA requires the city perform an ADA Evaluation and create a Transition Plan; and
- C. Staff released an RFP and requested proposals from three qualified consulting firms; and
- D. City Staff received one proposal from Interwest Consulting and two letters from firms stating there were not able to submit proposals; and
- E. City Staff found Interwest Consulting Group to be highly experienced and qualified to perform the work; and
- F. The project will be funded from the General Fund.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

1. The City Manager is authorized to execute the Professional Services Agreement with Interwest Consulting Group in the amount of \$59,625 for the ADA Evaluation and Transition Plan.
2. The Fiscal Year 2015/2016 Public Works Administration budget is increased by \$19,625 from General Fund Reserves.

Approved at a Regular Meeting of the St. Helena City Council on January 12, 2016 by the following vote:

Mayor Galbraith:	_____
Vice Mayor White:	_____
Councilmember Crull:	_____
Councilmember Dohring:	_____
Councilmember Pitts:	_____

APPROVED:

ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on January 12th, 2016 by and between the City of St. Helena, located in the County of Napa, State of California (City), and **Interwest Consulting Group** (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as **City of St. Helena ADA Evaluation and Transition Plan**.

B. Consultant has represented that Consultant has the necessary expertise, experience, and qualifications to perform the required duties.

NOW, THEREFORE, in consideration of the mutual premises, covenants, and conditions herein contained, the parties agree as follows:

SECTION 1 – BASIC SERVICES

Consultant agrees to perform the services and work (together, “services”) set forth in **Exhibit A, “Scope of Services”** and made part of this Agreement.

SECTION 2 – ADDITIONAL SERVICES

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or **Exhibit A, “Scope of Services”**, unless such additional services and compensation are authorized in advance and in writing by the City Council or City Manager of the City.

SECTION 3 – TIME FOR COMPLETION

The time for completion of services shall be as identified in **Exhibit A, “Scope of Services”**.

SECTION 4 – COMPENSATION AND METHOD OF PAYMENT

A. Subject to any limitations set forth in this Agreement, City agrees to pay consultant the amount specified in **Exhibit B, “Compensation”**, attached hereto and made a part hereof. Total compensation shall not exceed **\$59,625.00**, unless additional compensation is approved in accordance with Section 2.

B. Consultant shall furnish to City an original invoice for all services performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories if applicable: labor (by sub-category), travel, materials, equipment, supplies, subconsultant contracts, and miscellaneous expenses. City shall independently review each invoice submitted to determine whether the services performed and expenses incurred are in compliance with the provisions of this Agreement. If no charges or expenses are disputed, the invoice shall be approved and City will use its best efforts to cause Consultant to be paid within

30 days of receipt of invoice. If any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. If the City reasonably determines, in its sole judgment, that the invoiced charges and expenses exceed the value of the services performed to date and that it is probable that the Agreement will not be completed satisfactorily within the Agreement price, City may retain all or a portion of the invoiced charges and expenses. Within thirty (30) days of satisfactory completion of the project, City shall pay the retained amount, if any, to Consultant. In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in Consultant's invoice.

C. Payment to the Consultant for services performed pursuant to this Agreement shall not be deemed to waive any defects in services performed by Consultant.

SECTION 5 – STANDARD OF PERFORMANCE

Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

SECTION 6 – INSPECTION AND FINAL ACCEPTANCE

City may inspect and accept or reject any of Consultant's services under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's services within sixty (60) days after submitted to City, unless the parties mutually agree to extend such deadline. City shall reject services by a timely written explanation, otherwise Consultant's services shall be deemed to have been accepted. City's acceptance shall be conclusive as to such services except with respect to latent defects and fraud. Acceptance of any of Consultant's services by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, the sections pertaining to indemnification and insurance.

SECTION 7 – INSURANCE REQUIRED

Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by the Consultant, its agents, representatives, or employees, as indicated:

- A. **Minimum Scope of Insurance.** Coverage shall be at least as broad as:
 - 1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
 - 2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
 - 3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

B. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations, as applicable. If Commercial General Liability Insurance or other form with a General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$2,000,000 per accident for bodily injury or disease.

C. Professional Liability Insurance. When Consultant under this Agreement is duly licensed under California Business and Professions Code as an architect, landscape architect, professional engineer, or land surveyor ("design professional"), Consultant shall maintain at least \$2,000,000 of professional liability insurance.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions of \$25,000 or greater must be declared to and approved by the City.

E. Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its agent, officers, officials, employees, and volunteers are to be covered as additional insured as respects: liability arising out of services or operations performed by the Consultant or Consultant's subconsultants; or automobile owned, leased, hired or borrowed by the Consultant.
2. For any claims related to Consultant's conduct while performing the services of this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its agents, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its agents, officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subsection (b) of Section 2782 of the Civil Code.

F. Waiver of Subrogation. The workers compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its agents, officers, officials, employees and volunteers for losses paid under the terms of this policy which arises from the services performed by the named insured for the City.

G. The Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

H. Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on forms that conform to City requirements. All certificates and endorsements are to be received and approved by the City before services commence. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SECTION 8 – INDEMNIFICATION

A. Consultant shall indemnify and hold harmless City, its agents, officers, officials, employees, and volunteers from any and all claims, demands, suits, loss, damages, injury, and/or liability (including any and all costs and expenses in connection therewith), incurred by reason of any negligent or otherwise wrongful act or omission of Consultant, its officers, agents, employees and subcontractors, or any of them, under or in connection with this Agreement; and Consultant agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against City, its agents, officers, officials, employees and volunteers, or any of them, arising out of such negligent or otherwise wrongful act or omission, and to pay and satisfy any resulting judgments.

B. When Consultant under this Agreement is a design professional, the provisions of this section regarding Consultant's duty to defend and indemnify apply only to claims that arise out of or relate to the negligence, recklessness, or willful misconduct of the design professional.

C. If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Consultant has agreed to indemnify Indemnitees as provided above, Consultant, upon notice from City, shall defend Indemnitees at Consultant's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to Indemnification in order to be so indemnified. The insurance required to be maintained by Consultant shall ensure Consultant's obligations under this section, but the limits of such insurance shall not limit the liability of Consultant hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

D. The provisions of this section do not apply to claims to the extent occurring as a result of the City's sole negligence or willful acts or misconduct.

SECTION 9 – INDEPENDENT CONTRACTOR STATUS

A. Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Consultant shall have no authority to bind City in any manner, nor to incur an obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

B. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as

set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, employees or agents of City.

C. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

SECTION 10 – CONFLICTS OF INTEREST

A. Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City Manager. Consultant agrees to at all times avoid conflicts with the interests of City in the performance of this Agreement.

B. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is aware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

SECTION 11 – OWNERSHIP OF DOCUMENTS

A. All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Consultant in the course of providing any services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Consultant. When requested by City, but no later than three years after project completion, Consultant shall deliver to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

B. All copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, improvements, developments, works of authorship, or other products developed or created by Consultant during the course of providing services (collectively the "Work Product") shall belong exclusively to City. The Work Product shall be considered a "work made for hire" within the meaning of Title 17 of the United States Code. Without reservation, limitation, or condition, Consultant hereby assigns, at the time of creation of the Work Products, without any requirement of further consideration, exclusively and perpetually, any and all right, title, and interest Consultant may have in the Work Product throughout the world, including without limitation any copyrights, patents, trade secrets, or other intellectual property rights, all rights of reproduction, all rights to create derivative works, and the right to secure registrations, renewals, reissues, and extensions thereof.

SECTION 12 – CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION

A. All information gained or Work Product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or Work Product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

B. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the services performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided consultant gives City notice of such court order or subpoena.

C. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or Work Product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

D. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the services performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite such response.

SECTION 13 – SUSPENSION OF SERVICES

City may, at any time, by ten (10) days written notice suspend further performance by Consultant. All suspensions shall extend the time schedule for performance in a mutually satisfactory manner and Consultant shall be paid for services performed and reimbursable expenses incurred prior to the suspension date.

SECTION 14 – COMPLIANCE WITH LAW

Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Consultant to comply with this section.

SECTION 15 – COMPLIANCE WITH CIVIL RIGHTS

During the performance of this Agreement, Consultant agrees as follows:

A. Equal Employment Opportunity. In connection with the execution of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, ancestry, age, sexual orientation, physical handicap, medical condition, marital status, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training including apprenticeship.

B. Nondiscrimination Civil Rights Act of 1964. Consultant will comply with all federal regulations relative to nondiscrimination to federally-assisted programs.

C. Solicitations for Subcontractors including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations, made by Consultant for services to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by Consultant of Consultant's obligations under this Agreement and the regulations relative to nondiscrimination.

SECTION 16 – RECORDS

A. Records of Consultant's direct labor costs, payroll costs, and reimbursable expenses pertaining to this project covered by this Agreement will be kept on a generally recognized accounting basis and made available to City if and when required for a period of up to 3 years from the date of Consultant's final invoice.

B. Consultant's records and design calculations will be available for examination and audit if and as required. The cost of any reproductions shall be paid by City.

SECTION 17 – COOPERATION BY CITY

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the services as outlined in the Exhibit A, "Scope of Services", shall be furnished to Consultant in every reasonable way to facilitate, without undue delay, the services to be performed under this Agreement.

SECTION 18 – NOTICES

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by facsimile or first class mail, addressed as follows:

To City: City Manager
1480 Main Street
St. Helena, California 94574

To Consultant: Interwest Consulting Group
9300 W. Stockton Blvd., Suite 105
Elk Grove, CA 95758

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or, if mailed, three (3) days after deposit in the custody of the U.S. Postal Service.

SECTION 19 – TERMINATION

A. City may terminate this Agreement, with or without cause, at any time by giving ten (10) days written notice of termination to Consultant. If such notice is given, Consultant shall cease immediately all services in progress.

B. If either Consultant or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Consultant, or City may terminate this Agreement immediately upon written notice.

C. Upon termination of this Agreement by either Consultant or City, all property belonging to City which is in Consultant's possession shall be delivered to City. Consultant shall furnish to City a final invoice for services performed and expenses incurred by Consultant, prepared as set forth in this Agreement.

SECTION 20 – ATTORNEY FEES

If litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be entitled. In addition, any legal fees, costs and expenses incurred to enforce the provisions of this Agreement shall be reimbursed to the prevailing party.

SECTION 21 – ENTIRE AGREEMENT

This Agreement, including the attached Exhibits, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Consultant and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 22 – SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties. However, this Agreement shall not be assigned by Consultant without written consent of the City.

SECTION 23 – CONTINUITY OF PERSONNEL

Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff assigned to perform the services required under this Agreement, prior to any such performance.

SECTION 24 – DEFAULT

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any services performed after the date of default and may terminate this Agreement immediately by written notice to Consultant.

SECTION 25 – WAIVER

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 26 – LAW TO GOVERN; VENUE

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Napa. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in San Francisco.

SECTION 27 – SEVERABILITY

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

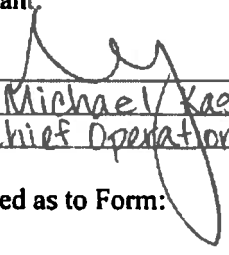
SECTION 28 – SPECIAL PROVISIONS

This Agreement is subject to the following special provisions: none.

IN WITNESS WHEREOF, the parties hereto have accepted, made, and executed this Agreement upon the terms, conditions, and provisions above stated, the day and year first above written.

Consultant:

City:

By:  _____

By: _____

Name: Michael Kashiwagi

Name: Jennifer Phillips

Title: Chief Operations Officer

Title: City Manager

Approved as to Form:

By: _____

Name: Thomas B. Brown

Title: City Attorney

Exhibit A

Scope of Services

City of St. Helena ADA Evaluation and Transition Plan

Task 1 | Programming and Development

This task will include meetings with appropriate City staff members to discuss the overall form of the ADA Transition Report. Meetings will be held with appropriate staff at key milestones during the report development to refine tasks and schedules. Items of discussion will include points of contact, the designated City ADA coordinator, level of detail during the inventory phase, type of reporting (GIS or other) and available capital resources in determining appropriate approach for the implementation of the report.

Task 2 | Review and Evaluate City's Policies and Facilities

This task will include the review and evaluation of City's current policies and facilities that may impact people with disabilities. Reviews and discussion will be held with all departments including activities that involve the public, facilities owned by the City, and programs and plans for public infrastructure improvements. A Self-Evaluation survey will be conducted with each department as part of this process. Responses will be compiled and a list of all policies and facilities will be developed.

Task 3 | Inventory Report of Existing Conditions

This task will include a visual inventory of the public side of City facilities and areas of public rights-of-way. Inventory will include public offices, place of public meetings, parking lots, curb ramps, park and recreation facilities, and transit stops/stations. The field surveys will include the collection and documentation of each element found to be inaccessible and/or appears to be non-compliant. Individual quantities will not be obtained or calculated. The Evaluation will be performed to develop an order of priority and magnitude of a work plan for implementation.

The Inventory Report shall include locations, description of non compliance, digital photo documentation, recommendation for compliance with associated cost estimate, and reference drawings where applicable.

The following inventory of Public side of City facilities and areas of public rights-of-way include:

List of Facilities	Qty
Curb Ramps*	382
Buildings*	11
Parks*	14

* List provided by the City

** Estimate based on 26 centerline miles

GIS

Interwest proposes to perform the field survey work using an Esri based ArcGIS Online / ArcGIS Collector solution. Interwest would be using iPad tablets connected to the Interwest ArcGIS Online account throughout the duration of the collection phase of the project. The proposed solution will allow field staff to efficiently locate ramps and assess their characteristics relative to ADA requirements. After the field collection is complete, all data will be downloaded into a spreadsheet format, along with any corresponding imagery. Also, simple hardcopy map(s) will be prepared to depict the locations of the collected ramps. All data and imagery collected will be the property of St. Helena at the completion of the project.

St. Helena ArcGIS Online Subscription - Optional

A St. Helena ArcGIS Online account will allow St. Helena staff to view and maintain ramp location information in a dynamic web mapping environment. Also, could be used for additional GIS needs for Public Works asset collections or other web mapping products.

8 hours – Setup, project data import, and introductory training for St. Helena staff

\$2,500 – Annual subscription cost for account (5 users). Payable to Esri.

Task 4 | Classification of Non-Compliant Barriers

Once an Inventory Report has been developed, each non-compliant barrier will be classified with a severity level. This classification will assist the City in determining how to prioritize and plan for future work. Classifications can be based on a ranking from 1 to 5 based on cost estimates, location priority or a combination of both. This phase will include the development of the classifications and assigning a classification to each non-compliant barrier. The information generated from this report can be provided through GIS linkage using aerial maps as an optional task.

Task 5 | Develop Draft ADA Transition Report and Public Survey

This task will include the development of a Draft ADA Transition Report and will be based on Task 1. Programming and Development for the framework. The report will include a background of the ADA requirements, overview of current standards and best management practices, inventory and findings of existing facilities, recommendations to obtain and maintain ADA compliance based on classification of barriers, identify goals and objectives for the implementation of ADA compliance facilities, and monitoring of facilities.

Public participation and input is encouraged and required during the review of the DRAFT ADA Transition Report. Public outreach can be conducted through advisory groups, non-profit organizations representing individuals with disabilities, public survey, press release, web site, newsletters, and postings at local businesses and within the community.

The plan will include: Background of the ADA requirements, overview of current standards and best management practices, inventory and findings of existing facilities, recommendations and/or modifications to policies, procedures, or practices, to obtain and maintain ADA compliance based on classification of barriers, identification of goals and objectives or remedial measures, for the implementation and monitoring of ADA compliant facilities. The plan will also include a tracking system detailing the priorities, estimated costs and timeframes for transition that will be updateable by City staff.

This phase will include planning and conducting a public survey; including the preparation and distribution of program materials; planning and conducting an initial workshop to receive community input and a public meeting to assist the City in presenting the Draft ADA Transition Plan to the community. Results from the survey will be compiled. Methods and results of the public outreach efforts will be documented in the ADA Transition Plan. A Draft copy will be given to the City for review and comment prior to public notification. Agendas and summary reports containing a record of the proceedings and comments will be provided for the survey outreach and public meetings.

Task 6 | Preparation of Final ADA Transition Report

This phase will include the development of a presentation for City staff to take to Council or to City Management. The presentation will include results of field evaluations, public outreach efforts, findings and recommendations.

A final version of the ADA Transition Report will be delivered to include comments from City staff, City Council and the public. This report will allow the City to move forward with a plan for improvements.

SCHEDULE

The level of effort required to complete the listed scope of work is as follows:

Task	Weeks
Task 1. Programming and Development	On-going
Task 2. Review and evaluate City's policies and facilities	6
Task 3. Inventory Report of Existing Conditions	8
Task 4. Classification of non-compliant barriers	4
Task 5. Develop Draft ADA Transition Report and Public Survey (includes 2 week City review)	12
Task 6. Preparation of Final ADA Transition Report (includes 2 week City review)	5
Total	35

Exhibit B
Compensation
City of St. Helena ADA Evaluation and
Transition Plan

For the Scope of Services indicated in Exhibit A, including all caveats, Interwest Consulting Group will not exceed fifty-nine thousand six-hundred and twenty-five dollars (\$59,625) unless additional compensation is approved in accordance with Section 2.

Budget by Task

Task	Proposed Cost
Task 1. Programming and Development	\$7,130
Task 2. Review and evaluate City's policies and facilities	\$5,170
Task 3. Inventory Report of Existing Conditions	\$9,800
Task 4. Classification of non-compliant barriers	\$4,230
Task 5. Develop Draft ADA Transition Report and Public Outreach	\$25,055
Task 6. Preparation of Final ADA Transition Report	\$4,980
Total (\$)	\$56,365
Optional: ArcGIS Online account and set up	\$3,260

Consultants Hours by Task

City of St. Helena ADA Transition Plan October 2015

Task	PW					Total
	Project		Obs/Admin/C		Subconsultant	
	Spr Engineer	Engineer/Arch.	ASP	GIS Analyst II	CrimePoint	
	\$160	\$125	\$35	\$65	See Attached	
Task 1. Programming and Development	24	16	4	10		7,130
Task 2. Review and evaluate City's policies and facilities	14	18	8			5,170
Task 3. Inventory Report of Existing Conditions	10	18	70			9,800
Task 4. Classification of non-compliant barriers	6	8	20	6		4,230
Task 5. Develop Draft ADA Transition Plan and Public Survey	20	24	4			6,540
Task 6. Preparation of Final ADA Self Evaluation Plan	10	16	14	2		4,900
TOTAL WORK HOURS	84	100	120.00	18		322
TOTAL COST	\$ 13,440	\$ 12,500	\$ 10,200	\$ 1,710	\$ 18,515	\$ 56,365
OPTIONAL						
St. Helena purchase own ArcGIS license (\$2,500 initial cost), GIS support for initial onsite support and phone support				8		\$ 3,280

Consultants Rate Schedule

CLASSIFICATION	HOURLY BILLING RATE
Engineering	
Principal in Charge.....	\$160
Project Manager.....	130
Traffic Engineer.....	130
Supervising Engineer.....	125
Senior Engineer.....	120
Engineering Associate III.....	105
Engineering Associate II.....	100
Engineering Associate I.....	85
Engineering Technician III.....	75
Engineering Technician II.....	70
Engineering Technician I.....	65
Student Trainee.....	30
Plan Review Services	
Certified Building Official.....	\$130
Senior Plan Review Architect.....	125
Senior Structural Engineer.....	120
Senior Plans Examiner.....	80
Fire Plans Examiner.....	90
CASp.....	85
Permit Technician.....	55
Inspector III.....	80
Inspector II.....	65
Inspector I.....	50
Code Enforcement Officer.....	80

Construction Management

Construction Manager	\$125
Assistant Construction Manager	110
Supervising Public Works Observer.....	105
Senior Public Works Observer.....	95
Public Works Observer III	85
Public Works Observer II	80
Public Works Observer I	75

Transportation

Supervising Transportation Planner.....	\$120
Senior Transportation Planner	110
Associate Transportation Planner III	95
Associate Transportation Planner II	85
Associate Transportation Planner I	80

GIS

GIS Manager.....	\$120
Senior GIS Analyst.....	115
GIS Analyst III	95
GIS Analyst II	90
GIS Analyst I	80

Administrative

Management Analyst II	\$90
Management Analyst I	80
Senior Administrative	65
Administrative III	58

Administrative II	54
Administrative I	48

Sub consultant Fee Schedule

Circlepoint Budget

Tasks	Size \$	SM PM \$	Assoc \$	Coordinator \$	Graphics \$	Total Hours	Total Dollars
Task 1 - SURVEY							
Develop Survey Questions (Includes review of existing materials, policies and programs)		2.00	3.00	-	-	5.00	\$ 645.00
Design Survey Questionnaire		-	-	-	3.00	3.00	\$ 255.00
Review and Approval of Survey Questionnaire (Includes one round of editing)		1.00	2.00	-	2.00	5.00	\$ 540.00
Develop Distribution Plan for Questionnaire		-	2.00	-	-	2.00	\$ 190.00
Print/Distribute Electronic Copies of Survey Questionnaire		-	3.00	3.00	2.00	8.00	\$ 680.00
Post Survey to City Website and Social Media		-	2.00	-	1.00	3.00	\$ 275.00
Compile Survey Responses: Printed and Online		1.00	5.00	5.00	-	11.00	\$ 1,030.00
Share Survey Responses with City/Update Draft Plan		1.00	4.00	3.00	-	8.00	\$ 785.00
Subtotal Task 1 - SURVEY		5.00	21.00	11.00	6.00	45.00	\$ 4,400.00
Task 2 - KICK OFF PUBLIC WORKSHOP							
Preparation for First Public Meeting (Kick-off Workshop - Includes planning and coordination calls)		6.00	4.00	2.00	-	12.00	\$ 1,610.00
Develop Noticing Text/Layout (format TBD) to Publicize Meeting		1.00	2.00	-	3.00	6.00	\$ 625.00
Develop and Distribute Public Meeting Noticing (Assumes Use of Existing City Resources/Distribution Outlets & Local Publications)		1.00	2.00	4.00	-	7.00	\$ 670.00
Post Noticing to City Website and Social Media		-	1.00	1.00	-	2.00	\$ 170.00
Develop Meeting Materials (Agenda, Sign-in Sheets, Comment Cards - Assumes one round of editing)		1.00	1.00	4.00	-	6.00	\$ 575.00
Public Meeting Attendance and Facilitation		4.00	4.00	-	-	8.00	\$ 1,100.00
Record and Organize Comments Received at First Meeting		1.00	2.00	6.00	-	9.00	\$ 820.00
Produce Summary of First Public Meeting and Survey Outreach (Includes one round of editing)		2.00	2.00	6.00	-	10.00	\$ 1,000.00
Subtotal Task 2 - KICK OFF PUBLIC WORKSHOP		16.00	18.00	23.00	3.00	60.00	\$ 6,570.00
Task 3 - PLAN REVIEW PUBLIC WORKSHOP							
Preparation for Second Public Meeting (Plan Review Workshop - Includes planning and coordination calls)		6.00	4.00	2.00	-	12.00	\$ 1,610.00
Develop Noticing Text/Layout (format TBD) to Publicize Meeting		1.00	2.00	-	3.00	6.00	\$ 625.00
Develop and Distribute Public Meeting Noticing (Assumes Use of Existing City Resources/Distribution Outlets & Local Publications)		1.00	2.00	4.00	-	7.00	\$ 670.00
Post Noticing to City Website and Social Media		-	1.00	1.00	-	2.00	\$ 170.00
Develop Meeting Materials (Agenda, Sign-in Sheets, Comment Cards)		1.00	1.00	4.00	-	6.00	\$ 575.00
Public Meeting Attendance and Facilitation		4.00	4.00	-	-	8.00	\$ 1,100.00
Record and Organize Comments Received at Second Meeting		1.00	3.00	6.00	-	10.00	\$ 915.00
Produce Summary of Second Public Meeting and Plan Outreach (Includes one round of editing)		2.00	2.00	6.00	-	10.00	\$ 1,000.00
Subtotal Task 3 - PLAN REVIEW PUBLIC WORKSHOP		16.00	19.00	23.00	3.00	61.00	\$ 6,445.00
Labor Subtotal		37.00	52.00	57.00	14.00	164.00	\$ 17,435.00
Labor Contingency							\$ -
Total Labor							\$ 17,435.00
ODCs							
Court Reporter / Transcription							\$ 300.00
Travel (to/from public meetings)							\$ 200.00
Printing of Meeting Materials and Noticing							\$ 200.00
Misc.							\$ 100.00
Subtotal ODCs							\$ 800.00
10.0% Mark-Up on ODCs							\$ 80.00
Total ODCs							\$ 880.00
TOTAL							\$ 18,515.00



Report to the City Council Meeting of January 12, 2016

Agenda Section: Consent Calendar

Subject: Consideration and proposed approval of a resolution approving addendum #2 to the approved Contract with Kaizen InfoSource LLC for Records and Information Management services for an additional one time cost of \$30,000 to conduct vital onsite records services for each department, training and provide various policies. Total contract not to exceed \$70,000, funds for Addendum #2 in the amount of \$30,000 will come from General Fund Assigned Reserve

CEQA Status: Not a CEQA project

Prepared By:  Cindy Black, City Clerk

Approved By:  Jennifer Phillips, City Manager

BACKGROUND

While working through steps of meeting all the milestones it is vitally clear the City needs additional assistance. St. Helena's primary concern is to reach the functioning goal for records management in an efficient, effective and economical management of its information. Records management touches each department and all the record-keeping requirements governed by the State of California.

The City contracted with Kaizen InfoSource LLC on January 13, 2015 per resolution 2015-8 for consulting services to assess the management, preservation, and protection of the City's permanent, vital and archival records. Kaizen consulted with each City department to determine St. Helena's records needs and practices. The contract consisted of the assessment for the cost of \$15,000, Records and Information Management Policy for \$5,000 and revise and modernize the current retention schedule for \$10,000.

The City Council adopted resolution 2015-99 a new Records & Information Management Policy and updated Retention Schedule on September 8, 2015. This Records & Information Management Policy and Retention Schedule gives guidance for the

management, preservation, and protection of the City's permanent, vital and archival records and a retention schedule for all City records.

The City Council adopted resolution 2015-133 on October 27, 2015 approving Addendum #3 to the contract for additional services to work with staff by providing additional records management training. The additional work would also consist of the City's website assessment. It has been determined the website does not meet the current needs of the City. The assessment will identify alternative options to work within the current website infrastructure. To date this addendum remains open with additional work scheduled. The total cost was \$10,000.

DISCUSSION

After initiating this records management project with Kaizen it quickly became apparent that the City's state of records management is more dire than first assessed.

On September 15, 2015, Kaizen provided Addendum #2 to City staff which provided for:

1. Training slides and facilitate training to City employees on how to read and apply the requirements in the approved Retention Schedule.
2. Communications Plan and templates plan for the City to use for informing employees and members of the public of the City's Records and Information Management Policy and Retention Schedule.
3. Facilitate the application of retention to hard copy documents documents and assist in a Retention Review.
4. Draft procedure for legal holds and public records request with assigned responsibilities. Assist the City with communication of this procedure.
5. Facilitate the configuration of the City's Document Management Software (Laserfiche) working in conjunction with the software vendor. Draft and provide the vendor with each department's file plan and create draft procedures to enable the departments to use Laserfiche as the "Official Record" for the City.

Kaizen's additional services under Addendum #2 began in October with training exercises.

Once this was identified by staff all work by Kaizen stopped immediately. As invoices were submitted by Kaizen for work performed under Addendum #2, staff realized this Addendum had not been approved City Council and funds appropriated.

FISCAL IMPACT

The fiscal impact for the contract addendum is not to exceed \$30,000 for the additional services. Funding for the additional work was not budgeted in the 2015/16 adopted budget; Addendum #2 in the amount of \$30,000 will come from General Fund Assigned Reserve.

RECOMMENDED ACTION

Staff recommends approval of the Resolution approving Addendum #2 to the contract with Kaizen InfoSource.

ATTACHMENTS

Attachment 1 – Resolution approving Addendum #2

Attachment 2 – Addendum #2

CITY OF ST. HELENA

RESOLUTION NO. 2016-__

**APPROVING AN ADDENDUM #2 TO THE CONTRACT
WITH KAIZEN INFOSOURCE LLC FOR ADDITIONAL SERVICES**

RECITALS

- A. The City has contracted with Kaizen InfoSource LLC since January 13, 2015 to provide essential records management services; and
- B. The City Council adopted a Records & Information Management Policy and updated Retention Schedule on September 8, 2015 which gives guidance for the management, preservation, and protection of the City's permanent, vital and archival records and a retention schedule for all City records; and
- C. After initiating this records management project with Kaizen InfoSource LLC it quickly became apparent that the City's state of records management is more dire than first assessed.
- D. On October 27, 2015 the Council authorized Addendum #3 utilizing the services of Kaizen InfoSource LLC for additional services to work with staff by providing additional records management training and website assessment; and
- E. On September 15, 2015 Kaizen InfoSource LLC provided Addendum #2 to City staff for additional services which included:
 - 1. Training slides and facilitate training to City employees on how to read and apply the requirements in the approved Retention Schedule.
 - 2. Communications Plan and templates plan for the City to use for informing employees and members of the public of the City's Records and Information Management Policy and Retention Schedule.
 - 3. Facilitate the application of retention to hard copy documents documents and assist in a Retention Review.
 - 4. Draft procedure for legal holds and public records request with assigned responsibilities. Assist the City with communication of this procedure.
 - 5. Facilitate the configuration of the City's Document Management Software (Laserfiche) working in conjunction with the software vendor. Draft and provide the vendor with each department's file plan and create draft procedures to enable the departments to use Laserfiche as the "Official Record" for the City.

Staff identified Addendum #2 did not go before Council for approval, once recognized all work stopped for proper authorization.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

- 1. The City Council approves addendum #2 to the contract with Kaizen InfoSource LLC. The addendum is a one-time cost of \$30,000 to conduct vital records management services. Funding for the additional work was not budgeted in the 2015/16 adopted budget; Addendum #2 in the amount of \$30,000 will come from General Fund Assigned Reserve; and

2. The City Council authorizes the City Manager to execute the addendum on behalf of the City.

Approved at a Regular Meeting of the St. Helena City Council on January 12, 2016 by the following vote:

Mayor Galbraith: _____

Vice Mayor White: _____

Councilmember Crull: _____

Councilmember Dohring: _____

Councilmember Pitts: _____

APPROVED:

ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk

ADDENDUM SCOPE OF SERVICES #2

This Scope of Services is hereby attached to and made a part of the Agreement for Consulting Services, dated January 13, 2015, by Resolution No. 2015-8 ("Agreement") between City of St. Helena (the "City") and Kaizen InfoSource LLC ("Company"). Except as provided herein, this Scope of Services incorporates all of the terms of the Agreement. The City and the Company hereby agree to the terms and conditions set forth below.

The Company will perform, develop, deliver and assure the quality of the Deliverables and Services specified below, as applicable, in accordance with the terms of this Statement of Work and of the Agreement. All terms and provisions of the Agreement shall apply to this Scope of Services, except to the extent expressly set forth in this Scope of Service.

1. Goal of Services

The goals and objectives of this Scope of Services is to train employees and implement the improvements in governance and technology to more effectively and efficiently manage the City's records and information.

2. Services and Deliverables

Company will perform the following tasks for this Scope of Service and provide the following deliverables:

Task	Description	Estimated Timeline	Deliverable
1	Develop and provide training to City employees on how to read and apply the requirements in the approved Retention Schedule	Sept 2015	Training slides and facilitate 2 training sessions along with train-the-trainer session
2	Draft a communications plan for the City to use for informing employees and members of the public of the City's Records and Information Management Policy and Retention Schedule.	Sept – Oct 2015	Communications Plan and associated templates (if needed)



ADDENDUM SCOPE OF SERVICES #2

3	Working with City employees, facilitate assignment of appropriate retention periods to hard copy documents and assist in a Retention Review Day event.	Oct – Nov 2015	Plan for implementing the retention requirements to hard copy documents.
4	Draft a procedure for City employees to follow in responding to Legal Holds and/or Public Records Requests with assigned responsibilities. Assist the City with communication of this procedure.	Nov 2015	Draft procedure(s) for approval by City Clerk and City Manager
5	Facilitate the configuration of the City's Document Management Software (Laserfiche) working in conjunction with the software vendor. Draft and provide the vendor with each department's file plan and create draft procedures to enable the departments to use Laserfiche as the "Official Record" for the City.	File Plans and Configuration - Sept – Jan 2016 User Testing Jan – Feb 2016	File Plans for each department, communication with the vendor and test scripts for user acceptance training.

3. Project Staffing

A. Company Project Manager: Scott Murchison

B. Other available Company Personnel

NAME	ROLE
Helen Streck	Consultant
Norman Weiner	Consultant
Pilar McAdam	Consultant

ADDENDUM SCOPE OF SERVICES #2

4. Schedule and Timeline

Begin date: September 15, 2015

Completion date: March 1, 2016

Termination for convenience by either party (10 business days)

5. Fees

A. Fees for services will be on a flat rate per task.

Task No.	Short Description	Flat Rate
1	Training slides and facilitate training	\$5,000
2	Communications Plan and templates	\$2,500
3	Facilitate the application of retention to hard copy documents	\$5,000
4	Draft procedure for legal holds and public records request	\$2,000
5	Facilitate file plans, configuration and testing of Laserfiche	\$15,500
Total Cost for Scope of Services		\$30,000

B. Expenses for travel will be billed at cost and as pass through



**Report to the City Council
Council Meeting of January 12, 2016**

Agenda Section: Public Hearing

Subject: **1) Introduction and First Reading of Proposed Modifications to the St. Helena Municipal Code Chapter 2.48 Fire Department;**
2) Consideration of resolution rescinding resolution No. 2012-60 and transitioning pay-per-call firefighters to part time employees with an hourly rate of \$25.00 for a cost of \$60,000 for the remainder of FY 2015-16. Total cost for FY 2016-17 is estimated at \$120,000.

CEQA Status: **Not a CEQA Project**

Prepared By: **Jennifer Phillips, City Manager** 
John Sorenson, Fire Chief

Approved By: **Jennifer Phillips, City Manager** 

BACKGROUND

In 1911, the City created a pay-per-call fire department which has evolved from 10 firefighters to 27 firefighters. The firefighters consist of local men and women who dedicate their time and energy to protecting the City. They are all members of the St. Helena Fire Department Association, which has been fully responsible for hiring and managing the firefighters since its inception. The Association has been very generous with its contributions to the operations of the Fire Department that includes equipment and fire apparatus. The City is responsible for the liability coverage and workers' compensation coverage for all firefighters. Firefighters are paid for each call they respond to, as well as training and active duty work. In addition, the firefighters participate in out of county strike team and in-county fire assignments at the request of the State for which their entire pay is fully reimbursed by the State.

The Fire Department currently consists of 26 suppression personnel, one Fire Chief, one Fire Marshal, and one administrative manager. Of the 26 suppression personnel, the positions include one 1st Assistant Chief, one 2nd Assistant Chief, six Captains, seven Engineers and 11 Firefighters. Currently Firefighters are paid on a pay-per-call basis of \$16.00 per call for day calls and \$20.00 for calls between the hours of 10:00 pm and 6:00 am. Resolution 2012-60 updated firefighter active duty pay to \$30.00 per hour. In addition, the 1st and 2nd Assistant Chiefs receive \$315 per month in

classification pay; the Captains receive \$210 per month in classification pay; and Engineers receive \$105 month in classification pay.

The Fire Chief is appointed by the City Council for a three year term after considering recommendations from the Association. The Fire Chief reports directly to the City Council, serves as a member of the Executive Team, and is paid by the City for eight hours of work each week. He is responsible for the overall management, suppression and fire prevention duties of the Fire Department. The Fire Department also has a full-time administrative mid-manager responsible for the day-to-day administrative matters such as contracts, payroll, supplies, purchase orders, and records management. Both the Fire Chief and the Mid-Manager are City employees and are part of the City's payroll system.

The firefighters are considered independent contractors by the City. Under this system, the City issues each firefighter a check through the accounts payable system. At the end of the year, the firefighters receive an IRS form 1099.

DISCUSSION

Following a review of the Fire Department service model, the City has determined that the firefighters should be permanent part-time employees, rather than independent contractors or volunteers for the following reasons: 1) firefighters who receive active duty pay for some firefighter work cannot also be considered volunteers for other similar work; 2) the change to part-time employment status will ensure that the firefighters can, at their current pay rate, continue serving on strike teams which is important training for the firefighters and provides vital fire suppression services for surrounding communities; 3) the means by which the City assigns work to the firefighters is consistent with part-time employment status; and 4) establishing a career fire department with some or all firefighters serving as full-time employees would cost the City several hundred thousand dollars annually.

Implementation of this new service model will require the City to create 30 part-time positions limited to 950 hours per year. Any hours earned by a part-time employee above 1,000 would be subject to inclusion into the Public Employees Retirement System (PERS) and both the City and the employee would be required to make contributions. Therefore, all part-time fire department staff will be expressly limited to less than 1,000 hours annually. The positions would be included as part of the payroll system, appropriate taxes would be withheld and a W2 would be issued to each employee at the end of the year.

As part of this service model review, the hourly and classification rates were also considered. Staff recommends increasing the pay-per-call rate from \$16.00 to \$25.00 per hour, thereby making duty pay and call pay equal. This means that for emergency calls, the Firefighters receive a raise, but for active duty time, they will receive a

reduction in pay. The Fire Department receives approximately 760 calls per year, of which 680 are one hour calls. Generally five to ten pay-per-call firefighters respond to the call. Currently, this amount is \$16.00 and \$20.00 for night calls, and covers just responding to the call all the way through entire length of the call. Under staff's recommended change, each responding firefighter would receive \$25.00 for responding to the call through the first hour. For calls that are longer than one hour, the firefighters on the call would be paid in 15 minute increments. Classification pay for the Assistant Chiefs, Captains and Engineers will continue as described above. In addition, the Fire Marshal position will be compensated at \$45.00, due to the additional skills required for the job.

Finally, Assistant Chiefs, and on a rare occasion Captains, will be paid stand-by pay when required to be on standby in the absence of the Fire Chief. Standby pay will be at a rate of \$50.00 per 24 hour period.

This change will also have an impact on administrative staff. The Administrative Manager will be assigned the orientation, recruitment and when necessary separation paperwork of the 30 part-time staff and the Finance Department will be required to incorporate the 30 part-time staff into the payroll system. However, work will be reduced in the accounts payable section. The Fire Chief will be responsible for hiring new employees, employee evaluations and performance expectations as he is today, but under a more structured City system. The Fire Chief will also continue to be responsible for safety and training for the firefighters. A personnel policy specifically for the part-time fire department personnel is being developed and will be implemented along with this service model if approved by Council.

Finally, the St. Helena Municipal Code Chapter 2.48 requires updating to reflect this new service model. The St. Helena Fire Department will become a department of the City and the Fire Chief will still be appointed by the City Council, but will report to the City Manager. All personnel management will be conducted by the City's Administrative Manager, while all administration and operations of the Fire Department will be the direct responsibility of the Fire Chief.

FISCAL IMPACT

The FY 2015-16 Fire Department budget for firefighters is \$220,000. The proposed service model will cost approximately \$344,157 for a full year, requiring an increase in the FY 2016-17 budget of \$124,157. The proposed changes would go into effect January 1, 2016, which would require a budget adjustment from Assigned General Fund Reserves in the amount of \$62,079. However, the City has received a modest increase in property tax and sales tax revenue above projected amounts in the FY 2015-16 budget. This additional revenue will be used to cover this expense.

RECOMMENDED ACTION

Staff recommends the City Council of the City of St. Helena

- 1) Waive further reading and introduce the ordinance reflecting the updates to Chapter 2.48;
- 2) Rescind Resolution No. 2012-60;
- 3) Approve Resolution No. _____ transitioning the employment status of the pay-per-call firefighters to part time employees in the Fire Department at an hourly rate of \$25.00 and classification pay for Engineers, Captains, Assistant Chiefs and \$45.00 per hour for the Fire Marshall and transfer \$55,736 from the Assigned General Fund Reserve to the Fire Department Part-Time account number 101-4800-20-20, \$4,264 to the Fire Department FICA/Medicare account number 101-4800-20-40 and transferring the remaining amount of Other Contract Services account number 101-4800-21-45 to Part-Time account number 101-4800-20-20.

OPTIONS

Staff evaluated several service models as part of the process to develop the recommended model. 1) Transition the Fire Department back to a Volunteer Fire Department by providing only a small stipend (\$16.00 per call) to the volunteer firefighters. This would create a significant financial hardship for the current firefighters as it would require eliminating the classification pays and duty pay as well as significantly reducing the strike team pay rate; 2) Establish a Fire Department with all firefighters employed as full time employees. This option would require a significant budgetary increase, which at this time cannot be covered with existing General Fund revenues; 3) Establish a Fire Department where some firefighters are full time and others are volunteer, following the Calistoga Fire Department model. This option also would require a significant budgetary increase, which at this time cannot be covered with existing General Fund revenues.

ATTACHMENTS

1. Resolution
2. Proposed Ordinance for Chapter 2.28
3. Salary & Staffing Survey of Fire Departments in Napa County
4. Spreadsheet showing the cost breakdown for Part time Fire Department staffing

CITY OF ST. HELENA

RESOLUTION NO. 2016-

**INCREASING FIREFIGHTERS ACTIVE DUTY
PAY AND RESCINDING RESOLUTION 2012-60**

RECITALS

- A. The mission of the St. Helena Fire Department is to provide efficient and cost effective emergency services including: fire protection, both prevention and suppression; public life safety education; emergency medical and rescue services; response to natural and man-made disasters; and respond to incidents involving hazardous materials; and
- B. This service should, at all times, provide for the safety of the members of the Fire Department and serve the interest of the residents of the City of St. Helena and the surrounding area.; and
- C. In July, 2012 the City Council adopted resolution 2012-60 setting the current Firefighter active duty pay; and
- D. In order to compensate Fire Department personnel, a resolution setting their hourly rate of pay is required; and
- E. Firefighters are currently paid on a "pay per call" basis of \$16.00 per call for day calls, \$20.00 for calls between the hours of 10:00pm and 6:00am; and
- F. Firefighters are currently paid \$30.00 an hour for "active duty pay"; and
- G. Active duty pay must be the same as the hourly rate for outside emergency services; and
- H. The City recently reviewed and researched means to improve current St. Helena Fire Department pay-per-call service model. In this process the City also engaged the Fire Chief as well as the Firefighters to solicit ideas and proposals for the reconfiguration of the new service model; and
- I. It has been determined that Firefighters and related classifications will transition to part-time employees of the City; and
- J. It has been determined that the Fire Marshal will transition to part-time employee of the City; and
- K. Classification pay should continue for Engineers, Captains, and Assistant Chiefs and,
- L. Stand-by pay will be paid to cover in the Fire Chief's absence.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, by the City of St. Helena as follows:

1. Firefighters, Engineers, Captains, Assistant Fire Chiefs, and the Fire Marshall employment status will transition to part-time employees of the City.
2. The active duty hourly rate for Firefighters, Engineers, Captains, and Assistant Fire Chiefs is reduced from \$30 per hour to \$25 per hour.
3. St Helena Firefighters, Engineers, Captains, and Assistant Fire Chiefs will be compensated at \$25.00 per call for up to the first one hour of each call to which the listed employee responds. In addition, for every additional hour the responding employee is assigned to work on a call, the assigned employee will be paid the active duty hourly rate of \$25 per hour. Pay for fractions of an hour shall be prorated in increments of 15 minutes.
4. The Fire Marshall shall be paid \$45 per hour for all hours worked, prorated for fractions of an hour in increments of 15 minutes.
5. The City shall establish 30 part-time positions limited to 950 hours per year.
6. Assistant Fire Chiefs shall receive \$315.00 per month for classification pay.
7. Captains shall receive \$210.00 per month in classification pay.
8. Engineers shall receive \$105.00 per month in classification pay.
9. Stand-by pay will be paid at the hourly rate of \$50.00 per 24 hour period.
10. Resolution No. 2012-60 is repealed.
11. The terms of this Resolution No. ____ are effective January 1, 2016.

PASSED AND ADOPTED at a regular meeting of the City of St. Helena Council on the 12th day of January, 2016, by the following vote:

Mayor Galbraith: _____
Vice Mayor White: _____
Councilmember Crull: _____
Councilmember Dohring: _____
Councilmember Pitts: _____

APPROVED:

ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk

CITY OF ST. HELENA

ORDINANCE NO. 2016-

**AMENDING CHAPTER 2.48 OF THE ST. HELENA MUNICIPAL CODE TO: REPEAL
SECTIONS AUTHORIZING A PRIVATE FIRE DEPARTMENT CORPORATION, AND
ESTABLISHING THE FIRE DEPARTMENT AS A CITY DEPARTMENT**

The City Council of the City of St. Helena does hereby ordain as follows:

SECTION 1. Chapter 2.48 is hereby amended to read as set forth in the attached Exhibit A.

SECTION 2. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance to amend Chapter 2.48 of the St. Helena Municipal Code is not a Project subject to, and also exempt from, the provisions of the California Environmental Quality Act (Public Resources Code Section 2100, et seq.) (CEQA) because the City Council hereby finds that it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance is exempt from CEQA pursuant to CEQA Guidelines Sections 15061 (b)(1), 15061(b)(2), and 15061 (b)(3).

SECTION 3. Severability. The City Council hereby declares every section, paragraph, sentence, clause and phrase is severable. If any section, paragraph, sentence, clause or phrase of this Ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 4. Inclusion in the St. Helena Municipal Code. It is the intention of the St. Helena City Council that the text in Exhibit A of this Ordinance be made a part of the St. Helena Municipal Code and that the text may be renumbered or re-lettered and the word "Ordinance" may be changed to "Section", "Chapter" or other such appropriate word or phrase to accomplish this intention.

SECTION 5. Effective Date. This Ordinance shall take effect and be in force 30 days after its adoption, and a summary of this Ordinance shall be published once with the names of the members of the Council voting for and against the ordinance in the St. Helena Star, a newspaper of general circulation published in the city of St. Helena.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the St. Helena City Council on the 12th day of January 2016, and was adopted at a regular meeting of the St. Helena City Council on the ____ the day of _____ 2016, by the following vote:

Mayor Galbraith: _____
Vice Mayor White: _____
Councilmember Crull: _____
Councilmember Dohring: _____
Councilmember Pitts: _____

APPROVED:

ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk

I, CINDY BLACK, CITY CLERK of the City of St. Helena, California, do hereby certify that the foregoing Ordinance was regularly introduced and placed upon its first reading at a regular meeting of the City Council on the 12th day of January, 2016. That thereafter said Ordinance was duly adopted and passed at a regular meeting of the City Council on the ____ the day of _____ 2016 by the following vote:

EXHIBIT A

Chapter 2.48 FIRE DEPARTMENT

Sections:

2.48.010 Establishment of fire department.

2.48.020 Incorporation.

2.48.030 Membership.

2.48.040 Officers.

2.48.020 Fire Chief

2.48.0350 Monthly drills.

2.48.060 Chief accountable to city council.

2.48.0470 Ownership of fire department equipment.

2.48.0580 Duties of chief.

2.48.0690 Primary responsibility to city.

2.48.070 Fire Marshal

2.48.010 Establishment of fire department.

A department to be hereafter known as the "St. Helena Fire Department" of the city, hereinafter called the fire department, the primary purposes of which shall be the prevention and suppression of fire and the protection of life and property within the city limits is created. The fire department shall consist of the Fire Chief, the Fire Marshal, and as many employees as the city manager may designate, as set forth in Section 2.12.060(B)(2).

(Prior code § 5A.1)

2.48.020 Incorporation.

The fire department shall have the power to incorporate under the laws of the state and to adopt bylaws for its proper government. (Prior code § 5A.2)

2.48.030 Membership.

~~The fire department shall have not more than thirty (30) members unless authorized to have more members by resolution of the city council. Members shall be elected to the fire department in accordance with applicable provisions of the bylaws of the fire department. (Prior code § 5A.3)~~

2.48.0240 OfficersFire Chief.

~~The officers of the fire department shall consist of a chief, a first assistant chief, a second assistant chief, a fire marshal, and company officers as may be provided by the bylaws of the fire department.~~

~~The~~ There shall be a chief of the fire department who shall be appointed by the city council. The chief shall be appointed every three years in February of the three-year cycle. The fire department may recommend to the city council prior to appointment of a chief its choice or choices for chief. The Chief shall report directly to and be supervised by the City Manager as set forth in Section 2.12.060(B)(2).

~~The chief shall hold office until the chief's successor is appointed.~~

~~The other officers of the fire department shall be selected as provided in the bylaws of the fire department. (Prior code § 5A.4)~~

2.48.0350 Monthly drills.

The fire department shall conduct, at least twice a month, suitable drills or instruction in the operation and handling of equipment, first aid and rescue work, salvage, a study of buildings in the city, fire prevention, water supplies and all other matters generally considered essential to the safety of life and property from fire. (Prior code § 5A.5)

2.48.060 Chief accountable to city council.

~~The chief shall be accountable to the city council and shall make written and verbal reports to the city council as the city council may require. All other fire department officers and members shall be accountable to the chief. (Prior code § 5A.6)~~

2.48.0470 Ownership of fire department equipment.

All the equipment now owned or which may be acquired hereafter by the fire department shall belong to the city. (Prior code § 5A.7)

2.48.0580 Duties of chief.

The duties of the chief shall include all of the following: (1) be responsible for the morale and general efficiency of the fire department, ~~shall~~(2) take charge of any fire that may occur, ~~shall~~(3) see that complete records are kept of all fires, inspections, apparatus and equipment, (3) serve as the Head of the Fire Department with responsibility for supervising Department employees, making recommendations to

the City Manager regarding personnel actions pursuant to Section 2.12.060 (B)(2), and taking personnel actions as authorized by the City's personnel policies and rules, and (4) shall perform all duties imposed upon the chief by the bylaws of the fire department and by all applicable laws, and rules and regulations of the Cityany public agency. In the absence of the chief, the next ranking officer of the fire department shall discharge the chief's duties and exercise the chief's powers. (Prior code § 5A.8)

2.48.0690 Primary responsibility to city.

The primary responsibility of the fire department is to provide fire protection and suppression to the territory within the city, provided, however, the city council may enter into agreements with the county or other public agencies to provide fire suppression services outside the city limits and to provide for mutual aid. (Prior code § 5A.9)

2.48.070 Fire Marshal

The Fire Chief fire chief shall recommend to the City Manager the appointment of a Fire Marshal fire marshal and to administer the uniform fire code inspection program. The Fire Marshal fire marshal shall have power to inspect all premises within the City city at any and all reasonable times for the purpose of determining if any State laws, provisions of this code or any ordinances of the City city, or any regulations of the Council city council are being violated, or any conditions exist, which, in the Fire Marshal's fire marshal's judgment, create fire hazards.

SALARY & STAFFING SURVEY OF FIRE DEPARTMENTS IN NAPA COUNTY

	City of ST. HELENA	PROPOSED City of ST. HELENA	City of CALISTOGA	Town of YOUNTVILLE	City of AMERICAN CANYON	City of NAPA	County of NAPA
POPULATION:	5,814	5,814	5,155	2,933 (*Includes Veterans' Home population of 984)	19,454	76,915	28,356 (unincorporated)
ANNUAL BUDGET:	\$606,639	\$726,639	\$938,893	\$1,406,046	\$4,408,850	\$13,607,402	\$15,221,332
ANNUAL PAYROLL COST OF STAFFING ONE STATION (INCLUDING BENEFITS):	\$210,000	\$340,000	\$688,520	\$1,210,000 (BASED ON 2 CALFIRE CAPTAINS & 7 CALFIRE ENGINEERS)	\$1,840,000	\$1,959,400	
# ENGINES & PERSONNEL PER STATION	10 PERSONNEL (AVG.) (17-20 FOR MAJOR INCIDENTS)	10 PERSONNEL (AVG.) (17-20 FOR MAJOR INCIDENTS)	1 ENGINE 2 PERSONNEL	2 ENGINES 4 PERSONNEL	2 ENGINES 5 PERSONNEL	1 ENGINE 3 PERSONNEL	
COST PER CAPITA:	\$104	\$125	\$182	\$479	\$227	\$177	\$537
FIRE CHIEF SALARY & BENEFITS	\$29,364 (SOURCE: TRANSPARENT CALIFORNIA, 2013)	\$29,364 (SOURCE: TRANSPARENT CALIFORNIA, 2013)	\$153,363 (SOURCE: TRANSPARENT CALIFORNIA, 2012)	(INCLUDED IN NAPA COUNTY CHIEF SALARY)	\$219,000 (SOURCE: CITY OF AMERICAN CANYON, 2015)	\$285,073 (SOURCE: TRANSPARENT CALIFORNIA, 2013)	\$174,354 (SOURCE: TRANSPARENT CALIFORNIA, 2013)

Fire Department Payroll Costs
@ \$25 per hour

760 Calls	Hours needed per call	Total Hours	1st Hour *	2nd Hour **	3rd Hour **	4+ Hour **	
679	1	679	169,750				
49	2	98	12,250	7,350			
21	3	63	5,250	3,150	3,150		
11	4 +	44	2,750	1,650	1,650	1,650	
760		884	190,000	12,150	4,800	1,650	208,600
							Total Call out cost

208,600 Call outs

31,500 Specialty Pay

78,000 Duty Hours (3,120 hours)

1,600 Standby

319,700 Subtotal

24,457 FICA

344,157 Total

* 10 FF respond to each call and will receive 1 hour pay

** 6 FF on average stay on call

52 Thursdays x 2 hour trainings

30 FF x 2 hours each

60 x 52 x \$25

3120 hours

344,157 New budget

220,000 Current budget

124,157 Balance

62,079 Jan - June budget adjustment



Report to the City Council
Council Meeting of January 12, 2016

Agenda Section: Public Hearing

Subject: Introduction and first reading Ordinance amending Title 17 of the Municipal Code relating to cottage food operations in dwellings.

CEQA Status: Categorically Exempt Pursuant to CEQA Guidelines Section 15301, 15305, and 15061(b)(3)

Prepared By: Noah Housh, Planning and Community Improvement Director
& Aaron Hecock, Senior Planner ~~AA~~ *NH*

Approved By: Jennifer Phillips, City Manager *JPH*

BACKGROUND

Assembly Bill 1616, also known as the California Homemade Food Act, became effective on January 1, 2013 (see Attachment 2). The Act exempts home-based food businesses known as "cottage food operations" from State regulations that apply to traditional food production. AB 1616 established a list of non-potentially hazardous foods and can be generally described as food products that do not require refrigeration.

The current list includes:

1. *Baked goods without cream, custard, or meat fillings, such as breads, biscuits, churros, cookies, pastries, and tortillas;*
2. *Candy, such as brittle and toffee;*
3. *Chocolate-covered nonperishable foods, such as nuts and dried fruit;*
4. *Dried fruit;*
5. *Dried pasta;*
6. *Dry baking mixes;*
7. *Fruit pies, fruit empanadas, and fruit tamales;*
8. *Granola, cereals, and trail mixes;*
9. *Herb blends and dried mole paste;*
10. *Honey and sweet sorghum syrup;*
11. *Jams, jellies, preserves, and fruit butter;*
12. *Nut mixes and nut butters;*
13. *Popcorn;*
14. *Vinegar and mustard;*
15. *Roasted coffee and dried tea; and*
16. *Waffle cones and pizelles.*

The act divides cottage food operations into two categories, "Class A" and "Class B." Class A operations are those that involve "direct sales," defined as sales directly between the operation and the consumer. Class A operations need only "register" with the County of Napa and self-certify their compliance with State health regulations with the County. Class A's do not require an initial or routine inspection by the County unless there has been a consumer complaint. Class B operations are those that involve both direct sales and "indirect sales," defined as sales involving a third-party retailer. Class B operations require a "permit" from the County of Napa after the conclusion of an initial inspection by the County. Class B's are inspected annually and when a consumer complaint is received. Both categories require a City of St. Helena Business License and include a gross sales limitation of (\$35,000 for 2013, \$45,000 for 2014) \$50,000 for 2015, and thereafter.

As of January 1, 2013, the Napa County Division of Environmental Health began registering and permitting cottage food operations. The County refers applicants to incorporated cities to sign off on the application.

While the County of Napa is responsible for the majority of the regulations implementing AB 1616, the Act states that cities "shall not prohibit a cottage food operation ... in any residential dwellings ..." and provides cities with three options:

- 1. Classify cottage food operations as a permitted use in a dwelling unit;*
- 2. Provide for a non-discretionary administrative permit that does not require a public hearing when the applicant satisfies "reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control;" and/or*
- 3. Provide for a zoning administrator process where a permit is granted if the applicant satisfies "reasonable standards, restrictions, and requirements concerning the following: spacing and concentration, traffic control, parking, and noise control relating to those homes."*

Additionally, the act requires the following:

- 1. Cottage food operations shall be an allowable use within all dwelling units;*
- 2. Cottage food operations will not constitute a change in occupancy for the purpose of the California Building Code and the California Fire Code;*
- 3. Cottage food operations may have one employee who is not a family member; and*
- 4. Cottage food operations may directly sell to consumers from the dwelling unit.*

PROPOSED ORDINANCE

Chapter 17.116 "Accessory Buildings, Structure, Dwellings and Uses" establishes rules and regulations for various accessory uses, including home occupations. In order to implement AB 1616, staff proposes a new section specific to cottage food operations with a two-tiered approach that combines the first two options outlined by AB 1616.

The first tier allows for cottage food operations without a non-family member employee and without direct sales. Cottage food operations that can comply with the following standards do not require a permit through the Planning Department and may begin

operation once they have registered or obtained a permit from Napa County and have obtained a business license from the City:

- 1. The use shall be conducted within the kitchen of the subject dwelling unit except for attached rooms within the dwelling that are used exclusively for storage or bookkeeping. No greater than twenty-five percent of the dwelling may be used for the cottage food operations, and it shall not be conducted within an accessory building.*
- 2. The use is carried on only by a family member or household member occupying the dwelling, with no other person employed.*
- 3. The cottage food operation shall not invite customers to the residence and the operation shall not transact business with customers at the residence.*
- 4. No signage or advertisement identifying the cottage food operation shall be permitted at the premises.*
- 5. There shall be no change in the outside appearance of the dwelling unit or premises, or other visible evidence of the conduct of such cottage food operation.*
- 6. Except for vehicle parking, no outdoor portions of the premises shall be utilized for cottage food operation.*
- 7. Vehicles displaying advertising or signs must be parked inside a garage at all times while at the premises.*
- 8. The cottage food operation shall be registered or permitted by the Napa County Environmental Health Officer in accordance with Section 114365 of the California Health and Safety Code. Cottage food operations shall comply with all California Health and Safety Code requirements.*
- 9. The cottage food operator shall furnish to the City evidence of the application for or issuance of the necessary permits and/or registration of cottage food operations from the County of Napa.*

The second tier provides for "expanded cottage food operations" and will allow for one non-family member employee and/or direct sales. Expanded cottage food operations will be subject to approval of an administrative permit. Administrative permits are used to streamline the use permit process or to comply with State laws for specific uses where performance standards are established and public hearings are not permitted by State law. Because expanded cottage food operations that have an employee and/or customer traffic differ in operation from cottage food operations, staff believes that a process that allows for the notification of all property owners within 300 feet of the issuance of an administrative permit is appropriate. The proposed standards for expanded cottage food operations are listed below:

- 1. The applicant for the cottage food operation permit shall be the individual who conducts the cottage food operation from his or her private dwelling unit and is the owner of the cottage food operation. The permit shall not be transferable to another operator, nor transferable to another site.*

2. *The use shall be conducted within the kitchen of the subject dwelling unit except for attached rooms within the dwelling that are used exclusively for storage or bookkeeping. No greater than twenty-five percent of the dwelling may be used for the cottage food operations, and it shall not be conducted within an accessory building.*
3. *One cottage food employee, as defined by California Health and Safety Code Section 113758(b)(1), is permitted to be employed by the cottage food operation in addition to any family member or household member occupying the dwelling.*
4. *One sign affixed near the entrance of the dwelling and no greater than one square foot in size may be permitted.*
5. *Except for vehicle parking, no outdoor portions of the premises shall be utilized for cottage food operation including outdoor sales and visitation.*
6. *Direct sales of products from the site of the cottage food operation shall be conducted by prior appointment only, and shall not exceed more than two visitors in any single day. No customers of the cottage food operation shall be permitted to dine at the premises.*
7. *No greater than one visitor's vehicle and one non-resident employee's vehicle shall be parked on site at any time.*
8. *Vehicles displaying advertising or signs must be parked inside a garage at all times while at the premises.*
9. *Direct sales and cottage food operation related deliveries shall not occur between the hours of 6 p.m. and 8 a.m.*
10. *The cottage food operation shall be registered or permitted by the Napa County Environmental Health Officer in accordance with Section 114365 of the California Health and Safety Code. Cottage food operations shall comply with all California Health and Safety Code requirements.*
11. *The applicant shall furnish to the City evidence of the application for or issuance of the necessary permits and/or registration of cottage food operations from the County of Napa.*
12. *A business license is required for all cottage food operators.*
13. *All property owners within 300 feet of the cottage food operation shall be notified upon permit issuance.*

In addition to creating a new Section 17.116.045 of the Zoning Ordinance, the following amendments are proposed to implement the details of the cottage food regulations (see Attachment 1):

1. *Add a definition of cottage food operations and cottage food products to Chapter 17.04; and*
2. *Add "cottage food operations" as a permitted accessory use to all zoning districts that allow for dwelling units, subject to the provisions of Section 17.116.045, as follows: the Twenty-Acre Agriculture (A-20), Winery (W), Agricultural Preserve (AP), Low Density Residential (LR), Low Density Residential One Acre Minimum*

(LR-1A), Medium Density Residential (MR), and High Density Residential (HR) Districts, Central Business (CB), Service Commercial (SC), Business and Professional Office (BPO), Industrial (I), and Woodlands and Watershed (WW) Districts.

ANALYSIS

GENERAL PLAN

The proposed regulations are consistent with Land Use Policy 4.3.1 which seeks to “[p]reserve the rural small town quality of St. Helena...”, and Tourism Management Guiding Policy 3.4.1 which seeks to “[p]rohibit any visitor-serving activity or development which would compromise the quality of life for St. Helena residents. Furthermore, the addition of cottage food operations is consistent with Land Use Guiding Policy 2.6.26 which seeks to “[d]esignate sufficient acreage to accommodate needed local-serving commercial uses within the community,” and Land Use Guiding Policy 2.6.39 which states, “All retail businesses shall conform to a scale commensurate and compatible with the small town character of St. Helena.”

ZONING

The proposed ordinance establishes performance standards to ensure the compatibility between the cottage food operation and the residential character of neighborhoods in which the business may be located within, consistent with the Zoning Ordinance purpose of: 1) protecting and promoting the public health, safety, moral, peace, prosperity and general welfare; 2) encouraging orderly, compatible and beneficial uses of land; 3) minimizing conflicts which might result from incompatible and inappropriate land uses; 4) maintaining and enhancing the desirable character of the city and its various neighborhoods and areas; and 5) lessening congestion on streets. (SHMC Section 17.04.020).

CEQA

Staff has determined that the Zoning Ordinance text amendment would not have a significant effect on the environment and is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301, Class 1 - Existing Facilities, Section 15305, Class 5 - Minor Alteration in Land Use Limitations, and by the General Rule, Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. This proposed Zoning Ordinance text amendment would establish an administrative permitting process for cottage food operations to be conducted within a portion of existing dwelling units as an accessory use to the residence involving negligible or no expansion of the dwellings. The proposed Zoning Ordinance text amendment would not have a significant effect on the environment.

FISCAL IMPACT

Staff time will be required in order to administer these potential changes to the Municipal Code. A Cottage Food permit application will need to be created, a administration fee established and applications will need to be reviewed by staff prior to the issuance of a permit.

PLANNING COMMISSION REVIEW

On September 3, 2013, the Planning Commission reviewed the staff report and heard public comments on the Municipal Code changes described in this report. Although the Commission discussion was varied and several individual comments were made on the cottage food issue, the Commission as a whole, identified two specific changes that should be considered with the proposed Ordinance revisions. These recommended elements are listed below for Council consideration:

1. Prohibit direct sales from 6 p.m. to 8 a.m. opposed to 8 p.m. to 7 a.m.; and
2. Notify all property owners within 300 feet when a permit is issued.

Each of these provisions have been added to the draft revised ordinance amendments.

RECOMMENDED ACTION

The Planning Commission and the Planning and Community Improvement Department recommends that the City Council conducts the first reading and introduction by title only of proposed Ordinance amending the City's Municipal Code allowing for cottage food operations within the City, as directed by the State of California.

ATTACHMENTS

1. Ordinance for amendments to Title 17 of the Municipal Code
2. Assembly Bill 1616
3. September 3, 2013 Planning Commission Meeting Minutes

CITY OF ST. HELENA

ORDINANCE NO. ____

**AMENDING TITLE 17 OF THE ST. HELENA MUNICIPAL CODE
RELATING TO COTTAGE FOOD OPERATIONS IN DWELLINGS**

The City Council of the City of St. Helena does hereby ordain as follows:

SECTION 1: Section 17.04.160.B "Definitions" of Chapter 17.04 "General Provisions and Definitions" is amended by adding two new definitions to read as follows:

"Cottage food operation" means an enterprise within the registered or permitted area of a dwelling unit where the cottage food operator, as defined by California Health and Safety Code Section 113758, resides and where cottage food products pursuant to California Health and Safety Code Section 113758 are prepared or packaged for direct, indirect, or direct and indirect sale to consumers.

"Cottage food products" means foods that are prepared for sale in the home kitchen of a person's primary private home and are not potentially hazardous food, as defined in Section 113871 of the California Health and Safety Code. Cottage food products include, but are not limited to, nonpotentially hazardous baked goods without cream, custard, or meat fillings, such as breads, biscuits, churros, cookies, pastries, and tortillas; candy, such as brittle and toffee; chocolate-covered nonperishable foods, such as nuts and dried fruit; dried fruit; dried pasta; dry baking mixes; fruit pies, fruit empanadas, and fruit tamales; granola, cereals, and trail mixes; herb blends and dried mole paste; honey and sweet sorghum syrup; jams, jellies, preserves, and fruit butter; nut mixes and nut butters; popcorn; vinegar and mustard; roasted coffee and dried tea; waffle cones and pizelles; and similar products.

SECTION 2: Chapter 17.116 "Accessory Building, Structures, Dwellings and Uses" of Title 17 of the St. Helena Municipal Code is hereby amended to add a new Section 17.116.045 to read as follows:

17.116.045 Cottage Food Operations.

- A. Purpose. The purposes of this section are to: implement requirements of Assembly Bill 1616 which amended State law to require municipalities to allow for cottage food operation within residences; establish reasonable standards allowed by State law to provide that cottage food operations within residences do not create unreasonable impacts or endanger public health, safety or welfare; and ensure compatibility of cottage food operations with the residential character of the neighborhoods in which cottage food operations are located.

- B. Definition. A cottage food operation is an enterprise within the registered or permitted area of a dwelling unit where the cottage food operator, as defined by California Health and Safety Code Section 113758, resides and where cottage food products pursuant to California Health and Safety Code Section 113758 are prepared or packaged for direct, indirect, or direct and indirect sale to consumers.
- C. Applicability. A cottage food operation is a an accessory use permitted in any legally established dwelling, subject to standards in Subsection D and E, and is a distinct use from a home occupation. This section only applies to cottage food operations and is not applicable to home occupations as defined in Section 17.116.040.
- D. Standards. Cottage food operations are permitted accessory uses to residences provided that all of the following standards are met:
1. The use shall be conducted within the kitchen of the subject dwelling unit except for attached rooms within the dwelling that are used exclusively for storage or bookkeeping. No greater than twenty-five percent of the dwelling may be used for the cottage food operations, and it shall not be conducted within an accessory building.
 2. The use is carried on only by a family member or household member occupying the dwelling, with no other person employed.
 3. The cottage food operation shall not invite customers to the residence and the operation shall not transact business with customers at the residence.
 4. No signage or advertisement identifying the cottage food operation shall be permitted at the premises.
 5. There shall be no change in the outside appearance of the dwelling unit or premises, or other visible evidence of the conduct of such cottage food operation.
 6. Except for vehicle parking, no outdoor portions of the premises shall be utilized for cottage food operation.
 7. Vehicles displaying advertising or signs must be parked inside a garage at all times while at the premises.
 8. The cottage food operation shall be registered or permitted by the Napa County Environmental Health Officer in accordance with Section 114365 of the California Health and Safety Code. Cottage food operations shall comply with all California Health and Safety Code requirements.
 9. The cottage food operator shall furnish to the City evidence of the application for or issuance of the necessary permits and/or registration of cottage food operations from the County of Napa.
- E. Expanded Cottage Food Operations. Exceptions to the standards established in subsections D.2 and D.3 may be granted with the approval of an administrative permit for an expanded cottage food operation provided that all of the following standards are met:
1. The applicant for the cottage food operation permit shall be the individual who conducts the cottage food operation from his or her private dwelling unit and is the

- owner of the cottage food operation. The permit shall not be transferable to another operator, nor transferable to another site.
2. The use shall be conducted within the kitchen of the subject dwelling unit except for attached rooms within the dwelling that are used exclusively for storage or bookkeeping. No greater than twenty-five percent of the dwelling may be used for the cottage food operations, and it shall not be conducted within an accessory building.
 3. One cottage food employee, as defined by California Health and Safety Code Section 113758(b)(1), is permitted to be employed by the cottage food operation in addition any family member or household member occupying the dwelling.
 4. One sign affixed near the entrance of the dwelling and no greater than one square foot in size may be permitted.
 5. Except for vehicle parking, no outdoor portions of the premises shall be utilized for cottage food operation including outdoor sales and visitation.
 6. Direct sales of products from the site of the cottage food operation shall be conducted by prior appointment only, and shall not exceed more than ten visitors in any single day. No customers of the cottage food operation shall be permitted to dine at the premises.
 7. No greater than one visitor's vehicle and one non-resident employee's vehicle shall be parked on site at any time.
 8. Vehicles displaying advertising or signs must be parked inside a garage at all times while at the premises.
 9. Direct sales and cottage food operation related deliveries shall not occur between the hours of 6 p.m. and 8 a.m.
 10. The cottage food operation shall be registered or permitted by the Napa County Environmental Health Officer in accordance with Section 114365 of the California Health and Safety Code. Cottage food operations shall comply with all California Health and Safety Code requirements.
 11. The applicant shall furnish to the City evidence of the application for or issuance of the necessary permits and/or registration of cottage food operations from the County of Napa.
 12. A Business License is required for all cottage food operators.
 13. All property owners within 300 feet of the cottage food operation shall be notified upon permit issuance.

SECTION 3: Section 17.20.050 "Accessory uses, buildings and structures" of Chapter 17.20 "Twenty-Acre Agriculture (A-20) District" of the St. Helena Municipal Code is amended to read as follows (additions shown by underline and deletions by strikethrough):

17.20.050 Accessory uses, buildings and structures.

The following are the accessory uses, buildings and structures permitted in the A-20 district:

- A. Garages, carports, workshops, pool houses, gazebos, patio covers, and other accessory buildings and structures without plumbing or cooking facilities;
- B. Home occupations subject to the provisions of Chapter 17.116;
- C. Roadside stands, not to exceed two hundred (200) square feet in floor area, for the sale of agricultural products produced on site;
- D. Signs subject to the provisions of Chapter 17.148;
- E. Swimming pools when located at least five feet from the property boundary and are fenced in a fashion to protect children in compliance with the Uniform Building Code;
- F. Cottage food operations subject to the provisions of Section 17.116.045.
- ~~F.—G.~~ Other uses and structures which are customarily incidental and clearly subordinate to permitted and conditional uses pursuant to Chapter 17.08. (Ord. 07-4 § 2 (part); Ord. 03-4 § 4: prior code § 27.23. Formerly 17.20.040)

SECTION 4: Section 17.24.050 “Accessory uses, buildings and structures” of Chapter 17.24 “Winery (W) District” of the St. Helena Municipal Code is amended to read as follows (additions shown by underline and deletions by strikethrough):

17.24.050 Accessory uses, buildings and structures.

The following are the accessory uses, buildings and structures permitted in the W district:

- A. Garages, carports, workshops, pool houses, gazebos, patio covers and other accessory buildings and structures;
- B. Roadside stands, not to exceed two hundred (200) square feet in floor area, for the sale of agricultural products produced on site;
- C. Signs subject to the provisions of Chapter 17.148;
- D. Cottage food operations subject to the provisions of Section 17.116.045.

~~D.—E.~~ Other uses and structures which are customarily incidental and clearly subordinate to permitted and conditional uses pursuant to Chapter 17.08.

SECTION 5: Section 17.28.020 “Permitted uses” of Chapter 17.28 “Agricultural Preserve (AP) District” of the St. Helena Municipal Code is amended to add a new subsection C to read as follows (additions shown by underline):

C. Cottage food operations subject to the provisions of Section 17.116.045.

SECTION 6: Section 17.32.050 "Accessory uses, buildings and structures" of Chapter 17.32 "Low Density Residential (LR) District" of the St. Helena Municipal Code is amended to read as follows (additions shown by underline and deletions by strikethrough):

17.32.050 Accessory uses, buildings and structures.

The following are the accessory uses, buildings and structures permitted in the LR district:

- A. Garages, carports, workshops, pool houses, gazebos, patio covers and other accessory buildings or structures without plumbing or cooking facilities;
- B. Home occupations subject to the provisions of Chapter 17.116;
- C. Family day care home serving twelve (12) or fewer children;
- D. Lodging house providing housing for not less than thirty (30) consecutive days for not more than two paying occupants, when located within the principal building, one on-site parking space is provided for each room, and the dwelling is owner occupied. Lodging house for more than two but not more than five paying occupants is permitted only upon approval of a use permit;
- E. Household pets and not more than twelve (12) small domestic animals in total. "Household pets" means small animals of the type generally accepted as pets, including dogs, cats, rabbits, domesticated pigs, pigeons, hens, and the like; but not including roosters, quacking ducks, geese, pea fowl, goats, sheep, hogs, kennels or the presence of animals for commercial purposes. Beekeeping (apiaries) shall be allowed pursuant to Chapter 17.190, Beekeeping;
- F. Gardening excluding the retail sale of any products on the premises;
- G. Signs subject to the provisions of Chapter 17.148;
- H. Swimming pools when located at least five feet from the property boundary and are fenced in a fashion to protect children;
- I. Satellite television receiving antennas subject to the provisions of Chapter 17.136;
- J. Fences and hedges subject to the provisions of Chapter 17.120;
- K. Cottage food operations subject to the provisions of Section 17.116.045.

~~K~~L. Other uses and structures which are customarily incidental and clearly subordinate to permitted and conditional uses pursuant to Chapter 17.08.

SECTION 7: Section 17.36.050 “Accessory uses, buildings and structures” of Chapter 17.36 “Low Density Residential One Acre Minimum (LR-1A) District” of the St. Helena Municipal Code is amended to read as follows (additions shown by underline and deletions by strikethrough):

17.36.050 Accessory uses, buildings and structures.

The following are the accessory uses, buildings and structures permitted in the LR-1A district:

- A. Garages, carports, workshops, pool houses, gazebos, patio covers, and other accessory buildings and structures without plumbing or cooking facilities;
- B. Home occupations subject to the provisions of Chapter 17.116;
- C. Family day care home serving twelve (12) or fewer children;
- D. Household pets such as dogs, cats, domesticated pigs, etc., and not more than twelve (12) small domestic animals in total, including rabbits, pigeons, hens, and the like; but not including roosters, quacking ducks, geese, pea fowl, goats, sheep, hogs, kennels or the presence of animals for commercial purposes. Beekeeping (apiaries) shall be allowed pursuant to Chapter 17.190, Beekeeping;
- E. Gardening excluding the retail sale of any products on the premises;
- F. Signs subject to the provisions of Chapter 17.148;
- G. Swimming pools when located at least five feet from the property boundary and are fenced in a fashion to protect children;
- H. Satellite television receiving antennas subject to the provisions of Chapter 17.136;
- I. Fences and hedges subject to the provisions of Chapter 17.120;
- J. Cottage food operations subject to the provisions of Section 17.116.045.

~~J~~K. Other uses and structures which are customarily incidental and clearly subordinate to permitted and conditional uses pursuant to Chapter 17.08.

SECTION 8: Section 17.40.050 “Accessory uses, buildings and structures” of Chapter 17.40 “Medium Density Residential (MR) District” of the St. Helena Municipal Code is

amended to read as follows (additions shown by underline and deletions by strikethrough):

17.40.050 Accessory uses, buildings and structures.

The following are the accessory uses, buildings and structures permitted in the MR district:

- A. Garages, carports, workshops, pool houses, gazebos, patio covers and other accessory buildings or structures without plumbing or cooking facilities;
- B. Home occupations subject to the provisions of Chapter 17.116;
- C. Family day care home serving twelve (12) or fewer children;
- D. Lodging house providing housing for not less than thirty (30) consecutive days for not more than two paying occupants, when located within the principal building, one on-site parking space is provided for each room, and the dwelling is owner occupied. Lodging house for more than two but not more than five paying occupants is permitted only upon approval of a use permit;
- E. Household pets and not more than twelve (12) small domestic animals in total. "Household pets" means animals of the type generally accepted as pets, including dogs, cats, rabbits, domesticated pigs, pigeons, hens, and the like; but not including roosters, quacking ducks, geese, pea fowl, goats, sheep, hogs, kennels or the presence of animals for commercial purposes. Beekeeping (apiaries) shall be allowed pursuant to Chapter 17.190, Beekeeping;
- F. Gardening excluding the retail sale of any products on the premises;
- G. Signs subject to the provisions of Chapter 17.148;
- H. Swimming pools when located at least five feet from the property boundary and are fenced in a fashion to protect children;
- I. Satellite television receiving antennas subject to the provisions of Chapter 17.136;
- J. Fences and hedges subject to the provisions of Chapter 17.120;
- K. Cottage food operations subject to the provisions of Section 17.116.045.
- ~~KL~~. Other uses and structures which are customarily incidental and clearly subordinate to permitted and conditional uses pursuant to Chapter 17.08.

SECTION 9: Section 17.44.050 "Accessory uses, buildings and structures" of Chapter 17.44 "High Density Residential (HR) District" of the St. Helena Municipal Code is

amended to read as follows (additions shown by underline and deletions by strikethrough):

17.44.050 Accessory uses, buildings and structures.

The following are the accessory uses, buildings and structures permitted in the HR district:

- A. Garages, carports, workshops, pool houses, gazebos, patio covers and other accessory buildings or structures without plumbing or cooking facilities;
- B. Home occupations subject to the provisions of Chapter 17.116;
- C. Family day care home serving twelve (12) or fewer children;
- D. Lodging house providing housing for not less than thirty (30) consecutive days for not more than two paying occupants, when located within the principal building, one on-site parking space is provided for each room, and the dwelling is owner occupied. Lodging house for more than two but not more than five paying occupants is permitted only upon approval of a use permit;
- E. Household pets and not more than twelve (12) small domestic animals in total. "Household pets" means animals of the type generally accepted as pets, including dogs, cats, rabbits, domesticated pigs, pigeons, hens, and the like; but not including roosters, quacking ducks, geese, pea fowl, goats, sheep, hogs, kennels or the presence of animals for commercial purposes. Beekeeping (apiaries) shall be allowed pursuant to Chapter 17.190, Beekeeping;
- F. Gardening excluding the retail sale of any products on the premises;
- G. Signs subject to the provisions of Chapter 17.148;
- H. Swimming pools when located at least five feet from the property boundary and are fenced in a fashion to protect children;
- I. Satellite television receiving antennas subject to the provisions of Chapter 17.136;
- J. Fences and hedges subject to the provisions of Chapter 17.120;
- K. Cottage food operations subject to the provisions of Section 17.116.045.
- KL. Other uses and structures which are customarily incidental and clearly subordinate to permitted and conditional uses pursuant to Chapter 17.08.

SECTION 10: Section 17.48.050 “Accessory uses, buildings and structures” of Chapter 17.48 “Central Business (CB) District” of the St. Helena Municipal Code is amended to read as follows (additions shown by underline and deletions by strikethrough):

7.48.050 Accessory uses, buildings and structures.

The following are the accessory uses, buildings and structures permitted in the CB district:

- A. Signs subject to the provisions of Chapter 17.148;
- B. Small recycling centers (not more than five hundred (500) square feet) including mobile recycling units, nonprofit drop-off facilities, and reverse vending machines, subject to design review approval by the planning director;
- C. On-site storage facilities accessory to the primary use subject to design review approval by the planning commission. On-site storage shall not be located within required parking areas. Design review will include, but not be limited to, location, length of time for the storage facility and size of the storage facility;
- D. Cottage food operations subject to the provisions of Section 17.116.045.

~~DE.~~ Other uses and structures which are customarily incidental and clearly subordinate to permitted and conditional use pursuant to procedures in Chapter 17.08.

SECTION 11: Section 17.52.050 “Accessory uses, buildings and structures” of Chapter 17.52 “Service Commercial (SC) District” of the St. Helena Municipal Code is amended to read as follows (additions shown by underline and deletions by strikethrough):

17.52.050 Accessory uses, buildings and structures.

The following are the accessory uses, buildings and structures permitted in the SC district:

- A. Signs subject to the provisions of Chapter 17.148;
- B. Small recycling centers (not more than five hundred (500) square feet) including mobile recycling units, nonprofit drop-off facilities, and reverse vending machines, subject to design review approval by the planning director;
- C. On-site storage facilities accessory to the primary use are subject to design review approval by the planning commission. On-site storage shall not be located within required parking areas. Design review will include, but not be limited to, location, length of time for the storage facility, and size of the storage facility;

D. Cottage food operations subject to the provisions of Section 17.116.045.

~~DE.~~ Other uses and structures which are customarily incidental and clearly subordinate to permitted and conditional use pursuant to Chapter 17.08.

SECTION 12: Section 17.56.050 “Accessory uses, buildings and structures” of Chapter 17.56 “Business and Professional Office (BPO) District” of the St. Helena Municipal Code is amended to read as follows (additions shown by underline and deletions by strikethrough):

17.56.050 Accessory uses, buildings and structures.

The following are the accessory uses, buildings and structures permitted in the BPO district:

- A. Signs subject to the provisions of Chapter 17.148;
- B. Small recycling centers (not more than five hundred (500) square feet) including mobile recycling units, nonprofit drop-off facilities and reverse vending machines, subject to design review approval by the planning director;
- C. On-site storage facilities accessory to the primary use are subject to design review approval by the planning commission. On-site storage shall not be located within required parking areas. Design review will include, but not be limited to, location, length of time for the storage facility, and size of the storage facility;

D. Cottage food operations subject to the provisions of Section 17.116.045.

~~DE.~~ Other uses and structures which are customarily incidental and clearly subordinate to permitted and conditional use pursuant to Chapter 17.08.

SECTION 13: Section 17.60.050 “Accessory uses, buildings and structures” of Chapter 17.60 “Industrial (I) District” of the St. Helena Municipal Code is amended to read as follows (additions shown by underline and deletions by strikethrough):

17.60.050 Accessory uses, buildings and structures.

The following are the accessory uses, buildings and structures permitted in the I district:

- A. Signs subject to the provisions of Chapter 17.148;
- B. On-site storage facilities accessory to the primary use subject to design review approval by the planning commission. On-site storage shall not be located within required parking areas. Design review will include, but not be limited to, location, length of time for the storage facility, and size of the storage facility;

C. Cottage food operations subject to the provisions of Section 17.116.045.

GD. Other uses and structures which are customarily incidental and clearly subordinate to permitted and conditional use pursuant to Chapter 17.08.

SECTION 14: Section 17.64.020 "Permitted Uses" of Chapter 17.64 "Woodlands and Watershed (WW) District" of the St. Helena Municipal code is amended to add a new subsection G to read as follows (additions shown by underline):

G. Cottage food operations subject to the provisions of Section 17.116.045.

SECTION 15: Severability. The City Council hereby declares every section, paragraph, sentence, cause and phrase is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 16: CEQA. The City Council hereby finds that this Ordinance would not have a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301, Class 1 - Existing Facilities, Section 15305, Class 5 - Minor Alteration in Land Use Limitations, and by the General Rule, Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. This proposed Zoning Ordinance text amendment would establish an administrative permitting process for cottage food operations to be conducted within a portion of existing dwelling units as an accessory use to the residence involving negligible or no expansion of the dwellings. The proposed Zoning Ordinance text amendment would not have a significant effect on the environment.

SECTION 17: This ordinance shall take effect and be in force 30 days after its adoption, and a summary of this ordinance shall be published once with the names of the members of the Council voting for and against the ordinance in the St. Helena Star, a newspaper of general circulation published in the city of St. Helena.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the St. Helena City Council on January 12, 2016 by the following vote:

Mayor Galbraith: _____

Vice Mayor White: _____

Councilmember Crull: _____

Councilmember Dohring: _____

Councilmember Pitts: _____

APPROVED:

Alan Galbraith, Mayor

ATTEST:

Cindy Black, City Clerk

Assembly Bill No. 1616

CHAPTER 415

An act to add Chapter 6.1 (commencing with Section 51035) to Part 1 of Division 1 of Title 5 of the Government Code, and to amend Sections 109947, 110050, 110460, 111955, 113789, 113851, 114021, 114023, 114390, 114405, and 114409 of, to add Sections 113758 and 114088 to, and to add Chapter 11.5 (commencing with Section 114365) to Part 7 of Division 104 of, the Health and Safety Code, relating to food safety.

[Approved by Governor September 21, 2012. Filed with
Secretary of State September 21, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1616, Gatto. Food safety: cottage food operations.

Existing law, the Sherman Food, Drug, and Cosmetic Law (Sherman Law), requires the State Department of Public Health to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the Federal Food, Drug, and Cosmetic Act. The Sherman Law makes it unlawful to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded. Food is misbranded if its labeling does not conform to specified federal labeling requirements regarding nutrition, nutrient content or health claims, and food allergens. Violation of this law is a misdemeanor.

The existing California Retail Food Code provides for the regulation of health and sanitation standards for retail food facilities, as defined, by the State Department of Public Health. Under existing law, local health agencies are primarily responsible for enforcing the California Retail Food Code. That law exempts private homes from the definition of a food facility, and prohibits food stored or prepared in a private home from being used or offered for sale in a food facility. That law also requires food that is offered for human consumption to be honestly presented, as specified. A violation of these provisions is a misdemeanor.

This bill would include a cottage food operation, as defined, that is registered or has a permit within the private home exemption of the California Retail Food Code. The bill would also exclude a cottage food operation from specified food processing establishment and Sherman Law requirements. This bill would require a cottage food operation to meet specified requirements relating to training, sanitation, preparation, labeling, and permissible types of sales and would subject a cottage food operation to inspections under specified circumstances. The bill would require a food facility that serves a cottage food product without packaging or labeling to identify it as homemade. The bill would establish various zoning and permit requirements relating to cottage food operations.

This bill would incorporate additional changes in Section 113789 of the Health and Safety Code, proposed by AB 2297, to be operative only if AB 2297 and this bill are both chaptered and become effective January 1, 2013, and this bill is chaptered last.

By imposing duties on local officials and adding new crimes, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Small businesses have played an important role in helping slow economics recover and prosper as an engine of job creation. During the 1990s, small businesses created the majority of new jobs and now account for 65 percent of United States employment.

(b) California, and the United States as a whole, are facing growing obesity and obesity-related disease epidemics.

(1) Two-thirds of American adults and nearly one-third of children and teens are obese or overweight, placing them at risk for developing chronic diseases such as diabetes, heart disease, and cancer.

(2) One in every nine California children, one in three teens, and over half of adults are already overweight or obese. This epidemic affects virtually all Californians.

(3) These health conditions are preventable and curable through lifestyle choices that include consumption of healthy fresh foods.

(c) For decades, low-income and rural communities have faced limited opportunities to purchase healthy foods. Often, without cars or convenient public transportation options, low-income residents in these areas must rely for much of their shopping on expensive, fatty, processed foods sold at convenience and corner stores.

(d) There is a growing movement in California to support community-based food production, sometimes referred to as “cottage food,” “artisanal food,” “slow food,” “locally based food,” or “urban agriculture” movements. These movements seek to connect food to local communities, small businesses, and environmental sustainability.

(e) Increased opportunities for entrepreneur development through microenterprises can help to supplement household incomes, prevent poverty and hunger, and strengthen local economics.

(f) At least 32 other states have passed laws that allow small business entrepreneurs to use their home kitchens to prepare, for sale, foods that are not potentially hazardous.

(g) Even some bake sales are currently illegal in California.

(h) It is the intent of the Legislature to enact a homemade food act specifically designed to help address these challenges and opportunities.

SEC. 2. Chapter 6.1 (commencing with Section 51035) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

CHAPTER 6.1. COTTAGE FOOD OPERATIONS

51035. (a) A city, county, or city and county shall not prohibit a cottage food operation, as defined in Section 113758 of the Health and Safety Code, in any residential dwellings, but shall do one of the following:

(1) Classify a cottage food operation as a permitted use of residential property for zoning purposes.

(2) Grant a nondiscretionary permit to use a residence as any cottage food operation that complies with local ordinances prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to those homes. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan. The permit issued pursuant to this paragraph shall be granted by the zoning administrator, or if there is no zoning administrator, by the person or persons designated by the planning agency to grant these permits, upon the certification without a hearing.

(3) Require any cottage food operation to apply for a permit to use a residence for its operation. The zoning administrator, or if there is no zoning administrator, the person or persons designated by the planning agency to handle the use permits, shall review and decide the applications. The use permit shall be granted if the cottage food operation complies with local ordinances, if any, prescribing reasonable standards, restrictions, and requirements concerning the following factors: spacing and concentration, traffic control, parking, and noise control relating to those homes. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan. The local government shall process any required permit as economically as possible. Fees charged for review shall not exceed the costs of the review and permit process. An applicant may request a verification of fees, and the city, county, or city and county shall provide the applicant with a written breakdown within 45 days of the request. The application form for cottage food operation permits shall include a statement of the applicant's right to request the written fee verification.

(b) In connection with any action taken pursuant to paragraph (2) or (3) of subdivision (a), a city, county, or city and county shall do all of the following:

(1) Upon the request of an applicant, provide a list of the permits and fees that are required by the city, county, or city and county, including information about other permits that may be required by other departments in the city, county, or city and county, or by other public agencies. The city, county, or city and county shall, upon request of any applicant, also provide information about the anticipated length of time for reviewing and processing the permit application.

(2) Upon the request of an applicant, provide information on the breakdown of any individual fees charged in connection with the issuance of the permit.

(3) If a deposit is required to cover the cost of the permit, provide information to the applicant about the estimated final cost to the applicant of the permit, and procedures for receiving a refund from the portion of the deposit not used.

(c) Use of a residence for the purposes of a cottage food operation shall not constitute a change of occupancy for purposes of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code), or for purposes of local building and fire codes.

(d) Cottage food operations shall be considered residences for the purposes of the State Uniform Building Standards Code and local building and fire codes.

SEC. 3. Section 109947 of the Health and Safety Code is amended to read:

109947. "Food processing facility" means any facility operated for the purposes of manufacturing, packing, or holding processed food. Food processing facility does not include a food facility as defined in Section 113785, a cottage food operation that is registered or has a permit pursuant to Section 114365, or any facility exclusively storing, handling, or processing dried beans.

SEC. 4. Section 110050 of the Health and Safety Code is amended to read:

110050. The Food Safety Fund is hereby created as a special fund in the State Treasury. All moneys collected by the department under subdivision (c) of Section 110466 and Sections 110470, 110471, 110485, 114365, 114365.6, 111130, and 113717, and under Article 7 (commencing with Section 110810) of Chapter 5 shall be deposited in the fund, for use by the department, upon appropriation by the Legislature, for the purposes of providing funds necessary to carry out and implement the inspection provisions of this part relating to food, licensing, inspection, enforcement, and other provisions of Article 12 (commencing with Section 111070) relating to water, the provisions relating to education and training in the prevention of microbial contamination pursuant to Section 110485, and the registration provisions of Article 7 (commencing with Section 110810) of Chapter 5, and to carry out and implement the provisions of the California Retail Food Code (Part 7 (commencing with Section 113700) of Division 104).

SEC. 5. Section 110460 of the Health and Safety Code is amended to read:

110460. No person shall engage in the manufacture, packing, or holding of any processed food in this state unless the person has a valid registration from the department, except those engaged exclusively in the storing, handling, or processing of dried beans. The registration shall be valid for one calendar year from the date of issue, unless it is revoked. The registration shall not be transferable. This section shall not apply to a cottage food operation that is registered or has a permit pursuant to Section 114365.

SEC. 6. Section 111955 of the Health and Safety Code is amended to read:

111955. "Food processing establishment," as used in this chapter, shall mean any room, building, or place or portion thereof, maintained, used, or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, canning, packing, slaughtering, or otherwise preparing or handling food except restaurants. "Food processing establishment" shall not include a cottage food operation that is registered or has a permit pursuant to Section 114365.

SEC. 7. Section 113758 is added to the Health and Safety Code, to read:

113758. (a) "Cottage food operation" means an enterprise that has not more than the amount in gross annual sales that is specified in this subdivision, is operated by a cottage food operator, and has not more than one full-time equivalent cottage food employee, not including a family member or household member of the cottage food operator, within the registered or permitted area of a private home where the cottage food operator resides and where cottage food products are prepared or packaged for direct, indirect, or direct and indirect sale to consumers pursuant to this part. In 2013, the enterprise shall not have more than thirty-five thousand dollar (\$35,000) in gross annual sales in the calendar year. In 2014, the enterprise shall not have more than forty-five thousand dollars (\$45,000) in gross annual sales in the calendar year. Commencing in 2015, and each subsequent year thereafter, the enterprise shall not have more than fifty thousand dollars (\$50,000) in gross annual sales in the calendar year. A cottage food operation includes both of the following:

(1) A "Class A" cottage food operation, which is a cottage food operation that may engage only in direct sales of cottage food products from the cottage food operation or other direct sales venues described in paragraph (4) of subdivision (b).

(2) A "Class B" cottage food operation, which is a cottage food operation that may engage in both direct sales and indirect sales of cottage food products from the cottage food operation, from direct sales venues described in paragraph (4) of subdivision (b), from offsite events, or from a third-party retail food facility described in paragraph (5) of subdivision (b).

(b) For purposes of this section, the following definitions shall apply:

(1) "Cottage food employee" means an individual, paid or volunteer, who is involved in the preparation, packaging, handling, and storage of a cottage food product, or otherwise works for the cottage food operation. An

employee does not include an immediate family member or household member of the cottage food operator.

(2) “Cottage food operator” means an individual who operates a cottage food operation in his or her private home and is the owner of the cottage food operation.

(3) “Cottage food products” means nonpotentially hazardous foods, including foods that are described in Section 114365.5 and that are prepared for sale in the kitchen of a cottage food operation.

(4) “Direct sale” means a transaction between a cottage food operation operator and a consumer, where the consumer purchases the cottage food product directly from the cottage food operation. Direct sales include, but are not limited to, transactions at holiday bazaars or other temporary events, such as bake sales or food swaps, transactions at farm stands, certified farmers’ markets, or through community-supported agriculture subscriptions, and transactions occurring in person in the cottage food operation.

(5) “Indirect sale” means an interaction between a cottage food operation, a third-party retailer, and a consumer, where the consumer purchases cottage food products made by the cottage food operation from a third-party retailer that holds a valid permit issued pursuant to Section 114381. Indirect sales include, but are not limited to, sales made to retail shops or to retail food facilities where food may be immediately consumed on the premises.

(6) “Private home” means a dwelling, including an apartment or other leased space, where individuals reside.

(7) “Registered or permitted area” means the portion of a private home that contains the private home’s kitchen used for the preparation, packaging, storage, or handling of cottage food products and related ingredients or equipment, or both, and attached rooms within the home that are used exclusively for storage.

SEC. 8. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) “Food facility” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) “Food facility” includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities.

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

- (8) Vending machines.
- (9) Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.
- (10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.
- (c) "Food facility" does not include any of the following:
 - (1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.
 - (2) A private home, including a cottage food operation that is registered or has a permit pursuant to Section 114365.
 - (3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.
 - (4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.
 - (5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.
 - (6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer, or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.
 - (7) A commercial food processing plant as defined in Section 111955.
 - (8) A child day care facility, as defined in Section 1596.750.
 - (9) A community care facility, as defined in Section 1502.
 - (10) A residential care facility for the elderly, as defined in Section 1569.2.
 - (11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.
 - (12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the beer tasting, if no other beverage, except for beer and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers or pretzels, is served.

SEC. 8.5. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

- (1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) "Food facility" includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities, except as provided in paragraph (13) of subdivision (c).

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

(9) Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(c) "Food facility" does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home, including a cottage food operation that is registered or has a permit pursuant to Section 114365.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.

(6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer, or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.

(7) A commercial food processing plant as defined in Section 111955.

(8) A child day care facility, as defined in Section 1596.750.

(9) A community care facility, as defined in Section 1502.

(10) A residential care facility for the elderly, as defined in Section 1569.2.

(11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.

(12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the beer tasting, if no other beverage, except for beer and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers or pretzels, is served.

(13) (A) An intermediate care facility for the developmentally disabled, as defined in subdivisions (e), (h), and (m) of Section 1250, with a capacity of six beds or fewer.

(B) A facility described in subparagraph (A) shall report any foodborne illness or outbreak to the local health department and to the State Department of Public Health within 24 hours of the illness or outbreak.

SEC. 9. Section 113851 of the Health and Safety Code is amended to read:

113851. (a) "Permit" means the document issued by the enforcement agency that authorizes a person to operate a food facility or cottage food operation.

(b) "Registration" shall have the same meaning as permit for purposes of implementation and enforcement of this part.

SEC. 10. Section 114021 of the Health and Safety Code is amended to read:

114021. (a) Food shall be obtained from sources that comply with all applicable laws.

(b) Food stored or prepared in a private home shall not be used or offered for sale in a food facility, unless that food is prepared by a cottage food operation that is registered or has a permit pursuant to Section 114365.

SEC. 11. Section 114023 of the Health and Safety Code is amended to read:

114023. Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant, or from a cottage food operation that produces jams, jellies, and preserves and that is registered or has a permit pursuant to Section 114365.

SEC. 12. Section 114088 is added to the Health and Safety Code, to read:

114088. A cottage food product, as defined in Section 113758, that is served by a food facility without packaging or labeling, as described in Section 114365, shall be identified to the consumer as homemade on the menu, menu board, or other location that would reasonably inform a consumer of its homemade status.

SEC. 13. Chapter 11.5 (commencing with Section 114365) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

CHAPTER 11.5. COTTAGE FOOD OPERATIONS

114365. (a) (1) (A) A “Class A” cottage food operation shall not be open for business unless it is registered with the local enforcement agency and has submitted a completed, self-certification checklist approved by the local enforcement agency. The self-certification checklist shall verify that the cottage food operation conforms to this chapter, including the following requirements:

(i) No cottage food preparation, packaging, or handling may occur in the home kitchen concurrent with any other domestic activities, such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment.

(ii) No infants, small children, or pets may be in the home kitchen during the preparation, packaging, or handling of any cottage food products.

(iii) Kitchen equipment and utensils used to produce cottage food products shall be clean and maintained in a good state of repair.

(iv) All food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any cottage food products shall be washed, rinsed, and sanitized before each use.

(v) All food preparation and food and equipment storage areas shall be maintained free of rodents and insects.

(vi) Smoking shall be prohibited in the portion of a private home used for the preparation, packaging, storage, or handling of cottage food products and related ingredients or equipment, or both, while cottage food products are being prepared, packaged, stored, or handled.

(B) (i) The department shall post the requirements described in subparagraph (A) on its Internet Web site.

(ii) The local enforcement agency shall issue a registration number to a “Class A” cottage food operation that meets the requirements of subparagraph (A).

(C) (i) Except as provided in (ii), a “Class A” cottage food operation shall not be subject to initial or routine inspections.

(ii) For purposes of determining compliance with this chapter, a representative of a local enforcement agency may access, for inspection purposes, the registered area of a private home where a cottage food operation is located only if the representative has, on the basis of a consumer complaint, reason to suspect that adulterated or otherwise unsafe food has been produced by the cottage food operation or that the cottage food operation has violated this chapter.

(iii) Access under this subparagraph is limited to the registered area and solely for the purpose of enforcing or administering this chapter.

(iv) A local enforcement agency may seek recovery from a “Class A” cottage food operation of an amount that does not exceed the local enforcement agency’s reasonable costs of inspecting the “Class A” cottage food operation for compliance with this chapter, if the “Class A” cottage food operation is found to be in violation of this chapter.

(2) (A) A “Class B” cottage food operation shall not be open for business unless it obtains a permit from the local enforcement agency in a manner approved by the local enforcement agency to engage in the direct and indirect sale of cottage food products.

(B) (i) A “Class B” cottage food operation shall comply with the requirements described in clauses (i) to (vi), inclusive, of subparagraph (A) of paragraph (1) in addition to the other requirements of this chapter.

(ii) The local enforcement agency shall issue a permit number after an initial inspection has determined that the proposed “Class B” cottage food operation and its method of operation conform to this chapter.

(C) Except as provided in this subparagraph, a “Class B” cottage food operation shall not be subject to more than one inspection per year by the local enforcement agency.

(i) For purposes of determining compliance with this chapter, a representative of a local enforcement agency, for inspection purposes, may access the permitted area of a private home where a cottage food operation is located only if the representative has, on the basis of a consumer complaint, reason to suspect that adulterated or otherwise unsafe food has been produced by the cottage food operation, or that the cottage food operation has violated this chapter.

(ii) Access under this subparagraph is limited to the permitted area and solely for the purpose of enforcing or administering this chapter.

(D) (i) A “Class B” cottage food operation shall be authorized to engage in the indirect sales of cottage food products within the county in which the “Class B” cottage food operation is permitted.

(ii) A county may agree to allow a “Class B” cottage food operation permitted in another county to engage in the indirect sales of cottage food products in the county.

(b) A registration or permit, once issued, is nontransferable. A registration or permit shall be valid only for the person, location, type of food sales, and distribution activity specified by that registration or permit, and, unless suspended or revoked for cause, for the time period indicated.

114365.2. A cottage food operation that is registered or has a permit issued pursuant to Section 114365 shall be considered a restricted food service facility for purposes of, and subject to, Sections 113953.3, 114259.5, 114285, and 114286. A cottage food operation that is registered or has a permit also shall be subject to Sections 113967, 113973, 113980, 114259.5, 114405, 114407, 114409, 114411, and 114413, and to all of the following requirements:

(a) A person with a contagious illness shall refrain from work in the registered or permitted area of the cottage food operation.

(b) A person involved in the preparation or packaging of cottage food products shall keep his or her hands and exposed portions of his or her arms clean and shall wash his or her hands before any food preparation or packaging activity in a cottage food operation.

(c) Water used during the preparation of cottage food products shall meet the potable drinking water standards described in Section 113869, except

that a cottage food operation shall not be required to have an indirect sewer connection. Water used during the preparation of cottage food products includes all of the following:

(1) The washing, sanitizing, and drying of any equipment used in the preparation of a cottage food product.

(2) The washing, sanitizing, and drying of hands and arms.

(3) Water used as an ingredient.

(d) A person who prepares or packages cottage food products shall complete a food processor course instructed by the department to protect the public health within three months of becoming registered. The course shall not exceed four hours in length. The department shall work with the local enforcement agency to ensure that cottage food operators are properly notified of the location, date, and time of the classes offered.

(e) A cottage food operation shall properly label all cottage food products in compliance with the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343 et seq.). Additionally, to the extent permitted by federal law, the label shall include, but is not limited to, all of the following:

(1) The words "Made in a Home Kitchen" in 12-point type on the cottage food product's primary display panel.

(2) The name commonly used for the food product or an adequately descriptive name.

(3) The name of the cottage food operation which produced the cottage food product.

(4) The registration or permit number of the "Class A" or "Class B" cottage food operation, respectively, which produced the cottage food product and, in the case of a "Class B" cottage food operation, the name of the county of the local enforcement agency that issued the permit number.

(5) The ingredients of the cottage food product, in descending order of predominance by weight, if the product contains two or more ingredients.

114365.5. (a) The department shall adopt and post on its Internet Web site a list of not potentially hazardous foods and their ethnic variations that are approved for sale by a cottage food operation. A cottage food product shall not be potentially hazardous food, as defined in Section 113871.

(b) This list of nonpotentially hazardous foods shall include, but not be limited to, all of the following:

(1) Baked goods without cream, custard, or meat fillings, such as breads, biscuits, churros, cookies, pastries, and tortillas.

(2) Candy, such as brittle and toffee.

(3) Chocolate-covered nonperishable foods, such as nuts and dried fruit.

(4) Dried fruit.

(5) Dried pasta.

(6) Dry baking mixes.

(7) Fruit pies, fruit empanadas, and fruit tamales.

(8) Granola, cereals, and trail mixes.

(9) Herb blends and dried mole paste.

(10) Honey and sweet sorghum syrup.

(11) Jams, jellies, preserves, and fruit butter that comply with the standard described in Part 150 of Title 21 of the Code of Federal Regulations.

(12) Nut mixes and nut butters.

(13) Popcorn.

(14) Vinegar and mustard.

(15) Roasted coffee and dried tea.

(16) Waffle cones and pizelles.

(c) (1) The State Public Health Officer may add or delete food products to or from the list described in subdivision (b), which shall be known as the approved food products list. Notice of any change to the approved food products list shall be posted on the department's cottage food program Internet Web site, to also be known as the program Internet Web site for purposes of this chapter. Any change to the approved food products list shall become effective 30 days after the notice is posted. The notice shall state the reason for the change, the authority for the change, and the nature of the change. The notice will provide an opportunity for written comment by indicating the address to which to submit the comment and the deadline by which the comment is required to be received by the department. The address to which the comment is to be submitted may be an electronic site. The notice shall allow at least 20 calendar days for comments to be submitted. The department shall consider all comments submitted before the due date. The department may withdraw the proposed change at any time by notification on the program Internet Web site or through notification by other electronic means. The approved food products list described in subdivision (b), and any updates to the list, shall not be subject to the administrative rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The State Public Health Officer shall not remove any items from the approved food products list unless the State Public Health Officer also posts information on the program Internet Web site explaining the basis upon which the removed food item has been determined to be potentially hazardous.

114365.6. (a) The State Public Health Officer shall provide technical assistance, and develop, maintain, and deliver commodity-specific training related to the safe processing and packaging of cottage food products to local enforcement agencies.

(b) Local enforcement agencies may collect a surcharge fee in addition to any permit fees collected for "Class B" cottage food operations. The surcharge fee shall not exceed the reasonable costs that the department incurs through the administration of the training described in subdivision (a) to protect the public health. The surcharge fees collected shall be transmitted to the department in a manner established by the department to be deposited in the Food Safety Fund. The department shall use the surcharge fees only to develop and deliver the training described in subdivision (a) to local enforcement agency personnel on an ongoing basis.

SEC. 14. Section 114390 of the Health and Safety Code is amended to read:

114390. (a) Enforcement officers shall enforce this part and all regulations adopted pursuant to this part.

(b) (1) For purposes of enforcement, any authorized enforcement officer may, during the facility's hours of operation and other reasonable times, enter, inspect, issue citations to, and secure any sample, photographs, or other evidence from a food facility, cottage food operation, or any facility suspected of being a food facility or cottage food operation, or a vehicle transporting food to or from a retail food facility, when the vehicle is stationary at an agricultural inspection station, a border crossing, or at any food facility under the jurisdiction of the enforcement agency, or upon the request of an incident commander.

(2) If a food facility is operating under an HACCP plan, the enforcement officer may, for the purpose of determining compliance with the plan, secure as evidence any documents, or copies of documents, relating to the facility's adherence to the HACCP plan. Inspection may, for the purpose of determining compliance with this part, include any record, file, paper, process, HACCP plan, invoice, or receipt bearing on whether food, equipment, or utensils are in violation of this part.

(c) Notwithstanding subdivision (a), an employee may refuse entry to an enforcement officer who is unable to present official identification showing the enforcement officer's picture and enforcement agency name. In the absence of the identification card, a business card showing the enforcement agency's name plus a picture identification card such as a driver's license shall meet this requirement.

(d) It is a violation of this part for any person to refuse to permit entry or inspection, the taking of samples or other evidence, access to copy any record as authorized by this part, to conceal any samples or evidence, withhold evidence concerning them, or interfere with the performance of the duties of an enforcement officer, including making verbal or physical threats or sexual or discriminatory harassment.

(e) A written report of the inspection shall be made and a copy shall be supplied or mailed to the owner, manager, or operator of the food facility.

SEC. 15. Section 114405 of the Health and Safety Code is amended to read:

114405. (a) A permit may be suspended or revoked by a local enforcement officer for a violation of this part. Any food facility or cottage food operation for which the permit has been suspended shall close and remain closed until the permit has been reinstated. Any food facility or cottage food operation for which the permit has been revoked shall close and remain closed until a new permit has been issued.

(b) Whenever a local enforcement officer finds that a food facility or cottage food operation is not in compliance with the requirements of this part, a written notice to comply shall be issued to the permitholder. If the permitholder fails to comply, the local enforcement officer shall issue to the permitholder a notice setting forth the acts or omissions with which the permitholder is charged, and informing him or her of a right to a hearing, if requested, to show cause why the permit should not be suspended or

revoked. A written request for a hearing shall be made by the permitholder within 15 calendar days after receipt of the notice. A failure to request a hearing within 15 calendar days after receipt of the notice shall be deemed a waiver of the right to a hearing. When circumstances warrant, the hearing officer may order a hearing at any reasonable time within this 15-day period to expedite the permit suspension or revocation process.

(c) The hearing shall be held within 15 calendar days of the receipt of a request for a hearing. Upon written request of the permitholder, the hearing officer may postpone any hearing date, if circumstances warrant the action.

SEC. 16. Section 114409 of the Health and Safety Code is amended to read:

114409. (a) If any imminent health hazard is found, unless the hazard is immediately corrected, an enforcement officer may temporarily suspend the permit and order the food facility or cottage food operation immediately closed.

(b) Whenever a permit is suspended as the result of an imminent health hazard, the enforcement officer shall issue to the permitholder a notice setting forth the acts or omissions with which the permitholder is charged, specifying the pertinent code section, and informing the permitholder of the right to a hearing.

(c) At any time within 15 calendar days after service of a notice pursuant to subdivision (b), the permitholder may request in writing a hearing before a hearing officer to show cause why the permit suspension is not warranted. The hearing shall be held within 15 calendar days of the receipt of a request for a hearing. A failure to request a hearing within 15 calendar days shall be deemed a waiver of the right to a hearing.

SEC. 17. Section 8.5 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by both this bill and Assembly Bill 2297. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 113789 of the Health and Safety Code, and (3) this bill is enacted after Assembly Bill 2297, in which case Section 8 of this bill shall not become operative.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.



**DRAFT ACTION MINUTES
ST. HELENA PLANNING COMMISSION
VINTAGE HALL BOARD ROOM – 2ND FLOOR
465 MAIN STREET, ST. HELENA
SEPTEMBER 3, 2013
7:00 P.M.**

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE AND ROLL CALL

Commission Present: Commissioners Parker, Kistner, Monnette, Russell & Chairperson Heil

Commission Absent: None

Staff Present: Greg Desmond, Interim Planning Director, Debra Hight, Deputy Public Works Director

3. APPROVAL OF MINUTES: August 20, 2013

MOTION: *It was moved by Commissioner Kistner and seconded by Commissioner Monnette to approve the minutes of August 6, 2013.*

Ayes: Commissioners Parker, Kistner, Monnette & Chairperson Heil

Noes: None

Absent: None

Abstain: Commissioner Russell

4. PUBLIC FORUM: *None*

5. COMMUNICATIONS AND PETITIONS: *None*

6. SCHEDULED MATTERS:

6.1 Discussion regarding St Helena Municipal Code Section 17.148 - Signs

The commission discussed the St Helena Sign Ordinance generally concluding that the ordinance needed a comprehensive update at some future date. Until that time the commission discussed the idea of making amendments in the near term that would facilitate the permitting process for vineyard and vineyard appellation signs located within Agriculture and Winery designated districts.

7. RECOMMENDED CONSENT CALENDAR:

7.1 Design Review Exemptions

7.1 Design Review Exemptions

LOCATION: Various

APPLICANT: Various

APN: Various

CEQA: Exempt pursuant to Section 15301, Class 1.

REQUIRED ACTION: *Determine that the projects qualify for CEQA exemption pursuant to Section 15301, accept the required findings and approve the list of Design Review Exemptions.*

MOTION: *It was moved by Commissioner Kistner and seconded by Commissioner Parker to approve item 7.1.*

Ayes: Commissioners Kistner, Parker, Monnette, Russell & Chairperson Heil

Noes: None

Absent: None

Abstain: None

7.2 CITY INITIATED: Zoning Ordinance Text Amendment – Draft Cottage Food Ordinance

APPLICANT: City of St Helena

CEQA: Exempt pursuant to Section 15301 and Section 15305, Class 5.

DESCRIPTION: Amendments to the St Helena Municipal Code to establish provisions for the exemption of home-based food businesses known as cottage food operations from State regulations that apply to traditional food production. This ordinance will bring the City of St Helena into compliance with Assembly Bill 1616, also known as the California Homemade Food Act, which became effective on January 1, 2013.

REQUIRED ACTION: *Determine that the project qualifies for CEQA exemption pursuant to Section 15301 and Section 15305, Class 5, review and make a recommendation of approval to the City Council.*

Commissioner Monnette pulled this item from consent to ask the commission if they would consider limiting the hours of direct marketing and deliveries to 8:00 am to 6:00 pm. Commissioner Monnette also requested that the neighbor notification should be consistent with our standard noticing requirements which requires notification of all parcel owners within a 300' radius of the applicant's parcel. The commission agreed and with these revisions the commission recommends City Council approval of the ordinance.

MOTION: *With these modifications it was moved by Commissioner Russell and seconded by Commissioner Monnette to approve item 7.2.*

Ayes: Commissioners Russell, Monnette, Parker, Kistner, & Chairperson Heil

Noes: None

Absent: None

Abstain: None

8. SIGN PERMIT/ADMINISTRATIVE DETERMINATION: None

9. PUBLIC HEARINGS/ PLANNING COMMISSION ACTION IS FINAL:

9.1 2012-37: Variance

LOCATION: 1330 Sylvaner

APPLICANT: Dan Doyle

APN: 009-481-120

CEQA: Exempt pursuant to Section 15303, Class 3.

DESCRIPTION: Request by Dan Doyle for a Variance to reduce a side yard setback from the required ten (10) feet to six (6) feet. The request will allow the applicant to install a 187 sq. ft. modular 2nd unit. The project site is an 11,363 sq. ft. parcel located at 1330 Sylvaner Avenue in the LR: Low Density Residential district.

REQUIRED ACTION: *Determine that the project qualifies for CEQA exemption pursuant to Section 15303, accept or reject the required findings and approve or deny the request for a setback Variance.*

MOTION: *It was moved by Commissioner Kistner and seconded by Commissioner Russell to approve item 9.1*

Ayes: Commissioners Kistner, Russell, Monnette, Parker, & Chairperson Heil

Noes: None

Absent: None

Abstain: None

9.2 2013-45: Design Review

LOCATION: 1637 Scott

APPLICANT: Karen Johnson

APN: 009-294-005

CEQA: Exempt pursuant to Section 15303, Class 1.

DESCRIPTION: Request by Karen Johnson for Design Review approval to remodel/expand an existing 917 sq. ft. 1-story, 2-bedroom residence on an 8,746 sq. ft. parcel. The proposed remodel would result in a 2,012 sq. ft. 1-story, 2-bedroom residence. The project is located at 1637 Scott Street in the MR: Medium Density Residential district.

REQUIRED ACTION: *Determine that the project qualifies for CEQA exemption pursuant to Section 15301, accept or reject the required findings and approve or deny the request for Design Review approval.*

MOTION: *It was moved by Commissioner Kistner and seconded by Commissioner Parker to approve item 9.2 on the Consent Calendar.*

Ayes: Commissioners Kistner, Parker, Monnette, Russell & Chairperson Heil

Noes: None

Absent: None

Abstain: None

9.3 2012-44: Design Review & Use Permit

LOCATION: 1429 Main Street

APPLICANT: Edmund Junker

APN: 009-223-006

CEQA: Exempt pursuant to Section 15303, Class 3.

Item 9.3 was been continued to the October 1, 2013 meeting at the request of the applicant.

9.4 2013-35: Use Permit & Design Review

LOCATION: 1720 Vineyard Avenue

APPLICANT: Anthony Filippis

APN: 009-172-022

CEQA: Exempt pursuant to Section 15303, Class 3.

DESCRIPTION: Request by the applicant for Design Review and Use Permit approval to construct a new 2-story 1,596 sq. ft. 2-bedroom residence on a 3,250 sq. ft. parcel located at 1720 Vineyard Avenue in the MR: Medium Density Residential district.

REQUIRED ACTION: *Determine that the project qualifies for CEQA exemption pursuant to Section 15303, accept or reject the required findings and approve or deny the request for Design Review and Use Permit approval.*

MOTION: *It was moved by Commissioner Russell and seconded by Commissioner Monnette to deny Design Review approval for item 9.4*

Ayes: Commissioners Russell, Monnette, Parker & Kistner

Noes: None

Absent: None

Abstain: Chairperson Heil

10. PUBLIC HEARINGS/ RECOMMENDATIONS TO CITY COUNCIL: None

11. REFERRALS: None

12. REPORTS BY STAFF AND PLANNING COMMISSION: None

13. AGENDA FORECAST:

14. **ADJOURNMENT:** A motion was made to adjourn to a regularly scheduled meeting of the Planning Commission on August 20, 2013 at 7:00 p.m. in the Vintage Hall Board Room, 465 Main Street, St. Helena, CA.

Greg Desmond - Interim Planning Director

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**Report to the City Council
Council Meeting of January 12, 2016**

Agenda Section: Public Hearing

Subject: Introduction and first reading Ordinance adding Chapter 17.126 to the St. Helena Municipal Code to prohibit marijuana cultivation, dispensaries and deliveries within the City of St. Helena, subject to limited exceptions, and repealing St. Helena Municipal Code Chapter 9.18

CEQA Status: The Ordinance is exempt from CEQA pursuant to Guidelines Sections 15061(b)(1), 15061(b)(2), and specifically, the "General Rule" Section 15061(b)(3), where it can be seen with certainty that the proposed action will have no significant effect on the environment. Moreover, the adoption of this Ordinance is further exempt from CEQA because the Ordinance does not change, but instead codifies existing City law and practice.

Prepared By: Noah Housh, Planning and Community Improvement Director

Approved By: Jennifer Phillips, City Manager

BACKGROUND

On October 9, 2015, Governor Brown signed into law a suite of legislation termed The Medical Marijuana Regulation and Safety Act, including Senate Bill 643 (McGuire), Assembly Bill 266 (Bonta), and Assembly Bill 243 (Wood). These bills contain numerous provisions, including the creation of a new state agency: the Bureau of Medical Marijuana Regulation under the California Department of Consumer Affairs. It also defines medical marijuana as an agricultural product.

These bills regulate medical marijuana in five distinct categories: manufacturing, dispensing, transportation, delivery, and cultivation. The first three areas will be regulated by various State agencies. However, the activities of delivery and cultivation will fall under local land use jurisdiction. Delivery refers to the transfer of medical marijuana or marijuana products to a primary caregiver or patient. It also includes transfer to a testing laboratory.

AB 243 contains a provision stating that cities that do not have an ordinance regulating or prohibiting cultivation by March 1, 2016 will lose the authority to regulate or ban

cultivation within their city limits and the state will become the sole licensing authority. Although this date has been identified as an error (and the bill's author has agreed to extend the deadline via clean-up legislation) cities wishing to modify the allowances granted by the State, have been advised to enact legislation by the end of February to ensure their legislative goals are enacted.

Under Section 19340.(b).(1) of the Business and Professions Code, a city or county must explicitly by ordinance prohibit delivery. If the city or county does not adopt an ordinance regarding delivery, then it is prohibited from preventing lawful delivery. Jurisdictions that allow delivery may impose a tax on each delivery transaction.

Cultivation involves the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. Section 11362.777.(c).(1) states that a city or county may issue or deny permits to cultivate medical marijuana. Any conditional permits issued by the city or county must be at least as strict as the state licensing requirements. If, however, a city or county does not have an ordinance regulating or prohibiting the cultivation of marijuana or chooses not to administer a conditional permit program, then the California Department of Food and Agriculture will become the sole permitting authority for medical marijuana cultivation in that city or county.

Any city or county with a business license program may impose fees and taxes on businesses regulated under this legislation.

If no action is taken to address these state regulations by March 1, the state regulations would become the default, based on current language in the adopted legislation (although clean-up language on the deadline has been promised).

of allowing 6 mature and 12 immature (medical) marijuana plants to be grown would become a legal threshold by which marijuana cultivation is permitted in St. Helena.

DISCUSSION

Currently, outdoor cultivation of Medical Marijuana is expressly prohibited in Section 9.18 of the City of St Helena Municipal Code, while other un-permitted medical marijuana activities (such as dispensary operations) are prohibited through permissive zoning limitations. In response to the requirements of the above referenced legislation, staff has prepared an ordinance which would continue the current prohibitions on most medical marijuana activities within St Helena. These formal prohibitions would be incorporated into the land use (zoning) portion of the Municipal Code under Section 17.126, as directed by the new state regulations.

On November 3, 2015, the County of Napa directed their staff to continue the County prohibition on commercial marijuana cultivation and operation of medical marijuana dispensaries within the jurisdiction of the un-incorporated County areas. However there

was some concern voiced to continue to allow citizens in the un-incorporated areas to maintain personal access to medical marijuana through delivery services (from outside the County) and personal medical marijuana growing.

In response to the recently passed State legislation, City staff has prepared the attached Ordinance revisions. These revisions are essentially intended to maintain the status quo regarding medical marijuana regulation within St Helena. Currently, all outdoor cultivation and dispensary services are prohibited while limited indoor cultivation (12-immature and 6-mature plants per qualified patient) and non-commercial delivery services (from a dedicated caregiver to a qualified patient) are allowable. The attached regulations would maintain these prohibitions and allowances.

FISCAL IMPACT

The fiscal impacts of a continued ban on outdoor medical marijuana cultivation and operation of a medical marijuana dispensary are minimal as the ban essentially maintains the status quo. The state legislation does allow for taxation of sales, should delivery services and/or dispensary operations be permitted. The financial impacts of such as tax are unknown at this time.

PLANNING COMMISSION REVIEW/ACTION

On December 15, 2015, the Planning Commission reviewed the proposed ordinance at a noticed Public Hearing. After reviewing the proposed legislation and holding a brief discussion of the regulations, no issues were identified by the Planning Commission. The Commission then voted unanimously (5-0) to recommend that the City Council adopt the draft Ordinance, as proposed.

RECOMMENDED ACTION

It is recommended by the Planning Commission and the Planning and Community Improvement Department that the City Council conduct the first reading and introduction by title only of the proposed ordinance regulating Medical Marijuana in the City of St. Helena.

ATTACHMENTS

- A. Draft Ordinance to revise the Medical Marijuana Regulations within the City of St. Helena with Exhibit A-Text of Proposed Municipal Code Revisions
- B. Attachment B - Assembly Bill 243
- C. Attachment C - Assembly Bill 266
- D. Attachment D – Senate Bill 643
- E. California Medical Marijuana Regulatory Responsibility Factsheet
- F. Santa Clara District Attorney Report
- G. White Paper on Medical Marijuana Dispensaries

CITY OF ST. HELENA

ORDINANCE NO. _____

ADDING CHAPTER 17.126 TO THE ST. HELENA MUNICIPAL CODE TO PROHIBIT MARIJUANA CULTIVATION, DISPENSARIES AND DELIVERIES WITHIN THE CITY OF ST. HELENA, SUBJECT TO LIMITED EXCEPTIONS, AND REPEALING ST. HELENA MUNICIPAL CODE CHAPTER 9.18.

The City Council of the City of St. Helena does hereby ordain as follows:

SECTION 1. Findings. In adopting this Ordinance, the City Council finds:

A. In 1970, Congress enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States.

B. In 1972, California added Chapter 6 to the state Uniform Controlled Substances Act, commencing at Health and Safety Code section 11350, which established the state's prohibition, penalties, and punishments for the possession, cultivation, transportation, and distribution of marijuana.

C. In 1996, the voters of the State of California approved Proposition 215 (the "Act;" Health and Safety (H&S) Code Section 11362.5 et seq.).

D. California courts have held that the Act creates a limited exception from criminal liability under the state Uniform Controlled Substances Act for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances.

E. On January 1, 2004, the "Medical Marijuana Program" (MMP), codified as H&S Code Sections 11362.7 to 11362.83, was enacted by the state Legislature to clarify the scope of the Act, establish a voluntary program for identification cards issued by counties for qualified patients and primary caregivers, and provide criminal immunity to qualified patients and primary caregivers for certain activities involving medical marijuana, including the collective or cooperative cultivation of medical marijuana.

F. The California Supreme Court ruled unanimously in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, that the Act and the MMP do not preempt local ordinances that completely and permanently ban medical marijuana dispensaries, collectives, and cooperatives.

G. In *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Third District Court of Appeal held, based on *Inland Empire*, that there was no right to cultivate medical marijuana and that a city could implement and enforce a complete ban on this activity, including a ban on personal cultivation.

H. On October 9, 2015, Assembly Bills 243 and 266 and Senate Bill 643 (collectively, the “Medical Marijuana Regulation and Safety Act” or “MMRSA”) were enacted to create a state regulatory and licensing system governing the cultivation, testing, and distribution of medical marijuana, the manufacturing of medical marijuana products, and physician recommendations for medical marijuana.

I. While the new legislation expressly preserves local control over medical marijuana facilities and land uses, including the authority to prohibit all medical marijuana businesses and cultivation completely, newly-added Health & Safety Code section 11362.777(c)(4) provides that if a city does not have a land use regulation or ordinance regulating or prohibiting marijuana cultivation, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program under that section, then commencing March 1, 2016, the state Department of Food and Agriculture will become the sole licensing authority for marijuana cultivation in that jurisdiction.

J. Under newly-added Business and Professions Code section 19340(a), if a city wants to prevent medical marijuana deliveries within its jurisdiction, it must adopt an ordinance expressly prohibiting them.

K. Municipal Code Chapter 9.18 prohibits outdoor marijuana cultivation, but the Municipal Code does not expressly address medical marijuana businesses, dispensaries, indoor cultivation activities, and marijuana delivery services. Because such land uses are not listed in the Zoning Code as either permitted or conditionally-permitted land uses, they are, therefore, prohibited under the City’s permissive zoning provisions, as set forth in Municipal Code section 17.04.040 (*City of Corona v. Naulls* (2008) 166 Cal.App.4th 418, 431-433).

L. The City Council has determined that express Municipal Code regulations regarding medical marijuana dispensaries, indoor and outdoor marijuana cultivation facilities, commercial cannabis activities, and medical marijuana deliveries will benefit the public by providing clear guidelines regarding the scope of prohibited conduct and minimize the potential for confusion regarding the City’s policies.

M. Several California cities and counties have experienced serious adverse impacts associated with and resulting from medical marijuana dispensaries, cultivation sites, and delivery services. According to these communities and according to news stories widely reported, medical marijuana activities have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, and illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana activities. There have also been large numbers of complaints of odors related to the cultivation and storage of marijuana.

N. A California Police Chiefs Association compilation of police reports, news stories, and statistical research regarding crimes involving medical marijuana businesses and their secondary impacts on the community is contained in a 2009 white paper report which is

attached to the staff report presented to the City Council with this ordinance and on file with the City Clerk.

O. The Santa Clara County District Attorney's Office issued a May 2014 memorandum entitled "Issues Surrounding Marijuana in Santa Clara County," which outlined many of the negative secondary effects resulting from marijuana cultivation; a copy of this memorandum is attached to the staff report presented to the City Council with this ordinance and on file with the City Clerk.

Q. It is reasonable to conclude that medical marijuana dispensaries, marijuana cultivation facilities, commercial cannabis activities, and medical marijuana deliveries could cause similar adverse impacts on the public health, safety, and welfare in St. Helena.

R. In order to protect the public health, safety, and welfare, the City Council desires to add St. Helena Municipal Code Chapter 17.126 to prohibit, in express terms, medical marijuana dispensaries, marijuana cultivation facilities, commercial cannabis activities, and medical marijuana deliveries, subject to limited specified exceptions, and to repeal St. Helena Municipal Code Chapter 9.18.

S. These regulations were reviewed by the St. Helena Planning Commission on December 15, 2015, at a duly noticed Public Hearing and the regulations were recommended to the City Council for adoption by a vote of 5-0.

SECTION 2. Adding Chapter 17.126. Chapter 17.126 is hereby added to Title 17 of the St. Helena Municipal Code to read in its entirety as shown on Exhibit A, attached hereto and incorporated herein by reference.

SECTION 3. Repealing Former Chapter 9.18. St. Helena Municipal Code Chapter 9.18 is hereby repealed.

SECTION 4. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance to amend Chapter 17.126 of the St. Helena Municipal Code is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) because the City Council hereby finds that it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment, and the Ordinance is exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(1), 15061(b)(2), and 15061(b)(3). Moreover, the adoption of this Ordinance is further exempt from CEQA because the Ordinance does not change, but instead codifies existing City law and practice.

SECTION 5. Severability. The City Council hereby declares every section, paragraph, sentence, cause and phrase is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 6: Inclusion in the St. Helena Municipal Code. It is the intention of the St. Helena City Council that the text in Exhibit A of this ordinance be made a part of the St. Helena Municipal Code and that the text may be renumbered or re-lettered and the word "Ordinance" may be changed to "Section," "Chapter," or such other appropriate word or phrase to accomplish this intention.

SECTION 7: Effective Date. This ordinance shall take effect and be in force 30 days after its adoption, and a summary of this ordinance shall be published once with the names of the members of the Council voting for and against the ordinance in the St. Helena Star, a newspaper of general circulation published in the city of St. Helena.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the St. Helena City Council on the _12_ th day of January, 2016, and was adopted at a regular meeting of the St. Helena City Council on the __26th day of January_, 2016, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Alan Galbraith, Mayor

ATTEST:

CITY OF ST. HELENA

Cindy Black, City Clerk

I, CINDY BLACK, CITY CLERK of the City of St. Helena, California, do hereby certify that the foregoing Ordinance was regularly introduced and placed upon its first reading at a regular meeting of the City Council on the _12th day of January, 2016. That thereafter said Ordinance was duly adopted and passed at a regular meeting of the City Council on the _26th day of January, 2016 by the following vote:

AYES:
NOES:
ABSENT:

ABSTAIN:

Cindy Black, City Clerk

APPROVED AS TO FORM:

Thomas B. Brown, City Attorney

EXHIBIT A**Chapter 17.126
Medical Marijuana Facilities**

Sections:

17.126.010	Purpose
17.126.020	Definitions
17.26.030	Prohibitions
17.26.040	Enforcement

17.126.010 Purpose

The purpose and intent of this chapter is to prohibit marijuana cultivation facilities, medical marijuana dispensaries, medical marijuana deliveries, and commercial cannabis activities, as defined below, subject to limited and specified exceptions, within the City limits. It is recognized that it is a Federal violation under the Controlled Substances Act to possess or distribute marijuana even if for medical purposes. Additionally, there is evidence of an increased incidence of crime-related secondary impacts in locations associated with marijuana cultivation facilities and medical marijuana dispensaries and in connection with medical marijuana deliveries, which is contrary to policies that are intended to promote and maintain the public's health, safety, and welfare.

17.126.020 Definitions

The following definitions shall apply to the provisions of this chapter:

- A. "Commercial cannabis activity" shall have the meaning set forth in Business and Professions Code section 19300.5(k).
- B. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.
- C. "Establish" or "operate" a marijuana cultivation facility, medical marijuana dispensary, or commercial cannabis activity means and includes any of the following:
 - 1. The opening or commencement of the operation of a marijuana cultivation facility, medical marijuana dispensary, or commercial cannabis activity;
 - 2. The conversion of an existing business, facility, use, establishment, or location to a marijuana cultivation facility, medical marijuana dispensary, or commercial cannabis activity;
 - 3. The addition of a marijuana cultivation facility, medical marijuana dispensary, or commercial cannabis activity to any other existing business, facility, use, establishment or location.

D. "Marijuana" means all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It includes marijuana infused in foodstuff, and concentrated cannabis and the separated resin, whether crude or petrified, obtained from marijuana. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant that are incapable of germination.

E. "Medical marijuana" is marijuana used for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of acquired immune deficiency syndrome ("AIDS"), anorexia, arthritis, cancer, chronic pain, glaucoma, migraine, spasticity, or any other serious medical condition for which marijuana is deemed to provide relief as defined in subsection (h) of Health and Safety Code § 11362.7.

F. "Marijuana cultivation facility" means any business, facility, use, establishment, property, or location where the cultivation of marijuana occurs.

G. "Medical marijuana dispensary" means any business, facility, use, establishment, property, or location, whether fixed or mobile, where medical marijuana is sold, made available, delivered and/or distributed by or to three or more people. A "medical marijuana dispensary" does not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code § 11362.5 et seq.

17.126.030 Prohibitions and Limited Exceptions.

A. Medical marijuana dispensaries are prohibited in all zoning districts in the city and shall not be established or operated anywhere in the city. The city shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of a medical marijuana dispensary. No person may be the lessor of property where a medical marijuana dispensary is located. No person may participate as an employee, contractor, agent, volunteer, or in any manner or capacity in any medical marijuana dispensary in the city.

B. Marijuana cultivation facilities are prohibited in all zoning districts in the city and shall not be established or operated anywhere in the city. The city shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of a marijuana cultivation facility. No person may be the lessor of property where a marijuana cultivation facility is

located. No person may participate as an employee, contractor, agent, volunteer, or in any manner or capacity in any marijuana cultivation facility in the city.

C. The prohibition against cultivation facilities set forth in subsection B above, however, shall not apply to a qualified patient cultivating marijuana/cannabis pursuant to Section 11362.5 and the Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use promulgated by the California Attorney General under the following circumstances:

1. The patient maintains no more than 6 mature or 12 immature marijuana/cannabis plants; and
2. The patient cultivates marijuana/cannabis for his or her personal medical use and does not sell, distribute, donate, transmit, or provide marijuana/cannabis to any other person or entity; and
3. The location of all cultivation activities is located in-doors, and housed completely within a structure with no external indication of cultivation activities; and
3. The property on which the qualified patient is cultivating marijuana/cannabis has no more than 100 square feet devoted to the cultivation of marijuana /cannabis by any qualified patient or combination of qualified patients (the area used to cultivate marijuana/cannabis shall be measured by the aggregate area of vegetative growth of live marijuana plants on the premises).

Notwithstanding this exception, a qualified patient cultivating marijuana may not create or cause a nuisance condition and the city may abate, in any manner permitted by law, a nuisance condition created or caused by, associated with, or arising from marijuana cultivation by a qualified patient.

D. Commercial cannabis activities are prohibited in all zoning districts in the city and shall not be established or operated anywhere in the city. The city shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of a commercial cannabis activity. No person may be the lessor of property where a commercial cannabis activity is located. No person may participate as an employee, contractor, agent, volunteer, or in any manner or capacity in any commercial cannabis activity in the city.

E. No person and/or entity may deliver or transport medical marijuana from any fixed or mobile location, either inside or outside the city, to any person in the city, except that a person may deliver or transport medical marijuana to a qualified patient or person with an identification card, as those terms are defined in Health and Safety Code section 11362.7, for whom he or she is the primary caregiver within the meaning of Health and Safety Code sections 11362.5 and 11362.7(d).

F. Nothing contained in this section shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.

17.26.040 Enforcement

The city may enforce this chapter in any manner permitted by law. The violation of this chapter shall be and is hereby declared to be a public nuisance and contrary to the public interest and shall, at the discretion of the city, create a cause of action for injunctive relief.

Assembly Bill No. 243

CHAPTER 688

An act to add Article 6 (commencing with Section 19331), Article 13 (commencing with Section 19350), and Article 17 (commencing with Section 19360) to Chapter 3.5 of Division 8 of the Business and Professions Code, to add Section 12029 to the Fish and Game Code, to add Sections 11362.769 and 11362.777 to the Health and Safety Code, and to add Section 13276 to the Water Code, relating to medical marijuana, and making an appropriation therefor.

[Approved by Governor October 9, 2015. Filed with
Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 243, Wood. Medical marijuana.

Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by boards or bureaus within the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill would require the Department of Food and Agriculture, the Department of Pesticide Regulation, the State Department of Public Health, the Department of Fish and Wildlife, and the State Water Resources Control Board to promulgate regulations or standards relating to medical marijuana and its cultivation, as specified. The bill would also require various state agencies to take specified actions to mitigate the impact that marijuana cultivation has on the environment. By requiring cities, counties, and their local law enforcement agencies to coordinate with state agencies to enforce laws addressing the environmental impacts of medical marijuana cultivation, and by including medical marijuana within the Sherman Act, the bill would impose a state-mandated local program.

This bill would require a state licensing authority to charge each licensee under the act a licensure and renewal fee, as applicable, and would further require the deposit of those collected fees into an account specific to that licensing authority in the Medical Marijuana Regulation and Safety Act Fund, which this bill would establish. This bill would impose certain fines

and civil penalties for specified violations of the Medical Marijuana Regulation and Safety Act, and would require moneys collected as a result of these fines and civil penalties to be deposited into the Medical Cannabis Fines and Penalties Account, which this bill would establish within the fund. Moneys in the fund and each account of the fund would be available upon appropriation of the Legislature.

This bill would authorize the Director of Finance to provide an initial operating loan from the General Fund to the Medical Marijuana Regulation and Safety Act Fund of up to \$10,000,000, and would appropriate \$10,000,000 from the Medical Marijuana Regulation and Safety Act Fund to the Department of Consumer Affairs to begin the activities of the bureau.

This bill would provide that its provisions are severable.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would become operative only if AB 266 and SB 643 of the 2015–16 Regular Session are enacted and take effect on or before January 1, 2016.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Article 6 (commencing with Section 19331) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 6. Licensed Cultivation Sites

19331. The Legislature finds and declares all of the following:

(a) The United States Environmental Protection Agency has not established appropriate pesticide tolerances for, or permitted the registration and lawful use of, pesticides on cannabis crops intended for human consumption pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(b) The use of pesticides is not adequately regulated due to the omissions in federal law, and cannabis cultivated in California for California patients can and often does contain pesticide residues.

(c) Lawful California medical cannabis growers and caregivers urge the Department of Pesticide Regulation to provide guidance, in absence of federal guidance, on whether the pesticides currently used at most cannabis

cultivation sites are actually safe for use on cannabis intended for human consumption.

19332. (a) The Department of Food and Agriculture shall promulgate regulations governing the licensing of indoor and outdoor cultivation sites.

(b) The Department of Pesticide Regulation, in consultation with the Department of Food and Agriculture, shall develop standards for the use of pesticides in cultivation, and maximum tolerances for pesticides and other foreign object residue in harvested cannabis.

(c) The State Department of Public Health shall develop standards for the production and labeling of all edible medical cannabis products.

(d) The Department of Food and Agriculture, in consultation with the Department of Fish and Wildlife and the State Water Resources Control Board, shall ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(e) The Department of Food and Agriculture shall have the authority necessary for the implementation of the regulations it adopts pursuant to this chapter. The regulations shall do all of the following:

(1) Provide that weighing or measuring devices used in connection with the sale or distribution of medical cannabis are required to meet standards equivalent to Division 5 (commencing with Section 12001).

(2) Require that cannabis cultivation by licensees is conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, agricultural discharges, and similar matters. Nothing in this chapter, and no regulation adopted by the department, shall be construed to supersede or limit the authority of the State Water Resources Control Board, regional water quality control boards, or the Department of Fish and Wildlife to implement and enforce their statutory obligations or to adopt regulations to protect water quality, water supply, and natural resources.

(3) Establish procedures for the issuance and revocation of unique identifiers for activities associated with a cannabis cultivation license, pursuant to Article 8 (commencing with Section 19337). All cannabis shall be labeled with the unique identifier issued by the Department of Food and Agriculture.

(4) Prescribe standards, in consultation with the bureau, for the reporting of information as necessary related to unique identifiers, pursuant to Article 8 (commencing with Section 19337).

(f) The Department of Pesticide Regulation, in consultation with the State Water Resources Control Board, shall promulgate regulations that require that the application of pesticides or other pest control in connection with the indoor or outdoor cultivation of medical cannabis meets standards equivalent to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

(g) State cultivator license types issued by the Department of Food and Agriculture include:

(1) Type 1, or “specialty outdoor,” for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on noncontiguous plots.

(2) Type 1A, or “specialty indoor,” for indoor cultivation using exclusively artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.

(3) Type 1B, or “specialty mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than or equal to 5,000 square feet of total canopy size on one premises.

(4) Type 2, or “small outdoor,” for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(5) Type 2A, or “small indoor,” for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(6) Type 2B, or “small mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(7) Type 3, or “outdoor,” for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(8) Type 3A, or “indoor,” for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(9) Type 3B, or “mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(10) Type 4, or “nursery,” for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

19333. An employee engaged in commercial cannabis cultivation activity shall be subject to Wage Order 4-2001 of the Industrial Welfare Commission.

SEC. 2. Article 13 (commencing with Section 19350) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 13. Funding

19350. Each licensing authority shall establish a scale of application, licensing, and renewal fees, based upon the cost of enforcing this chapter, as follows:

(a) Each licensing authority shall charge each licensee a licensure and renewal fee, as applicable. The licensure and renewal fee shall be calculated to cover the costs of administering this chapter. The licensure fee may vary depending upon the varying costs associated with administering the various regulatory requirements of this chapter as they relate to the nature and scope of the different licensure activities, including, but not limited to, the track and trace program required pursuant to Section 19335, but shall not exceed the reasonable regulatory costs to the licensing authority.

(b) The total fees assessed pursuant to this chapter shall be set at an amount that will fairly and proportionately generate sufficient total revenue to fully cover the total costs of administering this chapter.

(c) All license fees shall be set on a scaled basis by the licensing authority, dependent on the size of the business.

(d) The licensing authority shall deposit all fees collected in a fee account specific to that licensing authority, to be established in the Medical Marijuana Regulation and Safety Act Fund. Moneys in the licensing authority fee accounts shall be used, upon appropriation of the Legislature, by the designated licensing authority for the administration of this chapter.

19351. (a) The Medical Marijuana Regulation and Safety Act Fund is hereby established within the State Treasury. Moneys in the fund shall be available upon appropriation by the Legislature. Notwithstanding Section 16305.7 of the Government Code, the fund shall include any interest and dividends earned on the moneys in the fund.

(b) (1) Funds for the establishment and support of the regulatory activities pursuant to this chapter shall be advanced as a General Fund or special fund loan, and shall be repaid by the initial proceeds from fees collected pursuant to this chapter or any rule or regulation adopted pursuant to this chapter, by January 1, 2022. Should the initial proceeds from fees not be sufficient to repay the loan, moneys from the Medical Cannabis Fines and Penalties Account shall be made available to the bureau, by appropriation of the Legislature, to repay the loan.

(2) Funds advanced pursuant to this subdivision shall be appropriated to the bureau, which shall distribute the moneys to the appropriate licensing authorities, as necessary to implement the provisions of this chapter.

(3) The Director of Finance may provide an initial operating loan from the General Fund to the Medical Marijuana Regulation and Safety Act Fund that does not exceed ten million dollars (\$10,000,000).

(c) Except as otherwise provided, all moneys collected pursuant to this chapter as a result of fines or penalties imposed under this chapter shall be deposited directly into the Medical Marijuana Fines and Penalties Account, which is hereby established within the fund, and shall be available, upon appropriation by the Legislature to the bureau, for the purposes of funding the enforcement grant program pursuant to subdivision (d).

(d) (1) The bureau shall establish a grant program to allocate moneys from the Medical Cannabis Fines and Penalties Account to state and local entities for the following purposes:

(A) To assist with medical cannabis regulation and the enforcement of this chapter and other state and local laws applicable to cannabis activities.

(B) For allocation to state and local agencies and law enforcement to remedy the environmental impacts of cannabis cultivation.

(2) The costs of the grant program under this subdivision shall, upon appropriation by the Legislature, be paid for with moneys in the Medical Cannabis Fines and Penalties Account.

(3) The grant program established by this subdivision shall only be implemented after the loan specified in this section is repaid.

19352. The sum of ten million dollars (\$10,000,000) is hereby appropriated from the Medical Marijuana Regulation and Safety Act Fund to the Department of Consumer Affairs to begin the activities of the Bureau of Medical Marijuana Regulation. Funds appropriated pursuant to this section shall not include moneys received from fines or penalties.

SEC. 3. Article 17 (commencing with Section 19360) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 17. Penalties and Violations

19360. (a) A person engaging in cannabis activity without a license and associated unique identifiers required by this chapter shall be subject to civil penalties of up to twice the amount of the license fee for each violation, and the department, state or local authority, or court may order the destruction of medical cannabis associated with that violation. Each day of operation shall constitute a separate violation of this section. All civil penalties imposed and collected pursuant to this section shall be deposited into the Marijuana Production and Environment Mitigation Fund established pursuant to Section 31013 of the Revenue and Taxation Code.

(b) If an action for civil penalties is brought against a licensee pursuant to this chapter by the Attorney General, the penalty collected shall be deposited into the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney or city prosecutor, the penalty collected shall be paid to the treasurer of the city or city and county in which the judgment was entered. If the action is brought by a city attorney and is adjudicated in a superior court located in the unincorporated area or another city in the same county, the penalty shall be paid one-half to the treasurer of the city in which the complaining attorney has jurisdiction and one-half to the treasurer of the county in which the judgment is entered.

(c) Notwithstanding subdivision (a), criminal penalties shall continue to apply to an unlicensed person or entity engaging in cannabis activity in violation of this chapter, including, but not limited to, those individuals covered under Section 11362.7 of the Health and Safety Code.

SEC. 4. Section 12029 is added to the Fish and Game Code, to read:

12029. (a) The Legislature finds and declares all of the following:

(1) The environmental impacts associated with marijuana cultivation have increased, and unlawful water diversions for marijuana irrigation have a detrimental effect on fish and wildlife and their habitat, which are held in trust by the state for the benefit of the people of the state.

(2) The remediation of existing marijuana cultivation sites is often complex and the permitting of these sites requires greater department staff time and personnel expenditures. The potential for marijuana cultivation sites to significantly impact the state's fish and wildlife resources requires immediate action on the part of the department's lake and streambed alteration permitting staff.

(b) In order to address unlawful water diversions and other violations of the Fish and Game Code associated with marijuana cultivation, the department shall establish the watershed enforcement program to facilitate the investigation, enforcement, and prosecution of these offenses.

(c) The department, in coordination with the State Water Resources Control Board, shall establish a permanent multiagency task force to address the environmental impacts of marijuana cultivation. The multiagency task force, to the extent feasible and subject to available Resources, shall expand its enforcement efforts on a statewide level to ensure the reduction of adverse impacts of marijuana cultivation on fish and wildlife and their habitats throughout the state.

(d) In order to facilitate the remediation and permitting of marijuana cultivation sites, the department shall adopt regulations to enhance the fees on any entity subject to Section 1602 for marijuana cultivation sites that require remediation. The fee schedule established pursuant to this subdivision shall not exceed the fee limits in Section 1609.

SEC. 5. Section 11362.769 is added to the Health and Safety Code, to read:

11362.769. Indoor and outdoor medical marijuana cultivation shall be conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, water quality, woodland and riparian habitat protection, agricultural discharges, and similar matters. State agencies, including, but not limited to, the State Board of Forestry and Fire Protection, the Department of Fish and Wildlife, the State Water Resources Control Board, the California regional water quality control boards, and traditional state law enforcement agencies shall address environmental impacts of medical marijuana cultivation and shall coordinate, when appropriate, with cities and counties and their law enforcement agencies in enforcement efforts.

SEC. 6. Section 11362.777 is added to the Health and Safety Code, to read:

11362.777. (a) The Department of Food and Agriculture shall establish a Medical Cannabis Cultivation Program to be administered by the secretary, except as specified in subdivision (c), shall administer this section as it pertains to the cultivation of medical marijuana. For purposes of this section and Chapter 3.5 (commencing with Section 19300) of the Business and Professions Code, medical cannabis is an agricultural product.

(b) (1) A person or entity shall not cultivate medical marijuana without first obtaining both of the following:

(A) A license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.

(B) A state license issued by the department pursuant to this section.

(2) A person or entity shall not submit an application for a state license issued by the department pursuant to this section unless that person or entity has received a license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.

(3) A person or entity shall not submit an application for a state license issued by the department pursuant to this section if the proposed cultivation of marijuana will violate the provisions of any local ordinance or regulation, or if medical marijuana is prohibited by the city, county, or city and county in which the cultivation is proposed to occur, either expressly or otherwise under principles of permissive zoning.

(c) (1) Except as otherwise specified in this subdivision, and without limiting any other local regulation, a city, county, or city and county, through its current or future land use regulations or ordinance, may issue or deny a permit to cultivate medical marijuana pursuant to this section. A city, county, or city and county may inspect the intended cultivation site for suitability prior to issuing a permit. After the city, county, or city and county has approved a permit, the applicant shall apply for a state medical marijuana cultivation license from the department. A locally issued cultivation permit shall only become active upon licensing by the department and receiving final local approval. A person shall not cultivate medical marijuana prior to obtaining both a permit from the city, county, or city and county and a state medical marijuana cultivation license from the department.

(2) A city, county, or city and county that issues or denies conditional licenses to cultivate medical marijuana pursuant to this section shall notify the department in a manner prescribed by the secretary.

(3) A city, county, or city and county's locally issued conditional permit requirements must be at least as stringent as the department's state licensing requirements.

(4) If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county.

(d) (1) The secretary may prescribe, adopt, and enforce regulations relating to the implementation, administration, and enforcement of this part, including, but not limited to, applicant requirements, collections, reporting, refunds, and appeals.

(2) The secretary may prescribe, adopt, and enforce any emergency regulations as necessary to implement this part. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(3) The secretary may enter into a cooperative agreement with a county agricultural commissioner to carry out the provisions of this chapter, including, but not limited to, administration, investigations, inspections, licensing and assistance pertaining to the cultivation of medical marijuana. Compensation under the cooperative agreement shall be paid from assessments and fees collected and deposited pursuant to this chapter and shall provide reimbursement to the county agricultural commissioner for associated costs.

(e) (1) The department, in consultation with, but not limited to, the Bureau of Medical Marijuana Regulation, the State Water Resources Control Board, and the Department of Fish and Wildlife, shall implement a unique identification program for medical marijuana. In implementing the program, the department shall consider issues, including, but not limited to, water use and environmental impacts. In implementing the program, the department shall ensure that:

(A) Individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(B) Cultivation will not negatively impact springs, riparian wetlands, and aquatic habitats.

(2) The department shall establish a program for the identification of permitted medical marijuana plants at a cultivation site during the cultivation period. The unique identifier shall be attached at the base of each plant. A unique identifier, such as, but not limited to, a zip tie, shall be issued for each medical marijuana plant.

(A) Unique identifiers will only be issued to those persons appropriately licensed by this section.

(B) Information associated with the assigned unique identifier and licensee shall be included in the trace and track program specified in Section 19335 of the Business and Professions Code.

(C) The department may charge a fee to cover the reasonable costs of issuing the unique identifier and monitoring, tracking, and inspecting each medical marijuana plant.

(D) The department may promulgate regulations to implement this section.

(3) The department shall take adequate steps to establish protections against fraudulent unique identifiers and limit illegal diversion of unique identifiers to unlicensed persons.

(f) (1) A city, county, or city and county that issues or denies licenses to cultivate medical marijuana pursuant to this section shall notify the department in a manner prescribed by the secretary.

(2) Unique identifiers and associated identifying information administered by a city or county shall adhere to the requirements set by the department and be the equivalent to those administered by the department.

(g) This section does not apply to a qualified patient cultivating marijuana pursuant to Section 11362.5 if the area he or she uses to cultivate marijuana does not exceed 100 square feet and he or she cultivates marijuana for his or her personal medical use and does not sell, distribute, donate, or provide marijuana to any other person or entity. This section does not apply to a primary caregiver cultivating marijuana pursuant to Section 11362.5 if the area he or she uses to cultivate marijuana does not exceed 500 square feet and he or she cultivates marijuana exclusively for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 and does not receive remuneration for these activities, except for compensation provided in full compliance with subdivision (c) of Section 11362.765. For purposes of this section, the area used to cultivate marijuana shall be measured by the aggregate area of vegetative growth of live marijuana plants on the premises. Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from regulating or banning the cultivation, storage, manufacture, transport, provision, or other activity by the exempt person, or impair the enforcement of that regulation or ban.

SEC. 7. Section 13276 is added to the Water Code, to read:

13276. (a) The multiagency task force, the Department of Fish and Wildlife and State Water Resources Control Board pilot project to address the Environmental Impacts of Cannabis Cultivation, assigned to respond to the damages caused by marijuana cultivation on public and private lands in California, shall continue its enforcement efforts on a permanent basis and expand them to a statewide level to ensure the reduction of adverse impacts of marijuana cultivation on water quality and on fish and wildlife throughout the state.

(b) Each regional board shall, and the State Water Resources Control Board may, address discharges of waste resulting from medical marijuana cultivation and associated activities, including by adopting a general permit, establishing waste discharge requirements, or taking action pursuant to Section 13269. In addressing these discharges, each regional board shall include conditions to address items that include, but are not limited to, all of the following:

(1) Site development and maintenance, erosion control, and drainage features.

(2) Stream crossing installation and maintenance.

(3) Riparian and wetland protection and management.

- (4) Soil disposal.
- (5) Water storage and use.
- (6) Irrigation runoff.
- (7) Fertilizers and soil.
- (8) Pesticides and herbicides.
- (9) Petroleum products and other chemicals.
- (10) Cultivation-related waste.
- (11) Refuse and human waste.
- (12) Cleanup, restoration, and mitigation.

SEC. 8. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 10. This measure shall become operative only if both Assembly Bill 266 and Senate Bill 643 of the 2015–16 Regular Session are enacted and become operative.

Assembly Bill No. 266

CHAPTER 689

An act to amend Sections 27 and 101 of, to add Section 205.1 to, and to add Chapter 3.5 (commencing with Section 19300) to Division 8 of, the Business and Professions Code, to amend Section 9147.7 of the Government Code, to amend Section 11362.775 of the Health and Safety Code, to add Section 147.5 to the Labor Code, and to add Section 31020 to the Revenue and Taxation Code, relating to medical marijuana.

[Approved by Governor October 9, 2015. Filed with
Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 266, Bonta. Medical marijuana.

(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by boards or bureaus within the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill, among other things, would enact the Medical Marijuana Regulation and Safety Act for the licensure and regulation of medical marijuana and would establish within the Department of Consumer Affairs the Bureau of Medical Marijuana Regulation, under the supervision and control of the Director of Consumer Affairs. The bill would require the director to administer and enforce the provisions of the act.

This bill would also require the Board of Equalization, in consultation with the Department of Food and Agriculture, to adopt a system for reporting the movement of commercial cannabis and cannabis products.

This bill would impose certain fines and civil penalties for specified violations of the act, and would require moneys collected as a result of these fines and civil penalties to be deposited into the Medical Cannabis Fines and Penalties Account.

(2) Under existing law, certain persons with identification cards, who associate within the state in order collectively or cooperatively to cultivate marijuana for medical purposes, are not solely on the basis of that fact subject to specified state criminal sanctions.

This bill would repeal these provisions upon the issuance of licenses by licensing authorities pursuant to the Medical Marijuana Regulation and Safety Act, as specified, and would instead provide that actions of licensees with the relevant local permits, in accordance with the act and applicable local ordinances, are not offenses subject to arrest, prosecution, or other sanction under state law.

(3) This bill would provide that its provisions are severable.

(4) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(6) The bill would provide that it shall become operative only if SB 643 and AB 243 of the 2015–16 Regular Session are also enacted and become operative.

The people of the State of California do enact as follows:

SECTION 1. Section 27 of the Business and Professions Code is amended to read:

27. (a) Each entity specified in subdivisions (c), (d), and (e) shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action, including accusations filed pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a

physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) In providing information on the Internet, each entity specified in subdivisions (c) and (d) shall comply with the Department of Consumer Affairs' guidelines for access to public records.

(c) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Board for Professional Engineers, Land Surveyors, and Geologists shall disclose information on its registrants and licensees.

(2) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(3) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation shall disclose information on its licensees and registrants, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(4) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, cemetery managers, crematory managers, cemetery authorities, crematories, cremated remains disposers, embalmers, funeral establishments, and funeral directors.

(5) The Professional Fiduciaries Bureau shall disclose information on its licensees.

(6) The Contractors' State License Board shall disclose information on its licensees and registrants in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(7) The Bureau for Private Postsecondary Education shall disclose information on private postsecondary institutions under its jurisdiction, including disclosure of notices to comply issued pursuant to Section 94935 of the Education Code.

(8) The California Board of Accountancy shall disclose information on its licensees and registrants.

(9) The California Architects Board shall disclose information on its licensees, including architects and landscape architects.

(10) The State Athletic Commission shall disclose information on its licensees and registrants.

(11) The State Board of Barbering and Cosmetology shall disclose information on its licensees.

(12) The State Board of Guide Dogs for the Blind shall disclose information on its licensees and registrants.

(13) The Acupuncture Board shall disclose information on its licensees.

(14) The Board of Behavioral Sciences shall disclose information on its licensees, including licensed marriage and family therapists, licensed clinical

social workers, licensed educational psychologists, and licensed professional clinical counselors.

(15) The Dental Board of California shall disclose information on its licensees.

(16) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of its licensees.

(17) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

(d) The State Board of Chiropractic Examiners shall disclose information on its licensees.

(e) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(f) The Bureau of Medical Marijuana Regulation shall disclose information on its licensees.

(g) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

SEC. 2. Section 101 of the Business and Professions Code is amended to read:

101. The department is comprised of the following:

- (a) The Dental Board of California.
- (b) The Medical Board of California.
- (c) The State Board of Optometry.
- (d) The California State Board of Pharmacy.
- (e) The Veterinary Medical Board.
- (f) The California Board of Accountancy.
- (g) The California Architects Board.
- (h) The Bureau of Barbering and Cosmetology.
- (i) The Board for Professional Engineers and Land Surveyors.
- (j) The Contractors' State License Board.
- (k) The Bureau for Private Postsecondary Education.
- (l) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.
- (m) The Board of Registered Nursing.
- (n) The Board of Behavioral Sciences.
- (o) The State Athletic Commission.
- (p) The Cemetery and Funeral Bureau.
- (q) The State Board of Guide Dogs for the Blind.
- (r) The Bureau of Security and Investigative Services.
- (s) The Court Reporters Board of California.
- (t) The Board of Vocational Nursing and Psychiatric Technicians.
- (u) The Landscape Architects Technical Committee.
- (v) The Division of Investigation.

- (w) The Bureau of Automotive Repair.
- (x) The Respiratory Care Board of California.
- (y) The Acupuncture Board.
- (z) The Board of Psychology.
- (aa) The California Board of Podiatric Medicine.
- (ab) The Physical Therapy Board of California.
- (ac) The Arbitration Review Program.
- (ad) The Physician Assistant Committee.
- (ae) The Speech-Language Pathology and Audiology Board.
- (af) The California Board of Occupational Therapy.
- (ag) The Osteopathic Medical Board of California.
- (ah) The Naturopathic Medicine Committee.
- (ai) The Dental Hygiene Committee of California.
- (aj) The Professional Fiduciaries Bureau.
- (ak) The State Board of Chiropractic Examiners.
- (al) The Bureau of Real Estate.
- (am) The Bureau of Real Estate Appraisers.
- (an) The Structural Pest Control Board.
- (ao) The Bureau of Medical Marijuana Regulation.
- (ap) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 3. Section 205.1 is added to the Business and Professions Code, to read:

205.1. Notwithstanding subdivision (a) of Section 205, the Medical Marijuana Regulation and Safety Act Fund is a special fund within the Professions and Vocations Fund, and is subject to subdivision (b) of Section 205.

SEC. 4. Chapter 3.5 (commencing with Section 19300) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 3.5. MEDICAL MARIJUANA REGULATION AND SAFETY ACT

Article 1. Definitions

19300. This act shall be known and may be cited as the Medical Marijuana Regulation and Safety Act.

19300.5. For purposes of this chapter, the following definitions shall apply:

(a) "Accrediting body" means a nonprofit organization that requires conformance to ISO/IEC 17025 requirements and is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement for Testing.

(b) "Applicant," for purposes of Article 4 (commencing with Section 19319), means the following:

(1) Owner or owners of a proposed facility, including all persons or entities having ownership interest other than a security interest, lien, or encumbrance on property that will be used by the facility.

(2) If the owner is an entity, “owner” includes within the entity each person participating in the direction, control, or management of, or having a financial interest in, the proposed facility.

(3) If the applicant is a publicly traded company, “owner” means the chief executive officer or any person or entity with an aggregate ownership interest of 5 percent or more.

(c) “Batch” means a specific quantity of medical cannabis or medical cannabis products that is intended to have uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture.

(d) “Bureau” means the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs.

(e) “Cannabinoid” or “phytocannabinoid” means a chemical compound that is unique to and derived from cannabis.

(f) “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from marijuana. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, “cannabis” does not mean “industrial hemp” as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(g) “Cannabis concentrate” means manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product’s potency. An edible medical cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

(h) “Caregiver” or “primary caregiver” has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

(i) “Certificate of accreditation” means a certificate issued by an accrediting body to a licensed testing laboratory, entity, or site to be registered in the state.

(j) “Chief” means Chief of the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs.

(k) “Commercial cannabis activity” includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product, except as set forth in Section 19319, related to qualifying patients and primary caregivers.

(l) “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

(m) “Delivery” means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. “Delivery” also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under this chapter, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

(n) “Dispensary” means a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical cannabis and medical cannabis products as part of a retail sale.

(o) “Dispensing” means any activity involving the retail sale of medical cannabis or medical cannabis products from a dispensary.

(p) “Distribution” means the procurement, sale, and transport of medical cannabis and medical cannabis products between entities licensed pursuant to this chapter.

(q) “Distributor” means a person licensed under this chapter to engage in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a licensed manufacturer, for sale to a licensed dispensary.

(r) “Dried flower” means all dead medical cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.

(s) “Edible cannabis product” means manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum. An edible medical cannabis product is not considered food as defined by Section 109935 of the Health and Safety Code or a drug as defined by Section 109925 of the Health and Safety Code.

(t) “Fund” means the Medical Marijuana Regulation and Safety Act Fund established pursuant to Section 19351.

(u) “Identification program” means the universal identification certificate program for commercial medical cannabis activity authorized by this chapter.

(v) “Labor peace agreement” means an agreement between a licensee and a bona fide labor organization that, at a minimum, protects the state’s proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant’s business. This agreement means that the

applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the applicant's employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

(w) "Licensing authority" means the state agency responsible for the issuance, renewal, or reinstatement of the license, or the state agency authorized to take disciplinary action against the license.

(x) "Cultivation site" means a facility where medical cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities, that holds a valid state license pursuant to this chapter, and that holds a valid local license or permit.

(y) "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured medical cannabis, as described in subdivision (ae), or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container, that holds a valid state license pursuant to this chapter, and that holds a valid local license or permit.

(z) "Testing laboratory" means a facility, entity, or site in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in the medical cannabis industry in the state.

(2) Registered with the State Department of Public Health.

(aa) "Transporter" means a person issued a state license by the bureau to transport medical cannabis or medical cannabis products in an amount above a threshold determined by the bureau between facilities that have been issued a state license pursuant to this chapter.

(ab) "Licensee" means a person issued a state license under this chapter to engage in commercial cannabis activity.

(ac) "Live plants" means living medical cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants.

(ad) "Lot" means a batch, or a specifically identified portion of a batch, having uniform character and quality within specified limits. In the case of medical cannabis or a medical cannabis product produced by a continuous process, "lot" means a specifically identified amount produced in a unit of time or a quantity in a manner that ensures its having uniform character and quality within specified limits.

(ae) "Manufactured cannabis" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

(af) “Manufacturing site” means a location that produces, prepares, propagates, or compounds manufactured medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a licensee for these activities.

(ag) “Medical cannabis,” “medical cannabis product,” or “cannabis product” means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. For the purposes of this chapter, “medical cannabis” does not include “industrial hemp” as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(ah) “Nursery” means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of medical cannabis.

(ai) “Permit,” “local license,” or “local permit” means an official document granted by a local jurisdiction that specifically authorizes a person to conduct commercial cannabis activity in the local jurisdiction.

(aj) “Person” means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

(ak) “State license,” “license,” or “registration” means a state license issued pursuant to this chapter.

(al) “Topical cannabis” means a product intended for external use. A topical cannabis product is not considered a drug as defined by Section 109925 of the Health and Safety Code.

(am) “Transport” means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to this chapter.

19300.7. License classifications pursuant to this chapter are as follows:

- (a) Type 1 = Cultivation; Specialty outdoor; Small.
- (b) Type 1A = Cultivation; Specialty indoor; Small.
- (c) Type 1B = Cultivation; Specialty mixed-light; Small.
- (d) Type 2 = Cultivation; Outdoor; Small.
- (e) Type 2A = Cultivation; Indoor; Small.
- (f) Type 2B = Cultivation; Mixed-light; Small.
- (g) Type 3 = Cultivation; Outdoor; Medium.
- (h) Type 3A = Cultivation; Indoor; Medium.
- (i) Type 3B = Cultivation; Mixed-light; Medium.
- (j) Type 4 = Cultivation; Nursery.
- (k) Type 6 = Manufacturer 1.
- (l) Type 7 = Manufacturer 2.
- (m) Type 8 = Testing.

- (n) Type 10 = Dispensary; General.
- (o) Type 10A = Dispensary; No more than three retail sites.
- (p) Type 11 = Distribution.
- (q) Type 12 = Transporter.

Article 2. Administration

19302. There is in the Department of Consumer Affairs the Bureau of Medical Marijuana Regulation, under the supervision and control of the director. The director shall administer and enforce the provisions of this chapter.

19303. Protection of the public shall be the highest priority for the bureau in exercising its licensing, regulatory, and disciplinary functions under this chapter. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

19304. The bureau shall make and prescribe reasonable rules as may be necessary or proper to carry out the purposes and intent of this chapter and to enable it to exercise the powers and duties conferred upon it by this chapter, not inconsistent with any statute of this state, including particularly this chapter and Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the performance of its duties, the bureau has the power conferred by Sections 11180 to 11191, inclusive, of the Government Code.

19305. Notice of any action of the licensing authority required by this chapter to be given may be signed and given by the director or an authorized employee of the department and may be made personally or in the manner prescribed by Section 1013 of the Code of Civil Procedure.

19306. (a) The bureau may convene an advisory committee to advise the bureau and licensing authorities on the development of standards and regulations pursuant to this chapter, including best practices and guidelines to ensure qualified patients have adequate access to medical cannabis and medical cannabis products. The advisory committee members shall be determined by the chief.

(b) The advisory committee members may include, but not be limited to, representatives of the medical marijuana industry, representatives of medical marijuana cultivators, appropriate local and state agencies, appropriate local and state law enforcement, physicians, environmental and public health experts, and medical marijuana patient advocates.

19307. A licensing authority may make or cause to be made such investigation as it deems necessary to carry out its duties under this chapter.

19308. For any hearing held pursuant to this chapter, the director, or a licensing authority, may delegate the power to hear and decide to an administrative law judge. Any hearing before an administrative law judge shall be pursuant to the procedures, rules, and limitations prescribed in

Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

19309. In any hearing before a licensing authority pursuant to this chapter, the licensing authority may pay any person appearing as a witness at the hearing at the request of the licensing authority pursuant to a subpoena, his or her actual, necessary, and reasonable travel, food, and lodging expenses, not to exceed the amount authorized for state employees.

19310. The department may on its own motion at any time before a penalty assessment is placed into effect and without any further proceedings, review the penalty, but such review shall be limited to its reduction.

Article 3. Enforcement

19311. Grounds for disciplinary action include:

(a) Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter.

(b) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 3 (commencing with Section 490) of Division 1.5.

(c) Any other grounds contained in regulations adopted by a licensing authority pursuant to this chapter.

(d) Failure to comply with any state law, except as provided for in this chapter or other California law.

19312. Each licensing authority may suspend or revoke licenses, after proper notice and hearing to the licensee, if the licensee is found to have committed any of the acts or omissions constituting grounds for disciplinary action. The disciplinary proceedings under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director of each licensing authority shall have all the powers granted therein.

19313. Each licensing authority may take disciplinary action against a licensee for any violation of this chapter when the violation was committed by the licensee's agent or employee while acting on behalf of the licensee or engaged in commercial cannabis activity.

19313.5. Upon suspension or revocation of a license, the licensing authority shall inform the bureau. The bureau shall then inform all other licensing authorities and the Department of Food and Agriculture.

19314. All accusations against licensees shall be filed by the licensing authority within five years after the performance of the act or omission alleged as the ground for disciplinary action; provided, however, that the foregoing provision shall not constitute a defense to an accusation alleging fraud or misrepresentation as a ground for disciplinary action. The cause for disciplinary action in such case shall not be deemed to have accrued until discovery, by the licensing authority, of the facts constituting the fraud or misrepresentation, and, in such case, the accusation shall be filed within five years after such discovery.

19315. (a) Nothing in this chapter shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.

(b) Nothing in this chapter shall be interpreted to require the Department of Consumer Affairs to undertake local law enforcement responsibilities, enforce local zoning requirements, or enforce local licensing requirements.

(c) Nothing in this chapter shall be interpreted to supersede or limit state agencies from exercising their existing enforcement authority under the Fish and Game Code, the Water Code, the Food and Agricultural Code, or the Health and Safety Code.

19316. (a) Pursuant to Section 7 of Article XI of the California Constitution, a city, county, or city and county may adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity. Any standards, requirements, and regulations regarding health and safety, testing, security, and worker protections established by the state shall be the minimum standards for all licensees statewide.

(b) For facilities issued a state license that are located within the incorporated area of a city, the city shall have full power and authority to enforce this chapter and the regulations promulgated by the bureau or any licensing authority, if delegated by the state. Notwithstanding Sections 101375, 101400, and 101405 of the Health and Safety Code or any contract entered into pursuant thereto, or any other law, the city shall further assume complete responsibility for any regulatory function relating to those licensees within the city limits that would otherwise be performed by the county or any county officer or employee, including a county health officer, without liability, cost, or expense to the county.

(c) Nothing in this chapter, or any regulations promulgated thereunder, shall be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution.

19317. (a) The actions of a licensee, its employees, and its agents that are (1) permitted pursuant to both a state license and a license or permit issued by the local jurisdiction following the requirements of the applicable local ordinances, and (2) conducted in accordance with the requirements of this chapter and regulations adopted pursuant to this chapter, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.

(b) The actions of a person who, in good faith, allows his or her property to be used by a licensee, its employees, and its agents, as permitted pursuant to both a state license and a local license or permit following the requirements of the applicable local ordinances, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.

19318. (a) A person engaging in commercial cannabis activity without a license required by this chapter shall be subject to civil penalties of up to twice the amount of the license fee for each violation, and the court may order the destruction of medical cannabis associated with that violation in accordance with Section 11479 of the Health and Safety Code. Each day of operation shall constitute a separate violation of this section. All civil penalties imposed and collected pursuant to this section by a licensing authority shall be deposited into the Medical Cannabis Fines and Penalties Account established pursuant to Section 19351.

(b) If an action for civil penalties is brought against a licensee pursuant to this chapter by the Attorney General on behalf of the people, the penalty collected shall be deposited into the Medical Cannabis Fines and Penalties Account established pursuant to Section 19351. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney or city prosecutor, the penalty collected shall be paid to the treasurer of the city or city and county in which the judgment was entered. If the action is brought by a city attorney and is adjudicated in a superior court located in the unincorporated area or another city in the same county, the penalty shall be paid one-half to the treasurer of the city in which the complaining attorney has jurisdiction and one-half to the treasurer of the county in which the judgment is entered.

(c) Notwithstanding subdivision (a), criminal penalties shall continue to apply to an unlicensed person engaging in commercial cannabis activity in violation of this chapter, including, but not limited to, those individuals covered under Section 11362.7 of the Health and Safety Code.

Article 4. Licensing

19320. (a) Licensing authorities administering this chapter may issue state licenses only to qualified applicants engaging in commercial cannabis activity pursuant to this chapter. Upon the date of implementation of regulations by the licensing authority, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization. A licensee shall not commence activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.

(b) Revocation of a local license, permit, or other authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction until the local jurisdiction reinstates or reissues the local license, permit, or other required authorization. Local authorities shall notify the bureau upon revocation of a local license. The bureau shall inform relevant licensing authorities.

(c) Revocation of a state license shall terminate the ability of a medical cannabis licensee to operate within California until the licensing authority reinstates or reissues the state license. Each licensee shall obtain a separate license for each location where it engages in commercial medical cannabis activity. However, transporters only need to obtain licenses for each physical location where the licensee conducts business while not in transport, or any equipment that is not currently transporting medical cannabis or medical cannabis products, permanently resides.

(d) In addition to the provisions of this chapter, local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are licensed pursuant to this chapter and the business activities of those licensees.

(e) Nothing in this chapter shall be construed to supersede or limit state agencies, including the State Water Resources Control Board and Department of Fish and Wildlife, from establishing fees to support their medical cannabis regulatory programs.

19321. (a) The Department of Consumer Affairs, the Department of Food and Agriculture, and the State Department of Public Health shall promulgate regulations for implementation of their respective responsibilities in the administration of this chapter.

(b) A license issued pursuant to this section shall be valid for 12 months from the date of issuance. The license shall be renewed annually. Each licensing authority shall establish procedures for the renewal of a license.

(c) Notwithstanding subdivision (a) of Section 19320, a facility or entity that is operating in compliance with local zoning ordinances and other state and local requirements on or before January 1, 2018, may continue its operations until its application for licensure is approved or denied pursuant to this chapter. In issuing licenses, the licensing authority shall prioritize any facility or entity that can demonstrate to the authority's satisfaction that it was in operation and in good standing with the local jurisdiction by January 1, 2016.

(d) Issuance of a state license or a determination of compliance with local law by the licensing authority shall in no way limit the ability of the City of Los Angeles to prosecute any person or entity for a violation of, or otherwise enforce, Proposition D, approved by the voters of the City of Los Angeles on the May 21, 2013, ballot for the city, or the city's zoning laws. Nor may issuance of a license or determination of compliance with local law by the licensing authority be deemed to establish, or be relied upon, in determining satisfaction with the immunity requirements of Proposition D or local zoning law, in court or in any other context or forum.

Article 5. Medical Marijuana Regulation

19326. (a) A person other than a licensed transporter shall not transport medical cannabis or medical cannabis products from one licensee to another licensee, unless otherwise specified in this chapter.

(b) All licensees holding cultivation or manufacturing licenses shall send all medical cannabis and medical cannabis products cultivated or manufactured to a distributor, as defined in Section 19300.5, for quality assurance and inspection by the Type 11 licensee and for a batch testing by a Type 8 licensee prior to distribution to a dispensary. Those licensees holding a Type 10A license in addition to a cultivation license or a manufacturing license shall send all medical cannabis and medical cannabis products to a Type 11 licensee for presale inspection and for a batch testing by a Type 8 licensee prior to dispensing any product. The licensing authority shall fine a licensee who violates this subdivision in an amount determined by the licensing authority to be reasonable.

(c) (1) Upon receipt of medical cannabis or medical cannabis products by a holder of a cultivation or manufacturing license, the Type 11 licensee shall first inspect the product to ensure the identity and quantity of the product and then ensure a random sample of the medical cannabis or medical cannabis product is tested by a Type 8 licensee prior to distributing the batch of medical cannabis or medical cannabis products.

(2) Upon issuance of a certificate of analysis by the Type 8 licensee that the product is fit for manufacturing or retail, all medical cannabis and medical cannabis products shall undergo a quality assurance review by the Type 11 licensee prior to distribution to ensure the quantity and content of the medical cannabis or medical cannabis product, and for tracking and taxation purposes by the state. Licensed cultivators and manufacturers shall package or seal all medical cannabis and medical cannabis products in tamper-evident packaging and use a unique identifier, as prescribed by the Department of Food and Agriculture, for the purpose of identifying and tracking medical cannabis or medical cannabis products. Medical cannabis and medical cannabis products shall be labeled as required by Section 19347. All packaging and sealing shall be completed prior to medical cannabis or medical cannabis products being transported or delivered to a licensee, qualified patient, or caregiver.

(3) This section does not limit the ability of licensed cultivators, manufacturers, and dispensaries to directly enter into contracts with one another indicating the price and quantity of medical cannabis or medical cannabis products to be distributed. However, a Type 11 licensee responsible for executing the contract is authorized to collect a fee for the services rendered, including, but not limited to, costs incurred by a Type 8 licensee, as well as applicable state or local taxes and fees.

(d) Medical cannabis and medical cannabis products shall be tested by a registered testing laboratory, prior to retail sale or dispensing, as follows:

(1) Medical cannabis from dried flower shall, at a minimum, be tested for concentration, pesticides, mold, and other contaminants.

(2) Medical cannabis extracts shall, at a minimum, be tested for concentration and purity of the product.

(3) This chapter shall not prohibit a licensee from performing on-site testing for the purposes of quality assurance of the product in conjunction

with reasonable business operations. On-site testing by the licensee shall not be certified by the State Department of Public Health.

(e) All commercial cannabis activity shall be conducted between licensees, when these are available.

19327. (a) A licensee shall keep accurate records of commercial cannabis activity.

(b) All records related to commercial cannabis activity as defined by the licensing authorities shall be maintained for a minimum of seven years.

(c) The bureau may examine the books and records of a licensee and inspect the premises of a licensee as the licensing authority or a state or local agency deems necessary to perform its duties under this chapter. All inspections shall be conducted during standard business hours of the licensed facility or at any other reasonable time.

(d) Licensees shall keep records identified by the licensing authorities on the premises of the location licensed. The licensing authorities may make any examination of the records of any licensee. Licensees shall also provide and deliver copies of documents to the licensing agency upon request.

(e) A licensee or its agent, or employee, that refuses, impedes, obstructs, or interferes with an inspection of the premises or records of the licensee pursuant to this section has engaged in a violation of this chapter.

(f) If a licensee or an employee of a licensee fails to maintain or provide the records required pursuant to this section, the licensee shall be subject to a citation and fine of thirty thousand dollars (\$30,000) per individual violation.

19328. (a) A licensee may only hold a state license in up to two separate license categories, as follows:

(1) Type 1, 1A, 1B, 2, 2A, or 2B licensees may also hold either a Type 6 or 7 state license.

(2) Type 6 or 7 licensees, or a combination thereof, may also hold either a Type 1, 1A, 1B, 2, 2A, or 2B state license.

(3) Type 6 or 7 licensees, or a combination thereof, may also hold a Type 10A state license.

(4) Type 10A licensees may also hold either a Type 6 or 7 state license, or a combination thereof.

(5) Type 1, 1A, 1B, 2, 2A, or 2B licensees, or a combination thereof, may also hold a Type 10A state license.

(6) Type 10A licensees may apply for Type 1, 1A, 1B, 2, 2A, or 2B state license, or a combination thereof.

(7) Type 11 licensees shall apply for a Type 12 state license, but shall not apply for any other type of state license.

(8) Type 12 licensees may apply for a Type 11 state license.

(9) A Type 10A licensee may apply for a Type 6 or 7 state license and hold a 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4 or combination thereof if, under the 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4 or combination of licenses thereof, no more than four acres of total canopy size of cultivation by the licensee is occurring throughout the state during the period that the respective licenses

are valid. All cultivation pursuant to this section shall comply with local ordinances. This paragraph shall become inoperative on January 1, 2026.

(b) Except as provided in subdivision (a), a person or entity that holds a state license is prohibited from licensure for any other activity authorized under this chapter, and is prohibited from holding an ownership interest in real property, personal property, or other assets associated with or used in any other license category.

(c) (1) In a jurisdiction that adopted a local ordinance, prior to July 1, 2015, allowing or requiring qualified businesses to cultivate, manufacture, and dispense medical cannabis or medical cannabis products, with all commercial cannabis activity being conducted by a single qualified business, upon licensure that business shall not be subject to subdivision (a) if it meets all of the following conditions:

(A) The business was cultivating, manufacturing, and dispensing medical cannabis or medical cannabis products on July 1, 2015, and has continuously done so since that date.

(B) The business has been in full compliance with all applicable local ordinances at all times prior to licensure.

(C) The business is registered with the State Board of Equalization.

(2) A business licensed pursuant to paragraph (1) is not required to conduct all cultivation or manufacturing within the bounds of a local jurisdiction, but all cultivation and manufacturing shall have commenced prior to July 1, 2015, and have been in full compliance with applicable local ordinances.

(d) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

19329. A licensee shall not also be licensed as a retailer of alcoholic beverages pursuant to Division 9 (commencing with Section 23000).

19330. This chapter and Article 2 (commencing with Section 11357) and Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code shall not interfere with an employer's rights and obligations to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of cannabis in the workplace or affect the ability of employers to have policies prohibiting the use of cannabis by employees and prospective employees, or prevent employers from complying with state or federal law.

Article 7. Licensed Distributors, Dispensaries, and Transporters

19334. (a) State licenses to be issued by the Department of Consumer Affairs are as follows:

(1) "Dispensary," as defined in this chapter. This license shall allow for delivery pursuant to Section 19340.

(2) "Distributor," for the distribution of medical cannabis and medical cannabis products from manufacturer to dispensary. A Type 11 licensee

shall hold a Type 12, or transporter, license and register each location where product is stored for the purposes of distribution. A Type 11 licensee shall not hold a license in a cultivation, manufacturing, dispensing, or testing license category and shall not own, or have an ownership interest in, a facility licensed in those categories other than a security interest, lien, or encumbrance on property that is used by a licensee. A Type 11 licensee shall be bonded and insured at a minimum level established by the licensing authority.

(3) “Transport,” for transporters of medical cannabis or medical cannabis products between licensees. A Type 12 licensee shall be bonded and insured at a minimum level established by the licensing authority.

(4) “Special dispensary status” for dispensers who have no more than three licensed dispensary facilities. This license shall allow for delivery where expressly authorized by local ordinance.

(b) The bureau shall establish minimum security requirements for the commercial transportation and delivery of medical cannabis and products.

(c) A licensed dispensary shall implement sufficient security measures to both deter and prevent unauthorized entrance into areas containing medical cannabis or medical cannabis products and theft of medical cannabis or medical cannabis products at the dispensary. These security measures shall include, but not be limited to, all of the following:

(1) Preventing individuals from remaining on the premises of the dispensary if they are not engaging in activity expressly related to the operations of the dispensary.

(2) Establishing limited access areas accessible only to authorized dispensary personnel.

(3) Storing all finished medical cannabis and medical cannabis products in a secured and locked room, safe, or vault, and in a manner as to prevent diversion, theft, and loss, except for limited amounts of cannabis used for display purposes, samples, or immediate sale.

(d) A dispensary shall notify the licensing authority and the appropriate law enforcement authorities within 24 hours after discovering any of the following:

(1) Significant discrepancies identified during inventory. The level of significance shall be determined by the bureau.

(2) Diversion, theft, loss, or any criminal activity involving the dispensary or any agent or employee of the dispensary.

(3) The loss or unauthorized alteration of records related to cannabis, registered qualifying patients, primary caregivers, or dispensary employees or agents.

(4) Any other breach of security.

Article 9. Delivery

19340. (a) Deliveries, as defined in this chapter, can only be made by a dispensary and in a city, county, or city and county that does not explicitly prohibit it by local ordinance.

(b) Upon approval of the licensing authority, a licensed dispensary that delivers medical cannabis or medical cannabis products shall comply with both of the following:

(1) The city, county, or city and county in which the licensed dispensary is located, and in which each delivery is made, do not explicitly by ordinance prohibit delivery, as defined in Section 19300.5.

(2) All employees of a dispensary delivering medical cannabis or medical cannabis products shall carry a copy of the dispensary's current license authorizing those services with them during deliveries and the employee's government-issued identification, and shall present that license and identification upon request to state and local law enforcement, employees of regulatory authorities, and other state and local agencies enforcing this chapter.

(c) A county shall have the authority to impose a tax, pursuant to Article 11 (commencing with Section 19348), on each delivery transaction completed by a licensee.

(d) During delivery, the licensee shall maintain a physical copy of the delivery request and shall make it available upon request of the licensing authority and law enforcement officers. The delivery request documentation shall comply with state and federal law regarding the protection of confidential medical information.

(e) The qualified patient or primary caregiver requesting the delivery shall maintain a copy of the delivery request and shall make it available, upon request, to the licensing authority and law enforcement officers.

(f) A local jurisdiction shall not prevent carriage of medical cannabis or medical cannabis products on public roads by a licensee acting in compliance with this chapter.

Article 10. Licensed Manufacturers and Licensed Laboratories

19341. The State Department of Public Health shall promulgate regulations governing the licensing of cannabis manufacturers and testing laboratories. Licenses to be issued are as follows:

(a) "Manufacturing level 1," for manufacturing sites that produce medical cannabis products using nonvolatile solvents.

(b) "Manufacturing level 2," for manufacturing sites that produce medical cannabis products using volatile solvents. The State Department of Public Health shall limit the number of licenses of this type.

(c) "Testing," for testing of medical cannabis and medical cannabis products. Testing licensees shall have their facilities licensed according to regulations set forth by the division. A testing licensee shall not hold a

license in another license category of this chapter and shall not own or have ownership interest in a facility licensed pursuant to this chapter.

19342. (a) For the purposes of testing medical cannabis or medical cannabis products, licensees shall use a licensed testing laboratory that has adopted a standard operating procedure using methods consistent with general requirements for the competence of testing and calibration activities, including sampling, using standard methods established by the International Organization for Standardization, specifically ISO/IEC 17020 and ISO/IEC 17025 to test medical cannabis and medical cannabis products that are approved by an accrediting body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement.

(b) An agent of a licensed testing laboratory shall obtain samples according to a statistically valid sampling method for each lot.

(c) A licensed testing laboratory shall analyze samples according to either of the following:

(1) The most current version of the cannabis inflorescence monograph published by the American Herbal Pharmacopoeia.

(2) Scientifically valid methodology that is demonstrably equal or superior to paragraph (1), in the opinion of the accrediting body.

(d) If a test result falls outside the specifications authorized by law or regulation, the licensed testing laboratory shall follow a standard operating procedure to confirm or refute the original result.

(e) A licensed testing laboratory shall destroy the remains of the sample of medical cannabis or medical cannabis product upon completion of the analysis.

19343. A licensed testing laboratory shall not handle, test, or analyze medical cannabis or medical cannabis products unless the licensed testing laboratory meets all of the following:

(a) Is registered by the State Department of Public Health.

(b) Is independent from all other persons and entities involved in the medical cannabis industry.

(c) Follows the methodologies, ranges, and parameters that are contained in the scope of the accreditation for testing medical cannabis or medical cannabis products. The testing lab shall also comply with any other requirements specified by the State Department of Public Health.

(d) Notifies the State Department of Public Health within one business day after the receipt of notice of any kind that its accreditation has been denied, suspended, or revoked.

(e) Has established standard operating procedures that provide for adequate chain of custody controls for samples transferred to the licensed testing laboratory for testing.

19344. (a) A licensed testing laboratory shall issue a certificate of analysis for each lot, with supporting data, to report both of the following:

(1) Whether the chemical profile of the lot conforms to the specifications of the lot for compounds, including, but not limited to, all of the following:

(A) Tetrahydrocannabinol (THC).

(B) Tetrahydrocannabinolic Acid (THCA).

- (C) Cannabidiol (CBD).
- (D) Cannabidiolic Acid (CBDA).
- (E) The terpenes described in the most current version of the cannabis inflorescence monograph published by the American Herbal Pharmacopoeia.
- (F) Cannabigerol (CBG).
- (G) Cannabinol (CBN).
- (H) Any other compounds required by the State Department of Public Health.

(2) That the presence of contaminants does not exceed the levels that are the lesser of either the most current version of the American Herbal Pharmacopoeia monograph or the State Department of Public Health. For purposes of this paragraph, contaminants includes, but is not limited to, all of the following:

- (A) Residual solvent or processing chemicals.
- (B) Foreign material, including, but not limited to, hair, insects, or similar or related adulterant.
- (C) Microbiological impurity, including total aerobic microbial count, total yeast mold count, *P. aeruginosa*, *aspergillus* spp., *s. aureus*, aflatoxin B1, B2, G1, or G2, or ochratoxin A.
- (D) Whether the batch is within specification for odor and appearance.

(b) Residual levels of volatile organic compounds shall be below the lesser of either the specifications set by the United States Pharmacopeia (U.S.P. Chapter 467) or those set by the State Department of Public Health.

19345. (a) Except as provided in this chapter, a licensed testing laboratory shall not acquire or receive medical cannabis or medical cannabis products except from a licensed facility in accordance with this chapter, and shall not distribute, sell, deliver, transfer, transport, or dispense medical cannabis or medical cannabis products, from which the medical cannabis or medical cannabis products were acquired or received. All transfer or transportation shall be performed pursuant to a specified chain of custody protocol.

(b) A licensed testing laboratory may receive and test samples of medical cannabis or medical cannabis products from a qualified patient or primary caregiver only if he or she presents his or her valid recommendation for cannabis for medical purposes from a physician. A licensed testing laboratory shall not certify samples from a qualified patient or caregiver for resale or transfer to another party or licensee. All tests performed by a licensed testing laboratory for a qualified patient or caregiver shall be recorded with the name of the qualified patient or caregiver and the amount of medical cannabis or medical cannabis product received.

(c) The State Department of Public Health shall develop procedures to ensure that testing of cannabis occurs prior to delivery to dispensaries or any other business, specify how often licensees shall test cannabis and that the cost of testing shall be borne by the licensed cultivators, and require destruction of harvested batches whose testing samples indicate noncompliance with health and safety standards promulgated by the State Department of Public Health, unless remedial measures can bring the

cannabis into compliance with quality assurance standards as promulgated by the State Department of Public Health.

(d) The State Department of Public Health shall establish a licensing fee, and laboratories shall pay a fee to be licensed. Licensing fees shall not exceed the reasonable regulatory cost of the licensing activities.

19347. (a) Prior to delivery or sale at a dispensary, medical cannabis products shall be labeled and in a tamper-evident package. Labels and packages of medical cannabis products shall meet the following requirements:

(1) Medical cannabis packages and labels shall not be made to be attractive to children.

(2) All medical cannabis product labels shall include the following information, prominently displayed and in a clear and legible font:

(A) Manufacture date and source.

(B) The statement "SCHEDULE I CONTROLLED SUBSTANCE."

(C) The statement "KEEP OUT OF REACH OF CHILDREN AND ANIMALS" in bold print.

(D) The statement "FOR MEDICAL USE ONLY."

(E) The statement "THE INTOXICATING EFFECTS OF THIS PRODUCT MAY BE DELAYED BY UP TO TWO HOURS."

(F) The statement "THIS PRODUCT MAY IMPAIR THE ABILITY TO DRIVE OR OPERATE MACHINERY. PLEASE USE EXTREME CAUTION."

(G) For packages containing only dried flower, the net weight of medical cannabis in the package.

(H) A warning if nuts or other known allergens are used.

(I) List of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC), cannabidiol (CBD), and other cannabinoid content, the THC and other cannabinoid amount in milligrams per serving, servings per package, and the THC and other cannabinoid amount in milligrams for the package total.

(J) Clear indication, in bold type, that the product contains medical cannabis.

(K) Identification of the source and date of cultivation and manufacture.

(L) Any other requirement set by the bureau.

(M) Information associated with the unique identifier issued by the Department of Food and Agriculture pursuant to Section 11362.777 of the Health and Safety Code.

(b) Only generic food names may be used to describe edible medical cannabis products.

Article 14. Reporting

19353. Beginning on March 1, 2023, and on or before March 1 of each following year, each licensing authority shall prepare and submit to the Legislature an annual report on the authority's activities and post the report

on the authority's Internet Web site. The report shall include, but not be limited to, the following information for the previous fiscal year:

(a) The amount of funds allocated and spent by the licensing authority for medical cannabis licensing, enforcement, and administration.

(b) The number of state licenses issued, renewed, denied, suspended, and revoked, by state license category.

(c) The average time for processing state license applications, by state license category.

(d) The number and type of enforcement activities conducted by the licensing authorities and by local law enforcement agencies in conjunction with the licensing authorities or the bureau.

(e) The number, type, and amount of penalties, fines, and other disciplinary actions taken by the licensing authorities.

19354. The bureau shall contract with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, authorized pursuant to Section 11362.9 of the Health and Safety Code, to develop a study that identifies the impact that cannabis has on motor skills.

Article 15. Privacy

19355. (a) Information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in records kept by the office or licensing authorities for the purposes of administering this chapter are confidential and shall not be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), except as necessary for authorized employees of the State of California or any city, county, or city and county to perform official duties pursuant to this chapter, or a local ordinance.

(b) Information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in records kept by the bureau for the purposes of administering this chapter shall be maintained in accordance with Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code, Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code, and other state and federal laws relating to confidential patient information.

(c) Nothing in this section precludes the following:

(1) Employees of the bureau or any licensing authorities notifying state or local agencies about information submitted to the agency that the employee suspects is falsified or fraudulent.

(2) Notifications from the bureau or any licensing authorities to state or local agencies about apparent violations of this chapter or applicable local ordinance.

(3) Verification of requests by state or local agencies to confirm licenses and certificates issued by the regulatory authorities or other state agency.

(4) Provision of information requested pursuant to a court order or subpoena issued by a court or an administrative agency or local governing body authorized by law to issue subpoenas.

(d) Information shall not be disclosed by any state or local agency beyond what is necessary to achieve the goals of a specific investigation, notification, or the parameters of a specific court order or subpoena.

SEC. 5. Section 9147.7 of the Government Code is amended to read:

9147.7. (a) For the purpose of this section, “eligible agency” means any agency, authority, board, bureau, commission, conservancy, council, department, division, or office of state government, however denominated, excluding an agency that is constitutionally created or an agency related to postsecondary education, for which a date for repeal has been established by statute on or after January 1, 2011.

(b) The Joint Sunset Review Committee is hereby created to identify and eliminate waste, duplication, and inefficiency in government agencies. The purpose of the committee is to conduct a comprehensive analysis over 15 years, and on a periodic basis thereafter, of every eligible agency to determine if the agency is still necessary and cost effective.

(c) Each eligible agency scheduled for repeal shall submit to the committee, on or before December 1 prior to the year it is set to be repealed, a complete agency report covering the entire period since last reviewed, including, but not limited to, the following:

(1) The purpose and necessity of the agency.

(2) A description of the agency budget, priorities, and job descriptions of employees of the agency.

(3) Any programs and projects under the direction of the agency.

(4) Measures of the success or failures of the agency and justifications for the metrics used to evaluate successes and failures.

(5) Any recommendations of the agency for changes or reorganization in order to better fulfill its purpose.

(d) The committee shall take public testimony and evaluate the eligible agency prior to the date the agency is scheduled to be repealed. An eligible agency shall be eliminated unless the Legislature enacts a law to extend, consolidate, or reorganize the eligible agency. No eligible agency shall be extended in perpetuity unless specifically exempted from the provisions of this section. The committee may recommend that the Legislature extend the statutory sunset date for no more than one year to allow the committee more time to evaluate the eligible agency.

(e) The committee shall be comprised of 10 members of the Legislature. The Senate Committee on Rules shall appoint five members of the Senate to the committee, not more than three of whom shall be members of the same political party. The Speaker of the Assembly shall appoint five members of the Assembly to the committee, not more than three of whom shall be members of the same political party. Members shall be appointed within 15 days after the commencement of the regular session. Each member of the committee who is appointed by the Senate Committee on Rules or the Speaker of the Assembly shall serve during that committee member’s

term of office or until that committee member no longer is a Member of the Senate or the Assembly, whichever is applicable. A vacancy on the committee shall be filled in the same manner as the original appointment. Three Assembly Members and three Senators who are members of the committee shall constitute a quorum for the conduct of committee business. Members of the committee shall receive no compensation for their work with the committee.

(f) The committee shall meet not later than 30 days after the first day of the regular session to choose a chairperson and to establish the schedule for eligible agency review provided for in the statutes governing the eligible agencies. The chairperson of the committee shall alternate every two years between a Member of the Senate and a Member of the Assembly, and the vice chairperson of the committee shall be a member of the opposite house as the chairperson.

(g) This section shall not be construed to change the existing jurisdiction of the budget or policy committees of the Legislature.

(h) This section shall not apply to the Bureau of Medical Marijuana Regulation.

SEC. 6. Section 11362.775 of the Health and Safety Code is amended to read:

11362.775. (a) Subject to subdivision (b), qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate cannabis for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

(b) This section shall remain in effect only until one year after the Bureau of Medical Marijuana Regulation posts a notice on its Internet Web site that the licensing authorities have commenced issuing licenses pursuant to the Medical Marijuana Regulation and Safety Act (Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code), and is repealed upon issuance of licenses.

SEC. 7. Section 147.5 is added to the Labor Code, to read:

147.5. (a) By January 1, 2017, the Division of Occupational Safety and Health shall convene an advisory committee to evaluate whether there is a need to develop industry-specific regulations related to the activities of facilities issued a license pursuant to Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code.

(b) By July 1, 2017, the advisory committee shall present to the board its findings and recommendations for consideration by the board. By July 1, 2017, the board shall render a decision regarding the adoption of industry-specific regulations pursuant to this section.

SEC. 8. Section 31020 is added to the Revenue and Taxation Code, to read:

31020. The board, in consultation with the Department of Food and Agriculture, shall adopt a system for reporting the movement of commercial

cannabis and cannabis products throughout the distribution chain. The system shall not be duplicative of the electronic database administered by the Department of Food and Agriculture specified in Section 19335 of the Business and Professions Code. The system shall also employ secure packaging and be capable of providing information to the board. This system shall capture, at a minimum, all of the following:

- (a) The amount of tax due by the designated entity.
- (b) The name, address, and license number of the designated entity that remitted the tax.
- (c) The name, address, and license number of the succeeding entity receiving the product.
- (d) The transaction date.
- (e) Any other information deemed necessary by the board for the taxation and regulation of marijuana and marijuana products.

SEC. 9. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 10. The Legislature finds and declares that Section 4 of this act, which adds Section 19355 to the Business and Professions Code, thereby imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The limitation imposed under this act is necessary for purposes of compliance with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code).

SEC. 11. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 12. This act shall become operative only if Senate Bill 643 and Assembly Bill 243 of the 2015–16 Regular Session are also enacted and become operative.

Senate Bill No. 643

CHAPTER 719

An act to amend Sections 144, 2220.05, 2241.5, and 2242.1 of, to add Sections 19302.1, 19319, 19320, 19322, 19323, 19324, and 19325 to, to add Article 25 (commencing with Section 2525) to Chapter 5 of Division 2 of, and to add Article 6 (commencing with Section 19331), Article 7.5 (commencing with Section 19335), Article 8 (commencing with Section 19337), and Article 11 (commencing with Section 19348) to Chapter 3.5 of Division 8 of, the Business and Professions Code, relating to medical marijuana.

[Approved by Governor October 9, 2015. Filed with
Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 643, McGuire. Medical marijuana.

(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 6, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill would, among other things, set forth standards for a physician and surgeon prescribing medical cannabis and require the Medical Board of California to prioritize its investigative and prosecutorial resources to identify and discipline physicians and surgeons that have repeatedly recommended excessive cannabis to patients for medical purposes or repeatedly recommended cannabis to patients for medical purposes without a good faith examination, as specified. The bill would require the Bureau of Medical Marijuana to require an applicant to furnish a full set of fingerprints for the purposes of conducting criminal history record checks. The bill would prohibit a physician and surgeon who recommends cannabis to a patient for a medical purpose from accepting, soliciting, or offering any form of remuneration from a facility licensed under the Medical Marijuana Regulation and Safety Act. The bill would make a violation of this prohibition a misdemeanor, and by creating a new crime, this bill would impose a state-mandated local program.

This bill would require the Governor, under the Medical Marijuana Regulation and Safety Act, to appoint, subject to confirmation by the Senate, a chief of the Bureau of Medical Marijuana Regulation. The act would require the Department of Consumer Affairs to have the sole authority to create, issue, renew, discipline, suspend, or revoke licenses for the transportation and storage, unrelated to manufacturing, of medical marijuana, and would authorize the department to collect fees for its regulatory activities and impose specified duties on this department in this regard. The act would require the Department of Food and Agriculture to administer the provisions of the act related to, and associated with, the cultivation, and transportation of, medical cannabis and would impose specified duties on this department in this regard. The act would require the State Department of Public Health to administer the provisions of the act related to, and associated with, the manufacturing and testing of medical cannabis and would impose specified duties on this department in this regard.

This bill would authorize counties to impose a tax upon specified cannabis-related activity.

This bill would require an applicant for a state license pursuant to the act to provide a statement signed by the applicant under penalty of perjury, thereby changing the scope of a crime and imposing a state-mandated local program.

This bill would set forth standards for the licensed cultivation of medical cannabis, including, but not limited to, establishing duties relating to the environmental impact of cannabis and cannabis products. The bill would also establish state cultivator license types, as specified.

(2) This bill would provide that its provisions are severable.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) Existing constitutional provisions require that a statute that limits the right of access to the meeting of public bodies or the writings of public bodies or the writings of public officials and agencies be adopted with finding demonstrating the interest protected by the limitation and the need for protecting that interest. The bill would make legislative findings to that effect.

(5) The bill would become operative only if AB 266 and AB 243 of the 2015–16 Regular Session are enacted and take effect on or before January 1, 2016.

The people of the State of California do enact as follows:

SECTION 1. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following:

- (1) California Board of Accountancy.
 - (2) State Athletic Commission.
 - (3) Board of Behavioral Sciences.
 - (4) Court Reporters Board of California.
 - (5) State Board of Guide Dogs for the Blind.
 - (6) California State Board of Pharmacy.
 - (7) Board of Registered Nursing.
 - (8) Veterinary Medical Board.
 - (9) Board of Vocational Nursing and Psychiatric Technicians.
 - (10) Respiratory Care Board of California.
 - (11) Physical Therapy Board of California.
 - (12) Physician Assistant Committee of the Medical Board of California.
 - (13) Speech-Language Pathology and Audiology and Hearing Aid Dispenser Board.
 - (14) Medical Board of California.
 - (15) State Board of Optometry.
 - (16) Acupuncture Board.
 - (17) Cemetery and Funeral Bureau.
 - (18) Bureau of Security and Investigative Services.
 - (19) Division of Investigation.
 - (20) Board of Psychology.
 - (21) California Board of Occupational Therapy.
 - (22) Structural Pest Control Board.
 - (23) Contractors' State License Board.
 - (24) Naturopathic Medicine Committee.
 - (25) Professional Fiduciaries Bureau.
 - (26) Board for Professional Engineers, Land Surveyors, and Geologists.
 - (27) Bureau of Medical Marijuana Regulation.
- (c) For purposes of paragraph (26) of subdivision (b), the term "applicant" shall be limited to an initial applicant who has never been registered or licensed by the board or to an applicant for a new licensure or registration category.

SEC. 2. Section 2220.05 of the Business and Professions Code is amended to read:

2220.05. (a) In order to ensure that its resources are maximized for the protection of the public, the Medical Board of California shall prioritize its

investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in the first paragraph:

(1) Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician and surgeon represents a danger to the public.

(2) Drug or alcohol abuse by a physician and surgeon involving death or serious bodily injury to a patient.

(3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain consistent with lawful prescribing, including, but not limited to, Sections 725, 2241.5, and 2241.6 of this code and Sections 11159.2 and 124961 of the Health and Safety Code, be prosecuted for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.

(4) Repeated acts of clearly excessive recommending of cannabis to patients for medical purposes, or repeated acts of recommending cannabis to patients for medical purposes without a good faith prior examination of the patient and a medical reason for the recommendation.

(5) Sexual misconduct with one or more patients during a course of treatment or an examination.

(6) Practicing medicine while under the influence of drugs or alcohol.

(b) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

(c) The Medical Board of California shall indicate in its annual report mandated by Section 2312 the number of temporary restraining orders, interim suspension orders, and disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).

SEC. 3. Section 2241.5 of the Business and Professions Code is amended to read:

2241.5. (a) A physician and surgeon may prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

(b) No physician and surgeon shall be subject to disciplinary action for prescribing, dispensing, or administering dangerous drugs or prescription controlled substances in accordance with this section.

(c) This section shall not affect the power of the board to take any action described in Section 2227 against a physician and surgeon who does any of the following:

(1) Violates subdivision (b), (c), or (d) of Section 2234 regarding gross negligence, repeated negligent acts, or incompetence.

(2) Violates Section 2241 regarding treatment of an addict.

(3) Violates Section 2242 or 2525.3 regarding performing an appropriate prior examination and the existence of a medical indication for prescribing, dispensing, or furnishing dangerous drugs or recommending medical cannabis.

(4) Violates Section 2242.1 regarding prescribing on the Internet.

(5) Fails to keep complete and accurate records of purchases and disposals of substances listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) or controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Sec. 801 et seq.), or pursuant to the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. A physician and surgeon shall keep records of his or her purchases and disposals of these controlled substances or dangerous drugs, including the date of purchase, the date and records of the sale or disposal of the drugs by the physician and surgeon, the name and address of the person receiving the drugs, and the reason for the disposal or the dispensing of the drugs to the person, and shall otherwise comply with all state recordkeeping requirements for controlled substances.

(6) Writes false or fictitious prescriptions for controlled substances listed in the California Uniform Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(7) Prescribes, administers, or dispenses in violation of this chapter, or in violation of Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210) of Division 10 of the Health and Safety Code.

(d) A physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist.

(e) Nothing in this section shall prohibit the governing body of a hospital from taking disciplinary actions against a physician and surgeon pursuant to Sections 809.05, 809.4, and 809.5.

SEC. 4. Section 2242.1 of the Business and Professions Code is amended to read:

2242.1. (a) No person or entity may prescribe, dispense, or furnish, or cause to be prescribed, dispensed, or furnished, dangerous drugs or dangerous devices, as defined in Section 4022, on the Internet for delivery to any person in this state, without an appropriate prior examination and medical indication, except as authorized by Section 2242.

(b) Notwithstanding any other provision of law, a violation of this section may subject the person or entity that has committed the violation to either

a fine of up to twenty-five thousand dollars (\$25,000) per occurrence pursuant to a citation issued by the board or a civil penalty of twenty-five thousand dollars (\$25,000) per occurrence.

(c) The Attorney General may bring an action to enforce this section and to collect the fines or civil penalties authorized by subdivision (b).

(d) For notifications made on and after January 1, 2002, the Franchise Tax Board, upon notification by the Attorney General or the board of a final judgment in an action brought under this section, shall subtract the amount of the fine or awarded civil penalties from any tax refunds or lottery winnings due to the person who is a defendant in the action using the offset authority under Section 12419.5 of the Government Code, as delegated by the Controller, and the processes as established by the Franchise Tax Board for this purpose. That amount shall be forwarded to the board for deposit in the Contingent Fund of the Medical Board of California.

(e) If the person or entity that is the subject of an action brought pursuant to this section is not a resident of this state, a violation of this section shall, if applicable, be reported to the person's or entity's appropriate professional licensing authority.

(f) Nothing in this section shall prohibit the board from commencing a disciplinary action against a physician and surgeon pursuant to Section 2242 or 2525.3.

SEC. 5. Article 25 (commencing with Section 2525) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 25. Recommending Medical Cannabis

2525. (a) It is unlawful for a physician and surgeon who recommends cannabis to a patient for a medical purpose to accept, solicit, or offer any form of remuneration from or to a facility issued a state license pursuant to Chapter 3.5 (commencing with Section 19300) of Division 8, if the physician and surgeon or his or her immediate family have a financial interest in that facility.

(b) For the purposes of this section, "financial interest" shall have the same meaning as in Section 650.01.

(c) A violation of this section shall be a misdemeanor punishable by up to one year in county jail and a fine of up to five thousand dollars (\$5,000) or by civil penalties of up to five thousand dollars (\$5,000) and shall constitute unprofessional conduct.

2525.1. The Medical Board of California shall consult with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, authorized pursuant to Section 11362.9 of the Health and Safety Code, on developing and adopting medical guidelines for the appropriate administration and use of medical cannabis.

2525.2. An individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California shall not recommend medical

cannabis to a patient, unless that person is the patient's attending physician, as defined by subdivision (a) of Section 11362.7 of the Health and Safety Code.

2525.3. Recommending medical cannabis to a patient for a medical purpose without an appropriate prior examination and a medical indication constitutes unprofessional conduct.

2525.4. It is unprofessional conduct for any attending physician recommending medical cannabis to be employed by, or enter into any other agreement with, any person or entity dispensing medical cannabis.

2525.5. (a) A person shall not distribute any form of advertising for physician recommendations for medical cannabis in California unless the advertisement bears the following notice to consumers:

NOTICE TO CONSUMERS: The Compassionate Use Act of 1996 ensures that seriously ill Californians have the right to obtain and use cannabis for medical purposes where medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of medical cannabis. Recommendations must come from an attending physician as defined in Section 11362.7 of the Health and Safety Code. Cannabis is a Schedule I drug according to the federal Controlled Substances Act. Activity related to cannabis use is subject to federal prosecution, regardless of the protections provided by state law.

(b) Advertising for attending physician recommendations for medical cannabis shall meet all of the requirements in Section 651. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discounts, premiums, gifts, or statements of a similar nature.

SEC. 6. Section 19302.1 is added to the Business and Professions Code, to read:

19302.1. (a) The Governor shall appoint a chief of the bureau, subject to confirmation by the Senate, at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve under the direction and supervision of the director and at the pleasure of the Governor.

(b) Every power granted to or duty imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy or assistant director or by the chief, subject to conditions and limitations that the director may prescribe. In addition to every power granted or duty imposed with this chapter, the director shall have all other powers and duties generally applicable in relation to bureaus that are part of the Department of Consumer Affairs.

(c) The director may employ and appoint all employees necessary to properly administer the work of the bureau, in accordance with civil service laws and regulations.

(d) The Department of Consumer Affairs shall have the sole authority to create, issue, renew, discipline, suspend, or revoke licenses for the

transportation, storage unrelated to manufacturing activities, distribution, and sale of medical marijuana within the state and to collect fees in connection with activities the bureau regulates. The bureau may create licenses in addition to those identified in this chapter that the bureau deems necessary to effectuate its duties under this chapter.

(e) The Department of Food and Agriculture shall administer the provisions of this chapter related to and associated with the cultivation of medical cannabis. The Department of Food and Agriculture shall have the authority to create, issue, and suspend or revoke cultivation licenses for violations of this chapter. The State Department of Public Health shall administer the provisions of this chapter related to and associated with the manufacturing and testing of medical cannabis.

SEC. 7. Section 19319 is added to the Business and Professions Code, to read:

19319. (a) A qualified patient, as defined in Section 11362.7 of the Health and Safety Code, who cultivates, possesses, stores, manufactures, or transports cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person is not thereby engaged in commercial cannabis activity and is therefore exempt from the licensure requirements of this chapter.

(b) A primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides cannabis exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 of the Health and Safety Code, but who does not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Section 11362.765 of the Health and Safety Code, is exempt from the licensure requirements of this chapter.

SEC. 8. Section 19320 is added to the Business and Professions Code, to read:

19320. (a) Licensing authorities administering this chapter may issue state licenses only to qualified applicants engaging in commercial cannabis activity pursuant to this chapter. Upon the date of implementation of regulations by the licensing authority, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization. A licensee shall not commence activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.

(b) Revocation of a local license, permit, or other authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction until the local jurisdiction reinstates or reissues the local license, permit, or other required authorization. Local authorities shall notify the bureau upon revocation of a local license. The bureau shall inform relevant licensing authorities.

(c) Revocation of a state license shall terminate the ability of a medical cannabis licensee to operate within California until the licensing authority reinstates or reissues the state license. Each licensee shall obtain a separate license for each location where it engages in commercial medical cannabis activity. However, transporters only need to obtain licenses for each physical location where the licensee conducts business while not in transport, or any equipment that is not currently transporting medical cannabis or medical cannabis products, permanently resides.

(d) In addition to the provisions of this chapter, local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are licensed pursuant to this chapter and the business activities of those licensees.

(e) Nothing in this chapter shall be construed to supersede or limit state agencies, including the State Water Resources Control Board and Department of Fish and Wildlife, from establishing fees to support their medical cannabis regulatory programs.

SEC. 9. Section 19322 is added to the Business and Professions Code, to read:

19322. (a) A person or entity shall not submit an application for a state license issued by the department pursuant to this chapter unless that person or entity has received a license, permit, or authorization by a local jurisdiction. An applicant for any type of state license issued pursuant to this chapter shall do all of the following:

(1) Electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and arrests, and information as to the existence and content of a record of state or federal convictions and arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance, pending trial or appeal.

(A) The Department of Justice shall provide a response to the licensing authority pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(B) The licensing authority shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2 of the Penal Code, for applicants.

(C) The Department of Justice shall charge the applicant a fee sufficient to cover the reasonable cost of processing the requests described in this paragraph.

(2) Provide documentation issued by the local jurisdiction in which the proposed business is operating certifying that the applicant is or will be in compliance with all local ordinances and regulations.

(3) Provide evidence of the legal right to occupy and use the proposed location. For an applicant seeking a cultivator, distributor, manufacturing, or dispensary license, provide a statement from the owner of real property or their agent where the cultivation, distribution, manufacturing, or dispensing commercial medical cannabis activities will occur, as proof to demonstrate the landowner has acknowledged and consented to permit

cultivation, distribution, manufacturing, or dispensary activities to be conducted on the property by the tenant applicant.

(4) If the application is for a cultivator or a dispensary, provide evidence that the proposed location is located beyond at least a 600-foot radius from a school, as required by Section 11362.768 of the Health and Safety Code.

(5) Provide a statement, signed by the applicant under penalty of perjury, that the information provided is complete, true, and accurate.

(6) (A) For an applicant with 20 or more employees, provide a statement that the applicant will enter into, or demonstrate that it has already entered into, and abide by the terms of a labor peace agreement.

(B) For the purposes of this paragraph, “employee” does not include a supervisor.

(C) For purposes of this paragraph, “supervisor” means an individual having authority, in the interest of the licensee, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(7) Provide the applicant’s seller’s permit number issued pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code or indicate that the applicant is currently applying for a seller’s permit.

(8) Provide any other information required by the licensing authority.

(9) For an applicant seeking a cultivation license, provide a statement declaring the applicant is an “agricultural employer,” as defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code), to the extent not prohibited by law.

(10) For an applicant seeking licensure as a testing laboratory, register with the State Department of Public Health and provide any information required by the State Department of Public Health.

(11) Pay all applicable fees required for licensure by the licensing authority.

(b) For applicants seeking licensure to cultivate, distribute, or manufacture medical cannabis, the application shall also include a detailed description of the applicant’s operating procedures for all of the following, as required by the licensing authority:

- (1) Cultivation.
- (2) Extraction and infusion methods.
- (3) The transportation process.
- (4) Inventory procedures.
- (5) Quality control procedures.

SEC. 10. Section 19323 is added to the Business and Professions Code, to read:

19323. (a) The licensing authority shall deny an application if either the applicant or the premises for which a state license is applied do not qualify for licensure under this chapter.

(b) The licensing authority may deny the application for licensure or renewal of a state license if any of the following conditions apply:

(1) Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter, including but not limited to, any requirement imposed to protect natural resources, instream flow, and water quality pursuant to subdivision (a) of Section 19332.

(2) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 2 (commencing with Section 480) of Division 1.5.

(3) A local agency has notified the licensing authority that a licensee or applicant within its jurisdiction is in violation of state rules and regulation relating to commercial cannabis activities, and the licensing authority, through an investigation, has determined that the violation is grounds for termination or revocation of the license. The licensing authority shall have the authority to collect reasonable costs, as determined by the licensing authority, for investigation from the licensee or applicant.

(4) The applicant has failed to provide information required by the licensing authority.

(5) The applicant or licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the licensing authority determines that the applicant or licensee is otherwise suitable to be issued a license and granting the license would not compromise public safety, the licensing authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the applicant or licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the licensing authority shall include, but not be limited to, the following:

(A) A felony conviction for the illegal possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance.

(B) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.

(C) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.

(D) A felony conviction involving fraud, deceit, or embezzlement.

(6) The applicant, or any of its officers, directors, or owners, is a licensed physician making patient recommendations for medical cannabis pursuant to Section 11362.7 of the Health and Safety Code.

(7) The applicant or any of its officers, directors, or owners has been subject to fines or penalties for cultivation or production of a controlled substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code.

(8) The applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unlicensed commercial medical cannabis activities or has had a license revoked under this chapter in the three years immediately preceding the date the application is filed with the licensing authority.

(9) Failure to obtain and maintain a valid seller's permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

SEC. 11. Section 19324 is added to the Business and Professions Code, to read:

19324. Upon the denial of any application for a license, the licensing authority shall notify the applicant in writing. Within 30 days of service of the notice, the applicant may file a written petition for a license with the licensing authority. Upon receipt of a timely filed petition, the licensing authority shall set the petition for hearing. The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director of each licensing authority shall have all the powers granted therein.

SEC. 12. Section 19325 is added to the Business and Professions Code, to read:

19325. An applicant shall not be denied a state license if the denial is based solely on any of the following:

(a) A conviction or act that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made for which the applicant or licensee has obtained a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(b) A conviction that was subsequently dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

SEC. 13. Article 6 (commencing with Section 19331) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 6. Licensed Cultivation Sites

19331. The Legislature finds and declares all of the following:

(a) The United States Environmental Protection Agency has not established appropriate pesticide tolerances for, or permitted the registration and lawful use of, pesticides on cannabis crops intended for human consumption pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(b) The use of pesticides is not adequately regulated due to the omissions in federal law, and cannabis cultivated in California for California patients can and often does contain pesticide residues.

(c) Lawful California medical cannabis growers and caregivers urge the Department of Pesticide Regulation to provide guidance, in absence of federal guidance, on whether the pesticides currently used at most cannabis

cultivation sites are actually safe for use on cannabis intended for human consumption.

19332. (a) The Department of Food and Agriculture shall promulgate regulations governing the licensing of indoor and outdoor cultivation sites.

(b) The Department of Pesticide Regulation, in consultation with the Department of Food and Agriculture, shall develop standards for the use of pesticides in cultivation, and maximum tolerances for pesticides and other foreign object residue in harvested cannabis.

(c) The State Department of Public Health shall develop standards for the production and labeling of all edible medical cannabis products.

(d) The Department of Food and Agriculture, in consultation with the Department of Fish and Wildlife and the State Water Resources Control Board, shall ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(e) The Department of Food and Agriculture shall have the authority necessary for the implementation of the regulations it adopts pursuant to this chapter. The regulations shall do all of the following:

(1) Provide that weighing or measuring devices used in connection with the sale or distribution of medical cannabis are required to meet standards equivalent to Division 5 (commencing with Section 12001).

(2) Require that cannabis cultivation by licensees is conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, agricultural discharges, and similar matters. Nothing in this chapter, and no regulation adopted by the department, shall be construed to supersede or limit the authority of the State Water Resources Control Board, regional water quality control boards, or the Department of Fish and Wildlife to implement and enforce their statutory obligations or to adopt regulations to protect water quality, water supply, and natural resources.

(3) Establish procedures for the issuance and revocation of unique identifiers for activities associated with a cannabis cultivation license, pursuant to Article 8 (commencing with Section 19337). All cannabis shall be labeled with the unique identifier issued by the Department of Food and Agriculture.

(4) Prescribe standards, in consultation with the bureau, for the reporting of information as necessary related to unique identifiers, pursuant to Article 8 (commencing with Section 19337).

(f) The Department of Pesticide Regulation, in consultation with the State Water Resources Control Board, shall promulgate regulations that require that the application of pesticides or other pest control in connection with the indoor or outdoor cultivation of medical cannabis meets standards equivalent to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

(g) State cultivator license types issued by the Department of Food and Agriculture include:

(1) Type 1, or “specialty outdoor,” for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on noncontiguous plots.

(2) Type 1A, or “specialty indoor,” for indoor cultivation using exclusively artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.

(3) Type 1B, or “specialty mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than or equal to 5,000 square feet of total canopy size on one premises.

(4) Type 2, or “small outdoor,” for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(5) Type 2A, or “small indoor,” for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(6) Type 2B, or “small mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(7) Type 3, or “outdoor,” for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(8) Type 3A, or “indoor,” for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(9) Type 3B, or “mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(10) Type 4, or “nursery,” for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

19332.5. (a) Not later than January 1, 2020, the Department of Food and Agriculture in conjunction with the bureau, shall make available a certified organic designation and organic certification program for medical marijuana, if permitted under federal law and the National Organic Program (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)), and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code.

(b) The bureau may establish appellations of origin for marijuana grown in California.

(c) It is unlawful for medical marijuana to be marketed, labeled, or sold as grown in a California county when the medical marijuana was not grown in that county.

(d) It is unlawful to use the name of a California county in the labeling, marketing, or packaging of medical marijuana products unless the product was grown in that county.

19333. An employee engaged in commercial cannabis cultivation activity shall be subject to Wage Order 4-2001 of the Industrial Welfare Commission.

SEC. 14. Article 7.5 (commencing with Section 19335) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 7.5. Unique Identifier and Track and Trace Program

19335. (a) The Department of Food and Agriculture, in consultation with the bureau, shall establish a track and trace program for reporting the movement of medical marijuana items throughout the distribution chain that utilizes a unique identifier pursuant to Section 11362.777 of the Health and Safety Code and secure packaging and is capable of providing information that captures, at a minimum, all of the following:

- (1) The licensee receiving the product.
- (2) The transaction date.
- (3) The cultivator from which the product originates, including the associated unique identifier, pursuant to Section 11362.777 of the Health and Safety Code.

(b) (1) The Department of Food and Agriculture shall create an electronic database containing the electronic shipping manifests which shall include, but not be limited to, the following information:

- (A) The quantity, or weight, and variety of products shipped.
- (B) The estimated times of departure and arrival.
- (C) The quantity, or weight, and variety of products received.
- (D) The actual time of departure and arrival.
- (E) A categorization of the product.
- (F) The license number and the unique identifier pursuant to Section 11362.777 of the Health and Safety Code issued by the licensing authority for all licensees involved in the shipping process, including cultivators, transporters, distributors, and dispensaries.

(2) (A) The database shall be designed to flag irregularities for all licensing authorities in this chapter to investigate. All licensing authorities pursuant to this chapter may access the database and share information related to licensees under this chapter, including social security and individual taxpayer identifications notwithstanding Section 30.

(B) The Department of Food and Agriculture shall immediately inform the bureau upon the finding of an irregularity or suspicious finding related to a licensee, applicant, or commercial cannabis activity for investigatory purposes.

(3) Licensing authorities and state and local agencies may, at any time, inspect shipments and request documentation for current inventory.

(4) The bureau shall have 24-hour access to the electronic database administered by the Department of Food and Agriculture.

(5) The Department of Food and Agriculture shall be authorized to enter into memoranda of understandings with licensing authorities for data sharing purposes, as deemed necessary by the Department of Food and Agriculture.

(6) Information received and contained in records kept by the Department of Food and Agriculture or licensing authorities for the purposes of administering this section are confidential and shall not be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), except as necessary for authorized employees of the State of California or any city, county, or city and county to perform official duties pursuant to this chapter or a local ordinance.

(7) Upon the request of a state or local law enforcement agency, licensing authorities shall allow access to or provide information contained within the database to assist law enforcement in their duties and responsibilities pursuant to this chapter.

19336. (a) Chapter 4 (commencing with Section 55121) of Part 30 of Division 2 of the Revenue and Taxation Code shall apply with respect to the bureau's collection of the fees, civil fines, and penalties imposed pursuant to this chapter.

(b) Chapter 8 (commencing with Section 55381) of Part 30 of Division 2 of the Revenue and Taxation Code shall apply with respect to the disclosure of information under this chapter.

SEC. 15. Article 8 (commencing with Section 19337) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 8. Licensed Transporters

19337. (a) A licensee authorized to transport medical cannabis and medical cannabis products between licenses shall do so only as set forth in this chapter.

(b) Prior to transporting medical cannabis or medical cannabis products, a licensed transporter of medical cannabis or medical cannabis products shall do both of the following:

(1) Complete an electronic shipping manifest as prescribed by the licensing authority. The shipping manifest must include the unique identifier, pursuant to Section 11362.777 of the Health and Safety Code, issued by the Department of Food and Agriculture for the original cannabis product.

(2) Securely transmit the manifest to the bureau and the licensee that will receive the medical cannabis product. The bureau shall inform the Department of Food and Agriculture of information pertaining to commercial cannabis activity for the purpose of the track and trace program identified in Section 19335.

(c) During transportation, the licensed transporter shall maintain a physical copy of the shipping manifest and make it available upon request to agents of the Department of Consumer Affairs and law enforcement officers.

(d) The licensee receiving the shipment shall maintain each electronic shipping manifest and shall make it available upon request to the Department of Consumer Affairs and any law enforcement officers.

(e) Upon receipt of the transported shipment, the licensee receiving the shipment shall submit to the licensing agency a record verifying receipt of the shipment and the details of the shipment.

(f) Transporting, or arranging for or facilitating the transport of, medical cannabis or medical cannabis products in violation of this chapter is grounds for disciplinary action against the licensee.

19338. (a) This chapter shall not be construed to authorize or permit a licensee to transport or cause to be transported cannabis or cannabis products outside the state, unless authorized by federal law.

(b) A local jurisdiction shall not prevent transportation of medical cannabis or medical cannabis products on public roads by a licensee transporting medical cannabis or medical cannabis products in compliance with this chapter.

SEC. 16. Article 11 (commencing with Section 19348) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 11. Taxation

19348. (a) (1) A county may impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing medical cannabis or medical cannabis products by a licensee operating pursuant to this chapter.

(2) The board of supervisors shall specify in the ordinance proposing the tax the activities subject to the tax, the applicable rate or rates, the method of apportionment, if necessary, and the manner of collection of the tax. The tax may be imposed for general governmental purposes or for purposes specified in the ordinance by the board of supervisors.

(3) In addition to any other method of collection authorized by law, the board of supervisors may provide for the collection of the tax imposed pursuant to this section in the same manner, and subject to the same penalties and priority of lien, as other charges and taxes fixed and collected by the county. A tax imposed pursuant to this section is a tax and not a fee or special assessment. The board of supervisors shall specify whether the tax applies throughout the entire county or within the unincorporated area of the county.

(4) The tax authorized by this section may be imposed upon any or all of the activities set forth in paragraph (1), as specified in the ordinance, regardless of whether the activity is undertaken individually, collectively, or cooperatively, and regardless of whether the activity is for compensation or gratuitous, as determined by the board of supervisors.

(b) A tax imposed pursuant to this section shall be subject to applicable voter approval requirements imposed by law.

(c) This section is declaratory of existing law and does not limit or prohibit the levy or collection of any other fee, charge, or tax, or a license or service fee or charge upon, or related to, the activities set forth in subdivision (a) as otherwise provided by law. This section shall not be construed as a limitation upon the taxing authority of a county as provided by law.

(d) This section shall not be construed to authorize a county to impose a sales or use tax in addition to the sales and use tax imposed under an ordinance conforming to the provisions of Sections 7202 and 7203 of the Revenue and Taxation Code.

SEC. 17. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 18. The Legislature finds and declares that Section 14 of this act, which adds Section 19335 to the Business and Professions Code, thereby imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The limitation imposed under this act is necessary for purposes of compliance with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code).

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 20. This act shall become operative only if Assembly Bill 266 and Assembly Bill 243 of the 2015–16 Session are enacted and take effect on or before January 1, 2016.

Medical Marijuana AB 243 (Wood, Ch. 688, Stat. of 2015) - AB 266 (Bonta, Ch. 689, Stat of 2015) – SB 643 (McGuire, Ch. 719, Stat of 2015)

Attachment E

Dept. of Consumer Affairs	CA Dept. of Food and Ag	CA Dept. of Public Health	CA Dept. of Public Health	DCA/BMMR	DCA/BMMR	DCA/BMMR
						
OVERSIGHT	CULTIVATION	MANUFACTURING	TESTING	DISTRIBUTION	DISPENSARY	TRANSPORTATION
- Bur. of Medical Marijuana Regulation (BMMR) - Medical Marijuana Regulation and Safety Act - Governor Appointment - Authority to create, issue, renew, discipline, suspend, or revoke licenses for the transportation, storage unrelated to manufacturing activities, distribution, and sale of MM - Require each licensing authority to report to BMMR suspension or revocation of a license - Engaging in commercial MM activity without a license is subject to civil and criminal penalties - May appoint an Advisory Committee - Establish license /renewal fees \$10 million GF loan for start up - Provide public info on licensees - Contract for study on effect of cannabis on motor skills - Requires fingerprints for applicants - May deny license w 30 day appeal	- Declared Ag Product - CDFA has authority to create, issue, renew, discipline, suspend, or revoke licenses - Issue Unique Identifiers w/DPK to dev. stds for use pesticides, max tolerance for pest / foreign objects - Create Medical Cannabis Cultivation Program - Require permit from city/county - Require cultivators to package in tamper-evident packaging, use unique identifier, label the product, and prohibits packages and labels from being made attractive to children - Monitor H2O diversion or discharge with SWRCB and DFW - Req. CDFA w/BMMR to develop organic certification program - Authorizes BMMR to establish appellations of origin - CDFA to create an electronic tracking database (Track and Trace) - Establish license /renewal fees- License valid for 12 months - Cannot be located within 600 feet of a school.	- CDPH to license manufacturers establish fees and fines - Promulgate regulations for implementation of CDPH responsibilities (manufacture/edibles) - Edibles declared to be "not a food" & "not a drug" - Edibles defined as manufactured cannabis for human consumption - Only generic food names to be used to describe edible medical cannabis products - CDPH has authority to issue, renew, discipline, suspend, or revoke licenses - May participate in BMMR Advisory Committee - Require all manufacturers to package all medical cannabis products in tamper-evident packaging, use a unique identifier, label the product, and prohibits MM packages and labels from being made to be attractive to children and specific health warnings - CDPH inspects records of Manufacturers	- Registered/licensed by CDPH - Promulgate regulations for Implementation of CDPH Lab Testing Responsibilities (methods/OA/testing protocols) - CDPH has authority to issue, renew, discipline, suspend, or revoke licenses and adopt fee - Performs tests of cannabis or products w/ chain of custody controls - Accredited by specific orgs. Must notify CDPH within 1 day of loss of accreditation - Provide Certificate of Analysis - Testing, calibration and sampling activities consistent with ISO/IEC 17020 & ISO/IEC 17025 - Testing must occur prior to sending to dispensary or any other business - Determine how often cannabis is to be tested - Establish license /renewal fees - Licensees must destroy samples/product not meeting health/safety standards and not able to be mitigated - CDPH inspects records of testing labs.	- Licensed to purchase cannabis (cultivator) or products (manufacturer) for sale to dispensary or manufacturer - Conduct quality assurance and send to testing lab - Verifies quantity and content for manufacture or retail - Tracking for tax purposes - Must be bonded and insured	- Licensed for retail sale - Facility where medical cannabis, products or delivery devices are offered for retail sale - Deliveries can only be made by a dispensary pursuant to local ordinance - Requires a dispensary to implement security measures to deter theft of, medical cannabis or medical cannabis products. Require a dispensary to notify the licensing authority and law enforcement within 24 hours after discovering breaches of security - DCA creates storage requirements - Cannot be located within 600 feet of a school.	- Req. to complete an electronic shipping manifest and to transmit to BMMR and receiving licensee - Required to maintain a copy of the manifest while transporting - Req. transmittal to licensee of verification of receipt - Local jurisdiction shall not prohibit transportation of medical cannabis by licensed transporters on public roads - Security requirements for delivery and transportation
	The statute lists clarity on the exact relationship between cultivators & manufacturers					
	License Type 6, 7			License Type 8	License Type 10, 10A	License Type 12
	License Type 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4					

State Water Resources Control Board	Dept. of Pesticide Regulation	Dept. of Fish and Wildlife	Dept. of Justice	Div. of Occupational Safety and Health	CITY / COUNTY	ALL
						
WATER WASTE	PESTICIDE USE	ENVIRO IMPACT	VERIFICATION	LABOR	ORDINANCES	REPORTS
•w/DFW, establish multagency task force to environmental impacts •Pilot to address environmental impact of cannabis cultivation with Task Force and DFW •May establish fees to support regulatory program •Address discharge •Work with CDFA to ensure H2O diversion and discharge do not affect the in stream flows	•w/CDFA, develop standards for use of pesticides in cultivation and max tolerance for pesticides and other foreign object residue in harvested cannabis. •Work with SWRCB to develop standards for application (of pesticides) on cultivation	•DFW, w/ CDFA and the SWRCB to ensure that effects of water diversion and discharge associated with cultivation do not affect the in stream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability •May establish fees to support regulatory programs •Establish Watershed Enforcement Program •w/ SWRCB establishes multagency task force to study environmental impacts. •Develop remediation fees	•Requires applicants to submit fingerprints to the DOJ to provide a record of state or federal convictions and arrests •Provide information to licensing authorities	•By January 1, 2017, DOSH must convene an advisory committee to evaluate need to develop industry-specific regulations related to the activities of licensed facilities •Board must decide on need by July 1, 2017 •Employees subject to Wage Order-4-2001	•May prohibit cultivation site •May impose tax on cultivation, production, dispensing of MM on public roads by licensed transporter. •Does not supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.	•3/1/23 and yearly thereafter, each licensing authority submit report to legislature on authority activities and post the report on authority's website •Amt of \$ allocated and spent •# of license issued •Average time to process licenses •# and type of enforcement •#, \$ and type of penalties
TREASURY	Board of Equalization	Medical Board of CA	PATIENTS	CAREGIVERS	LICENSE TYPES	
					BPC 19300.7. License Type	
FUNDS	TAX	PHYSICIANS	HSC § 11362.7	HSC § 11362.7	1 Cultivation; Specialty outdoor; Small 1A Cultivation; Specialty indoor; Small 1B Cultivation; Specialty mid-light; Small 2 Cultivation; Outdoor; Small 2A Cultivation; Indoor; Small 2B Cultivation; Mid-light; Small 3 Cultivation; Outdoor; Medium 3A Cultivation; Indoor; Medium 3B Cultivation; Mid-light; Medium 4 Cultivation; Nursery 6 Manufacturer 1 7 Manufacturer 2 8 Testing 10 Dispensary; General 10A Dispensary; s three retail sites 11 Distribution 12 Transporter	
•Med. Marijuana Regulation and Safety Act Fund •Medical Cannabis Fines and Penalties Act •Medical Marijuana Fines and Penalties •Marijuana Production & Environment Mitigation Fund •BMMR to provide grant funding to local or state agencies •Provides start up GF with repayment.	•Collect tax from cultivators •Require BOE w/CDFA to adopt a system for reporting the movement of cannabis and cannabis products through the distribution chain for tax purposes; different from Track and Trace database	•Prioritize cases / deems unprofessional conduct for repeated acts of excessive recommending or without prior exam/medical reason. •Misdemeanor for a MD to accept, solicit, or offer any form of \$ from or to a facility if MD/immediate family has a financial interest •Consult to develop medical guidelines for admin and use of MM •MD advertisement must meet specific requirements	•Allows personal consumption cultivation of s100 sq. feet	•Cultivation of s500 sq. feet for use for s5 patients •Receives no remuneration •Repeal existing decriminalization provision allowing qualified patients and caregivers to collectively cultivate MM 1 yr after the BMMR has started to issue licenses.	•Imposes limitations on numbers/types of licenses per license holder •Licensee may only hold license in up to two separate licensing categories •Limit number of licensees (#7) that produce medical cannabis products using volatile solvents.	

County of Santa Clara

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Jeffrey F. Rosen
District Attorney

Issues Surrounding Marijuana in Santa Clara County

By Patrick Vanier, Supervisor of Narcotics Prosecution Team

Business Practices that Epitomize the Problems with the Proliferation of Marijuana Dispensaries

In 2014, the Santa Clara County District Attorney's Office prosecuted a case involving the transportation and possession for sale of six pounds of dried marijuana and twelve pounds of concentrated cannabis. The defendant told investigators he was delivering marijuana from a vendor on behalf of his San Jose-based marijuana club.

During trial, the director of the marijuana club, described as a "marijuana dispensary," testified to the business practice and organization of the club. The club consists of approximately 14,000 members between 2 "stores" in San Jose. 50 "vendors" throughout California sourced this "dispensary" with marijuana. Within the marijuana industry, the term "vendor" refers to a person who supplies marijuana to dispensaries and receives compensation for the product. The director identified the 50 vendors as persons who have marijuana cultivation sites which he has neither visited nor inspected. This particular dispensary does not pay city or state sales tax, or any income tax.

The club generates approximately \$1 million a year in annual sales involving approximately 100 pounds of dried marijuana bud, 30-40 pounds of wax (a form of concentrated cannabis) and varying quantities of cannabis products in other forms. The concentrated cannabis products are primarily manufactured using butane or other chemical solvents. This method of manufacturing is a crime under California Health and Safety Code section 11379.6 because of the hazards associated with production.

The business practices and organization of this club epitomize the many problems resulting from the proliferation of marijuana clubs in Santa Clara County. Illegal marijuana cultivation operations generate a significant number of collateral crimes on the supply side. For example, marijuana clubs and dispensaries self-monitor in the absence of government oversight. Therefore, there is no way to be sure how and from whom the clubs are acquiring their inventory of cannabis products. Law enforcement agencies have gathered valuable intelligence that some clubs are selling marijuana harvested by illegal cultivation operations. This intelligence has been documented through arrested individuals, "vendor" membership agreements or Prop 215 notices referencing local dispensaries, and subpoenaed club records.

Marijuana Case Trends

The District Attorney's Office observed the following trends based on recent cases prosecuted by the Office. The following statistics include only issued cases, not pending investigations. Between 2011 and 2013, the Office issued criminal charges against 172 illegal marijuana growing operations. Of these cases, 118 were

identified as “indoor grows” and 54 were classified as “outdoor grows.” Once again, these numbers only reflect a representative sample of cultivation operations within Santa Clara County.

Indoor Grow Operations

While indoor marijuana grow operations can be found in a variety of settings, including warehouses, barns, and back rooms of business establishments, the most common locations were single family homes in residential neighborhoods. These are locations where entire rental properties or vacant foreclosed homes are converted into clandestine greenhouses. The interior rooms for these homes are typically modified without construction permits, without permission from the banks (usually involving squatters) or knowledge of the rental property owners. With no regard to safety, structural integrity or value to the property, these former residences are generally ransacked.

Often times the electricity to homes where cultivation operations are present have been haphazardly rewired or compromised in other forms to accommodate the equipment – e.g. grow lights, fans, irrigation pumps, timers. Electrical circuit boxes are modified to bypass electricity from the power company’s meters (usually PG&E) resulting in the theft of millions of dollars in energy. House fires associated to residential marijuana gardens are frequently caused by the theft of power. Investigators also report tremendous amounts of moisture and standing water inside these indoor grows from leaking water sources, as well as humidity associated with the indoor process. Standing water is a breeding ground for caustic spores, black mold and fungus. Puddles of water combined with extension cords and exposed wiring create electrical hazards. First responders typically wear protective gear and respirators to avoid these dangers.

Of 118 indoor marijuana grows over the last three years:

- 76 involved converted homes,
- 2 involved converted warehouses, and
- 41 of these locations were identified as rental properties.

In at least 61 of these cases, electrical bypasses were observed where theft of power was deemed present and there were 5 house fires associated to indoor cultivations. The victim homeowners for these vandalized properties are by and large burdened with hundreds of thousands of dollars in clean up costs from indoor grows.

Outdoor Grow Operations

The other source of harvested marijuana comes from outdoor marijuana gardens. A large number of outdoor cultivation operations reviewed by the District Attorney’s Office were investigated by the Santa Clara County Marijuana Eradication Team (MET). Over the last three years, the MET team reported the removal of 355,005 marijuana plants and the seizure of 1,838 pounds of processed marijuana bud derived mostly from outdoor grow locations. These outdoor grow sites were typically discovered by detectives in remote areas of unincorporated Santa Clara County – eastern foothills of Milpitas and San Jose, Gilroy and Morgan Hill foothills, the base of the Santa Cruz mountains and the eastern foothills of Los Gatos, Los Altos and Saratoga. Marijuana gardens have been found on public lands (e.g. Henry Coe State Park and Midpeninsula Regional Open Space District) and private property in varying sizes. These grows can have a few hundred plants over a small plot of land or tens of thousands of marijuana bushes spread over many acres.

The number of marijuana plants will determine the yield potential for an operation. Most law enforcement experts conservatively estimate that a single marijuana plant can produce about 1 to 2 pounds of marijuana valued at \$1,500 to \$3,000 per pound (wholesale pricing). During harvesting periods for outdoor cultivations, May through October, the number of individual harvests for a single location can also impact

the profitability of the enterprise. Experienced growers can get two or three harvests on a single plot of land each year. The same is true for indoor marijuana locations, however, such locations can obviously grow year round.

The level of sophistication of these outdoor grows can vary as well. Some outdoor operations have only one or two experienced cultivators, while others have teams of migrant farm workers tending to the crop. The single most important variable for any outdoor grow is a nearby water source. Many outdoor operations are set up near creeks, rivers or reservoirs. Water is diverted without regulatory permits or permission from landowners. There have been numerous instances of water diverted to illegal marijuana grows from nearby legitimate farms. Illegal outdoor marijuana cultivators pollute waterways with pesticides, rodent poisons, human feces, trash, and soil erosion. Wardens with the California Department of Fish and Wildlife assist MET detectives with these investigations and recommend the charging of environmental crimes associated with marijuana cultivation. Of the 54 outdoor marijuana gardens charged between 2011-2013, at least 24 of the grow sites were on private land and 11 were on public property/open space. Environmental crimes were charged in 21 of these cases.

Other Associated Crimes

In addition to the crimes and social impacts unique to the two styles of marijuana cultivation, other alarming trends have been noted. Within the sample size of the 172 cases referenced above, firearms were located in 36 investigations. Other controlled substances, e.g. methamphetamine, were found in 25 cultivation sites. Children were reported present in 10 instances. Serious or violent felony crimes, e.g. burglary, robbery or assaults using deadly weapons, were reported in 8 investigations. In 2012, one investigation of an outdoor marijuana garden resulted in an officer involved shooting when one of the marijuana growers pointed a loaded .22 caliber semi-automatic rifle at a Fish and Wildlife Warden.

Organized Crime

Probably one of the least talked about issues involving marijuana grows has been the influence of organized crime. Law enforcement has documented numerous instances of organized crime controlling the cultivation of marijuana. Conservatively, at least 8 documented instances of Mexican National Drug Cartels and/or criminal street gangs have been tied to marijuana grows. At one outdoor marijuana operation, investigators found written references to the Sinaloa Drug Cartel and a drawing of "Jesus Malverde," the patron saint of drug traffickers. At another indoor-marijuana grow, officers found a "Santa Muerte" statue, a Mexican cult figure associated with violence, criminality, and the illegal drug trade.

Within the last five years, the U.S. Drug Enforcement Administration (DEA) and the Santa Clara County Sheriff's Office Multi-Jurisdictional Methamphetamine Enforcement Team (CAL-MMET) have identified multiple cartel drug trafficking cells operating within the county. These organizations are poly drug traffickers distributing methamphetamine, cocaine, heroin and marijuana. Through a variety of investigative techniques, DEA and CAL-MMET have learned that both indoor and outdoor marijuana cultivation is just one of many lucrative businesses operated by cartels to supplement the trafficking of methamphetamine and cocaine from Mexico. Mexican drug distributors will engage in human trafficking to bring farm workers up from the territorial regions the cartels control – Sinaloa or Michoacan – to tend to the cultivations. DEA and CAL-MMET investigations have resulted in the arrest of several high ranking drug distributors who have described to investigators firsthand how marijuana cultivation is a significant component to their overall business.

Law enforcement has also seen the rise of multiple Vietnamese criminal street gangs distributing marijuana within Santa Clara County. In 2010, California Department of Justice, Bureau of Narcotics Enforcement, investigated the Insane Viet Thugs (IVT), a documented street gang distributing marijuana and other

narcotics, as well as firearms. Agents learned through the investigation that IVT was managing a network of grow houses and distributing drugs throughout the Bay Area – San Jose to Vallejo. The investigation of IVT resulted in the service of 22 search warrants throughout the Bay Area and the prosecution of 22 validated or associate gang members, the seizure of approximately 1,500 marijuana plants from 5 indoor grow houses (a total of 7 grow houses were identified during the investigation) over 71 lbs of harvested marijuana, 16 firearms (including 3 assault weapons), over \$110,000 in U.S. Currency and various quantities of heroin, cocaine, methamphetamine and ecstasy.

The information provided in this narrative demonstrates how the lack of any significant regulatory schemes to control the supply of marijuana to dispensaries is impacting public safety and quality of life within the county. DA Jeff Rosen supports Santa Clara County's efforts to establish comprehensive guidelines designed to prevent the dangerous and illegal activities from illegal cultivation and distribution of marijuana.

WHITE PAPER ON MARIJUANA DISPENSARIES

by

**CALIFORNIA POLICE CHIEFS ASSOCIATION'S
TASK FORCE ON MARIJUANA DISPENSARIES**

ACKNOWLEDGMENTS

Beyond any question, this White Paper is the product of a major cooperative effort among representatives of numerous law enforcement agencies and allies who share in common the goal of bringing to light the criminal nexus and attendant societal problems posed by marijuana dispensaries that until now have been too often hidden in the shadows. The critical need for this project was first recognized by the California Police Chiefs Association, which put its implementation in the very capable hands of CPCA's Executive Director Leslie McGill, City of Modesto Chief of Police Roy Wasden, and City of El Cerrito Chief of Police Scott Kirkland to spearhead. More than 30 people contributed to this project as members of CPCA's Medical Marijuana Dispensary Crime/Impact Issues Task Force, which has been enjoying the hospitality of Sheriff John McGinnis at regular meetings held at the Sacramento County Sheriff's Department's Headquarters Office over the past three years about every three months. The ideas for the White Paper's components came from this group, and the text is the collaborative effort of numerous persons both on and off the task force. Special mention goes to Riverside County District Attorney Rod Pacheco and Riverside County Deputy District Attorney Jacqueline Jackson, who allowed their Office's fine White Paper on Medical Marijuana: History and Current Complications to be utilized as a partial guide, and granted permission to include material from that document. Also, Attorneys Martin Mayer and Richard Jones of the law firm of Jones & Mayer are thanked for preparing the pending legal questions and answers on relevant legal issues that appear at the end of this White Paper. And, I thank recently retired San Bernardino County Sheriff Gary Penrod for initially assigning me to contribute to this important work.

Identifying and thanking everyone who contributed in some way to this project would be well nigh impossible, since the cast of characters changed somewhat over the years, and some unknown individuals also helped meaningfully behind the scenes. Ultimately, developing a *White Paper on Marijuana Dispensaries* became a rite of passage for its creators as much as a writing project. At times this daunting, and sometimes unwieldy, multi-year project had many task force members, including the White Paper's editor, wondering if a polished final product would ever really reach fruition. But at last it has! If any reader is enlightened and spurred to action to any degree by the White Paper's important and timely subject matter, all of the work that went into this collaborative project will have been well worth the effort and time expended by the many individuals who worked harmoniously to make it possible.

Some of the other persons and agencies who contributed in a meaningful way to this group venture over the past three years, and deserve acknowledgment for their helpful input and support, are:

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Dennis Tilton, Editor

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WHITE PAPER ON MARIJUANA DISPENSARIES

by

**CALIFORNIA POLICE CHIEFS ASSOCIATION'S
TASK FORCE ON MARIJUANA DISPENSARIES****EXECUTIVE SUMMARY****INTRODUCTION**

Proposition 215, an initiative authorizing the limited possession, cultivation, and use of marijuana by patients and their care providers for certain medicinal purposes recommended by a physician without subjecting such persons to criminal punishment, was passed by California voters in 1996. This was supplemented by the California State Legislature's enactment in 2003 of the Medical Marijuana Program Act (SB 420) that became effective in 2004. The language of Proposition 215 was codified in California as the Compassionate Use Act, which added section 11362.5 to the California Health & Safety Code. Much later, the language of Senate Bill 420 became the Medical Marijuana Program Act (MMPA), and was added to the California Health & Safety Code as section 11362.7 *et seq.* Among other requirements, it purports to direct all California counties to set up and administer a voluntary identification card system for medical marijuana users and their caregivers. Some counties have already complied with the mandatory provisions of the MMPA, and others have challenged provisions of the Act or are awaiting outcomes of other counties' legal challenges to it before taking affirmative steps to follow all of its dictates. And, with respect to marijuana dispensaries, the reaction of counties and municipalities to these nascent businesses has been decidedly mixed. Some have issued permits for such enterprises. Others have refused to do so within their jurisdictions. Still others have conditioned permitting such operations on the condition that they not violate any state or federal law, or have reversed course after initially allowing such activities within their geographical borders by either limiting or refusing to allow any further dispensaries to open in their community. This White Paper explores these matters, the apparent conflicts between federal and California law, and the scope of both direct and indirect adverse impacts of marijuana dispensaries in local communities. It also recounts several examples that could be emulated of what some governmental officials and law enforcement agencies have already instituted in their jurisdictions to limit the proliferation of marijuana dispensaries and to mitigate their negative consequences.

FEDERAL LAW

Except for very limited and authorized research purposes, federal law through the Controlled Substances Act absolutely prohibits the use of marijuana for any legal purpose, and classifies it as a banned Schedule I drug. It cannot be legally prescribed as medicine by a physician. And, the federal regulation supersedes any state regulation, so that under federal law California medical marijuana statutes do not provide a legal defense for cultivating or possessing marijuana—even with a physician's recommendation for medical use.

CALIFORNIA LAW

Although California law generally prohibits the cultivation, possession, transportation, sale, or other transfer of marijuana from one person to another, since late 1996 after passage of an initiative (Proposition 215) later codified as the Compassionate Use Act, it has provided a limited affirmative defense to criminal prosecution for those who cultivate, possess, or use limited amounts of marijuana for medicinal purposes as qualified patients with a physician's recommendation or their designated primary caregiver or cooperative. Notwithstanding these limited exceptions to criminal culpability, California law is notably silent on any such available defense for a storefront marijuana dispensary, and California Attorney General Edmund G. Brown, Jr. has recently issued guidelines that generally find marijuana dispensaries to be unprotected and illegal drug-trafficking enterprises except in the rare instance that one can qualify as a true cooperative under California law. A primary caregiver must consistently and regularly assume responsibility for the housing, health, or safety of an authorized medical marijuana user, and nowhere does California law authorize cultivating or providing marijuana—medical or non-medical—for profit.

California's Medical Marijuana Program Act (Senate Bill 420) provides further guidelines for mandated county programs for the issuance of identification cards to authorized medical marijuana users on a voluntary basis, for the chief purpose of giving them a means of certification to show law enforcement officers if such persons are investigated for an offense involving marijuana. This system is currently under challenge by the Counties of San Bernardino and San Diego and Sheriff Gary Penrod, pending a decision on review by the U.S. Supreme Court, as is California's right to permit any legal use of marijuana in light of federal law that totally prohibits any personal cultivation, possession, sale, transportation, or use of this substance whatsoever, whether for medical or non-medical purposes.

PROBLEMS POSED BY MARIJUANA DISPENSARIES

Marijuana dispensaries are commonly large money-making enterprises that will sell marijuana to most anyone who produces a physician's written recommendation for its medical use. These recommendations can be had by paying unscrupulous physicians a fee and claiming to have most any malady, even headaches. While the dispensaries will claim to receive only donations, no marijuana will change hands without an exchange of money. These operations have been tied to organized criminal gangs, foster large grow operations, and are often multi-million-dollar profit centers.

Because they are repositories of valuable marijuana crops and large amounts of cash, several operators of dispensaries have been attacked and murdered by armed robbers both at their storefronts and homes, and such places have been regularly burglarized. Drug dealing, sales to minors, loitering, heavy vehicle and foot traffic in retail areas, increased noise, and robberies of customers just outside dispensaries are also common ancillary byproducts of their operations. To repel store invasions, firearms are often kept on hand inside dispensaries, and firearms are used to hold up their proprietors. These dispensaries are either linked to large marijuana grow operations or encourage home grows by buying marijuana to dispense. And, just as destructive fires and unhealthful mold in residential neighborhoods are often the result of large indoor home grows designed to supply dispensaries, money laundering also naturally results from dispensaries' likely unlawful operations.

LOCAL GOVERNMENTAL RESPONSES

Local governmental bodies can impose a moratorium on the licensing of marijuana dispensaries while investigating this issue; can ban this type of activity because it violates federal law; can use zoning to control the dispersion of dispensaries and the attendant problems that accompany them in unwanted areas; and can condition their operation on not violating any federal or state law, which is akin to banning them, since their primary activities will always violate federal law as it now exists—and almost surely California law as well.

LIABILITY

While highly unlikely, local public officials, including county supervisors and city council members, could potentially be charged and prosecuted for aiding and abetting criminal acts by authorizing and licensing marijuana dispensaries if they do not qualify as “cooperatives” under California law, which would be a rare occurrence. Civil liability could also result.

ENFORCEMENT OF MARIJUANA LAWS

While the Drug Enforcement Administration has been very active in raiding large-scale marijuana dispensaries in California in the recent past, and arresting and prosecuting their principals under federal law in selective cases, the new U.S. Attorney General, Eric Holder, Jr., has very recently announced a major change of federal position in the enforcement of federal drug laws with respect to marijuana dispensaries. It is to target for prosecution only marijuana dispensaries that are exposed as fronts for drug trafficking. It remains to be seen what standards and definitions will be used to determine what indicia will constitute a drug trafficking operation suitable to trigger investigation and enforcement under the new federal administration.

Some counties, like law enforcement agencies in the County of San Diego and County of Riverside, have been aggressive in confronting and prosecuting the operators of marijuana dispensaries under state law. Likewise, certain cities and counties have resisted granting marijuana dispensaries business licenses, have denied applications, or have imposed moratoria on such enterprises. Here, too, the future is uncertain, and permissible legal action with respect to marijuana dispensaries may depend on future court decisions not yet handed down.

Largely because the majority of their citizens have been sympathetic and projected a favorable attitude toward medical marijuana patients, and have been tolerant of the cultivation and use of marijuana, other local public officials in California cities and counties, especially in Northern California, have taken a “hands off” attitude with respect to prosecuting marijuana dispensary operators or attempting to close down such operations. But, because of the life safety hazards caused by ensuing fires that have often erupted in resultant home grow operations, and the violent acts that have often shadowed dispensaries, some attitudes have changed and a few political entities have reversed course after having previously licensed dispensaries and authorized liberal permissible amounts of marijuana for possession by medical marijuana patients in their jurisdictions. These “patients” have most often turned out to be young adults who are not sick at all, but have secured a physician’s written recommendation for marijuana use by simply paying the required fee demanded for this document without even first undergoing a physical examination. Too often “medical marijuana” has been used as a smokescreen for those who want to legalize it and profit off it, and storefront dispensaries established as cover for selling an illegal substance for a lucrative return.

WHITE PAPER ON MARIJUANA DISPENSARIES

by

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INTRODUCTION

In November of 1996, California voters passed Proposition 215. The initiative set out to make marijuana available to people with certain illnesses. The initiative was later supplemented by the Medical Marijuana Program Act. Across the state, counties and municipalities have varied in their responses to medical marijuana. Some have allowed businesses to open and provide medical marijuana. Others have disallowed all such establishments within their borders. Several once issued business licenses allowing medical marijuana stores to operate, but no longer do so. This paper discusses the legality of both medical marijuana and the businesses that make it available, and more specifically, the problems associated with medical marijuana and marijuana dispensaries, under whatever name they operate.

FEDERAL LAW

Federal law clearly and unequivocally states that all marijuana-related activities are illegal. Consequently, all people engaged in such activities are subject to federal prosecution. The United States Supreme Court has ruled that this federal regulation supersedes any state's regulation of marijuana – even California's. (*Gonzales v. Raich* (2005) 125 S.Ct. 2195, 2215.) "The Supremacy Clause unambiguously provides that if there is any conflict between federal law and state law, federal law shall prevail." (*Gonzales v. Raich, supra.*) Even more recently, the 9th Circuit Court of Appeals found that there is no fundamental right under the United States Constitution to even use medical marijuana. (*Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850, 866.)

In *Gonzales v. Raich*, the High Court declared that, despite the attempts of several states to partially legalize marijuana, it continues to be wholly illegal since it is classified as a Schedule I drug under federal law. As such, there are no exceptions to its illegality. (21 USC secs. 812(c), 841(a)(1).) Over the past thirty years, there have been several attempts to have marijuana reclassified to a different schedule which would permit medical use of the drug. All of these attempts have failed. (See *Gonzales v. Raich* (2005) 125 S.Ct. 2195, fn 23.) The mere categorization of marijuana as "medical" by some states fails to carve out any legally recognized exception regarding the drug. Marijuana, in any form, is neither valid nor legal.

Clearly the United States Supreme Court is the highest court in the land. Its decisions are final and binding upon all lower courts. The Court invoked the United States Supremacy Clause and the Commerce Clause in reaching its decision. The Supremacy Clause declares that all laws made in pursuance of the Constitution shall be the "supreme law of the land" and shall be legally superior to any conflicting provision of a state constitution or law.¹ The Commerce Clause states that "the

Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”²

Gonzales v. Raich addressed the concerns of two California individuals growing and using marijuana under California’s medical marijuana statute. The Court explained that under the Controlled Substances Act marijuana is a Schedule I drug and is strictly regulated.³ “Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment.”⁴ (21 USC sec. 812(b)(1).) The Court ruled that the Commerce Clause is applicable to California individuals growing and obtaining marijuana for their own personal, medical use. Under the Supremacy Clause, the federal regulation of marijuana, pursuant to the Commerce Clause, supersedes any state’s regulation, including California’s. The Court found that the California statutes did not provide any federal defense if a person is brought into federal court for cultivating or possessing marijuana.

Accordingly, there is no federal exception for the growth, cultivation, use or possession of marijuana and all such activity remains illegal.⁵ California’s Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 do not create an exception to this federal law. All marijuana activity is absolutely illegal and subject to federal regulation and prosecution. This notwithstanding, on March 19, 2009, U.S. Attorney General Eric Holder, Jr. announced that under the new Obama Administration the U.S. Department of Justice plans to target for prosecution only those marijuana dispensaries that use medical marijuana dispensing as a front for dealers of illegal drugs.⁶

CALIFORNIA LAW

Generally, the possession, cultivation, possession for sale, transportation, distribution, furnishing, and giving away of marijuana is unlawful under California state statutory law. (See Cal. Health & Safety Code secs. 11357-11360.) But, on November 5, 1996, California voters adopted Proposition 215, an initiative statute authorizing the medical use of marijuana.⁷ The initiative added California Health and Safety code section 11362.5, which allows “seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician”⁸ The codified section is known as the Compassionate Use Act of 1996.⁹ Additionally, the State Legislature passed Senate Bill 420 in 2003. It became the Medical Marijuana Program Act and took effect on January 1, 2004.¹⁰ This act expanded the definitions of “patient” and “primary caregiver”¹¹ and created guidelines for identification cards.¹² It defined the amount of marijuana that “patients,” and “primary caregivers” can possess.¹³ It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana,¹⁴ as well as to the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana for a person who qualifies as a “patient,” a “primary caregiver,” or as a member of a legally recognized “cooperative,” as those terms are defined within the statutory scheme. Nevertheless, there is no provision in any of these laws that authorizes or protects the establishment of a “dispensary” or other storefront marijuana distribution operation.

Despite their illegality in the federal context, the medical marijuana laws in California are specific. The statutes craft narrow affirmative defenses for particular individuals with respect to enumerated marijuana activity. All conduct, and people engaging in it, that falls outside of the statutes’ parameters remains illegal under California law. Relatively few individuals will be able to assert the affirmative defense in the statute. To use it a person must be a “qualified patient,” “primary caregiver,” or a member of a “cooperative.” Once they are charged with a crime, if a person can prove an applicable legal status, they are entitled to assert this statutory defense.

Former California Attorney General Bill Lockyer has also spoken about medical marijuana, and strictly construed California law relating to it. His office issued a bulletin to California law enforcement agencies on June 9, 2005. The office expressed the opinion that *Gonzales v. Raich* did not address the validity of the California statutes and, therefore, had no effect on California law. The office advised law enforcement to not change their operating procedures. Attorney General Lockyer made the recommendation that law enforcement neither arrest nor prosecute “individuals within the legal scope of California’s Compassionate Use Act.” Now the current California Attorney General, Edmund G. Brown, Jr., has issued guidelines concerning the handling of issues relating to California’s medical marijuana laws and marijuana dispensaries. The guidelines are much tougher on storefront dispensaries—generally finding them to be unprotected, illegal drug-trafficking enterprises if they do not fall within the narrow legal definition of a “cooperative”—than on the possession and use of marijuana upon the recommendation of a physician.

When California’s medical marijuana laws are strictly construed, it appears that the decision in *Gonzales v. Raich* does affect California law. However, provided that federal law does not preempt California law in this area, it does appear that the California statutes offer some legal protection to “individuals within the legal scope of” the acts. The medical marijuana laws speak to patients, primary caregivers, and true collectives. These people are expressly mentioned in the statutes, and, if their conduct comports to the law, they may have some state legal protection for specified marijuana activity. Conversely, all marijuana establishments that fall outside the letter and spirit of the statutes, including dispensaries and storefront facilities, are not legal. These establishments have no legal protection. Neither the former California Attorney General’s opinion nor the current California Attorney General’s guidelines present a contrary view. Nevertheless, without specifically addressing marijuana dispensaries, Attorney General Brown has sent his deputies attorney general to defend the codified Medical Marijuana Program Act against court challenges, and to advance the position that the state’s regulations promulgated to enforce the provisions of the codified Compassionate Use Act (Proposition 215), including a statewide database and county identification card systems for marijuana patients authorized by their physicians to use marijuana, are all valid.

1. Conduct

California Health and Safety Code sections 11362.765 and 11362.775 describe the conduct for which the affirmative defense is available. If a person qualifies as a “patient,” “primary caregiver,” or is a member of a legally recognized “cooperative,” he or she has an affirmative defense to possessing a defined amount of marijuana. Under the statutes no more than eight ounces of dried marijuana can be possessed. Additionally, either six mature or twelve immature plants may be possessed.¹⁵ If a person claims patient or primary caregiver status, and possesses more than this amount of marijuana, he or she can be prosecuted for drug possession. The qualifying individuals may also cultivate, plant, harvest, dry, and/or process marijuana, but only while still strictly observing the permitted amount of the drug. The statute may also provide a limited affirmative defense for possessing marijuana for sale, transporting it, giving it away, maintaining a marijuana house, knowingly providing a space where marijuana can be accessed, and creating a narcotic nuisance.¹⁶

However, for anyone who cannot lay claim to the appropriate status under the statutes, all instances of marijuana possession, cultivation, planting, harvesting, drying, processing, possession for the purposes of sales, completed sales, giving away, administration, transportation, maintaining of marijuana houses, knowingly providing a space for marijuana activity, and creating a narcotic nuisance continue to be illegal under California law.

2. Patients and Cardholders

A dispensary obviously is not a patient or cardholder. A “qualified patient” is an individual with a physician’s recommendation that indicates marijuana will benefit the treatment of a qualifying illness. (Cal. H&S Code secs. 11362.5(b)(1)(A) and 11362.7(f).) Qualified illnesses include cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or *any other illness for which marijuana provides relief*.¹⁷ A physician’s recommendation that indicates medical marijuana will benefit the treatment of an illness is required before a person can claim to be a medical marijuana patient. Accordingly, such proof is also necessary before a medical marijuana affirmative defense can be claimed.

A “person with an identification card” means an individual who is a qualified patient who has applied for and received a valid identification card issued by the State Department of Health Services. (Cal. H&S Code secs. 11362.7(c) and 11362.7(g).)

3. Primary Caregivers

The only person or entity authorized to receive compensation for services provided to patients and cardholders is a primary caregiver. (Cal. H&S Code sec. 11362.77(c).) However, nothing in the law authorizes any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.765(a).) It is important to note that it is almost impossible for a storefront marijuana business to gain true primary caregiver status. Businesses that call themselves “cooperatives,” but function like storefront dispensaries, suffer this same fate. In *People v. Mower*, the court was very clear that the defendant had to prove he was a primary caregiver in order to raise the medical marijuana affirmative defense. Mr. Mower was prosecuted for supplying two people with marijuana.¹⁸ He claimed he was their primary caregiver under the medical marijuana statutes. This claim required him to prove he “consistently had assumed responsibility for either one’s housing, health, or safety” before he could assert the defense.¹⁹ (Emphasis added.)

The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health; the responsibility for the health must be consistent; it must be independent of merely providing marijuana for a qualified person; and such a primary caregiver-patient relationship must begin before or contemporaneously with the time of assumption of responsibility for assisting the individual with marijuana. (*People v. Mentch* (2008) 45 Cal.4th 274, 283.) Any relationship a storefront marijuana business has with a patient is much more likely to be transitory than consistent, and to be wholly lacking in providing for a patient’s health needs beyond just supplying him or her with marijuana.

A “primary caregiver” is an individual or facility that has “consistently assumed responsibility for the housing, health, or safety of a patient” over time. (Cal. H&S Code sec. 11362.5(e).) “Consistency” is the key to meeting this definition. A patient can elect to patronize any dispensary that he or she chooses. The patient can visit different dispensaries on a single day or any subsequent day. The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. But, in light of the holding in *People v. Mentch*, *supra*, to qualify as a primary caregiver, more aid to a person’s health must occur beyond merely dispensing marijuana to a given customer.

Additionally, if more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. And, in most circumstances the primary caregiver must be at least 18 years of age.

The courts have found that the act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. (*See People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390: "One maintaining a source of marijuana supply, from which all members of the public qualified as permitted medicinal users may or may not discretionarily elect to make purchases, does not thereby become the party 'who has consistently assumed responsibility for the housing, health, or safety' of that purchaser as section 11362.5(e) requires.")

The California Legislature had the opportunity to legalize the existence of dispensaries when setting forth what types of facilities could qualify as "primary caregivers." Those included in the list clearly show the Legislature's intent to restrict the definition to one involving a significant and long-term commitment to the patient's health, safety, and welfare. The only facilities which the Legislature authorized to serve as "primary caregivers" are clinics, health care facilities, residential care facilities, home health agencies, and hospices which actually provide medical care or supportive services to qualified patients. (Cal. H&S Code sec. 11362.7(d)(1).) Any business that cannot prove that its relationship with the patient meets these requirements is not a primary caregiver. Functionally, the business is a drug dealer and is subject to prosecution as such.

4. Cooperatives and Collectives

According to the California Attorney General's recently issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, unless they meet stringent requirements, dispensaries also cannot reasonably claim to be cooperatives or collectives. In passing the Medical Marijuana Program Act, the Legislature sought, in part, to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation programs. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747, 881.) The Act added section 11362.775, which provides that "Patients and caregivers who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions" for the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana. However, there is no authorization for any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.77(a).) If a dispensary is only a storefront distribution operation open to the general public, and there is no indication that it has been involved with growing or cultivating marijuana for the benefit of members as a non-profit enterprise, it will not qualify as a cooperative to exempt it from criminal penalties under California's marijuana laws.

Further, the common dictionary definition of "collectives" is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess "the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; capital investment receives either no return or a limited return; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy, or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members."²⁰ Marijuana businesses, of any kind, do not normally meet this legal definition.

Based on the foregoing, it is clear that virtually all marijuana dispensaries are not legal enterprises under either federal or state law.

LAWS IN OTHER STATES

Besides California, at the time of publication of this White Paper, thirteen other states have enacted medical marijuana laws on their books, whereby to some degree marijuana recommended or prescribed by a physician to a specified patient may be legally possessed. These states are Alaska, Colorado, Hawaii, Maine, Maryland, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington. And, possession of marijuana under one ounce has now been decriminalized in Massachusetts.²¹

STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES

Since the passage of the Compassionate Use Act of 1996, many storefront marijuana businesses have opened in California.²² Some are referred to as dispensaries, and some as cooperatives; but it is how they operate that removes them from any umbrella of legal protection. These facilities operate as if they are pharmacies. Most offer different types and grades of marijuana. Some offer baked goods that contain marijuana.²³ Monetary donations are collected from the patient or primary caregiver when marijuana or food items are received. The items are not technically sold since that would be a criminal violation of the statutes.²⁴ These facilities are able to operate because they apply for and receive business licenses from cities and counties.

Federally, all existing storefront marijuana businesses are subject to search and closure since they violate federal law.²⁵ Their mere existence violates federal law. Consequently, they have no right to exist or operate, and arguably cities and counties in California have no authority to sanction them.

Similarly, in California there is no apparent authority for the existence of these storefront marijuana businesses. The Medical Marijuana Program Act of 2004 allows *patients* and *primary caregivers* to grow and cultivate marijuana, and no one else.²⁶ Although California Health and Safety Code section 11362.775 offers some state legal protection for true collectives and cooperatives, no parallel protection exists in the statute for any storefront business providing any narcotic.

The common dictionary definition of collectives is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess "the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; *capital investment receives either no return or a limited return*; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members."²⁷ Marijuana businesses, of any kind, do not meet this legal definition.

Actual medical dispensaries are commonly defined as offices in hospitals, schools, or other institutions from which medical supplies, preparations, and treatments are dispensed. Hospitals, hospices, home health care agencies, and the like are specifically included in the code as primary caregivers as long as they have "consistently assumed responsibility for the housing, health, or safety" of a patient.²⁸ Clearly, it is doubtful that any of the storefront marijuana businesses currently

existing in California can claim that status. Consequently, they are not primary caregivers and are subject to prosecution under both California and federal laws.

HOW EXISTING DISPENSARIES OPERATE

Despite their clear illegality, some cities do have existing and operational dispensaries. Assuming, *arguendo*, that they may operate, it may be helpful to review the mechanics of the business. The former Green Cross dispensary in San Francisco illustrates how a typical marijuana dispensary works.²⁹

A guard or employee may check for medical marijuana cards or physician recommendations at the entrance. Many types and grades of marijuana are usually available. Although employees are neither pharmacists nor doctors, sales clerks will probably make recommendations about what type of marijuana will best relieve a given medical symptom. Baked goods containing marijuana may be available and sold, although there is usually no health permit to sell baked goods. The dispensary will give the patient a form to sign declaring that the dispensary is their "primary caregiver" (a process fraught with legal difficulties). The patient then selects the marijuana desired and is told what the "contribution" will be for the product. The California Health & Safety Code specifically prohibits the sale of marijuana to a patient, so "contributions" are made to reimburse the dispensary for its time and care in making "product" available. However, if a calculation is made based on the available evidence, it is clear that these "contributions" can easily add up to millions of dollars per year. That is a very large cash flow for a "non-profit" organization denying any participation in the retail sale of narcotics. Before its application to renew its business license was denied by the City of San Francisco, there were single days that Green Cross sold \$45,000 worth of marijuana. On Saturdays, Green Cross could sell marijuana to forty-three patients an hour. The marijuana sold at the dispensary was obtained from growers who brought it to the store in backpacks. A medium-sized backpack would hold approximately \$16,000 worth of marijuana. Green Cross used many different marijuana growers.

It is clear that dispensaries are running as if they are businesses, not legally valid cooperatives. Additionally, they claim to be the "primary caregivers" of patients. This is a spurious claim. As discussed above, the term "primary caregiver" has a very specific meaning and defined legal qualifications. A primary caregiver is an individual who has "consistently assumed responsibility for the housing, health, or safety of a patient."³⁰ The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. If more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. In most circumstances the primary caregiver must be at least 18 years of age.

It is almost impossible for a storefront marijuana business to gain true primary caregiver status. A business would have to prove that it "**consistently** had assumed responsibility for [a patient's] **housing, health, or safety.**"³¹ The key to being a primary caregiver is not simply that marijuana is provided for a patient's health: the responsibility for the patient's health must be **consistent**.

As seen in the Green Cross example, a storefront marijuana business's relationship with a patient is most likely transitory. In order to provide a qualified patient with marijuana, a storefront marijuana business must create an instant "primary caregiver" relationship with him. The very fact that the relationship is instant belies any consistency in their relationship and the requirement that housing, health, or safety is consistently provided. Courts have found that a patient's act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. The

consistent relationship demanded by the statute is mere fiction if it can be achieved between an individual and a business that functions like a narcotic retail store.

ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILARLY OPERATING COOPERATIVES

Of great concern are the adverse secondary effects of these dispensaries and storefront cooperatives. They are many. Besides flouting federal law by selling a prohibited Schedule I drug under the Controlled Substances Act, marijuana dispensaries attract or cause numerous ancillary social problems as byproducts of their operation. The most glaring of these are other criminal acts.

ANCILLARY CRIMES

A. ARMED ROBBERIES AND MURDERS

Throughout California, many violent crimes have been committed that can be traced to the proliferation of marijuana dispensaries. These include armed robberies and murders. For example, as far back as 2002, two home occupants were shot in Willits, California in the course of a home-invasion robbery targeting medical marijuana.³² And, a series of four armed robberies of a marijuana dispensary in Santa Barbara, California occurred through August 10, 2006, in which thirty dollars and fifteen baggies filled with marijuana on display were taken by force and removed from the premises in the latest holdup. The owner said he failed to report the first three robberies because "medical marijuana is such a controversial issue."³³

On February 25, 2004, in Mendocino County two masked thugs committed a home invasion robbery to steal medical marijuana. They held a knife to a 65-year-old man's throat, and though he fought back, managed to get away with large amounts of marijuana. They were soon caught, and one of the men received a sentence of six years in state prison.³⁴ And, on August 19, 2005, 18-year-old Demarco Lowrey was "shot in the stomach" and "bled to death" during a gunfight with the business owner when he and his friends attempted a takeover robbery of a storefront marijuana business in the City of San Leandro, California. The owner fought back with the hooded home invaders, and a gun battle ensued. Demarco Lowrey was hit by gunfire and "dumped outside the emergency entrance of Children's Hospital Oakland" after the shootout.³⁵ He did not survive.³⁶

Near Hayward, California, on September 2, 2005, upon leaving a marijuana dispensary, a patron of the CCA Cannabis Club had a gun put to his head as he was relieved of over \$250 worth of pot. Three weeks later, another break-in occurred at the Garden of Eden Cannabis Club in September of 2005.³⁷

Another known marijuana-dispensary-related murder occurred on November 19, 2005. Approximately six gun- and bat-wielding burglars broke into Les Crane's home in Laytonville, California while yelling, "This is a raid." Les Crane, who owned two storefront marijuana businesses, was at home and shot to death. He received gunshot wounds to his head, arm, and abdomen.³⁸ Another man present at the time was beaten with a baseball bat. The murderers left the home after taking an unknown sum of U.S. currency and a stash of processed marijuana.³⁹

Then, on January 9, 2007, marijuana plant cultivator Rex Farrance was shot once in the chest and killed in his own home after four masked intruders broke in and demanded money. When the homeowner ran to fetch a firearm, he was shot dead. The robbers escaped with a small amount of

cash and handguns. Investigating officers counted 109 marijuana plants in various phases of cultivation inside the house, along with two digital scales and just under 4 pounds of cultivated marijuana.⁴⁰

More recently in Colorado, Ken Gorman, a former gubernatorial candidate and dispenser of marijuana who had been previously robbed over twelve times at his home in Denver, was found murdered by gunshot inside his home. He was a prominent proponent of medical marijuana and the legalization of marijuana.⁴¹

B. BURGLARIES

In June of 2007, after two burglarizing youths in Bellflower, California were caught by the homeowner trying to steal the fruits of his indoor marijuana grow, he shot one who was running away, and killed him.⁴² And, again in January of 2007, Claremont Councilman Corey Calaycay went on record calling marijuana dispensaries “crime magnets” after a burglary occurred in one in Claremont, California.⁴³

On July 17, 2006, the El Cerrito City Council voted to ban all such marijuana facilities. It did so after reviewing a nineteen-page report that detailed a rise in crime near these storefront dispensaries in other cities. The crimes included robberies, assaults, burglaries, murders, and attempted murders.⁴⁴ Even though marijuana storefront businesses do not currently exist in the City of Monterey Park, California, it issued a moratorium on them after studying the issue in August of 2006.⁴⁵ After allowing these establishments to operate within its borders, the City of West Hollywood, California passed a similar moratorium. The moratorium was “prompted by incidents of armed burglary at some of the city’s eight existing pot stores and complaints from neighbors about increased pedestrian and vehicle traffic and noise”⁴⁶

C. TRAFFIC, NOISE, AND DRUG DEALING

Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out of area criminals in search of prey, are commonly encountered just outside marijuana dispensaries,⁴⁷ as well as drug-related offenses in the vicinity—like resales of products just obtained inside—since these marijuana centers regularly attract marijuana growers, drug users, and drug traffickers.⁴⁸ Sharing just purchased marijuana outside dispensaries also regularly takes place.⁴⁹

Rather than the “seriously ill,” for whom medical marijuana was expressly intended,⁵⁰ “‘perfectly healthy’ young people frequenting dispensaries” are a much more common sight.⁵¹ Patient records seized by law enforcement officers from dispensaries during raids in San Diego County, California in December of 2005 “showed that 72 percent of patients were between 17 and 40 years old”⁵² Said one admitted marijuana trafficker, “The people I deal with are the same faces I was dealing with 12 years ago but now, because of Senate Bill 420, they are supposedly legit. I can totally see why cops are bummed.”⁵³

Reportedly, a security guard sold half a pound of marijuana to an undercover officer just outside a dispensary in Morro Bay, California.⁵⁴ And, the mere presence of marijuana dispensaries encourages illegal growers to plant, cultivate, and transport ever more marijuana, in order to supply and sell their crops to these storefront operators in the thriving medical marijuana dispensary market, so that the national domestic marijuana yield has been estimated to be 35.8 billion dollars, of which a 13.8 billion dollar share is California grown.⁵⁵ It is a big business. And, although the operators of some dispensaries will claim that they only accept monetary contributions for the products they

dispense, and do not sell marijuana, a patron will not receive any marijuana until an amount of money acceptable to the dispensary has changed hands.

D. ORGANIZED CRIME, MONEY LAUNDERING, AND FIREARMS VIOLATIONS

Increasingly, reports have been surfacing about organized crime involvement in the ownership and operation of marijuana dispensaries, including Asian and other criminal street gangs and at least one member of the Armenian Mafia.⁵⁶ The dispensaries or “pot clubs” are often used as a front by organized crime gangs to traffic in drugs and launder money. One such gang whose territory included San Francisco and Oakland, California reportedly ran a multi-million dollar business operating ten warehouses in which vast amounts of marijuana plants were grown.⁵⁷ Besides seizing over 9,000 marijuana plants during surprise raids on this criminal enterprise’s storage facilities, federal officers also confiscated three firearms,⁵⁸ which seem to go hand in hand with medical marijuana cultivation and dispensaries.⁵⁹

Marijuana storefront businesses have allowed criminals to flourish in California. In the summer of 2007, the City of San Diego cooperated with federal authorities and served search warrants on several marijuana dispensary locations. In addition to marijuana, many weapons were recovered, including a stolen handgun and an M-16 assault rifle.⁶⁰ The National Drug Intelligence Center reports that marijuana growers are employing armed guards, using explosive booby traps, and murdering people to shield their crops. Street gangs of all national origins are involved in transporting and distributing marijuana to meet the ever increasing demand for the drug.⁶¹ Active Asian gangs have included members of Vietnamese organized crime syndicates who have migrated from Canada to buy homes throughout the United States to use as grow houses.⁶²

Some or all of the processed harvest of marijuana plants nurtured in these homes then wind up at storefront marijuana dispensaries owned and operated by these gangs. Storefront marijuana businesses are very dangerous enterprises that thrive on ancillary grow operations.

Besides fueling marijuana dispensaries, some monetary proceeds from the sale of harvested marijuana derived from plants grown inside houses are being used by organized crime syndicates to fund other legitimate businesses for profit and the laundering of money, and to conduct illegal business operations like prostitution, extortion, and drug trafficking.⁶³ Money from residential grow operations is also sometimes traded by criminal gang members for firearms, and used to buy drugs, personal vehicles, and additional houses for more grow operations,⁶⁴ and along with the illegal income derived from large-scale organized crime-related marijuana production operations comes widespread income tax evasion.⁶⁵

E. POISONINGS

Another social problem somewhat unique to marijuana dispensaries is poisonings, both intentional and unintentional. On August 16, 2006, the Los Angeles Police Department received two such reports. One involved a security guard who ate a piece of cake extended to him from an operator of a marijuana clinic as a “gift,” and soon afterward felt dizzy and disoriented.⁶⁶ The second incident concerned a UPS driver who experienced similar symptoms after accepting and eating a cookie given to him by an operator of a different marijuana clinic.⁶⁷

OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES

Other adverse secondary impacts from the operation of marijuana dispensaries include street dealers lurking about dispensaries to offer a lower price for marijuana to arriving patrons; marijuana smoking in public and in front of children in the vicinity of dispensaries; loitering and nuisances; acquiring marijuana and/or money by means of robbery of patrons going to or leaving dispensaries; an increase in burglaries at or near dispensaries; a loss of trade for other commercial businesses located near dispensaries; the sale at dispensaries of other illegal drugs besides marijuana; an increase in traffic accidents and driving under the influence arrests in which marijuana is implicated; and the failure of marijuana dispensary operators to report robberies to police.⁶⁸

SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE

A. UNJUSTIFIED AND FICTITIOUS PHYSICIAN RECOMMENDATIONS

California's legal requirement under California Health and Safety Code section 11362.5 that a physician's recommendation is required for a patient or caregiver to possess medical marijuana has resulted in other undesirable outcomes: wholesale issuance of recommendations by unscrupulous physicians seeking a quick buck, and the proliferation of forged or fictitious physician recommendations. Some doctors link up with a marijuana dispensary and take up temporary residence in a local hotel room where they advertise their appearance in advance, and pass out medical marijuana use recommendations to a line of "patients" at "about \$150 a pop."⁶⁹ Other individuals just make up their own phony doctor recommendations,⁷⁰ which are seldom, if ever, scrutinized by dispensary employees for authenticity. Undercover DEA agents sporting fake medical marijuana recommendations were readily able to purchase marijuana from a clinic.⁷¹ Far too often, California's medical marijuana law is used as a smokescreen for healthy pot users to get their desired drug, and for proprietors of marijuana dispensaries to make money off them, without suffering any legal repercussions.⁷²

On March 11, 2009, the Osteopathic Medical Board of California adopted the proposed decision revoking Dr. Alfonso Jimenez's Osteopathic Physician's and Surgeon's Certificate and ordering him to pay \$74,323.39 in cost recovery. Dr. Jimenez operated multiple marijuana clinics and advertised his services extensively on the Internet. Based on information obtained from raids on marijuana dispensaries in San Diego, in May of 2006, the San Diego Police Department ran two undercover operations on Dr. Jimenez's clinic in San Diego. In January of 2007, a second undercover operation was conducted by the Laguna Beach Police Department at Dr. Jimenez's clinic in Orange County. Based on the results of the undercover operations, the Osteopathic Medical Board charged Dr. Jimenez with gross negligence and repeated negligent acts in the treatment of undercover operatives posing as patients. After a six-day hearing, the Administrative Law Judge (ALJ) issued her decision finding that Dr. Jimenez violated the standard of care by committing gross negligence and repeated negligence in care, treatment, and management of patients when he, among other things, issued medical marijuana recommendations to the undercover agents without conducting adequate medical examinations, failed to gain proper informed consent, and failed to consult with any primary care and/or treating physicians or obtain and review prior medical records before issuing medical marijuana recommendations. The ALJ also found Dr. Jimenez engaged in dishonest behavior by preparing false and/or misleading medical records and disseminating false and misleading advertising to the public, including representing himself as a "Cannabis Specialist" and "Qualified Medical Marijuana Examiner" when no such formal specialty or qualification existed. Absent any

requested administrative agency reconsideration or petition for court review, the decision was to become effective April 24, 2009.

B. PROLIFERATION OF GROW HOUSES IN RESIDENTIAL AREAS

In recent years the proliferation of grow houses in residential neighborhoods has exploded. This phenomenon is country wide, and ranges from the purchase for purpose of marijuana grow operations of small dwellings to "high priced McMansions . . ."⁷³ Mushrooming residential marijuana grow operations have been detected in California, Connecticut, Florida, Georgia, New Hampshire, North Carolina, Ohio, South Carolina, and Texas.⁷⁴ In 2007 alone, such illegal operations were detected and shut down by federal and state law enforcement officials in 41 houses in California, 50 homes in Florida, and 11 homes in New Hampshire.⁷⁵ Since then, the number of residences discovered to be so impacted has increased exponentially. Part of this recent influx of illicit residential grow operations is because the "THC-rich 'B.C. bud' strain" of marijuana originally produced in British Columbia "can be grown only in controlled indoor environments," and the Canadian market is now reportedly saturated with the product of "competing Canadian gangs," often Asian in composition or outlaw motorcycle gangs like the Hells Angels.⁷⁶ Typically, a gutted house can hold about 1,000 plants that will each yield almost half a pound of smokable marijuana; this collectively nets about 500 pounds of usable marijuana per harvest, with an average of three to four harvests per year.⁷⁷ With a street value of \$3,000 to \$5,000 per pound" for high-potency marijuana, and such multiple harvests, "a successful grow house can bring in between \$4.5 million and \$10 million a year . . ."⁷⁸ The high potency of hydroponically grown marijuana can command a price as much as six times higher than commercial grade marijuana.⁷⁹

C. LIFE SAFETY HAZARDS CREATED BY GROW HOUSES

In Humboldt County, California, structure fires caused by unsafe indoor marijuana grow operations have become commonplace. The city of Arcata, which sports four marijuana dispensaries, was the site of a house fire in which a fan had fallen over and ignited a fire; it had been turned into a grow house by its tenant. Per Arcata Police Chief Randy Mendosa, altered and makeshift "no code" electrical service connections and overloaded wires used to operate high-powered grow lights and fans are common causes of the fires. Large indoor marijuana growing operations can create such excessive draws of electricity that PG&E power pole transformers are commonly blown. An average 1,500-square-foot tract house used for growing marijuana can generate monthly electrical bills from \$1,000 to \$3,000 per month. From an environmental standpoint, the carbon footprint from greenhouse gas emissions created by large indoor marijuana grow operations should be a major concern for every community in terms of complying with Air Board AB-32 regulations, as well as other greenhouse gas reduction policies. Typically, air vents are cut into roofs, water seeps into carpeting, windows are blacked out, holes are cut in floors, wiring is jury-rigged, and electrical circuits are overloaded to operate grow lights and other apparatus. When fires start, they spread quickly.

The May 31, 2008 edition of the *Los Angeles Times* reported, "Law enforcement officials estimate that as many as 1,000 of the 7,500 homes in this Humboldt County community are being used to cultivate marijuana, slashing into the housing stock, spreading building-safety problems and sowing neighborhood discord." Not surprisingly, in this bastion of liberal pot possession rules that authorized the cultivation of up to 99 plants for medicinal purpose, most structural fires in the community of Arcata have been of late associated with marijuana cultivation.⁸⁰ Chief of Police Mendosa clarified that the actual number of marijuana grow houses in Arcata has been an ongoing subject of public debate. Mendosa added, "We know there are numerous grow houses in almost every neighborhood in and around the city, which has been the source of constant citizen complaints." House fires caused by

grower-installed makeshift electrical wiring or tipped electrical fans are now endemic to Humboldt County.⁸¹

Chief Mendosa also observed that since marijuana has an illicit street value of up to \$3,000 per pound, marijuana grow houses have been susceptible to violent armed home invasion robberies. Large-scale marijuana grow houses have removed significant numbers of affordable houses from the residential rental market. When property owners discover their rentals are being used as grow houses, the residences are often left with major structural damage, which includes air vents cut into roofs and floors, water damage to floors and walls, and mold. The June 9, 2008 edition of the *New York Times* shows an unidentified Arcata man tending his indoor grow; the man claimed he can make \$25,000 every three months by selling marijuana grown in the bedroom of his rented house.⁸² Claims of ostensible medical marijuana growing pursuant to California's medical marijuana laws are being advanced as a mostly false shield in an attempt to justify such illicit operations.

Neither is fire an uncommon occurrence at grow houses elsewhere across the nation. Another occurred not long ago in Holiday, Florida.⁸³ To compound matters further, escape routes for firefighters are often obstructed by blocked windows in grow houses, electric wiring is tampered with to steal electricity, and some residences are even booby-trapped to discourage and repel unwanted intruders.⁸⁴

D. INCREASED ORGANIZED GANG ACTIVITIES

Along with marijuana dispensaries and the grow operations to support them come members of organized criminal gangs to operate and profit from them. Members of an ethnic Chinese drug gang were discovered to have operated 50 indoor grow operations in the San Francisco Bay area, while Cuban-American crime organizations have been found to be operating grow houses in Florida and elsewhere in the South. A Vietnamese drug ring was caught operating 19 grow houses in Seattle and Puget Sound, Washington.⁸⁵ In July of 2008, over 55 Asian gang members were indicted for narcotics trafficking in marijuana and ecstasy, including members of the Hop Sing Gang that had been actively operating marijuana grow operations in Elk Grove and elsewhere in the vicinity of Sacramento, California.⁸⁶

E. EXPOSURE OF MINORS TO MARIJUANA

Minors who are exposed to marijuana at dispensaries or residences where marijuana plants are grown may be subtly influenced to regard it as a generally legal drug, and inclined to sample it. In grow houses, children are exposed to dangerous fire and health conditions that are inherent in indoor grow operations.⁸⁷ Dispensaries also sell marijuana to minors.⁸⁸

F. IMPAIRED PUBLIC HEALTH

Indoor marijuana grow operations emit a skunk-like odor,⁸⁹ and foster generally unhealthy conditions like allowing chemicals and fertilizers to be placed in the open, an increased carbon dioxide level within the grow house, and the accumulation of mold,⁹⁰ all of which are dangerous to any children or adults who may be living in the residence,⁹¹ although many grow houses are uninhabited.

G. LOSS OF BUSINESS TAX REVENUE

When business suffers as a result of shoppers staying away on account of traffic, blight, crime, and the undesirability of a particular business district known to be frequented by drug users and traffickers, and organized criminal gang members, a city's tax revenues necessarily drop as a direct consequence.

H. DECREASED QUALITY OF LIFE IN DETERIORATING NEIGHBORHOODS, BOTH BUSINESS AND RESIDENTIAL

Marijuana dispensaries bring in the criminal element and loiterers, which in turn scare off potential business patrons of nearby legitimate businesses, causing loss of revenues and deterioration of the affected business district. Likewise, empty homes used as grow houses emit noxious odors in residential neighborhoods, project irritating sounds of whirring fans,⁹² and promote the din of vehicles coming and going at all hours of the day and night. Near harvest time, rival growers and other uninvited enterprising criminals sometimes invade grow houses to beat "clip crews" to the site and rip off mature plants ready for harvesting. As a result, violence often erupts from confrontations in the affected residential neighborhood.⁹³

ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS

On balance, any utility to medical marijuana patients in care giving and convenience that marijuana dispensaries may appear to have on the surface is enormously outweighed by a much darker reality that is punctuated by the many adverse secondary effects created by their presence in communities, recounted here. These drug distribution centers have even proven to be unsafe for their own proprietors.

POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES

A. IMPOSED MORATORIA BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While in the process of investigating and researching the issue of licensing marijuana dispensaries, as an interim measure city councils may enact date-specific moratoria that expressly prohibit the presence of marijuana dispensaries, whether for medical use or otherwise, and prohibiting the sale of marijuana in any form on such premises, anywhere within the incorporated boundaries of the city until a specified date. Before such a moratorium's date of expiration, the moratorium may then either be extended or a city ordinance enacted completely prohibiting or otherwise restricting the establishment and operation of marijuana dispensaries, and the sale of all marijuana products on such premises.

County supervisors can do the same with respect to marijuana dispensaries sought to be established within the unincorporated areas of a county. Approximately 80 California cities, including the cities of Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill, and 6 counties, including Contra Costa County, have enacted moratoria banning the existence of marijuana dispensaries. In a novel approach, the City of Arcata issued a moratorium on any new dispensaries in the downtown area, based on no agricultural activities being permitted to occur there.⁹⁴

B. IMPOSED BANS BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While the Compassionate Use Act of 1996 permits seriously ill persons to legally obtain and use marijuana for medical purposes upon a physician's recommendation, it is silent on marijuana dispensaries and does not expressly authorize the sale of marijuana to patients or primary caregivers.

Neither Proposition 215 nor Senate Bill 420 specifically authorizes the dispensing of marijuana in any form from a storefront business. And, no state statute presently exists that expressly permits the licensing or operation of marijuana dispensaries.⁹⁵ Consequently, approximately 39 California cities, including the Cities of Concord and San Pablo, and 2 counties have prohibited marijuana dispensaries within their respective geographical boundaries, while approximately 24 cities, including the City of Martinez, and 7 counties have allowed such dispensaries to do business within their jurisdictions. Even the complete prohibition of marijuana dispensaries within a given locale cannot be found to run afoul of current California law with respect to permitted use of marijuana for medicinal purposes, so long as the growing or use of medical marijuana by a city or county resident in conformance with state law is not proscribed.⁹⁶

In November of 2004, the City of Brampton in Ontario, Canada passed The Grow House Abatement By-law, which authorized the city council to appoint inspectors and local police officers to inspect suspected grow houses and render safe hydro meters, unsafe wiring, booby traps, and any violation of the Fire Code or Building Code, and remove discovered controlled substances and ancillary equipment designed to grow and manufacture such substances, at the involved homeowner's cost.⁹⁷ And, after state legislators became appalled at the proliferation of for-profit residential grow operations, the State of Florida passed the Marijuana Grow House Eradication act (House Bill 173) in June of 2008. The governor signed this bill into law, making owning a house for the purpose of cultivating, packaging, and distributing marijuana a third-degree felony; growing 25 or more marijuana plants a second-degree felony; and growing "25 or more marijuana plants in a home with children present" a first-degree felony.⁹⁸ It has been estimated that approximately 17,500 marijuana grow operations were active in late 2007.⁹⁹ To avoid becoming a dumping ground for organized crime syndicates who decide to move their illegal grow operations to a more receptive legislative environment, California and other states might be wise to quickly follow suit with similar bills, for it may already be happening.¹⁰⁰

C. IMPOSED RESTRICTED ZONING AND OTHER REGULATION BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

If so inclined, rather than completely prohibit marijuana dispensaries, through their zoning power city and county officials have the authority to restrict owner operators to locate and operate so-called "medical marijuana dispensaries" in prescribed geographical areas of a city or designated unincorporated areas of a county, and require them to meet prescribed licensing requirements before being allowed to do so. This is a risky course of action though for would-be dispensary operators, and perhaps lawmakers too, since federal authorities do not recognize any lawful right for the sale, purchase, or use of marijuana for medical use or otherwise anywhere in the United States, including California. Other cities and counties have included as a condition of licensure for dispensaries that the operator shall "violate no federal or state law," which puts any applicant in a "Catch-22" situation since to federal authorities any possession or sale of marijuana is automatically a violation of federal law.

Still other municipalities have recently enacted or revised comprehensive ordinances that address a variety of medical marijuana issues. For example, according to the City of Arcata Community

Development Department in Arcata, California, in response to constant citizen complaints from what had become an extremely serious community problem, the Arcata City Council revised its Land Use Standards for Medical Marijuana Cultivation and Dispensing. In December of 2008, City of Arcata Ordinance #1382 was enacted. It includes the following provisions:

“Categories:

1. Personal Use
2. Cooperatives or Collectives

Medical Marijuana for Personal Use: An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence in conformance with the following standards:

1. Cultivation area shall not exceed 50 square feet and not exceed ten feet (10') in height.
 - a. Cultivation lighting shall not exceed 1200 watts;
 - b. Gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing is prohibited.
 - c. Cultivation and sale is prohibited as a Home Occupation (sale or dispensing is prohibited).
 - d. Qualified patient shall reside in the residence where the medical marijuana cultivation occurs;
 - e. Qualified patient shall not participate in medical marijuana cultivation in any other residence.
 - f. Residence kitchen, bathrooms, and primary bedrooms shall not be used primarily for medical marijuana cultivation;
 - g. Cultivation area shall comply with the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation.
 - h. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents.
2. City Zoning Administrator may approve up to 100 square foot:
 - a. Documentation showing why the 50 square foot cultivation area standard is not feasible.
 - b. Include written permission from the property owner.
 - c. City Building Official must inspect for California Building Code and Fire Code.
 - d. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board.
 - e. Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

Medical Marijuana Cooperatives or Collectives.

1. Allowed with a Conditional Use Permit.
2. In Commercial, Industrial, and Public Facility Zoning Districts.
3. Business form must be a cooperative or collective.
4. Existing cooperative or collective shall be in full compliance within one year.
5. Total number of medical marijuana cooperatives or collectives is limited to four and ultimately two.
6. Special consideration if located within
 - a. A 300 foot radius from any existing residential zoning district,
 - b. Within 500 feet of any other medical marijuana cooperative or collective.

- c. Within 500 feet from any existing public park, playground, day care, or school.
- 7. Source of medical marijuana.
 - a. Permitted Cooperative or Collective. On-site medical marijuana cultivation shall not exceed twenty-five (25) percent of the total floor area, but in no case greater than 1,500 square feet and not exceed ten feet (10') in height.
 - b. Off-site Permitted Cultivation. Use Permit application and be updated annually.
 - c. Qualified Patients. Medical marijuana acquired from an individual qualified patient shall received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Collective or cooperative may credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.
- 8. Operations Manual at a minimum include the following information:
 - a. Staff screening process including appropriate background checks.
 - b. Operating hours.
 - c. Site, floor plan of the facility.
 - d. Security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification.
 - e. Screening, registration and validation process for qualified patients.
 - f. Qualified patient records acquisition and retention procedures.
 - g. Process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources.
 - h. Measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana.
 - i. Chemicals stored, used and any effluent discharged into the City's wastewater and/or storm water system.
- 9. Operating Standards.
 - a. No dispensing medical marijuana more than twice a day.
 - b. Dispense to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid.
 - c. Display the client rules and/or regulations at each building entrance.
 - d. Smoking, ingesting or consuming medical marijuana on the premises or in the vicinity is prohibited.
 - e. Persons under the age of eighteen (18) are precluded from entering the premises.
 - f. No on-site display of marijuana plants.
 - g. No distribution of live plants, starts and clones on through Use Permit.
 - h. Permit the on-site display or sale of marijuana paraphernalia only through the Use Permit.
 - i. Maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;
 - j. Submit an "Annual Performance Review Report" which is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary.
 - k. Monitoring review fees shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.
- 10. Permit Revocation or Modification. A use permit may be revoked or modified for non-compliance with one or more of the items described above."

LIABILITY ISSUES

With respect to issuing business licenses to marijuana storefront facilities a very real issue has arisen: counties and cities are arguably aiding and abetting criminal violations of federal law. Such actions clearly put the counties permitting these establishments in very precarious legal positions. Aiding and abetting a crime occurs when someone commits a crime, the person aiding that crime knew the criminal offender intended to commit the crime, and the person aiding the crime intended to assist the criminal offender in the commission of the crime.

The legal definition of aiding and abetting could be applied to counties and cities allowing marijuana facilities to open. A county that has been informed about the *Gonzales v. Raich* decision knows that all marijuana activity is federally illegal. Furthermore, such counties know that individuals involved in the marijuana business are subject to federal prosecution. When an individual in California cultivates, possesses, transports, or uses marijuana, he or she is committing a federal crime.

A county issuing a business license to a marijuana facility knows that the people there are committing federal crimes. The county also knows that those involved in providing and obtaining marijuana are intentionally violating federal law.

This very problem is why some counties are re-thinking the presence of marijuana facilities in their communities. There is a valid fear of being prosecuted for aiding and abetting federal drug crimes. Presently, two counties have expressed concern that California's medical marijuana statutes have placed them in such a precarious legal position. Because of the serious criminal ramifications involved in issuing business permits and allowing storefront marijuana businesses to operate within their borders, San Diego and San Bernardino Counties filed consolidated lawsuits against the state seeking to prevent the State of California from enforcing its medical marijuana statutes which potentially subject them to criminal liability, and squarely asserting that California medical marijuana laws are preempted by federal law in this area. After California's medical marijuana laws were all upheld at the trial level, California's Fourth District Court of Appeal found that the State of California could mandate counties to adopt and enforce a voluntary medical marijuana identification card system, and the appellate court bypassed the preemption issue by finding that San Diego and San Bernardino Counties lacked standing to raise this challenge to California's medical marijuana laws. Following this state appellate court decision, independent petitions for review filed by the two counties were both denied by the California Supreme Court.

Largely because of the quandary that county and city peace officers in California face in the field when confronted with alleged medical marijuana with respect to enforcement of the total federal criminal prohibition of all marijuana, and state exemption from criminal penalties for medical marijuana users and caregivers, petitions for a writ of certiorari were then separately filed by the two counties seeking review of this decision by the United States Supreme Court in the consolidated cases of *County of San Diego, County of San Bernardino, and Gary Penrod, as Sheriff of the County of San Bernardino v. San Diego Norml, State of California, and Sandra Shewry, Director of the California Department of Health Services in her official capacity*, Ct.App. Case No. D-5-333.) The High Court has requested the State of California and other interested parties to file responsive briefs to the two counties' and Sheriff Penrod's writ petitions before it decides whether to grant or deny review of these consolidated cases. The petitioners would then be entitled to file a reply to any filed response. It is anticipated that the U.S. Supreme Court will formally grant or deny review of these consolidated cases in late April or early May of 2009.

In another case, *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, although the federal preemption issue was not squarely raised or addressed in its decision, California's Fourth District Court of Appeal found that public policy considerations allowed a city standing to challenge a state trial court's order directing the return by a city police department of seized medical marijuana to a person determined to be a patient. After the court-ordered return of this federally banned substance was upheld at the intermediate appellate level, and not accepted for review by the California Supreme Court, a petition for a writ of certiorari was filed by the City of Garden Grove to the U.S. Supreme Court to consider and reverse the state appellate court decision. But, that petition was also denied. However, the case of *People v. Kelly* (2008) 163 Cal.App.4th 124—in which a successful challenge was made to California's Medical Marijuana Program's maximum amounts of marijuana and marijuana plants permitted to be possessed by medical marijuana patients (Cal. H&S Code sec. 11362.77 *et seq.*), which limits were found at the court of appeal level to be without legal authority for the state to impose—has been accepted for review by the California Supreme Court on the issue of whether this law was an improper amendment to Proposition 215's Compassionate Use Act of 1996.

A SAMPLING OF EXPERIENCES WITH MARIJUANA DISPENSARIES

1. MARIJUANA DISPENSARIES-THE SAN DIEGO STORY

After the passage of Proposition 215 in 1996, law enforcement agency representatives in San Diego, California met many times to formulate a comprehensive strategy of how to deal with cases that may arise out of the new law. In the end it was decided to handle the matters on a case-by-case basis. In addition, questionnaires were developed for patient, caregiver, and physician interviews. At times patients without sales indicia but large grows were interviewed and their medical records reviewed in making issuing decisions. In other cases where sales indicia and amounts supported a finding of sales the cases were pursued. At most, two cases a month were brought for felony prosecution.

In 2003, San Diego County's newly elected District Attorney publicly supported Prop. 215 and wanted her newly created Narcotics Division to design procedures to ensure patients were not caught up in case prosecutions. As many already know, law enforcement officers rarely arrest or seek prosecution of a patient who merely possesses personal use amounts. Rather, it is those who have sales amounts in product or cultivation who are prosecuted. For the next two years the District Attorney's Office proceeded as it had before. But, on the cases where the patient had too many plants or product but not much else to show sales—the DDAs assigned to review the case would interview and listen to input to respect the patient's and the DA's position. Some cases were rejected and others issued but the case disposition was often generous and reflected a "sin no more" view.

All of this changed after the passage of SB 420. The activists and pro-marijuana folks started to push the envelope. Dispensaries began to open for business and physicians started to advertise their availability to issue recommendations for the purchase of medical marijuana. By spring of 2005 the first couple of dispensaries opened up—but they were discrete. This would soon change. By that summer, 7 to 10 dispensaries were open for business, and they were selling marijuana openly. In fact, the local police department was doing a small buy/walk project and one of its target dealers said he was out of pot but would go get some from the dispensary to sell to the undercover officer (UC); he did. It was the proliferation of dispensaries and ancillary crimes that prompted the San Diego Police Chief (the Chief was a Prop. 215 supporter who sparred with the Fresno DEA in his prior job over this issue) to authorize his officers to assist DEA.

The Investigation

San Diego DEA and its local task force (NTF) sought assistance from the DA's Office as well as the U.S. Attorney's Office. Though empathetic about being willing to assist, the DA's Office was not sure how prosecutions would fare under the provisions of SB 420. The U.S. Attorney had the easier road but was noncommittal. After several meetings it was decided that law enforcement would work on using undercover operatives (UCs) to buy, so law enforcement could see exactly what was happening in the dispensaries.

The investigation was initiated in December of 2005, after NTF received numerous citizen complaints regarding the crime and traffic associated with "medical marijuana dispensaries." The City of San Diego also saw an increase in crime related to the marijuana dispensaries. By then approximately 20 marijuana dispensaries had opened and were operating in San Diego County, and investigations on 15 of these dispensaries were initiated.

During the investigation, NTF learned that all of the business owners were involved in the transportation and distribution of large quantities of marijuana, marijuana derivatives, and marijuana food products. In addition, several owners were involved in the cultivation of high grade marijuana. The business owners were making significant profits from the sale of these products and not properly reporting this income.

Undercover Task Force Officers (TFO's) and SDPD Detectives were utilized to purchase marijuana and marijuana food products from these businesses. In December of 2005, thirteen state search warrants were executed at businesses and residences of several owners. Two additional follow-up search warrants and a consent search were executed the same day. Approximately 977 marijuana plants from seven indoor marijuana grows, 564.88 kilograms of marijuana and marijuana food products, one gun, and over \$58,000 U.S. currency were seized. There were six arrests made during the execution of these search warrants for various violations, including outstanding warrants, possession of marijuana for sale, possession of psilocybin mushrooms, obstructing a police officer, and weapons violations. However, the owners and clerks were not arrested or prosecuted at this time—just those who showed up with weapons or product to sell.

Given the fact most owners could claim mistake of law as to selling (though not a legitimate defense, it could be a jury nullification defense) the DA's Office decided not to file cases at that time. It was hoped that the dispensaries would feel San Diego was hostile ground and they would do business elsewhere. Unfortunately this was not the case. Over the next few months seven of the previously targeted dispensaries opened, as well as a slew of others. Clearly prosecutions would be necessary.

To gear up for the re-opened and new dispensaries prosecutors reviewed the evidence and sought a second round of UC buys wherein the UC would be buying for themselves and they would have a second UC present at the time acting as UC1's caregiver who also would buy. This was designed to show the dispensary was not the caregiver. There is no authority in the law for organizations to act as primary caregivers. Caregivers must be individuals who care for a marijuana patient. A primary caregiver is defined by Proposition 215, as codified in H&S Code section 11362.5(e), as, "For the purposes of this section, 'primary caregiver' means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person." The goal was to show that the stores were only selling marijuana, and not providing care for the hundreds who bought from them.

In addition to the caregiver-controlled buys, another aim was to put the whole matter in perspective for the media and the public by going over the data that was found in the raided dispensary records, as well as the crime statistics. An analysis of the December 2005 dispensary records showed a breakdown of the purported illness and youthful nature of the patients. The charts and other PR aspects played out after the second take down in July of 2006.

The final attack was to reveal the doctors (the gatekeepers for medical marijuana) for the fraud they were committing. UCs from the local PD went in and taped the encounters to show that the pot docs did not examine the patients and did not render care at all; rather they merely sold a medical MJ recommendation whose duration depended upon the amount of money paid.

In April of 2006, two state and two federal search warrants were executed at a residence and storage warehouse utilized to cultivate marijuana. Approximately 347 marijuana plants, over 21 kilograms of marijuana, and \$2,855 U.S. currency were seized.

Due to the pressure from the public, the United States Attorney's Office agreed to prosecute the owners of the businesses with large indoor marijuana grows and believed to be involved in money laundering activities. The District Attorney's Office agreed to prosecute the owners in the other investigations.

In June of 2006, a Federal Grand Jury indicted six owners for violations of Title 21 USC, sections 846 and 841(a)(1), Conspiracy to Distribute Marijuana; sections 846 and 841(a), Conspiracy to Manufacture Marijuana; and Title 18 USC, Section 2, Aiding and Abetting.

In July of 2006, 11 state and 11 federal search warrants were executed at businesses and residences associated with members of these businesses. The execution of these search warrants resulted in the arrest of 19 people, seizure of over \$190,000 in U.S. currency and other assets, four handguns, one rifle, 405 marijuana plants from seven grows, and over 329 kilograms of marijuana and marijuana food products.

Following the search warrants, two businesses reopened. An additional search warrant and consent search were executed at these respective locations. Approximately 20 kilograms of marijuana and 32 marijuana plants were seized.

As a result, all but two of the individuals arrested on state charges have pled guilty. Several have already been sentenced and a few are still awaiting sentencing. All of the individuals indicted federally have also pled guilty and are awaiting sentencing.

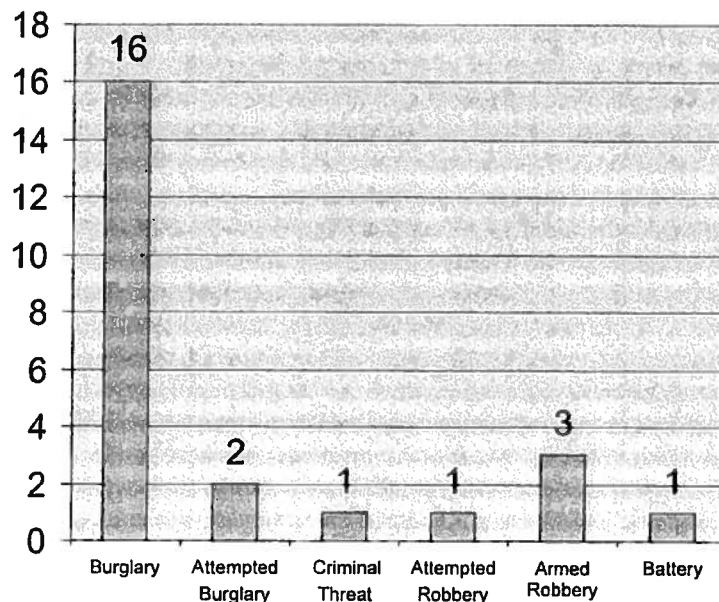
After the July 2006 search warrants a joint press conference was held with the U.S. Attorney and District Attorney, during which copies of a complaint to the medical board, photos of the food products which were marketed to children, and the charts shown below were provided to the media.

Directly after these several combined actions, there were no marijuana distribution businesses operating in San Diego County. Law enforcement agencies in the San Diego region have been able to successfully dismantle these businesses and prosecute the owners. As a result, medical marijuana advocates have staged a number of protests demanding DEA allow the distribution of marijuana. The closure of these businesses has reduced crime in the surrounding areas.

The execution of search warrants at these businesses sent a powerful message to other individuals operating marijuana distribution businesses that they are in violation of both federal law and California law.

Press Materials:

**Reported Crime at Marijuana Dispensaries
From January 1, 2005 through June 23, 2006**



Information showing the dispensaries attracted crime:

The marijuana dispensaries were targets of violent crimes because of the amount of marijuana, currency, and other contraband stored inside the businesses. From January 1, 2005 through June 23, 2006, 24 violent crimes were reported at marijuana dispensaries. An analysis of financial records seized from the marijuana dispensaries showed several dispensaries were grossing over \$300,000 per month from selling marijuana and marijuana food products. The majority of customers purchased marijuana with cash.

Crime statistics inadequately reflect the actual number of crimes committed at the marijuana dispensaries. These businesses were often victims of robberies and burglaries, but did not report the crimes to law enforcement on account of fear of being arrested for possession of marijuana in excess of Prop. 215 guidelines. NTF and the San Diego Police Department (SDPD) received numerous citizen complaints regarding every dispensary operating in San Diego County.

Because the complaints were received by various individuals, the exact number of complaints was not recorded. The following were typical complaints received:

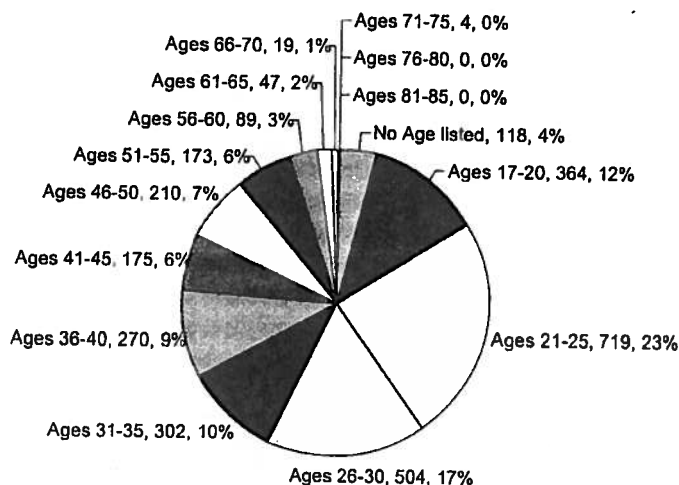
- high levels of traffic going to and from the dispensaries
- people loitering in the parking lot of the dispensaries
- people smoking marijuana in the parking lot of the dispensaries

- vandalism near dispensaries
- threats made by dispensary employees to employees of other businesses
- citizens worried they may become a victim of crime because of their proximity to dispensaries

In addition, the following observations (from citizen activists assisting in data gathering) were made about the marijuana dispensaries:

- Identification was not requested for individuals who looked under age 18
- Entrance to business was not refused because of lack of identification
- Individuals were observed loitering in the parking lots
- Child-oriented businesses and recreational areas were situated nearby
- Some businesses made no attempt to verify a submitted physician's recommendation

Dispensary Patients By Age



An analysis of patient records seized during search warrants at several dispensaries show that 52% of the customers purchasing marijuana were between the ages of 17 to 30. 63% of primary caregivers purchasing marijuana were between the ages of 18 through 30. Only 2.05% of customers submitted a physician's recommendation for AIDS, glaucoma, or cancer.

Why these businesses were deemed to be criminal--not compassionate:

The medical marijuana businesses were deemed to be criminal enterprises for the following reasons:

- Many of the business owners had histories of drug and violence-related arrests.
- The business owners were street-level marijuana dealers who took advantage of Prop. 215 in an attempt to legitimize marijuana sales for profit.
- Records, or lack of records, seized during the search warrants showed that all the owners were not properly reporting income generated from the sales of marijuana. Many owners were involved in money laundering and tax evasion.
- The businesses were selling to individuals without serious medical conditions.
- There are no guidelines on the amount of marijuana which can be sold to an individual. For

example, an individual with a physician's recommendation can go to as many marijuana distribution businesses and purchase as much marijuana as he/she wants.

- California law allows an individual to possess 6 mature or 12 immature plants per qualified person. However, the San Diego Municipal Code states a "caregiver" can only provide care to 4 people, including themselves; this translates to 24 mature or 48 immature plants total. Many of these dispensaries are operating large marijuana grows with far more plants than allowed under law. Several of the dispensaries had indoor marijuana grows inside the businesses, with mature and/or immature marijuana plants over the limits.
- State law allows a qualified patient or primary caregiver to possess no more than eight ounces of dried marijuana per qualified patient. However, the San Diego Municipal Code allows primary caregivers to possess no more than two pounds of processed marijuana. Under either law, almost every marijuana dispensary had over two pounds of processed marijuana during the execution of the search warrants.
- Some marijuana dispensaries force customers to sign forms designating the business as their primary caregiver, in an attempt to circumvent the law.

2. EXPERIENCES WITH MARIJUANA DISPENSARIES IN RIVERSIDE COUNTY

There were some marijuana dispensaries operating in the County of Riverside until the District Attorney's Office took a very aggressive stance in closing them. In Riverside, anyone that is not a "qualified patient" or "primary caregiver" under the Medical Marijuana Program Act who possesses, sells, or transports marijuana is being prosecuted.

Several dispensary closures illustrate the impact this position has had on marijuana dispensaries. For instance, the Palm Springs Caregivers dispensary (also known as Palm Springs Safe Access Collective) was searched after a warrant was issued. All materials inside were seized, and it was closed down and remains closed. The California Caregivers Association was located in downtown Riverside. Very shortly after it opened, it was also searched pursuant to a warrant and shut down. The CannaHelp dispensary was located in Palm Desert. It was searched and closed down early in 2007. The owner and two managers were then prosecuted for marijuana sales and possession of marijuana for the purpose of sale. However, a judge granted their motion to quash the search warrant and dismissed the charges. The District Attorney's Office then appealed to the Fourth District Court of Appeal. Presently, the Office is waiting for oral arguments to be scheduled.

Dispensaries in the county have also been closed by court order. The Healing Nations Collective was located in Corona. The owner lied about the nature of the business in his application for a license. The city pursued and obtained an injunction that required the business to close. The owner appealed to the Fourth District Court of Appeal, which ruled against him. (*City of Corona v. Ronald Naulls et al.*, Case No. E042772.)

3. MEDICAL MARIJUANA DISPENSARY ISSUES IN CONTRA COSTA COUNTY CITIES AND IN OTHER BAY AREA COUNTIES

Several cities in Contra Costa County, California have addressed this issue by either banning dispensaries, enacting moratoria against them, regulating them, or taking a position that they are simply not a permitted land use because they violate federal law. Richmond, El Cerrito, San Pablo, Hercules, and Concord have adopted permanent ordinances banning the establishment of marijuana dispensaries. Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill have imposed moratoria against dispensaries. Clayton, San Ramon, and Walnut Creek have not taken any formal action regarding the establishment of marijuana dispensaries but have indicated that marijuana dispensaries

are not a permitted use in any of their zoning districts as a violation of federal law. Martinez has adopted a permanent ordinance regulating the establishment of marijuana dispensaries.

The Counties of Alameda, Santa Clara, and San Francisco have enacted permanent ordinances regulating the establishment of marijuana dispensaries. The Counties of Solano, Napa, and Marin have enacted neither regulations nor bans. A brief overview of the regulations enacted in neighboring counties follows.

A. Alameda County

Alameda County has a nineteen-page regulatory scheme which allows the operation of three permitted dispensaries in unincorporated portions of the county. Dispensaries can only be located in commercial or industrial zones, or their equivalent, and may not be located within 1,000 feet of other dispensaries, schools, parks, playgrounds, drug recovery facilities, or recreation centers. Permit issuance is controlled by the Sheriff, who is required to work with the Community Development Agency and the Health Care Services agency to establish operating conditions for each applicant prior to final selection. Adverse decisions can be appealed to the Sheriff and are ruled upon by the same panel responsible for setting operating conditions. That panel's decision may be appealed to the Board of Supervisors, whose decision is final (subject to writ review in the Superior Court per CCP sec. 1094.5). Persons violating provisions of the ordinance are guilty of a misdemeanor.

B. Santa Clara County

In November of 1998, Santa Clara County passed an ordinance permitting dispensaries to exist in unincorporated portions of the county with permits first sought and obtained from the Department of Public Health. In spite of this regulation, neither the County Counsel nor the District Attorney's Drug Unit Supervisor believes that Santa Clara County has had *any* marijuana dispensaries in operation at least through 2006.

The only permitted activities are the on-site cultivation of medical marijuana and the distribution of medical marijuana/medical marijuana food stuffs. No retail sales of any products are permitted at the dispensary. Smoking, ingestion or consumption is also prohibited on site. All doctor recommendations for medical marijuana must be verified by the County's Public Health Department.

C. San Francisco County

In December of 2001, the Board of Supervisors passed Resolution No. 012006, declaring San Francisco to be a "Sanctuary for Medical Cannabis." City voters passed Proposition S in 2002, directing the city to explore the possibility of establishing a medical marijuana cultivation and distribution program run by the city itself.

San Francisco dispensaries must apply for and receive a permit from the Department of Public Health. They may only operate as a collective or cooperative, as defined by California Health and Safety Code section 11362.7 (see discussion in section 4, under "California Law" above), and may only sell or distribute marijuana to members. Cultivation, smoking, and making and selling food products may be allowed. Permit applications are referred to the Departments of Planning, Building Inspection, and Police. Criminal background checks are required but exemptions could still allow the operation of dispensaries by individuals with prior convictions for violent felonies or who have had prior permits suspended or revoked. Adverse decisions can be appealed to the Director of

Public Health and the Board of Appeals. It is unclear how many dispensaries are operating in the city at this time.

D. Crime Rates in the Vicinity of MariCare

Sheriff's data have been compiled for "Calls for Service" within a half-mile radius of 127 Aspen Drive, Pacheco. However, in research conducted by the El Cerrito Police Department and relied upon by Riverside County in recently enacting its ban on dispensaries, it was recognized that not all crimes related to medical marijuana take place in or around a dispensary. Some take place at the homes of the owners, employees, or patrons. Therefore, these statistics cannot paint a complete picture of the impact a marijuana dispensary has had on crime rates.

The statistics show that the overall number of calls decreased (3,746 in 2005 versus 3,260 in 2006). However, there have been **increases** in the numbers of crimes which appear to be related to a business which is an attraction to a criminal element. Reports of commercial burglaries increased (14 in 2005, 24 in 2006), as did reports of residential burglaries (13 in 2005, 16 in 2006) and miscellaneous burglaries (5 in 2005, 21 in 2006).

Tender Holistic Care (THC marijuana dispensary formerly located on N. Buchanan Circle in Pacheco) was forcibly burglarized on June 11, 2006. \$4,800 in cash was stolen, along with marijuana, hash, marijuana food products, marijuana pills, marijuana paraphernalia, and marijuana plants. The total loss was estimated to be \$16,265.

MariCare was also burglarized within two weeks of opening in Pacheco. On April 4, 2006, a window was smashed after 11:00 p.m. while an employee was inside the business, working late to get things organized. The female employee called "911" and locked herself in an office while the intruder ransacked the downstairs dispensary and stole more than \$200 worth of marijuana. Demetrio Ramirez indicated that since they were just moving in, there wasn't much inventory.

Reports of vehicle thefts increased (4 in 2005, 6 in 2006). Disturbance reports increased in nearly all categories (Fights: 5 in 2005, 7 in 2006; Harassment: 4 in 2005, 5 in 2006; Juveniles: 4 in 2005, 21 in 2006; Loitering: 11 in 2005, 19 in 2006; Verbal: 7 in 2005, 17 in 2006). Littering reports increased from 1 in 2005 to 5 in 2006. Public nuisance reports increased from 23 in 2005 to 26 in 2006.

These statistics reflect the complaints and concerns raised by nearby residents. Residents have reported to the District Attorney's Office, as well as to Supervisor Piepho's office, that when calls are made to the Sheriff's Department, the offender has oftentimes left the area before law enforcement can arrive. This has led to less reporting, as it appears to local residents to be a futile act and residents have been advised that law enforcement is understaffed and cannot always timely respond to all calls for service. As a result, Pacheco developed a very active, visible Neighborhood Watch program. The program became much more active in 2006, according to Doug Stewart. Volunteers obtained radios and began frequently receiving calls directly from local businesses and residents who contacted them **instead** of law enforcement. It is therefore significant that there has still been an increase in many types of calls for law enforcement service, although the overall number of calls has decreased.

Other complaints from residents included noise, odors, smoking/consuming marijuana in the area, littering and trash from the dispensary, loitering near a school bus stop and in the nearby church parking lot, observations that the primary patrons of MariCare appear to be individuals under age 25,

and increased traffic. Residents observed that the busiest time for MariCare appeared to be from 4:00 p.m. to 6:00 p.m. On a typical Friday, 66 cars were observed entering MariCare's facility; 49 of these were observed to contain additional passengers. The slowest time appeared to be from 1:00 p.m. to 3:00 p.m. On a typical Saturday, 44 cars were counted during this time, and 29 of these were observed to have additional passengers. MariCare has claimed to serve 4,000 "patients."

E. Impact of Proposed Ordinance on MedDelivery Dispensary, El Sobrante

It is the position of Contra Costa County District Attorney Robert J. Kochly that a proposed ordinance should terminate operation of the dispensary in El Sobrante because the land use of that business would be inconsistent with both state and federal law. However, the Community Development Department apparently believes that MedDelivery can remain as a "legal, non-conforming use."

F. Banning Versus Regulating Marijuana Dispensaries in Unincorporated Contra Costa County

It is simply bad public policy to allow the proliferation of any type of business which is illegal and subject to being raided by federal and/or state authorities. In fact, eight locations associated with the New Remedies dispensary in San Francisco and Alameda Counties were raided in October of 2006, and eleven Southern California marijuana clinics were raided by federal agents on January 18, 2007. The Los Angeles head of the federal Drug Enforcement Administration told CBS News after the January raids that "Today's enforcement operations show that these establishments are nothing more than drug-trafficking organizations bringing criminal activities to our neighborhoods and drugs near our children and schools." A Lafayette, California resident who owned a business that produced marijuana-laced foods and drinks for marijuana clubs was sentenced in federal court to five years and 10 months behind bars as well as a \$250,000 fine. Several of his employees were also convicted in that case.

As discussed above, there is absolutely no exception to the federal prohibition against marijuana cultivation, possession, transportation, use, and distribution. Neither California's voters nor its Legislature authorized the existence or operation of marijuana dispensing businesses when given the opportunity to do so. These enterprises cannot fit themselves into the few, narrow exceptions that were created by the Compassionate Use Act and Medical Marijuana Program Act.

Further, the presence of marijuana dispensing businesses contributes substantially to the existence of a secondary market for illegal, street-level distribution of marijuana. This fact was even recognized by the United States Supreme Court: "The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market. The likelihood that all such production will promptly terminate when patients recover or will precisely match the patients' medical needs during their convalescence seems remote; whereas the danger that excesses will satisfy some of the admittedly enormous demand for recreational use seems obvious." (*Gonzales v. Raich, supra*, 125 S.Ct. at p. 2214.)

As outlined below, clear evidence has emerged of such a secondary market in Contra Costa County.

- In September of 2004, police responded to reports of two men pointing a gun at cars in the parking lot at Monte Vista High School during an evening football game/dance. Two 19-year-old Danville residents were located in the parking lot (which was full of vehicles and pedestrians) and in possession of a silver Airsoft pellet pistol designed to replicate a

real Walther semi-automatic handgun. Marijuana, hash, and hash oil with typical dispensary packaging and labeling were also located in the car, along with a gallon bottle of tequila (1/4 full), a bong with burned residue, and rolling papers. The young men admitted to having consumed an unknown amount of tequila at the park next to the school and that they both pointed the gun at passing cars "as a joke." They fired several BBs at a wooden fence in the park when there were people in the area. The owner of the vehicle admitted that the marijuana was his and that he was **not** a medicinal marijuana user. He was able to buy marijuana from his friend "Brandon," who used a Proposition 215 card to purchase from a cannabis club in Hayward.

- In February of 2006, Concord police officers responded to a report of a possible drug sale in progress. They arrested a high school senior for two outstanding warrants as he came to buy marijuana from the cannabis club located on Contra Costa Boulevard. The young man explained that he had a cannabis club card that allowed him to purchase marijuana, and admitted that he planned to re-sell some of the marijuana to friends. He also admitted to possession of nearly 7 grams of cocaine which was recovered. A 21-year-old man was also arrested on an outstanding warrant. In his car was a marijuana grinder, a baggie of marijuana, rolling papers, cigars, and a "blunt" (hollowed out cigar filled with marijuana for smoking) with one end burned. The 21-year-old admitted that he did **not** have a physician's recommendation for marijuana.
- Also in February of 2006, a 17-year-old Monte Vista High School senior was charged with felony furnishing of marijuana to a child, after giving a 4-year-old boy a marijuana-laced cookie. The furnishing occurred on campus, during a child development class.
- In March of 2006, police and fire responded to an explosion at a San Ramon townhouse and found three young men engaged in cultivating and manufacturing "honey oil" for local pot clubs. Marijuana was also being sold from the residence. Honey oil is a concentrated form of cannabis chemically extracted from ground up marijuana with extremely volatile **butane** and a special "honey oil" extractor tube. The butane extraction operation **exploded** with such force that it blew the garage door partially off its hinges. Sprinklers in the residence kept the fire from spreading to the other homes in the densely packed residential neighborhood. At least one of the men was employed by Ken Estes, owner of the Dragonfly Holistic Solutions pot clubs in Richmond, San Francisco, and Lake County. They were making the "honey oil" with marijuana and butane that they brought up from one of Estes' San Diego pot clubs after it was shut down by federal agents.
- Also in March of 2006, a 16-year-old El Cerrito High School student was arrested after selling pot cookies to fellow students on campus, many of whom became ill. At least four required hospitalization. The investigation revealed that the cookies were made with a butter obtained outside a marijuana dispensary (a secondary sale). Between March of 2004 and May of 2006, the El Cerrito Police Department conducted seven investigations at the high school and junior high school, resulting in the arrest of eight juveniles for selling or possessing with intent to sell marijuana on or around the school campuses.
- In June of 2006, Moraga police officers made a traffic stop for suspected driving under the influence of alcohol. The car was seen drifting over the double yellow line separating north and southbound traffic lanes and driving in the bike lane. The 20-year-old driver denied having consumed any alcohol, as he was the "designated driver." When asked about his bloodshot, watery, and droopy eyes, the college junior explained that he had

smoked marijuana earlier (confirmed by blood tests). The young man had difficulty performing field sobriety tests, slurred his speech, and was ultimately arrested for driving under the influence. He was in possession of a falsified California Driver's License, marijuana, hash, a marijuana pipe, a scale, and \$12,288. The marijuana was in packaging from the Compassionate Collective of Alameda County, a Hayward dispensary. He explained that he buys the marijuana at "Pot Clubs," sells some, and keeps the rest. He only sells to close friends. About \$3,000 to \$4,000 of the cash was from playing high-stakes poker, but the rest was earned selling marijuana while a freshman at Arizona State University. The 18-year-old passenger had half an ounce of marijuana in her purse and produced a doctor's recommendation to a marijuana club in Oakland, the authenticity of which could not be confirmed.

Another significant concern is the proliferation of marijuana usage at community schools. In February of 2007, the Healthy Kids Survey for Alameda and Contra Costa Counties found that youthful substance abuse is more common in the East Bay's more affluent areas. These areas had higher rates of high school juniors who admitted having been high from drugs. The regional manager of the study found that the affluent areas had higher alcohol and marijuana use rates. *USA Today* recently reported that the percentage of 12th Grade students who said they had used marijuana has increased since 2002 (from 33.6% to 36.2% in 2005), and that marijuana was the most-used illicit drug among that age group in 2006. KSDK News Channel 5 reported that high school students are finding easy access to medical marijuana cards and presenting them to school authorities as a legitimate excuse for getting high. School Resource Officers for Monte Vista and San Ramon Valley High Schools in Danville have reported finding marijuana in prescription bottles and other packaging from Alameda County dispensaries. Marijuana has also been linked to psychotic illnesses.¹⁰¹ A risk factor was found to be starting marijuana use in adolescence.

For all of the above reasons, it is advocated by District Attorney Kochly that a ban on land uses which violate state or federal law is the most appropriate solution for the County of Contra Costa.

4. SANTA BARBARA COUNTY

According to Santa Barbara County Deputy District Attorney Brian Cota, ten marijuana dispensaries are currently operating within Santa Barbara County. The mayor of the City of Santa Barbara, who is an outspoken medical marijuana supporter, has stated that the police must place marijuana **behind** every other police priority. This has made it difficult for the local District Attorney's Office. Not many marijuana cases come to it for filing. The District Attorney's Office would like more regulations placed on the dispensaries. However, the majority of Santa Barbara County political leaders and residents are very liberal and do not want anyone to be denied access to medical marijuana if they say they need it. Partly as a result, no dispensaries have been prosecuted to date.

5. SONOMA COUNTY

Stephan R. Passalocqua, District Attorney for the County of Sonoma, has recently reported the following information related to distribution of medical marijuana in Sonoma County. In 1997, the Sonoma County Law Enforcement Chiefs Association enacted the following medical marijuana guidelines: a qualified patient is permitted to possess three pounds of marijuana and grow 99 plants in a 100-square-foot canopy. A qualified caregiver could possess or grow the above-mentioned amounts for each qualified patient. These guidelines were enacted after Proposition 215 was overwhelmingly passed by the voters of California, and after two separate unsuccessful prosecutions in Sonoma County. Two Sonoma County juries returned "not guilty" verdicts for three defendants

who possessed substantially large quantities of marijuana (60 plants in one case and over 900 plants in the other) where they asserted a medical marijuana defense. These verdicts, and the attendant publicity, demonstrated that the community standards are vastly different in Sonoma County compared to other jurisdictions.

On November 6, 2006, and authorized by Senate Bill 420, the Sonoma County Board of Supervisors specifically enacted regulations that allow a qualified person holding a valid identification card to possess up to three pounds of dried cannabis a year and cultivate 30 plants per qualified patient. No individual from any law enforcement agency in Sonoma County appeared at the hearing, nor did any representative publicly oppose this resolution.

With respect to the *People v. Sashon Jenkins* case, the defendant provided verified medical recommendations for five qualified patients prior to trial. At the time of arrest, Jenkins said that he had a medical marijuana card and was a care provider for multiple people, but was unable to provide specific documentation. Mr. Jenkins had approximately 10 pounds of dried marijuana and was growing 14 plants, which number of plants is consistent with the 2006 Sonoma County Board of Supervisors' resolution.

At a preliminary hearing held In January of 2007, the defense called five witnesses who were proffered as Jenkins' "patients" and who came to court with medical recommendations. Jenkins also testified that he was their caregiver. After the preliminary hearing, the assigned prosecutor conducted a thorough review of the facts and the law, and concluded that a Sonoma County jury would not return a "guilty" verdict in this case. Hence, no felony information was filed. With respect to the return of property issue, the prosecuting deputy district attorney never agreed to release the marijuana despite dismissing the case.

Other trial dates are pending in cases where medical marijuana defenses are being alleged. District Attorney Passalacqua has noted that, given the overwhelming passage of proposition 215, coupled with at least one United States Supreme Court decision that has not struck it down to date, these factors present current challenges for law enforcement, but that he and other prosecutors will continue to vigorously prosecute drug dealers within the boundaries of the law.

6. ORANGE COUNTY

There are 15 marijuana dispensaries in Orange County, and several delivery services. Many of the delivery services operate out of the City of Long Beach in Los Angeles County. Orange County served a search warrant on one dispensary, and closed it down. A decision is being made whether or not to file criminal charges in that case. It is possible that the United States Attorney will file on that dispensary since it is a branch of a dispensary that the federal authorities raided in San Diego County.

The Orange County Board of Supervisors has ordered a study by the county's Health Care Department on how to comply with the Medical Marijuana Program Act. The District Attorney's Office's position is that any activity under the Medical Marijuana Program Act beyond the mere issuance of identification cards violates federal law. The District Attorney's Office has made it clear to County Counsel that if any medical marijuana provider does not meet a strict definition of "primary caregiver" that person will be prosecuted.

PENDING LEGAL QUESTIONS

Law enforcement agencies throughout the state, as well as their legislative bodies, have been struggling with how to reconcile the Compassionate Use Act ("CUA"), Cal. Health & Safety Code secs. 11362.5, et seq., with the federal Controlled Substances Act ("CSA"), 21 U.S.C. sec. 801, et seq., for some time. Pertinent questions follow.

QUESTION

1. **Is it possible for a storefront marijuana dispensary to be legally operated under the Compassionate Use Act of 1996 (Health & Saf. Code sec. 11362.5) and the Medical Marijuana Program Act (Health & Saf. Code secs. 11362.7-11362.83?**

ANSWER

1. **Storefront marijuana dispensaries may be legally operated under the CUA and the Medical Marijuana Program Act ("MMPA"), Cal. Health & Safety Code secs. 11362.7-11362.83, as long as they are "cooperatives" under the MMPA.**

ANALYSIS

The question posed does not specify what services or products are available at a "storefront" marijuana dispensary. The question also does not specify the business structure of a "dispensary." A "dispensary" is often commonly used nowadays as a generic term for a facility that distributes medical marijuana.

The term "dispensary" is also used specifically to refer to marijuana facilities that are operated more like a retail establishment, that are open to the public and often "sell" medical marijuana to qualified patients or caregivers. By use of the term "store front dispensary," the question may be presuming that this type of facility is being operated. For purposes of this analysis, we will assume that a "dispensary" is a generic term that does not contemplate any particular business structure.¹ Based on that assumption, a "dispensary" might provide "assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person" and be within the permissible limits of the CUA and the MMPA. (Cal. Health & Safety Code sec. 11362.765 (b)(3).)

¹ As the term "dispensary" is commonly used and understood, marijuana dispensaries would *not* be permitted under the CUA or the MMPA, since they "sell" medical marijuana and are not operated as true "cooperatives."

The CUA permits a "patient" or a "patient's primary caregiver" to possess or cultivate marijuana for personal medical purposes with the recommendation of a physician. (Cal. Health & Safety Code sec. 11362.5 (d).) Similarly, the MMPA provides that "patients" or designated "primary caregivers" who have voluntarily obtained a valid medical marijuana identification card shall not be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in specified quantities. (Cal. Health & Safety Code sec. 11362.71 (d) & (e).) A "storefront dispensary" would not fit within either of these categories.

However, the MMPA also provides that "[q]ualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who *associate* within the State of California in order collectively or *cooperatively* to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under section 11357 [possession], 11358 [planting, harvesting or processing], 11359 [possession for sale], 11360 [unlawful transportation, importation, sale or gift], 11366 [opening or maintaining place for trafficking in controlled substances], 11366.5 [providing place for manufacture or distribution of controlled substance; Fortifying building to suppress law enforcement entry], or 11570 [Buildings or places deemed nuisances subject to abatement]." (Cal. Health & Safety Code sec. 11362.775.) (Emphasis added.)

Since medical marijuana cooperatives are permitted pursuant to the MMPA, a "storefront dispensary" that would qualify as a cooperative *would* be permissible under the MMPA. (Cal. Health & Safety Code sec. 11362.775. See also *People v. Urziceanu* (2005) 132 Cal. App. 4th 747 (finding criminal defendant was entitled to present defense relating to operation of medical marijuana cooperative).) In granting a re-trial, the appellate court in *Urziceanu* found that the defendant could present evidence which might entitle him to a defense under the MMPA as to the operation of a medical marijuana cooperative, including the fact that the "cooperative" verified physician recommendations and identities of individuals seeking medical marijuana and individuals obtaining medical marijuana paid membership fees, reimbursed defendant for his costs in cultivating the medical marijuana by way of donations, and volunteered at the "cooperative." (*Id.* at p. 785.)

Whether or not "sales" are permitted under *Urziceanu* and the MMPA is unclear. The *Urziceanu* Court did note that the incorporation of section 11359, relating to marijuana "sales," in section 11362.775, allowing the operation of cooperatives, "contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana." Whether "reimbursement" may be in the form only of donations, as were the facts presented in *Urziceanu*, or whether "purchases" could be made for medical marijuana, it does seem clear that a medical marijuana "cooperative" may not make a "profit," but may be restricted to being reimbursed for actual costs in providing the marijuana to its members and, if there are any "profits," these may have to be reinvested in the "cooperative" or shared by its members in order for a dispensary to

be truly considered to be operating as a "cooperative."² If these requirements are satisfied as to a "storefront" dispensary, then it will be permissible under the MMPA. Otherwise, it will be a violation of both the CUA and the MMPA.

QUESTION

2. If the governing body of a city, county, or city and county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, can an individual board or council member be found to be acting illegally and be subject to federal criminal charges, including aiding and abetting, or state criminal charges?

ANSWER

2. If a city, county, or city and county authorizes and regulates marijuana dispensaries, individual members of the legislative bodies may be held criminally liable under state or federal law.³

ANALYSIS

A. Federal Law

Generally, legislators of federal, state, and local legislative bodies are absolutely immune from liability for legislative acts. (U.S. Const., art. I, sec. 6 (Speech and Debate Clause, applicable to members of Congress); Fed. Rules Evid., Rule 501 (evidentiary privilege against admission of legislative acts); *Tenney v. Brandhove* (1951) 341 U.S. 367 (legislative immunity applicable to state legislators); *Bogan v. Scott-Harris* (1998) 523 U.S. 44 (legislative immunity applicable to local legislators).) However, while federal legislators are absolutely immune from *both* criminal *and* civil liability for purely legislative acts, local legislators are *only* immune from *civil* liability under federal law. (*United States v. Gillock* (1980) 445 U.S. 360.)

Where the United States Supreme Court has held that federal regulation of marijuana by way of the CSA, including any "medical" use of marijuana, is within Congress' Commerce Clause power, federal law stands as a bar to local action in direct violation of the CSA. (*Gonzales v. Raich* (2005) 545 U.S. 1.) In fact, the CSA itself provides that federal regulations do not

² A "cooperative" is defined as follows: An enterprise or organization that is owned or managed jointly by those who use its facilities or services. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, by Houghton Mifflin Company (4th Ed. 2000).

³ Indeed, the same conclusion would seem to result from the adoption by state legislators of the MMPA itself, in authorizing the issuance of medical marijuana identification cards. (Cal. Health & Safety Code secs. 11362.71, et seq.)

exclusively occupy the field of drug regulation "unless there is a positive conflict between that provision of this title [the CSA] and that state law so that the two cannot consistently stand together." (21 U.S.C. sec. 903.)

Based on the above provisions, then, legislative action by local legislators *could* subject the individual legislators to federal criminal liability. Most likely, the only violation of the CSA that could occur as a result of an ordinance approved by local legislators authorizing and regulating medical marijuana would be aiding and abetting a violation of the CSA.

The elements of the offense of aiding and abetting a criminal offense are: (1) specific intent to facilitate commission of a crime by another; (2) guilty knowledge on the part of the accused; (3) that an offense was being committed by someone; and (4) that the accused assisted or participated in the commission of an offense. (*United States v. Raper* (1982) 676 F.2d 841; *United States v. Staten* (1978) 581 F.2d 878.)

Criminal aiding and abetting liability, under 18 U.S.C. section 2, requires proof that the defendants in some way associated themselves with the illegal venture; that they participated in the venture as something that they wished to bring about; and that they sought by their actions to make the venture succeed. (*Central Bank, N.A. v. First Interstate Bank, N.A.* (1994) 511 U.S. 164.) Mere furnishing of company to a person engaged in a crime does not render a companion an aider or abettor. (*United States v. Garguilo* (2d Cir. 1962) 310 F.2d 249.) In order for a defendant to be an aider and abettor he must know that the activity condemned by law is actually occurring and must intend to help the perpetrator. (*United States v. McDaniel* (9th Cir. 1976) 545 F.2d 642.) To be guilty of aiding and abetting, the defendant must willfully seek, by some action of his own, to make a criminal venture succeed. (*United States v. Ehrenberg* (E.D. Pa. 1973) 354 F. Supp. 460 *cert. denied* (1974) 94 S. Ct. 1612.)

The question, as posed, may presume that the local legislative body has acted in a manner that affirmatively supports marijuana dispensaries. As phrased by Senator Kuehl, the question to be answered by the Attorney General's Office assumes that a local legislative body has adopted an ordinance that "authorizes" medical marijuana facilities. What if a local public entity adopts an ordinance that explicitly indicates that it does *not* authorize, legalize, or permit any dispensary that is in violation of federal law regarding controlled substances? If the local public entity grants a permit, regulates, or imposes locational requirements on marijuana dispensaries with the announced understanding that it does not thereby allow any *illegal* activity and that dispensaries are required to comply with all applicable laws, including federal laws, then the public entity should be entitled to expect that all laws will be obeyed.

It would seem that a public entity is not intentionally acting to encourage or aid acts in violation of the CSA merely because it has adopted an ordinance which regulates dispensaries; even the issuance of a "permit," if it is expressly *not* allowing violations of federal law, cannot necessarily support a charge or conviction of aiding and abetting violation of the CSA. A public entity should be entitled to presume that dispensaries will obey all applicable laws and that lawful business will be conducted at dispensaries. For instance, dispensaries could very well *not* engage in actual medical marijuana distribution, but instead engage in education and awareness activities as to the medical effects of marijuana; the sale of other, legal products that aid in the suffering of

ailing patients; or even activities directed at effecting a change in the federal laws relating to regulation of marijuana as a Schedule I substance under the CSA.

These are examples of legitimate business activities, and First Amendment protected activities at that, in which dispensaries could engage relating to medical marijuana, but *not* apparently in violation of the CSA. Public entities should be entitled to presume that legitimate activities can and will be engaged in by dispensaries that are permitted and/or regulated by local regulations. In fact, it seems counterintuitive that local public entities within the state should be expected to be the watchdogs of federal law; in the area of controlled substances, at least, local public entities do not have an affirmative obligation to discern whether businesses are violating federal law.

The California Attorney General's Office will note that the State Board of Equalization ("BOE") has already done precisely what has been suggested in the preceding paragraph. In a special notice issued by the BOE this year, it has indicated that sellers of medical marijuana must obtain a seller's permit. (See <http://www.boe.ca.gov/news/pdf/medseller2007.pdf> (Special Notice: Important Information for Sellers of Medical Marijuana).) As the Special Notice explicitly indicates to medical marijuana facilities, "[h]aving a seller's permit does not mean you have authority to make unlawful sales. The permit only provides a way to remit any sales and use taxes due. The permit states, 'NOTICE TO PERMITTEE: You are required to obey all federal and state laws that regulate or control your business. This permit does not allow you to do otherwise.'"

The above being said, however, there is no guarantee that criminal charges would not actually be brought by the federal government or that persons so charged could not be successfully prosecuted. It does seem that arguments contrary to the above conclusions could be persuasive in convicting local legislators. By permitting and/or regulating marijuana dispensaries by local ordinance, some legitimacy and credibility may be granted by governmental issuance of permits or authorizing and allowing dispensaries to exist or locate within a jurisdiction.⁴

All of this discussion, then, simply demonstrates that individual board or council members can, indeed, be found criminally liable under federal law for the adoption of an ordinance authorizing and regulating marijuana dispensaries that promote the use of marijuana as medicine. The actual likelihood of prosecution, and its potential success, may depend on the particular facts of the regulation that is adopted.

⁴ Of course, the question arises as to how far any such liability be taken. Where can the line be drawn between any permit or regulation adopted specifically with respect to marijuana dispensaries and other permits or approvals routinely, and often *ministerially*, granted by local public entities, such as building permits or business licenses, which are discussed *infra*? If local public entities are held responsible for adopting an ordinance authorizing and/or regulating marijuana dispensaries, cannot local public entities also be subject to liability for providing general public services for the illegal distribution of "medical" marijuana? Could a local public entity that knew a dispensary was distributing "medical" marijuana in compliance with state law be criminally liable if it provided electricity, water, and trash services to that dispensary? How can such actions really be distinguished from the adoption of an ordinance that authorizes and/or regulates marijuana dispensaries?

B. State Law

Similarly, under California law, aside from the person who directly commits a criminal offense, no other person is guilty as a principal unless he aids and abets. (*People v. Dole* (1898) 122 Cal. 486; *People v. Stein* (1942) 55 Cal. App. 2d 417.) A person who innocently aids in the commission of the crime cannot be found guilty. (*People v. Fredoni* (1910) 12 Cal. App. 685.)

To authorize a conviction as an aider and abettor of crime, it must be shown not only that the person so charged aided and assisted in the commission of the offense, but also that he abetted the act— that is, that he criminally or with guilty knowledge and intent aided the actual perpetrator in the commission of the act. (*People v. Terman* (1935) 4 Cal. App. 2d 345.) To "abet" another in commission of a crime implies a consciousness of guilt in instigating, encouraging, promoting, or aiding the commission of the offense. (*People v. Best* (1941) 43 Cal. App. 2d 100.) "Abet" implies knowledge of the wrongful purpose of the perpetrator of the crime. (*People v. Stein, supra.*)

To be guilty of an offense committed by another person, the accused must not only aid such perpetrator by assisting or supplementing his efforts, but must, with knowledge of the wrongful purpose of the perpetrator, abet by inciting or encouraging him. (*People v. Le Grant* (1946) 76 Cal. App. 2d 148, 172; *People v. Carlson* (1960) 177 Cal. App. 2d 201.)

The conclusion under state law aiding and abetting would be similar to the analysis above under federal law. Similar to federal law immunities available to local legislators, discussed above, state law immunities provide some protection for local legislators. Local legislators are certainly immune from civil liability relating to legislative acts; it is unclear, however, whether they would also be immune from criminal liability. (*Steiner v. Superior Court*, 50 Cal.App.4th 1771 (assuming, but finding no California authority relating to a "criminal" exception to absolute immunity for legislators under state law).)⁵ Given the apparent state of the law, local legislators could only be certain that they would be immune from civil liability and could not be certain that

⁵ Although the *Steiner* Court notes that "well-established federal law supports the exception," when federal case authority is applied in a state law context, there may be a different outcome. Federal authorities note that one purpose supporting criminal immunity as to federal legislators from federal prosecution is the separation of powers doctrine, which does not apply in the context of *federal* criminal prosecution of *local* legislators. However, if a state or county prosecutor brought criminal charges against a local legislator, the separation of powers doctrine may bar such prosecution. (Cal. Const., art. III, sec. 3.) As federal authorities note, bribery, or other criminal charges that do not depend upon evidence of, and cannot be said to further, any legislative acts, can still be prosecuted against legislators. (See *Bruce v. Riddle* (4th Cir. 1980) 631 F.2d 272, 279 ["Illegal acts such as bribery are obviously not in aid of legislative activity and legislators can claim no immunity for illegal acts."]; *United States v. Brewster*, 408 U.S. 501 [indictment for bribery not dependent upon how legislator debated, voted, or did anything in chamber or committee; prosecution need only show acceptance of money for promise to vote, not carrying through of vote by legislator]; *United States v. Swindall* (11th Cir. 1992) 971 F.2d

they would be at all immune from criminal liability under state law. However, there would not be any criminal violation if an ordinance adopted by a local public entity were in compliance with the CUA and the MMPA. An ordinance authorizing and regulating medical marijuana would not, by virtue solely of its subject matter, be a violation of state law; only if the ordinance itself permitted some activity inconsistent with state law relating to medical marijuana would there be a violation of state law that could subject local legislators to criminal liability under state law.

QUESTION

3. If the governing body of a city, city and county, or county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, and subsequently a particular dispensary is found to be violating state law regarding sales and trafficking of marijuana, could an elected official on the governing body be guilty of state criminal charges?

ANSWER

3. After adoption of an ordinance authorizing or regulating marijuana dispensaries, elected officials could not be found criminally liable under state law for the subsequent violation of state law by a particular dispensary.

ANALYSIS

Based on the state law provisions referenced above relating to aiding and abetting, it does not seem that a local public entity would be liable for any actions of a marijuana dispensary in violation of state law. Since an ordinance authorizing and/or regulating marijuana dispensaries would necessarily only be authorizing and/or regulating to the extent already *permitted* by state law, local elected officials could not be found to be aiding and abetting a *violation* of state law. In fact, the MMPA clearly contemplates local regulation of dispensaries. (Cal. Health & Safety Code sec. 11362.83 ("Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.")) Moreover, as discussed above, there may be legislative immunity applicable to the legislative acts of individual elected officials in adopting an ordinance, especially where it is consistent with state law regarding marijuana dispensaries that dispense crude marijuana as medicine.

1531, 1549 [evidence of legislative acts was essential element of proof and thus immunity applies].) Therefore, a criminal prosecution that relates *solely* to legislative acts cannot be maintained under the separation of powers rationale for legislative immunity.

QUESTION

4. Does approval of such an ordinance open the jurisdictions themselves to civil or criminal liability?

ANSWER

4. Approving an ordinance authorizing or regulating marijuana dispensaries may subject the jurisdictions to civil or criminal liability.

ANALYSIS

Under federal law, criminal liability is created solely by statute. (*Dowling v. United States* (1985) 473 U.S. 207, 213.) Although becoming more rare, municipalities have been, and still may be, criminally prosecuted for violations of federal law, where the federal law provides not just a penalty for imprisonment, but a penalty for monetary sanctions. (See Green, Stuart P., *The Criminal Prosecution of Local Governments*, 72 N.C. L. Rev. 1197 (1994) (discussion of history of municipal criminal prosecution).)

The CSA prohibits persons from engaging in certain acts, including the distribution and possession of Schedule I substances, of which marijuana is one. (21 U.S.C. sec. 841.) A person, for purposes of the CSA, includes "any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity." (21 C.F.R. sec. 1300.01 (34). See also 21 C.F.R. sec. 1301.02 ("Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.")) By its very terms, then, the CSA may be violated by a local public entity. If the actions of a local public entity otherwise satisfy the requirements of aiding and abetting a violation of the CSA, as discussed above, then local public entities may, indeed, be subject to criminal prosecution for a violation of federal law.

Under either federal or state law, local public entities would not be subject to civil liability for the mere adoption of an ordinance, a legislative act. As discussed above, local legislators are absolutely immune from civil liability for legislative acts under both federal and state law. In addition, there is specific immunity under state law relating to any issuance or denial of permits.

QUESTION

5. Does the issuance of a business license to a marijuana dispensary involve any additional civil or criminal liability for a city or county and its elected governing body?

ANSWER

5. Local public entities will likely *not* be liable for the issuance of business licenses to marijuana dispensaries that plan to dispense crude marijuana as medicine.

ANALYSIS

Business licenses are imposed by cities within the State of California oftentimes solely for revenue purposes, but are permitted by state law to be imposed for revenue, regulatory, or for both revenue and regulatory purposes. (Cal. Gov. Code sec. 37101.) Assuming a business license ordinance is for revenue purposes only, it seems that a local public entity would not have any liability for the mere collection of a tax, whether on legal or illegal activities. However, any liability that would attach would be analyzed the same as discussed above. In the end, a local public entity could hardly be said to have aided and abetted the distribution or possession of marijuana in violation of the CSA by its mere collection of a generally applicable tax on all business conducted within the entity's jurisdiction.

OVERALL FINDINGS

All of the above further exemplifies the catch-22 in which local public entities are caught, in trying to reconcile the CUA and MMPA, on the one hand, and the CSA on the other. In light of the existence of the CUA and the MMPA, and the resulting fact that medical marijuana *is* being used by individuals in California, local public entities have a need and desire to regulate the location and operation of medical marijuana facilities within their jurisdiction.^{6 102}

However, because of the divergent views of the CSA and California law regarding whether there is any accepted "medical" use of marijuana, state and local legislators, as well as local public entities themselves, could be subject to criminal liability for the adoption of statutes or ordinances furthering the possession, cultivation, distribution, transportation (and other act prohibited under the CSA) as to marijuana. Whether federal prosecutors would pursue federal criminal charges against state and/or local legislators or local public entities remains to be seen. But, based on past practices of locally based U.S. Attorneys who have required seizures of large amounts of marijuana before federal filings have been initiated, this can probably be considered unlikely.

⁶ Several compilations of research regarding the impacts of marijuana dispensaries have been prepared by the California Police Chiefs Association and highlight some of the practical issues facing local public entities in regulating these facilities. Links provided are as follows: "Riverside County Office of the District Attorney," [White Paper, Medical Marijuana: History and Current Complications, September 2006]; "Recent Information Regarding Marijuana and Dispensaries [El Cerrito Police Department Memorandum, dated January 12, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Marijuana Memorandum" [El Cerrito Police Department Memorandum, dated April 18, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Law Enforcement Concerns to Medical Marijuana Dispensaries" [Impacts of Medical Marijuana Dispensaries on communities between 75,000 and 100,000 population: Survey and council agenda report, City of Livermore].

CONCLUSIONS

In light of the United States Supreme Court's decision and reasoning in *Gonzales v. Raich*, the United States Supremacy Clause renders California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 suspect. No state has the power to grant its citizens the right to violate federal law. People have been, and continue to be, federally prosecuted for marijuana crimes. The authors of this White Paper conclude that medical marijuana is not legal under federal law, despite the current California scheme, and wait for the United States Supreme Court to ultimately rule on this issue.

Furthermore, storefront marijuana businesses are prey for criminals and create easily identifiable victims. The people growing marijuana are employing illegal means to protect their valuable cash crops. Many distributing marijuana are hardened criminals.¹⁰³ Several are members of stepped criminal street gangs and recognized organized crime syndicates, while others distributing marijuana to the businesses are perfect targets for thieves and robbers. They are being assaulted, robbed, and murdered. Those buying and using medical marijuana are also being victimized. Additionally, illegal so-called "medical marijuana dispensaries" have the potential for creating liability issues for counties and cities. All marijuana dispensaries should generally be considered illegal and should not be permitted to exist and engage in business within a county's or city's borders. Their presence poses a clear violation of federal and state law; they invite more crime; and they compromise the health and welfare of law-abiding citizens.

ENDNOTES

¹ U.S. Const., art. VI, cl. 2.

² U.S. Const., art. I, sec. 8, cl. 3.

³ *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.

⁴ *Gonzales v. Raich*. See also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.

⁵ *Gonzales v. Raich* (2005) 125 S.Ct. 2195; see also *United States v. Oakland Cannabis Buyers' Cooperative* 121 S.Ct. 1711.

⁶ Josh Meyer & Scott Glover, "U.S. won't prosecute medical pot sales," *Los Angeles Times*, 19 March 2009, available at <http://www.latimes.com/news/local/la-me-medpot19-2009mar19,0,4987571.story>

⁷ See *People v. Mower* (2002) 28 Cal.4th 457, 463.

⁸ Health and Safety Code section 11362.5(b)(1)(A). All references hereafter to the Health and Safety Code are by section number only.

⁹ H&S Code sec. 11362.5(a).

¹⁰ H&S Code sec. 11362.7 *et. seq.*

¹¹ H&S Code sec. 11362.7.

¹² H&S Code secs. 11362.71–11362.76.

¹³ H&S Code sec. 11362.77.

¹⁴ H&S Code secs. 11362.765 and 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4th 747 at p. 786.

¹⁵ H&S Code sec. 11362.77; whether or not this section violates the California Constitution is currently under review by the California Supreme Court. See *People v. Kelly* (2008) 82 Cal.Rptr.3d 167 and *People v. Phomphakdy* (2008) 85 Cal.Rptr. 3d 693.

¹⁶ H&S Code secs. 11357, 11358, 11359, 11360, 11366, 11366.5, and 11570.

¹⁷ H&S Code sec. 11362.7(h) gives a more comprehensive list – AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, seizures, severe nausea, and any other chronic or persistent medical symptom that either substantially limits the ability of a person to conduct one or more life activities (as defined in the ADA) or may cause serious harm to the patient's safety or physical or mental health if not alleviated.

¹⁸ *People v. Mower* (2002) 28 Cal.4th 457 at p. 476.

¹⁹ *Id.* Emphasis added.

²⁰ Packel, *Organization and Operation of Cooperatives*, 5th ed. (Philadelphia: American Law Institute, 1970), 4-5.

²¹ Sam Stanton, "Pot Clubs, Seized Plants, New President—Marijuana's Future Is Hazy," *Sacramento Bee*, 7 December 2008, 19A.

²² For a statewide list, see <http://canorml.org/prop/cbclist.html>.

²³ Laura McClure, "Fuming Over the Pot Clubs," *California Lawyer Magazine*, June 2006.

²⁴ H&S Code sec. 11362.765(c); see, e.g., *People v. Urziceanu*, 132 Cal.App.4th 747 at p. 764.

²⁵ *Gonzales v. Raich*, *supra*, 125 S.Ct. at page 2195.

²⁶ *People v. Urziceanu* (2005) 132 Cal.App.4th 747; see also H&S Code sec. 11362.765.

²⁷ Israel Packel, 4-5. Italics added.

²⁸ H&S Code sec. 11362.7(d)(1).

²⁹ See, e.g., McClure, "Fuming Over Pot Clubs," *California Lawyer Magazine*, June 2006.

³⁰ H&S Code secs. 11362.5(e) and 11362.7(d)(1), (2), (3), and (e); see also *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1395.

³¹ *People v. Mower*, 28 Cal.4th at 476. Emphasis added.

³² Glenda Anderson, "Laytonville Marijuana Guru Shot to Death: 2 Others Beaten in Home; No Suspects but Officials Believe Killing Related to Pot Growing," *Santa Rosa Press Democrat*, 19 November 2005, available at <http://www1.pressdemocrat.com/apps/pbcs.dll/article?AID=/20051119/NEWS/511190303/1033/>

³³ "Medical Marijuana Shop Robbed," *Santa Barbara Independent*, 10 August 2006, available at <http://independent.com/news/2006/aug/10/medical-marijuana-shop-robbed/>

³⁴ Mark Scaramella, "No Good Deed Goes Unpunished," *Anderson Valley Advertiser*, 16 June 2004, available at <http://www.theava.com/04/0616-cerelli.html>

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- ³⁶ Ricci Graham, "Man Faces Murder Charge in Pot Robbery," *Oakland Tribune*, 24 August 2005, available at <http://www.highbeam.com/doc/1P2-7021933.html>
- ³⁷ Ricci Graham, "Another Medical Marijuana Clinic Robbed," *Oakland Tribune*, 10 September 2005, available at http://findarticles.com/p/articles/mi_qn4176/is_20050910/ai_n15809189/print
- ³⁸ Laura Clark, "Pot Dispensary Owner Slain at Home," *Ukiah Daily Journal*, 19 November 2007, available at <http://www.marijuana.com/drug-war-headline-news/24910-ca-pot-dispensary-owner-slain-home.html>
- ³⁹ Laura Clark, "Breaking News: Medical Marijuana Supplier Les Crane Killed," *Ukiah Daily Journal*, 19 November 2005; Laura Clark, "Les Crane Murder Investigation Continues," *Ukiah Daily Journal*, 27 November 2005; Glenda Anderson, "Laytonville Marijuana Guru Shot to Death," *Santa Rosa Press Democrat*, 19 November 2005; Glenda Anderson, "Pot Activist Likely Knew Killers: Police Believe Gunmen Who Robbed Laytonville Man Familiar With Home," *Santa Rosa Press Democrat*, 20 November 2005, available at <http://www.equalrights4all.us/content/view/192/50/>
- ⁴⁰ Mark Scaramella, "The Mendo Pot Chronicles," *Anderson Valley Advertiser*, 3 October 2007, available at <http://www.theava.com/04/0616-cerelli.html>
- ⁴¹ Kirk Johnson, "Killing Highlights Risk of Selling Marijuana, Even Legally," *New York Times*, 13 March 2007, available at <http://www.nytimes.com/2007/03/02/us/02cannabis.html?ex=1181880000&en=c609936094adda50&ei=5070>
- ⁴² Tami Abdollah & Richard Winton, "Pot Theft Claimed in Boy's Shooting Death," *Los Angeles Times*, 23 January 2007, available at http://www.californiapolicechiefs.org/nav_files/marijuana_files/bellflower_shooting_death.pdf
- ⁴³ Will Bigham, "Claremont Marijuana Dispensary Burglarized," *Inland Valley Daily Bulletin*, 27 January 2007, available at http://www.dailybulletin.com/ci_5104514
- ⁴⁴ Planning Commission Agenda, available at <http://www.el-cerrito.org>; see also Alan Lopez, "El Cerrito Moves to Ban Dispensaries," *Contra Costa Times*, 24 June 2006, available at <http://www.thc-ministry.net/forum/archive/el-cerrito-moves-to-ban-cannabis-clubs-6974.htm>
- ⁴⁵ Fred Ortega, "City Bans Outlets for Medical Marijuana," *San Gabriel Valley Tribune*, 17 August 2006, available at <http://www.lca-uk.org/lcaforum/viewtopic.php?f=6&t=2436&start=0&sid=15b6da115a0da43facb17644195cbb>
- ⁴⁶ Ortega.
- ⁴⁷ Greg Beato, "Pot Clubs in Peril: Are San Francisco Zoning Boards a Bigger Threat to Medical Marijuana Than the DEA?" *Reason Magazine*, February 2007, available at <http://www.reason.com/news/show/118314.html>; Craig T. Steckler, *City of Fremont Police Department Memorandum re Medical Marijuana Dispensaries – Potential Secondary Impacts*, 20 June 2006; Tim Miller, *City of Anaheim Police Department: Special Operations Division Memorandum re Medical Marijuana Dispensary (MMD) Ban Ordinance*, 13 June 2007.
- ⁴⁸ Jeff McDonald, "15 Held in Raids on Pot Stores," *San Diego Union-Tribune*, 7 July 2006, available at http://www.signonsandiego.com/uniontrib/20060707/news_7m7pot.html
- ⁴⁹ McDonald; Beato.
- ⁵⁰ Cal. H&S Code sec. 11362.5.
- ⁵¹ Ethan Stewart, "The Medical Marijuana Movement Grows in Santa Barbara: Emerald Dreams and Smoky Realities," *Santa Barbara Independent*, 3 May 2007, available at <http://independcent.com/news/2007/may/03/medical-marijuana-movement-grows-santa-barbara/>; see also Adam Ashton, "DEA Busts Pot Store Day After Council Talk," *Modesto Bee*, 28 September 2006.
- ⁵² McDonald.
- ⁵³ Stewart.
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**Report to the City Council
Council Meeting of January 12, 2016**

Agenda Section: Public Hearing

Subject: Introduction and First Reading of Proposed Amendments to the City's Purchasing Ordinance, St. Helena Municipal Code Chapter 3.04.175, Procurement Process for Declared Emergencies

CEQA Status: Not a CEQA Project

**Prepared By: April Mitts, Finance Director 
Tracey Perkosky, Grants Manager **

Approved By: Jennifer Phillips, City Manager 

BACKGROUND

The City's current procurement policy is designed for purchases where sufficient time exists to prepare procurement documents, secure approvals, and advertise for competitive bids, as needed. However, when a disaster is declared in the City either by a local official or the Governor, there are situations when there are goods and services required to address an immediate threat to life, public health or safety, or an immediate threat of significant damage to improved public and private property, and there is not sufficient time to permit competitive solicitation. The current policy states in St. Helena Municipal Code §3.04.170 Emergencies:

Bidding procedures may be dispensed with in the case of an emergency. The city council delegates to the city manager the authority to declare a public emergency subject to confirmation by the city council at its next meeting for any purchase in excess of twenty-five thousand dollars (\$25,000.00). (Ord. 01-14 (part): prior code § 2.91.130).

However, this general statement does not outline a detailed process for procurement as required by the Federal Emergency Management Agency (FEMA) should any expenses be eligible for federal reimbursement.

DISCUSSION

This section of the Municipal Code will only take effect if the Governor has declared a state of emergency that includes the City of St. Helena or if the City Manager or his or her designee has declared a city emergency. The proposed Section 3.04.175 permits

the immediate rental or purchase of any equipment, supplies, services, or other items necessary to respond to an immediate threat to life, public health or safety, or an immediate threat of significant damage to improved public and private property.

Delegation of Purchasing Authority in Exigent Circumstances

The City Manager or his or her designee shall have single purchase authority on individual purchases up to \$100,000 on his or her signature alone. For purchases exceeding \$100,000 up to and including \$500,000, a signature from both the City Manager or his or her designee and Mayor or in the Mayor's absence another council member is required. For each disaster declaration, the City Manager or his or her designee shall have an aggregate authority on his or her signature alone up to and including \$1,500,000; aggregate purchases exceeding \$1,500,000 up to and including \$2,500,000 must be countersigned by the Mayor or another council member in the Mayor's absence.

All of the purchasing authority will be sub-delegated to the Emergency Operations Center (EOC) Director if the City Manager or his or her designee is not available to approve purchases.

If neither the City Manager (or his or her designee) nor the EOC Director are available, a Department Head will have authority to rent or purchase from the nearest source, any equipment supplies, services, or other items necessary for any department to respond to an immediate threat to life, public health or safety, or improved public or private property, up to a maximum of \$50,000. In the rare case that the City Manager or his or her designee, EOC Director, or Department Head is not available, a Mid-Manager will have the authority to rent or purchase from the nearest source, any equipment supplies, services, or other items necessary for any department to respond to an immediate threat to health, safety, or improved property, up to a maximum of \$25,000.

Administrative Procedures and Reporting Requirements

As soon as possible after a purchase is made, a Purchase Order will be requisitioned with a notation that the commodity or service has been ordered on an emergency basis. The Finance Director will inform the City Manager or his or her designee of any contract greater than \$25,000. The City Manager or his or her designee will sign all Purchase Orders over \$50,000 unless the delay in obtaining his or her signature will imperil life, public health or safety, or improved public or private property, in which case any Department Head can sign the Purchase Order. The Finance Director or designee will have the authority to sign all Purchase Orders for \$50,000 or less.

Purchases of \$250,000 or less shall not be required to be formally bid. Bids are encouraged when possible, and when applicable, notices inviting bids will be posted on the door of the Emergency Operations Center or the Alternate Emergency Operations Center. Should an Emergency Sole Source or No-Bid contract be awarded it will be

limited to the portion of the work that must be performed immediately, and subsequent procurement by competitive proposal for the remainder of the work under the City's normal purchasing policy. Emergency Sole Source or No-Bid contracts shall be necessary for one of the following reasons (1) placement of emergency protective measures, (2) procurement of scarce commodities, goods, or services, or (3) acquisition or rental of emergency equipment, emergency consulting services, emergency road clearance, or other emergency requirements.

The City's normal requirements for quotes, sealed bids or local preference shall not apply to purchases made under Declared State or City Emergencies. However, the Finance Director or designee shall conduct telephonic or electronic quote and bid solicitation from vendors in an effort to obtain multiple competitive proposals when and if time allows due to the exigent circumstances.

The City Council will ratify all City contracts and agreements over \$25,000 within 60 days of the award, and the City Council shall be notified of all purchases over \$25,000 within 30 days of the onset of the disaster. All disaster purchases shall be designated as such on the invoicing for payment and separated from non-disaster purchases.

This policy refers only to purchases made when a condition exists that (1) presents an immediate threat to life, public health or safety, or an immediate threat of significant damage to improved public and private property, and (2) a local emergency or disaster has been proclaimed by the Governor or City Manager or his or her designee. Any purchases that do not meet the standard of being necessary for responding to an immediate threat to life, public health or safety, or an immediate threat of significant damage to improved public and private property shall follow the City's regular purchasing provisions.

FISCAL IMPACT

There is no fiscal impact associated with the approval of the ordinance. However, not passing this or a similar ordinance could negatively impact any future reimbursement from a federal or state agency in the event of a declared disaster.

RECOMMENDED ACTION

Conduct introduction and first reading by title only of Ordinance No. 2016-_____, amending the City's Purchasing System Ordinance to add section 3.04.175. The proposed changes modify the existing purchasing process during a declared disaster.

ATTACHMENTS

Attachment A – Proposed St. Helena Municipal Code Section 3.04.175

CITY OF ST. HELENA

ORDINANCE NO. 2016-

**AMENDING CHAPTER 3.04 OF THE ST. HELENA MUNICIPAL CODE TO ADD A
PROCUREMENT PROCESS DURING DISASTERS AS SECTION 3.04.175**

The City Council of the City of St. Helena does hereby ordain as follows:

SECTION 1. Chapter 3.04 is hereby amended to add Section 3.04.175 to provide for purchasing procedures during “Declared Disasters”

SECTION 2. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance to amend Chapter 3.04 of the St. Helena Municipal Code is not a Project subject to, and also exempt from, the provisions of the California Environmental Quality Act (Public Resources Code Section 2100, et seq.) (CEQA) because the City Council hereby finds that it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance is exempt from CEQA pursuant to CEQA Guidelines Sections 15061 (b)(1), 15061(b)(2), and 15061 (b)(3).

SECTION 3. Severability. The City Council hereby declares every section, paragraph, sentence, clause and phrase is severable. If any section, paragraph, sentence, clause or phrase of this Ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 4. Inclusion in the St. Helena Municipal Code. It is the intention of the St. Helena City Council that the text in Exhibit A of this Ordinance be made a part of the St. Helena Municipal Code and that the text may be renumbered or relettered and the word “Ordinance” may be changed to “Section”, “Chapter” or other such appropriate word or phrase to accomplish this intention.

SECTION 5. Effective Date. This Ordinance shall take effect and be in force 30 days after its adoption, and a summary of this Ordinance shall be published once with the

names of the members of the Council voting for and against the ordinance in the St. Helena Star, a newspaper of general circulation published in the city of St. Helena.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the St. Helena City Council on the 12th day of January 2016, and was adopted at a regular meeting of the St. Helena City Council on the ____th day of _____ 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Alan Galbraith, Mayor

ATTEST:

CITY OF ST. HELENA

Cindy Black, City Clerk

I, CINDY BLACK, CITY CLERK of the City of St. Helena, California, do hereby certify that the foregoing Ordinance was regularly introduced and placed upon its first reading at a regular meeting of the City Council on the 12th day of January, 2016. That thereafter said Ordinance was duly adopted and passed at a regular meeting of the City Council on the ____th day of _____ 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Cindy Black, City Clerk

APPROVED AS TO FORM:

Thomas B. Brown, City Attorney

EXHIBIT A

3.04.175 Declared Emergencies

A. Purpose. This section modifies the City's normal purchasing practices only during a proclaimed emergency. With this revised policy, the City is able to acquire goods and services required to address an immediate threat to life, public health or safety, or an immediate threat of significant damage to improved public and private property while maintaining an effective purchasing policy.

B. Definitions. For the purposes of this section, the following definitions are applicable:

A proclaimed disaster or emergency exists if (1) the Governor has declared a state of emergency for an area which includes the geographic territory of the City, or (2) the City Manager or his or her designee has declared an emergency in the City.

"Exigent Circumstances" are situations in which (1) a disaster or emergency has been proclaimed, and (2) the public exigency for goods and services required to

address an immediate threat to life, public health or safety, or improved public and private property will not permit competitive solicitation.

C. Delegation of Purchasing Authority in Exigent Circumstances. If the City Manager or his or her designee determines that goods and services must be procured before the City Council is to assemble and approve purchases, the City Manager or his or her designee has the authority, subject to the limitations set forth below to approve the immediate rental and or purchase of any equipment, supplies, services, or other items necessary to respond to an immediate threat to life, public health or safety, or improved public and private property.

1. **Limits of Single Purchase Authority.** The City Manager or his or her designee shall have the authority to make individual purchases up to \$100,000 on his or her signature alone. The City Manager or his or her designee shall have the authority to make purchases in excess of \$100,000 up to a maximum of \$500,000 when countersigned by the Mayor or, in the Mayor's absence, countersigned by another council member.
2. **Limits of Aggregate Purchase Authority.** The City Manager or his or her designee shall have the authority to make aggregate purchases up to \$1,500,000 on his or her signature alone per disaster declaration. The City Manager or his or her designee shall have the authority to make aggregate purchases in excess of \$1,500,000 and up to a maximum of \$2,500,000 per disaster declaration when countersigned by the Mayor or, in the Mayor's absence, countersigned by another council member.
 - a. **Sub-delegation to the Emergency Operations Center (EOC) Director.** The EOC Director shall be a designee of the City Manager at any time that the City Manager is not available to approve purchases as allowed in this section.
 - b. **Sub-delegation of Purchasing Authority to Department Heads.** If neither the City Manager or his or her designee nor the EOC Director is available, then any City Department Head has the authority to rent or purchase from the nearest source, any equipment supplies, services, or other items necessary for any department to respond to an immediate threat to health, safety, or improved property, up to a maximum of \$50,000.
 - c. **Sub-delegation of Purchasing Authority to Mid-Managers.** If neither the City Manager or his or her designee, EOC Director, or any Department Head is not available, then any employee classified as a Mid-Manager has the authority to rent or purchase from the nearest source, any equipment supplies, services, or other items necessary for any department to respond to an immediate threat to health, safety, or improved property, up to a maximum of \$25,000.

D. Administrative Procedures and Reporting Requirements

1. As soon as possible after purchases are made under section C, the City Manager or his or her designee, EOC Director, Department Head or Mid-Manager shall submit to the Finance Director or designee a Purchase Order Requisition and a notation that the commodity has been ordered on an emergency basis from the vendor designated.
2. The Finance Director will inform the City Manager or his or her designee and the City Council of any individual purchase under this section with a contract amount greater than \$25,000, and also whenever the aggregate of purchases under this section is greater than \$250,000.
3. The Finance Director will obtain the City Manager's or his or her designee's (or EOC Director as the City Manager's designee) approval prior to any purchase by a Department Head if the amount is \$25,000 or more.
4. If the City Manager or his or her designee and the EOC Director are unavailable, and the delay in getting his or her signature would imperil life, public health or safety, or improved public or private property, then any Department Head (except the requestor) may approve the emergency purchase of \$50,000 or more.
5. The Finance Director or designee shall have the authority to approve all disaster related purchases under \$50,000.
6. The Finance Director or designee will expedite the verification of funds available and complete the preparation of the purchase order.

E. Procurement Procedures in Exigent Circumstances. Upon receipt of the requisitions under Section D, the Finance Director or designee shall prepare purchase orders for emergency equipment, supplies, services or other items in accordance with the requirements of this section.

1. **Exempt Purchases.** Purchases of \$250,000 or less shall not be required to be formally bid. Purchases greater than \$250,000 may be made following the procedures specified in this section. The signature(s) of the City Manager or his or her designee, Finance Director, or Department Head are still required as provided in Sections C and D.
2. **Justification of "Sole Source" or "No-bid" Contracts.** Where exigent circumstances require immediate procurement from the nearest available source, the Finance Director or designee shall justify the Emergency Sole Source Purchase or No-Bid Purchase on the Purchase Order.
 - a. Procurement should be limited to that portion of the work that must be performed immediately, and subsequent procurement by competitive proposal for the remainder of the work under the City's normal purchasing policy (Municipal Code 3.04)
 - b. "Sole Source" or "no bid" acquisitions shall be necessary for one of the following reasons: placement of emergency protective measures; procurement of scarce commodities, goods, or services; or acquisition or rental of emergency equipment, emergency consulting services, emergency road clearance, or other emergency requirements.

3. **Provision for Alternate Bid Solicitation Procedures.** The City's normal requirements for quotes, sealed bids, or local preference shall not apply to this section (Declared Emergencies). However, the Finance Director or designee shall conduct telephonic or other electronic bid solicitation from potential vendors or suppliers, in lieu of written and/or sealed bids, in an effort to obtain multiple competitive proposals when and if time allows in light of the exigent circumstances.
4. **Posting Locations for Requests for Proposals or Solicitations of Bids.** The Finance Director or designee may waive normal requirements for public posting of requests for proposals or solicitation of bids for the procurement of emergency equipment, goods or services. Notices soliciting bids or requests for proposals shall be posted, at minimum, at the Emergency Operations Center or the Alternate Emergency Operations Center, if the Primary Emergency Operations Center is not being used.
5. **Length of Time for Posting Requests for Proposals or Solicitation of Bids.** The Finance Director or designee shall determine the posting period. The Finance Director or designee will make reasonable efforts to ensure that multiple suppliers are able to place a bid during the shortened time period.

F. Notification and Ratification

1. **Posting of Contract Awards.** All contracts awarded that exceed \$25,000 shall be presented to the City Council for ratification and thereafter shall be publically posted within sixty (60) days of the award.
2. **Authority to Cancel Emergency Procurements.** The City Manager has the absolute authority to rescind a contract for non-performance within 24 hours when a contractor or vendor, once awarded a contract, is unable to perform under the terms of the contract and the resulting delay or non-performance presents an immediate threat to life, public health or safety, or improved public or private property.
3. **Notification Requirement for Emergency Services.** For any purchase in excess of \$25,000, the City Manager shall report all such purchases to the City Council within 30 days of the onset of the disaster.
4. **Requirement for Separate Invoicing.** All purchases or rentals made during the proclaimed emergency or disaster conditions shall require separate invoicing from routine (non-disaster) purchases. All invoices must state the goods, services, or equipment provided and must specify the location where the goods or services were delivered.
5. **Limitations of Declared Emergencies Purchasing Policy.** Any purchases that do not meet the standard of being necessary for responding to an immediate threat to life, public health or safety, or improved public or private property as outlined in this section shall follow the City's regular purchasing provisions.

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Report to the City Council
Council Meeting of January 12, 2016

Agenda Section: New Business

Subject: Consideration and proposed approval of a resolution approving amendment number 1 to an agreement with Our Town St. Helena for the sale of public property known as 684 McCorkle Avenue

CEQA Status: The sale of the McCorkle Property is exempt from review under the California Environmental Quality Act ("CEQA") pursuant to a categorical exemption under 14 CCR 15332, which exempts from review specified "in-fill development projects."

Prepared By: Jennifer Phillips, City Manager

Approved By: Jennifer Phillips, City Manager

DISCUSSION

On May 12, 2015, the City Council approved an agreement with Our Town St. Helena (OTSH) to sell 684 McCorkle Avenue ("McCorkle Property") for \$1.00. OTSH in cooperation with Rural Community Assistance Corporation ("RCAC") is working with the USDA Rural Development Mutual Self-Help Program and has secured a Technical Assistance Grant to build affordable housing in St. Helena.

Under the agreement, the City required that all final land use approvals be obtained from the City of St. Helena as a condition of transferring ownership to OTSH. OTSH has determined that they are not able to obtain the necessary financing unless OTSH holds title to the property. This contingency was placed into the agreement as a safe guard for the City to ensure an affordable housing project is built in the near term by OTSH, and if they were unable to obtain the grant or financing, that the title to the property would remain with the City.

OTSH has submitted the attached Amendment No. 1 to the Agreement for the City's consideration. Since May 2015, OTSH has obtained financing to manage and operate the Self-Help Program through a USDA Rural Development 523 Technical Assistance Grant. Development plans are nearly complete and will be submitted to the City for plan review within the next few weeks. Staff has work closely with OTSH regarding the need

for these amendments and independently analyzed the risks related to these proposed amendments to the agreement.

To fund pre-development and site development costs, OTSH will be seeking loans from various agencies including the County of Napa and Rural California Assistance Corporation. To obtain these loans, OTSH must use the property as collateral and as a result liens will be placed against the properties. The risk to the City is that if OTSH is not able to complete the housing project and defaults on their loan, the lien holders would have first rights to the property. Even though the amendment states that if OTSH has not met all contingencies within 24 months of the closing date, the City may terminate the agreement and take possession of the property, in reality the City will not be a party to the deed and therefore, would have no rights to the property. Staff explored options for the City to be included on the deed, but this requires the City to be a party to the development project, then deeming it a public project which adds more regulations and expense to the project.

FISCAL IMPACT

The recommended action does not have a fiscal impact on the City as outlined in this staff report. Options 1 and 2, would have fiscal impacts, which are unknown at this time.

RECOMMENDED ACTION

Staff recommends that the City Council of the City of St. Helena adopt the attached Resolution No. 2016-____, approving Amendment No. 1 to the Agreement with Our Town St. Helena for the sale of public property known as 684 McCorkle Avenue amending the pre-closing and post-closing contingencies for the Seller and Buyer.

OPTION 1

Direct staff to explore the option of partnering with OTSH on the McCorkle Self-Help Development project, thereby enabling the City to be included in the deed. Additional costs related to this option need to be identified and analyzed and the project would be delayed for several months as this work and an amendment to the purchase agreement and co-development agreement are developed.

OPTION 2

Decline OTSH's request to amend the purchase agreement which would result in OTSH's inability to satisfy the Buyers Contingencies and ultimately termination of the purchase agreement. The City would then need to search for another affordable housing non-profit partner that possessed greater resources to fund the pre-development and construction costs without placing a lien on the property. The feasibility of this option is unknown at this time and would certainly delay the construction of a project at this site.

ATTACHMENTS

1. Resolution
2. Amendment No. 1 to the Real Estate Purchase Agreement between the City of St. Helena and Our Town St Helena
3. November 17, 2015 Letter from OTSH requesting proposed changes to the Agreement

**CITY OF ST. HELENA
CITY COUNCIL RESOLUTION 2016-__**

**APPROVING AMENDMENT NO. 1 TO THE AGREEMENT
WITH OUR TOWN ST. HELENA FOR THE SALE OF PUBLIC PROPERTY
KNOWN AS 684 MCCORKLE AVENUE**

WHEREAS, on May 12, 2015, per resolution 2015-51 the City agreed to sell the McCorkle Site to Our Town St. Helena for \$1.00 to allow Our Town St. Helena (OTSH) to develop at least six (6) AFUs consisting of owner-occupied housing available to "lower income households" ;and

WHEREAS, OTSH in cooperation with Rural Community Assistance Corporation ("RCAC") is working with the USDA Rural Development Mutual Self-Help Program and has secured a Technical Assistance Grant to build affordable housing in St. Helena; and

WHEREAS, to fund pre-development and site development costs, OTSH will be seeking loans from various agencies including the County of Napa and Rural California Assistance Corporation. OTSH has determined that they are not able to obtain the necessary pre-development and site development costs financing unless OTSH holds title to the property, and

WHEREAS, it is the City's desire to move forward with attached Amendment No. 1 to the Agreement by and between the City and OTSH; and

WHEREAS, all legal prerequisites for the sale of the McCorkle Site have therefore been satisfied.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that the City Council approves Amendment No. 1 to the Agreement with Our Town St. Helena for the sale of public property known as 684 McCorkle Avenue amending the pre-closing and post-closing contingencies for the Seller and Buyer.

BE IT FURTHER RESOLVED that the City Manager is authorized to execute Amendment No. 1 to the Real Property Purchase Agreement on behalf of the City.

I HEREBY CERTIFY that the foregoing Resolution was duly approved by the City Council of the City of St. Helena at a regular meeting of said City Council held on January 12, 2016 by the following roll call vote:

Mayor Galbraith: _____

Vice Mayor White: _____

Councilmember Crull: _____

Councilmember Dohring: _____

Councilmember Pitts: _____

APPROVED:

ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk

AMENDMENT No. 1 TO REAL ESTATE PURCHASE AGREEMENT

This First Amendment to the Real Estate Purchase Agreement between the City of St. Helena (Seller) and Our Town St. Helena (Buyer) is dated January 12, 2016.

1. Recitals.

Whereas, Sellers and Buyers have determined that substantial progress has been made in the pre-development phase of "the McCorkle Site" and that some of the contingencies set forth in Section 4 are either no longer necessary or are more appropriately contingencies that need to be satisfied prior to construction rather than prior to closing on the sale from Seller to Buyer and,

Whereas, Seller and Buyer agree that the Real Estate Purchase Agreement (Agreement) should be amended consistent with the letter dated November 16th from Buyer to Seller attached hereto as Exhibit A.

Now, Therefore, the parties agree as follows:

2. Section 4 of the Agreement is amended as follows;

"4.1 Pre-closing Contingencies.

(A) Buyers Contingencies. The obligations of Buyer under this Agreement are contingent upon each of the following:

(1) Seller Performance. Seller shall have provided Buyer all documentation referred to in this Agreement within fifteen (15) days of Buyers Execution of this Agreement.

(2) Representations and Warranties. The representations and warranties of Seller contained in this Agreement shall be true as of the Closing Date as if made on the Closing Date.

(3) Condition of Property. There shall have been no material change in the condition of the Property as reasonably determined by Buyer between the opening of escrow and the Closing Date.

(4) Condition of Title. There shall have been no adverse material change in the condition of the Title as reasonably determined by Buyer between the date of this Agreement and the Closing Date.

(B) Seller Contingencies. The obligations of Seller under this Agreement are contingent upon the following:

(1) Buyer having obtained and provided to Seller evidence of proof of financing in the form of an obligation by the USDA of a USDA Rural Development

523 Technical Assistance grant to Buyers to manage and operate OTSH's Self-Help Program.

(2) Buyer having placed into Escrow the Declaration.

In the event that any of the contingencies set forth in this Section 4.1 are not satisfied as of the Closing Date, the parties shall not be obligated to proceed with the Close of Escrow and Buyer shall be entitled to a refund of its Deposit (if any) and all interest accrued thereon.

4.2 Post Closing Contingencies.

(A) Buyer and Seller Post Closing Contingencies. Prior to the issuance of a Building Permit for the construction of the single family housing on the McCorkle Site the following contingencies must be satisfied.

(1) Governmental Approvals. Buyer shall have obtained all final land use approvals from the City of St. Helena, CA and any other governmental agency having jurisdiction over the Property necessary, in Buyer's judgment, in order to make the use of the Property which buyer intends, including subdividing the Land to allow for the development of at least six (6) owner-occupied AFU's. Seller shall cooperate in all reasonable respects with Buyer in obtaining such approvals, and shall execute such documents as may be reasonably required in connection therewith in order to allow Buyer to seek the governmental approvals. Nothing in this Agreement shall be deemed to constitute a pre-approval by the City of St. Helena of any permit or other approval necessary for the development of the property.

(2) Financing Approvals. Buyer shall have obtained financing sufficient to develop the Property for the uses intended in this Agreement. Such financing may be in the form of a USDA Rural Development 502 Single Family Housing Direct Home loans tied to the McCorkle Site for the use by the eventual owner-occupiers of the units, or any other form of loans, and grants sufficient to construct the improvements on the property as entitled by the City of St. Helena.

In the event that the Post Closing Contingencies are not satisfied within 24 months of the Closing Date, either party, upon written notice to the other, may terminate this agreement and Buyer shall within 30 days of said notice reconvey the Property to Seller."

BUYER:

Our Town St Helena, a California nonprofit public benefit corporation

By _____

Name _____

Title _____

By _____

Name _____

Title _____

SELLER:

City of St. Helena, a California Municipality

By _____

Name **Jennifer Phillips**

City Manager

Approved as to form:

By _____

Thomas Brown

City Attorney

Attested by:

By _____

Name **Cindy Black**

City Clerk



November 17, 2016

Dear Jennifer,

This letter will summarize the changes proposed in the attached amendment to the Purchase Agreement between the City of St. Helena and Our Town St. Helena (OTSH) for the transfer of 684 McCorkle Avenue in St. Helena for a Mutual Self Help Homeownership project. We propose three revisions:

1. Delete the requirement for an appraisal of the property (Section 4.a.8 and Section 4.b.2)

It appears that neither the City nor OTSH required a new appraisal to complete this transaction. Therefore we propose to delete this contingency in its entirety.

2. Delete 502 Single Family Housing Direct Home Loans as a Financing Approval Contingency (Section 4.a.5 and Section 4.c.1)

The purchase agreement currently states that "Buyer shall have obtained financing in the form of an obligation by the United States Department of Agriculture ("USDA") of a USDA Rural Development 523 Technical Assistance grant to Buyer to manage and operate the Self-Help Program and an obligation by the USDA of USDA Rural Development 502 Single Family Housing Direct Home loans tied to the McCorkle Site for use by the eventual owner-occupiers of the units built by Buyer on the McCorkle Site".

The USDA RD 523 Technical Assistance grant in the amount of \$540K has been approved as indicated in the attached letter from Ron Tackett, Housing Program Director, USDA. This is the funding that will provide the staff and technical assistance needed to obtain qualified applicants and supervise the construction of the eight townhouses.

The 502 loans are the USDA loans that will be granted to the eight participants in the project and these loans will not close until the project is ready for construction. Thus, we propose to eliminate the 502 loans approval as a contingency of escrow.

3. Delete the requirement of entitlements (Section 4.a.3)

In the pre-application meeting held on 10/22/15 with Noah Housh and Aaron Hecock of the City of St. Helena Planning Department, Larry Florin of Napa County Director of Housing and representatives from OTSH, we

determined that there was a chicken and egg problem with the requirement that “all final land use approvals be obtained from the City of St. Helena” as a contingency in the purchase agreement. OTSH cannot obtain the financing necessary to submit their plan to the City for entitlement unless we hold title to the property.

We propose removing the entitlement requirement but adding a post-closing contingency stating that government approvals and sufficient financing must be obtained before building permits are issued. If these post-closing contingencies are not met within 24 months of the Closing Date, the City may terminate the agreement and take possession of the property.

Steve Goldfarb, a OTSH board member, and Ericka Holzhauer, our RCAC representative, who both worked with the City’s legal representative, Greg Murphy of Burke, Williams and Sorenson, on the purchase agreement are available to discuss these recommendations with your staff and/or your legal counsel as needed.

OTSH ask the City to determine if the Amendment #1 presented with this letter is acceptable at its earliest convenience so that we may close escrow and proceed with the project.

Sincerely,

Mary Stephenson

Enclosures:

- Proposed Purchase Agreement Amendment
- USDA 512 Grant Approval Letter

cc: Noah Housh, Steve Goldfarb, Ericka Holzhauer, and John Sales

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**Report to the City Council
Council Meeting of January 12, 2016**

Agenda Section: New Business

Subject: Approve a Two Year Memorandum of Understanding (MOU) between the City of St. Helena and the St. Helena Employee Association and authorize the City Manager to Execute the MOU and approve a mid-year budget adjustment not to exceed \$64,520 from the Assigned General Fund, Water, Sewer and Other Fund Reserves.

CEQA Status: Not a CEQA Project

Prepared By: Dawn Marshall, Administrative Services Manager 

Approved By: Jennifer Phillips, City Manager 

BACKGROUND

The City's negotiating team and the St. Helena Employee Association (SHEA) conducted three negotiating sessions before signing an agreement on January 7, 2016. The agreement is for a two-year Memorandum of Understanding (MOU).

DISCUSSION

The bargaining unit is made up of 28 full-time employees. The proposed MOU contains several changes, with many as housekeeping measures. The significant changes are summarized below:

- Two year term effective January 1, 2016 through December 31, 2017.
- A 4% Cost-of-Living (COLA) increase, effective January 9, 2016 is recommended and included in the attached MOU.
- Beginning in 2016, all PERS employees will pay an additional 1% of the employer's PERS cost. Therefore, Classic PERS employees' contributions will increase from 7% to 8% and PEPRAs employees' contribution will increase from 6.25% to 7.25%.
- Four hours holiday pay for Good Friday will discontinue and 8 hours for Cesar Chavez Day will be added.
- A 2.5% Cost-of-Living (COLA) increase, effective January 9, 2017 is recommended and included in the attached MOU.

- An alternative work schedule consisting of a 9/80 Schedule with either a Monday or Friday "off" will be available to SHEA employees contingent upon the needs of the department and with approval of the Department Head.
- Article 14 of the MOU shall be updated to replace the current advisory arbitration provisions to appeal discipline with a hearing and advisory recommendation to the City Manager by a 3 member panel with one person appointed by the city, one by the Association and a third neutral panel chairperson selected by the other 2 members.
- The City shall report the value of the employee's uniform and cleaning costs as special compensation for Classic member to CalPERS.
- The City agrees to continue to pay for full health care coverage for members and their dependents throughout the term of this MOU.

FISCAL IMPACT

The recommendations outlined above reflects an approximate cost of \$28,619 to the General Fund, \$20,775 to the Water Fund, \$11,661 to the Sewer Fund and \$3,465 to Other Funds for the remainder of Fiscal Year 2015-2016 for a total of \$64,520.

RECOMMENDED ACTION

Adopt the resolution approving the Memorandum of Understanding between the City of St. Helena and the St. Helena Employees Association (SHEA) for the period of January 1, 2016 - December 31, 2017.

ATTACHMENTS:

1. Resolution
2. Exhibit A-Memorandum of Understanding
3. Exhibit B-SHEA Salary Schedule effective 1/9/16
4. Exhibit C-SHEA Salary Schedule effective 1/9/17

Attachment 1

**CITY OF ST. HELENA
RESOLUTION # 2016-**

**APPROVE A MEMORANDUM OF UNDERSTANDING BETWEEN THE ST. HELENA
EMPLOYEES ASSOCIATION (SHEA) AND THE CITY OF ST. HELENA**

RECITALS

- A. The previous wage and benefits agreement with the miscellaneous employee group expired December 31, 2015; and
- B. Negotiations have resulted in a two year agreement expiring December 31, 2017. Included in the MOU is a 4% Cost-of-living (COLA) increase effective January 9, 2016 and a 2.5% COLA increase effective January 9, 2017; and
- C. Beginning in 2016, all PERS employees will pay an additional 1% of the employer's PERS cost. Therefore, Classic PERS employees' contributions will increase from 7% to 8% and PEPRA employees' contribution will increase from 6.25% to 7.25%; and
- D. Four hours holiday pay for Good Friday will discontinue and 8 hours for Cesar Chavez Day will be added; and
- E. An alternative work schedule consisting of a 9/80 Schedule with either a Monday or Friday "off" will be available to SHEA employees contingent upon the needs of the department and with approval of the Department Head; and
- F. Article 14 of the MOU shall be updated to replace the current advisory arbitration provisions to appeal discipline with a hearing and advisory recommendation to the City Manager by a 3 member panel with one person appointed by the city, one by the Association and a third neutral panel chairperson selected by the other 2 members; and
- G. The City shall report the value of the employee's uniform and cleaning costs as special compensation for Classic member to CalPERS; and
- H. The City agrees to continue to pay for full health care coverage for members and their dependents throughout the term of this MOU, however has advised the SHEA negotiating team that this practice is very unlikely to continue in future agreements.

Now, therefore, the City Council of the City of St. Helena resolves as follows:

1. The City Council approves and incorporates by reference the attached

**Memorandum of Understanding between St. Helena Employees Association
and the City of St. Helena for the period January 1, 2016 – December 31,
2017.**

Approved at a regular meeting of the St. Helena City Council on January 12, 2016 by the following vote:

Mayor Galbraith: _____

Vice Mayor White: _____

Councilmember Crull: _____

Councilmember Dohring: _____

Councilmember Pitts: _____

APPROVED:

ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk

MEMORANDUM OF UNDERSTANDING

BETWEEN

ST. HELENA EMPLOYEES ASSOCIATION

AND

CITY OF ST. HELENA

FOR THE PERIOD

~~JULY 1, 2013~~ JANUARY 1, 2016 THROUGH DECEMBER 31, 2017~~2015~~

***12/23/15 Draft # 1 with Changes Discussed on 12/22/15 Incorporated
1/6/15 Draft with changes to address union's comments on December 30, 2015***

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ARTICLE 1
PREAMBLE

This Memorandum of Understanding (MOU) is made and entered into between the City of St. Helena, hereinafter referred to as "City," and the St. Helena Employees Association, hereinafter referred to as "Association," pursuant to the Meyers-Milias-Brown Act (MMBA), California Government Code Section 3500 et. seq. The purpose of this MOU is the establishment of rates of compensation, hours of work and other terms and conditions of employment. Employees subject to this MOU are also covered by the City of St. Helena's Employee Handbook currently in effect (Employee Handbook) and related City policies and procedures. In the event of a conflict between this MOU and the Employee Handbook or other City policies or procedures, the MOU shall control. As noted in Article 17, the City is in the process of replacing the Employee Handbook with updated policies, has provided notice to the Association of proposed changes, and will meet and confer regarding those changes to the extent required by the MMBA.

ARTICLE 2 RECOGNITION

The City recognizes the Association as the recognized and exclusive representative for the following full-time classifications (part-time positions are not included in the bargaining unit represented by the Association):

- Accounting Assistant I, II, III
- Accounting Technician
- ~~Accounting Technician/Human Resources Manager-Confidential Employee~~
- Administrative Assistant
- Administrative Secretary
- Assistant Engineer
- Associate Engineer
- Assistant Planner
- Associate Planner
- Building Permit Technician I, II, III
- Capital Project Coordinator
- Chief Plant Operator - Water & Waste Water
- Chief Water Distribution Operator
- Human Resources Manager/Accounting Technician II
- Junior Engineer
- Lead Maintenance Worker
- Librarian I, II
- Library Assistant I, II
- Library Associate
- Maintenance Worker I, II, III
- Office Assistant
- Plant Operator I, II, III - Water & Waste Water
- Plant Operator in Training - Water & Waste Water
- Recreation Supervisor
- Public Works Supervisor
- Senior Librarian
- Senior Librarian Assistant

**ARTICLE 3
ASSOCIATION & CITY RIGHTS**

A. ASSOCIATION RIGHTS.

The Association shall have the following rights and responsibilities:

1. Reasonable advance notice of any City ordinance, rules, resolution or regulation directly relating to matters within the scope of this MOU.
2. Reasonable use of one (1) bulletin board at City Hall.
3. The right to payroll deductions made for payment of Association dues and for City-approved programs.
4. The right to represent its members before the City Council or the City Council's designee with regard to wages, hours and other matters within the scope of representation, subject to the provisions of applicable Federal, State or City laws and regulations. Inclusion of topics in this MOU does not deem them "negotiable" as that term is defined by applicable law.
5. The use of City facilities for regular, normal and lawful Association activities, providing the appropriate advance arrangements are made. The granting of such use may be conditioned on appropriate charges to offset the cost of such use.
6. Reasonable access to employee work locations for officers of the Association and their officially designated representatives for the purpose of processing grievances or contacting members of the Association concerning business within the scope of representation. Access shall be restricted so as not to interfere with the operations of the City or with established safety or security requirements.

B. CITY RIGHTS.

To insure that the City is able to fulfill its constitutional and statutory functions and responsibilities, the City retains its rights, including, but not limited to, the right to direct the work force; to select and determine the number of employees and skills required; to determine job classifications; to hire, transfer, promote, suspend, discipline and discharge employees; to assign work to employees in accordance with requirements of the City; to establish and change work schedules and assignments; to lay off employees for lack of work; to expand or diminish services; to determine and change methods of operations; to determine and change work locations and the processes and materials to the employee; to take all necessary actions to perform its functions in emergencies.

ARTICLE 4 DEFINITIONS

The words and terms have the following meanings:

Anniversary. The date upon which service time is computed for purposes of step advancement and accrual of vacation and sick leave benefits. (Usually the date of first employment.)

Average Work Day. ~~For a Part Time Employee, an "Average Work Day" (in hours) is the average number of hours actually worked per day, considering a five day work week. In any case for which the time period to be considered is twelve calendar months, the average work day is the number of hours worked in the preceding twelve months, divided by two thousand eighty, then multiplied by eight.~~

Benefits or Benefit Package. City-paid Insurance, paid leaves, holidays, and other non-salary items which are part of the compensation paid to any employee.

City. The City of St. Helena, California.

City Manager. The administrative head of the government of the City. The City Manager is responsible for the efficient administration of the affairs of the city, which affairs are under his or her control. The City Manager is considered a Department Head. The City Manager reports to and serves at the pleasure of the Council.

City Service. All positions in all departments and agencies of the City that are subject to control and regulation by the City Council of the City of St. Helena.

Classification. A particular type of employment in the City Service designed to include all positions having duties and responsibilities sufficiently similar so that the same requirements as to education, experience, knowledge, and ability may be required of incumbents and the same schedule or

Compensation may fairly be made to apply.

Compensation. The salary, wages, allowances, and all other forms of valuable consideration earned by or paid to any employee by reason of his or her service in a Position, but not including reimbursement for expenses incurred in the course of employment.

Confidential Employee. An employee having access in the course of his/her duties to confidential information on the employer's labor relations and consequently excludable from holding Association office and/or divulging confidential employer information to the Association.

Continuous Employment. Period of uninterrupted employment including holidays and authorized leave but not including periods of leave without pay or times on suspension.

Council. The City Council of the City of St. Helena.

Department Head. A member of the managerial staff of the City, consisting of the City Manager, the Fire Chief, the Police Chief, the City Clerk, the Director of Public Works, the Planning Director, the Library Director, the Recreation Director, the Finance Director and the City Attorney.

Emergency. Emergency shall include an event that damages or continues to threaten damage to the public health, safety, welfare, or property and shall include but not be limited to the following:

The repair or clearance of streets necessary for continued access to properties, including street sweeping.

The repair of public utility facilities.

The repair of City equipment necessary to maintain public safety services.

Activities associated with natural or man-made catastrophe.

~~On-going~~Ongoing investigation, surveillance, or similar police activities and the obtaining and serving of search warrants.

Shortage of personnel necessary to maintain public safety services.

Employee. A person legally occupying a full-time Position or office in the City Service that is listed in Article 2, and receiving compensation for services, other than an independent contractor. Employee and Full-Time Employee have the same meaning as used in this MOU.

Full-Time Employee. An employee who regularly works forty hours per week and is paid a monthly salary.

Non-Probationary Employee. An employee who has successfully completed the Probationary Period.

~~**Non-Qualified Part-Time Employee.** An employee who works less than thirty hours per week. Non-Qualified Part-Time Employees are not eligible for the Benefits set forth in this MOU unless specifically stated.~~

~~**Part-Time Employee.** An employee who works less than forty hours per week. Part-Time Employees are designated either as either Qualified Part-Time Employees or Non-Qualified Part-Time Employees.~~

Position. The title of an occupation along with a group of duties and responsibilities assigned or delegated by competent authority, which requires the full or part time service of one person.

Probationary Employee. An employee who has not yet completed a prescribed Probationary Period. ~~Only Full-Time and Qualified Part-Time Employees may be Probationary Employees.~~

Probationary Period. The length of continuous service for which an employee must serve in order to attain the status of Non-Probationary Employee.

~~**Qualified Part-Time Employee.** An employee whose designated work week is between thirty and thirty nine hours per week. Qualified Part Time Employees are generally eligible for a pro-rata share of the Benefits set forth in this MOU.~~

Salary or Pay. The monetary portion of compensation paid to an employee.

Standby. A period or condition which requires that an employee be able to readily report to work and be prepared to undertake work tasks. This will normally include either remaining at his/her home telephone or otherwise arranging for the immediate and convenient notification of an emergency condition, and being prepared to immediately report to the site of the emergency.

Supervisor. The mid-management staff of the City to include the designated assistant to a Department Head or the head of a sub-department or division of a department.

Title. The name applied to a Classification or to each Position included in the Classification.

Work Day.

One calendar day during which an employee is normally scheduled to work. If the employee is engaged in shift work that begins on one calendar day and ends on the following day, only one work day is denoted.

The number of hours of work contained in a calendar day for a given employee, in no case more than eight hours for a Full-Time Employee unless specified otherwise.

ARTICLE 5 HOURS OF WORK & SCHEDULES

A. BUSINESS HOURS.

The normal business hours of the City are from 8:00 a.m. to 5:00 p.m. Monday through Friday, except:

- Library hours ~~will be set by the Library Board and may vary.~~
- Parks hours include Saturday and Sunday. ~~Waste water hours include Saturday and Sunday for a one year trial period beginning January 1, 2013 through December 31, 2013.~~
- Streets, Parks, Water, Water Treatment and Waste Water Treatment Department Hours are from 7:00 a.m. to 3:30 p.m.
- Hours of operation differing from these guidelines may be established for any office or Department in order to meet the needs of the City and the citizens of St. Helena.

Employee work schedules shall be established consistently with the provisions of this Article 5. The City will provide SHEA and any affected employee with at least 21 days' notice before making a permanent change to the employee's work schedule.

B. HOURS OF WORK.

Five (5) days of eight (8) hours per day and for forty (40) hours per week constitute the normal workweek-work schedule for all employees. The standard workweek for these employees shall begin on Sunday at 12:01 a.m. and end of the following Sunday at 12:00 a.m. To the maximum extent practicable, work schedules for employees not working normal business hours shall be arranged so that the employee will work for five (5) consecutive eight (8) hours days, followed by two (2) days off. Employees are expected to be at their assigned place of work and prepared to commence work with tools at hand at the assigned time.

C. 9/80-FLEX SCHEDULE.

1. Eligibility.

A 9/80-Flex Schedule is available to Association employees in order to allow them time during the workweek to accomplish tasks which do not require public contact (i.e., outside of the 8:00 a.m. to 5:00 p.m. public hours).

~~Employees who opt for the 9/80 flex Schedule work 80 hours over nine work days in a two week work period without incurring overtime. The tenth day of the two week work period will be a day off. Only Friday may be the day off (the Friday Off).~~

~~Effective July 1, 2012 only employees currently on the 9/80 schedule will be granted this schedule.~~

The 9/80-Flex Schedule is voluntary, and subject to agreement by the employee and approval by the Department Head. Except in cases of emergency, the Department Head must provide at least 30 days' notice to terminate an employee's Flex Schedule.

The 9/80-Flex Schedule will not impact the accrual of vacation, Sick Leave or other benefits. Vacation time ~~off~~ or Sick Leave ~~days off~~ time will be deducted at ~~9~~ the number of hours per day for those days which are ~~deemed 9 hour work days~~ the leave is taken. For example, if an employee ~~was~~ is absent on a day he or she was scheduled to work nine (9) hours, nine (9) hours of leave time shall be deducted, and if the employee is absent on a day he or she was scheduled to work eight (8) hours, eight (8) hours of leave time shall be deducted.

2. 9/80 Schedule and Workweek.

Employees on a 9/80 schedule are scheduled to work eight (8) nine hour days, one (1) eight hour day, and will have one (1) day off every two weeks. ~~Employees who opt for the 9/80 flex Schedule work 80 hours over nine work days in a two week work period without incurring overtime. The tenth day of the two week work period will be a day off. Only Friday may be the day off (the Friday Off).~~

The scheduled one (1) day off every two weeks shall be either Monday or Friday as approved by the Department Head, but must be consistent from week to week. - Employees cannot change or flex their scheduled one (1) day off, unless the change is intended to be permanent and approved by the City.

For all employees working a 9/80 schedule, their workweek shall begin exactly four (4) hours into their eight (8) hour shift on the day of the week which constitutes their alternating day off. For example, for an employee scheduled to work from 8:00 a.m. – 6:00 p.m. with every other Friday off, the workweek shall begin at noon on Friday, and end at noon the following Friday.

a. Employees Scheduled with Every other Friday Off.

During a two week cycle, an employee working the 9/80 Flex Schedule will work nine hours per day Monday through Thursday and eight hours on Friday the first week. During the second week, the employee will work nine hours per day Monday through Thursday and be off on Friday.

For FLSA forty hour per week determination, the 9/80 Flex Schedule work-week begins four hours into the employee's eight hour shift at noon on Friday and ends at noon the following Friday.

In those instances where a holiday falls on the Friday-Off, the preceding work day shall be a day off with holiday pay. Since ~~h~~ Holiday pay is computed at the rate of eight hours, the affected employee will be required to take one hour of vacation or compensatory time off or to report to work for one hour on the "holiday." In order for an employee to be paid for nine hours when a holiday is observed on a scheduled nine-hour work day, the employee must make up the additional one hour of pay by either (1) using one hour of vacation or compensatory time off; or (2) working one additional hour on a scheduled work day during the same workweek that includes the day the holiday is observed. Additionally, working the make-up hour, as described in this paragraph, shall not entitle the employee to overtime under the following paragraph.

Employees working the 9/80 Flex Schedule will work from 7:00 am to 5:00 pm or from 8:00 am to 6:00 pm on the nine hour days and from 8:00 am to 5:00 pm on Fridays.

Employees working a 9/80 Flex Schedule shall be entitled to overtime for hours worked in excess of nine hours per day Monday – Thursday and in excess of eight hours on Friday. Employees will also receive overtime for all hours worked over 40 hours in each workweek (as defined above), in accordance with the FLSA.

b. Employees Scheduled with Every Other Monday Off

During a two week cycle, an employee working the 9/80 Flex Schedule will work eight hours on Monday and nine hours per day Tuesday through Friday the first week. During the second week, the employee will be off on Monday and work nine hours per day Tuesday through Friday.

For FLSA forty hour per week determination, the 9/80 Flex Schedule workweek begins four (4) hours into the employee's eight (8) hour shift.

In those instances where a holiday falls on the Monday-Off, the subsequent work day shall be a day off with holiday pay. Holiday pay is computed at the rate of eight hours. In order for an employee to be paid for nine hours when a holiday is observed on a scheduled nine-hour work day, the employee must make up the additional one hour of pay by either (1) using one hour of vacation or compensatory time-off; or (2) working one additional hour on a scheduled work day during the same work week that includes the day the holiday is observed. Additionally, working the make-up hour, as described in this paragraph, shall not entitle the employee to overtime under the following paragraph.

Employees working a 9/80 Flex Schedule shall be entitled to overtime for hours worked in excess of eight hours on Monday and in excess of nine hours per day Tuesday – Friday.

Employees will also receive overtime for all hours worked over 40 hours in each workweek (as defined above), in accordance with the FLSA.

~~Association employees working ¾ time (or 30 hours per week), may participate in a 4/30 Flex Schedule in which they work 7 ½ hours per day for four days and then have each Friday off.~~

~~3. Overtime:~~

~~Employees working a 9/80 Flex Schedule shall be entitled to overtime for hours worked in excess of nine hours Monday—Thursday or eight hours on Friday.~~

~~Employees working a 4/30 Flex Schedule shall be eligible for overtime for hours worked in excess of eight hours in one day.~~

~~3. 4/30 Flex Schedule~~

~~Association eEmployees working ¾ time (or 30 hours per week), may participate in a 4/30 Flex Schedule in which they work 7 ½ hours per day for four days and then have each Friday off. The standard workweek for these employees shall begin on Sunday at 12:01 a.m. and end of the following Sunday at 12:00 a.m.~~

~~Employees working a 4/30 Flex Schedule shall be eligible for overtime for hours worked in excess of eight hours in one day, or 40 hours in the regular work week, in accordance with the FLSA.~~

D. MEAL BREAKS.

Full-Time Employees are scheduled a period of between 30 and 60 minutes, generally in the middle of the workday, during which they are free to eat a meal or do personal errands. Unless directed otherwise, employees are not paid for this time and are free to leave the workplace. Qualified Part-Time Employees may be scheduled a meal break period if they work more than five hours in a workday.

E. REST BREAKS.

For each four (4) hours of work, conditions permitting, employees are granted a fifteen (15) minute rest break during which they may engage in personal conversations, move about, and otherwise “take a break” from the normal duties of their assignments. This time will be paid by the City as part of the workday.

F. SHEA ATTENDANCE AT BUDGET MEETINGS.

One Association officer shall be permitted to attend Council budget meetings held during work hours provided their absence does not create a hardship in the employee’s department nor require employee overtime.

**ARTICLE 6
PERSONNEL MATTERS**

A. PROBATIONARY PERIOD.

1. Probationary Period.

Each new ~~Full Time and Qualified Part Time~~ Employee shall be a Probationary Employee until successful completion of 12 months of Continuous Employment. The purpose of the Probationary Period is to give the Probationary Employee the opportunity to demonstrate that he or she is qualified, able, and willing to meet the expectations of the City with regard to the Position.

2. Termination During Probationary Period.

If at any time prior to successful completion of the Probationary Period the City Manager determines that it is in the best interest of the City to terminate the employment of the Probationary Employee, it will be in his or her discretion to do so without further justification. Probationary Employees are not entitled to the Disciplinary and Appeal Procedures set forth in Article 14 of this MOU and may be terminated ~~at will~~at will, with or without notice.

3. Extension of Probationary Period.

If it appears that the employee will not successfully complete the prescribed Probationary Period, the City Manager also has the discretion of extending the Probationary Period once for an additional six months, if the City Manager feels it is in the best interest of the City to do so.

~~B. NON QUALIFIED PART TIME, TEMPORARY AND CONTRACT EMPLOYEES.~~

~~Non Qualified Part Time, Temporary and Contract Employees are not subject to a Probationary Period since those employees are subject to discharge at the discretion of the appointing authority, without further justification. Non Qualified Part Time, Temporary and Contract Employees are not entitled to the Disciplinary and Appeal Procedures set forth in Article 14 of this MOU and may be terminated at will, with or without notice and with or without cause.~~

~~C.B.~~ EMPLOYEE EVALUATIONS.

Each employee shall be evaluated no less than annually by his/her Supervisor, according to a system approved by the City Manager. Each employee's evaluation shall be reviewed with the employee by the Department Head, after which the employee is expected to sign the evaluation. Signing the evaluation does not indicate agreement with that evaluation, and the employee may submit reasonable comments in explanation or rebuttal to its contents. After review by the City Manager, employee evaluations, including reasonable material submitted by the employee, will

be placed in the employee's personnel file. A satisfactory or above evaluation must be obtained before each promotion, Classification upgrade, or step increase is granted.

ARTICLE 7 PAY PLAN

A. SALARY SCHEDULE

1. Salaries

Salaries paid and any special compensation shall be in accordance with the most recent applicable salary resolution adopted by the City Council, and any amendments thereto. Such resolutions are hereby incorporated as part of this MOU and are available from the City Clerk. During the term of this MOU, the salary schedules shall be increased as follows:

1. 2016 Salary Schedule Increase: Effective January 9, 2016, the Salary Schedule shall be increased by 4% over the 2015 salary schedule. This increase is contingent upon the pension cost sharing agreement set forth in Article 11. (See Appendix A – 2016 Salary Schedule.)
2. 2017 Salary Schedule Increase: Effective January 9, 2017, the Salary Schedule shall be increased by 2.5% over the 2016 salary schedule.

B. SALARY UPON APPOINTMENT.

Employees appointed to a Position in City Service shall normally be placed in Step “A” of the range. Subject to approval of the City Manager for reasons of an applicant’s outstanding qualifications or for the needs of the City, appointment may be at a higher step. A current City employee being promoted into a range with a higher top step will normally receive at least a five percent (5%) increase.

C. STEP INCREASES.

1. Steps.

Upon completion of the following periods of service, a Full-Time Employee becomes eligible for the next higher step as follows:

- Six (6) months at Step A to become eligible for Step B
- Six (6) months at Step B to become eligible for Step C
- Six (6) months at Step C to become eligible for Step D
- Twelve (12) months at Step D to become eligible for Step E

2. Qualifications for Step Increase.

- a. Employees may be granted a step increase after having served for the designated qualifying period and after a performance evaluation finding that the employee's performance was not less than satisfactory.
- b. In unusual cases, upon recommendation of the Department Head, where special ability and aptitude is demonstrated, the City Manager may approve advancement of an employee to a higher step before completion of the normal qualifying period.

D. COST OF LIVING ADJUSTMENT (COLA).

~~—— A two percent (2%) salary increase shall be provided effective July 1, 2013.~~

~~—— A four percent (4%) salary increase effective January 1, 2014.~~

~~—— A four percent (4%) salary increase effective January 1, 2015.~~

~~The 2% salary increase shall be retroactive to July 1, 2013. The 4% salary increase shall be retroactive to January 1, 2014. The retroactive amount shall be applied to each member's payroll as necessary to allow the City to no longer need to complete payroll prior to an employees' hours actually being worked. The City shall issue a check to each member for the balance of the retroactive payment. The City will vacation or comp time leave to be used for newer hires receiving an insufficient amount of retroactive pay.~~

~~AnyIn considering COLAs for subsequent agreements, the parties will consider will be based upon the San Francisco, Oakland-San Jose All Urban Consumers Index.~~

E. HOURLY RATES.

Where any annual pay rate is to be converted to a salary hourly equivalent, the annual rate of pay shall be divided by 2080 to determine the hourly rate. Daily rates are equivalent to the appropriate hourly rate multiplied by eight (8) hours.

F. OVERTIME.

1. General Policy.

Employees must get pre-approval from their supervisor before working overtime. In cases of emergency or other unusual unforeseen circumstances, if the employee's supervisor is not available to approve the overtime work in advance, the employee shall contact the Administrative Services Manager or City Manager as soon as possible to seek approval of the overtime work, and may begin critical overtime work without specific advance authorization if needed to address emergency situations. It is the policy of the City that overtime is to be discouraged and used only in cases of

~~emergency. Except for an emergency, a Department Head shall not obligate the City to compensate for overtime without specific advance authorization.~~

2. Overtime Compensation.

Unless the employee is working a Flex Schedule (see Article 5, section C.2 , above), work in excess of eight (8) hours per day or forty (40) hours in a workweek, shall be paid at the rate of one and one-half (1.5) times the regular rate of pay; work in excess of twelve (12) hours per day shall be paid at the rate of twice the regular rate of pay. If the employee requests, a Department Head may, at his/her discretion, approve the accumulation of compensatory time to be taken off in lieu of overtime pay. An employee may accumulate up to a maximum of eighty (80) hours of compensatory time. When earned, compensatory time is accumulated at the same rate as if it were to be paid (i.e., at the rate of 1.5 times the regular rate for hours above 8 but less than 12 in one day).

3. Compensatory Time Off.

An employee, who has accumulated compensatory time as described in Subsection 7.F.2 above, may request time off, to be charged against the accumulated compensatory time. ~~Approval of the request for time off is at the discretion of the Department Head, who will consider the needs of the City, as well as the desire of the employee.~~ The Department Head will permit the requesting employee to use the time within a reasonable period after the request is made unless using the time will unduly disrupt the City's operations.

4. Overtime Meal.

If an employee is required to work more than twelve (12) hours with no breaks longer than one (1) hour, the City will provide that employee a meal.

G. HOLIDAY PAY ON HOLIDAYS.

When required to work on a holiday, an employee shall be paid twice the rate of pay at which the employee would be paid on a non-holiday. This section is not applicable to Standby Pay since ~~call-out~~ call-out is not a normal designated work day.

H. STANDBY PAY.

Standby Pay shall be paid at a rate of \$75.00 per weekend to those employees in the Public Works Department who are required to be on Standby on weekends (3:30 p.m. Friday to 7:00 a.m. Monday), \$75.00 per week for those employees who are required to Standby for the week (Monday – Friday) and \$75.00 for those employees who are required to Standby on holidays (3:30 p.m. to 7:00 a.m. of the next regular work day).

Public Works employees shall be compensated in 15 minute increments for time worked while on standby handling phone calls from dispatch. City management shall develop a process for including such time on employee timesheets.

I. MINIMUM CALLOUT TIME.

The minimum time charged for being called to work for an emergency shall be two (2) hours (home to home). In addition, such call out time shall be paid at the ~~over time~~ overtime rate.

J. LONGEVITY PAY.

~~A raise shall be granted to Full-Time and Qualified Part-Time Employees~~ shall be eligible to receive longevity pay according to ~~at the dates and rates below:~~

<u>Years of Continuous City Employment</u>	<u>Total Longevity Pay</u>
5 years <u>At the 5th Anniversary of Continuous Employment</u>	2.5% of current <u>base</u> salary;
10 years <u>At the 10th Anniversary of Continuous Employment</u>	5.0% of current <u>base</u> salary;
15 years <u>At the 15th Anniversary of Continuous Employment</u>	7.5% of current salary <u>base salary</u> ; and
20 years <u>At the 20th Anniversary of Continuous Employment</u>	10% of current <u>base</u> salary;

K. BILINGUAL PAY.

Bilingual pay for fluency in both English and Spanish will be paid to ~~any Full-Time or Qualified Part-Time City employees~~ who are routinely and consistently assigned to communicate in Spanish normally available for or to provide translation for City business. ~~For employees who are certified as fluent in both written and verbal Spanish language, such pay will be five percent (5%) of the designated employee's base salary. For employees who are certified as fluent only in verbal Spanish language, bilingual pay will be two and one-half percent (2.5%) of the designated employee's base salary. Only designated employees certified by the City as fluent in both English and Spanish designated by the City are eligible for this additional pay.~~

L. OUT-OF-CLASS PAY.

When, because of the absence of a Department Head or other Supervisory personnel, an employee performs substantially all of the functions (full-time) of the higher Classification, the employee will receive an increase of ~~no less than~~ ten percent (10%) of his/her base hourly

equivalent wage. The increase will be effective after the third (3rd) week of the assumption of those duties and continue during the period those duties are being performed by the employee on a full-time basis. Out-Of-Class-Pay must be pre-approved, in writing, by a Department Head or the City Manager.

M. REPORTING TIME WORKED.

Employees are responsible for reporting on a prescribed form, all hours worked and leave taken during the pay period. The employee is responsible for securing the signature of his/her immediate Supervisor on the form, indicating approval of the hours submitted. The employee is also responsible for seeing that the required documentation for approved leave or overtime worked is attached to the time report. In the event employees are unable to accurately report all time, due to the need to submit the time report prior to the end of the pay period, they shall be responsible for bringing that fact to the attention of their Department Head(s) as soon as practicable, so the payroll records can be adjusted accordingly.

ARTICLE 8 TIME OFF AND LEAVES OF ABSENCE

A. VACATION LEAVE.

1. Rate of Accrual or Award.

Employees shall accrue or be awarded vacation pay based on their years of Continuous Employment at the following rates:

- a. Less than five years of Continuous Employment: Full-Time Employees earn vacation at the rate of ten days per year. Vacation accrues on a monthly basis (six hours and forty minutes per month).
- b. After five years of Continuous Employment with the City, Full-Time Employees will accrue vacation at the rate of fifteen days per year; after six years, sixteen days; after seven years, seventeen days; eight years, eighteen days; nine years, nineteen days; and ten years, twenty days per year.
- c. After twenty-five years of Continuous Employment with the City, Full-Time Employees will earn one additional day of vacation each year and continue to earn one additional day of vacation every five years thereafter.
- ~~d. Qualified Part-time Employees shall accrue vacation on a pro-rata basis. For example, a Qualified Part-time Employee that works thirty hours per week shall accrue vacation at the rate of 7.5 days per year during the first five years of Continuous Employment. Vacation Leave accrues on a monthly basis.~~
- ~~e. Non-Qualified Part-time Employees do not accrue vacation during their first twelve months of Continuous Employment. Thereafter, Non-Qualified Part-Time Employees accrue vacation on a pro-rata basis based on the total number of hours they worked during the previous twelve months of employment as compared to 2,080 hours (full-time). For example, in year two of City Services, a Non-Qualified Part Time Employee that worked 1,040 hours in his or her first year of employment, will be eligible for five days of Vacation Leave during his or her second year of employment. Vacation Leave accrues on a monthly basis.~~

2. Administration.

- a. Approving Authority: Department Heads shall have the authority to schedule Vacation Leave according to the needs of the service and the wishes of the employee, in that order.

- b. Leave Requests: An employee's request for approval of Vacation Leave shall be made in writing to the Department Head. Except in the case of an emergency, a request for leave for one to three days should be made at least two days before the commencement of the leave. A leave in excess of three days should be made at least three days prior to the commencement of the leave.
- c. Holidays: If a holiday recognized by the City occurs during Vacation Leave, absence for that holiday shall be charged as Holiday Leave and not as Vacation Leave.
- d. Leave Accumulation: Except with the approval of the Council, accumulated Vacation Leave shall not exceed three hundred and eighty (380) hours and all employees who have accumulated at least eighty (80) hours of vacation shall expend at least eighty (80) Vacation Leave hours per calendar year with at least forty (40) hours being consecutive.

Any employee in a position represented by SHEA, who has more than 320 hours of accrued vacation leave, may have the option to receive a cash payment in lieu of their requested vacation time. This option to receive a cash payment in lieu of vacation time will only be available if (1) the employee has filed a written request for leave at least 30 days prior to the commencement of the leave; and (2) management denies the employee's request for leave because of department workload and staffing needs. Any payment in lieu of requested vacation time will not be PERSable and will not be credited towards the employee's single highest year compensation for retirement purposes. This provision shall not apply to leave which is denied for a requested period due to management's approval of leave for other employees and in which leave would still be available for a period close to the requested vacation period.

- e. Leave Award and Compensation: Vacation Leave shall begin to be earned by an employee upon employment. In the event of a separation of employment, any unused accrued or awarded Vacation Leave shall be compensated with a lump sum payment based on the employee's current rate of pay and included with the employee's final paycheck.
- f. Eligibility and Use: An employee may not take Vacation Leave until after the completion of six months of Continuous Employment. Vacation Leave shall be taken in not less than fifteen minute increments.

B. HOLIDAYS.

1. Holidays.

The following holidays shall be recognized for all Association employees:

New Year's Day (January 1st)
Martin Luther King Day (Third Monday in January)
President's Day (Third Monday in February)
~~Good Friday (4 hrs) (Traditional Observance)~~
Cesar Chavez Day (March 31)
Memorial Day (Last Monday in May)
Independence Day (July 4th)
Labor Day (First Monday in September)
Veteran's Day (November 11th)
Thanksgiving Day (Fourth Thursday in November)
Friday after Thanksgiving
Christmas Eve Day (December 24th)
Christmas Day (December 25th)

2. Exceptions.

When a holiday falls on a Saturday, the preceding Friday shall be deemed a holiday. When a holiday falls on a Sunday, the following Monday shall be deemed a holiday. When Christmas Eve falls on a Friday, the preceding Thursday shall be deemed a holiday. -When Christmas day falls on a Monday, the following Tuesday shall be deemed a holiday. When Christmas falls on a Thursday, the following Friday shall be a holiday in lieu of Christmas Eve Day.

3. Observance.

Except for emergency services, all City offices shall be closed on recognized holidays established by Council resolution or ordinance.

4. Holiday Pay

- a. ——— Full-Time Employees shall receive full pay provided they are employed and in a paid status on the first working day prior to and following the holiday.
- b. ——— ~~Qualified Part Time Employees who have been continuously employed by the City for at least twelve months will receive Holiday Pay for days designated as fixed holidays, in an amount determined by multiplying the employee's Average Work Day by the employee's hourly rate. If a Qualified Part Time Employee who is eligible for Holiday Pay is required to work on a holiday, then in lieu of paid time off the employee will receive additional pay equivalent to the employee's Average Work Day or the actual number of hours worked.~~

~~whichever is greater, but not to exceed eight (8) hours, multiplied by the employee's hourly rate.~~

- ~~e. Non-Qualified Part-Time Employees who have been continuously employed by the City for at least twelve months will receive Holiday Pay for days designated as fixed holidays in an amount equal to their Average Work Day over the last twelve-month period multiplied by their current hourly rate.~~

C. PERSONAL CONVENIENCE HOLIDAY.

Each Full-Time Employee and ~~Qualified Part-Time Employees~~ shall be eligible for two (2) Personal Convenience Holidays of eight (8) hours each per year. After five years of Continuous Employment, Full-Time and ~~Qualified Part-Time Employees~~ shall be eligible for an additional three (3) Personal Convenience Holidays each year. Personal Convenience Holidays are granted on January 1st of each year and must be used prior to the end of the calendar year and will not accrue. They may be taken at the employee's convenience, subject to the Department Head's approval. These Personal Convenience Holidays shall not incur additional expense to the City, e.g., causing another employee to work overtime, etc. Each Personal Convenience Holiday must be taken as a full day off. Employees do not receive Personal Convenience Holidays during the calendar year in which they are hired.

D. SICK LEAVE AND FITNESS FOR DUTY.

1. Accrual and Use.

Employees shall accrue and use sick leave in accordance with City of St. Helena Personnel/Administrative Policy No. 3.09 – Sick leave and the provisions of this Article 8(D). The provisions of this Article 8(D) shall supersede any inconsistent provisions of Policy No. 3.09.

a. Sick leave with pay shall accrue to all Full-Time Employees at the rate of one work day for each calendar month of service, with no limit to its maximum accumulation.

~~b. Qualified Part-Time Employees accrue Sick Leave on a pro-rata basis. For example, a Qualified Part-Time Employee who works 30 hours per week will receive six hours of Sick Leave for each calendar month of service.~~

~~c. Non-Qualified Part-Time Employees are not eligible for Sick Leave.~~

2. Administration/Fitness for Duty.

When the employee's need to use sick leave is foreseeable (for example, prescheduled appointments), the employee must provide reasonable advance notice to his/her immediate supervisor or Department manager of the need to use sick leave and its probable duration, if known. In all other situations, An employee who must be absent from work shall personally

(if able) notify his or her immediate superior or Department Head as soon as reasonably possible, and at least prior to or before or within the first thirty minutes of the absence. An employee and may be required to provide a physician's certificate for absence due to illness of more than three working days or at the request of the Department Head. If the City requires an employee to provide a physician's certificate for an absence pursuant to this paragraph, and the employee had not already seen or planned to see the physician for the illness or injury, the City shall reimburse the employee for the cost of any required co-pay associated with the visit to the physician if the visit was required solely to comply with the requirement to obtain the certificate of illness or injury.

When the City Manager determines that it is job-related and consistent with business necessity, an employee may be required to submit to an examination by a licensed physician designated by the City and at ~~the~~ the City's expense to determine whether the employee is still able to perform the essential functions of his or her job. Any information obtained about the Employee's health condition shall be treated confidentially as provided by federal and state law.

3. Reasons for Granting.

Sick leave shall be granted to eligible employees ~~for~~ in the following ~~reasons~~ seases:

- a) For the diagnosis, care or treatment of an existing health condition, or preventive care for the employee or a family member.
- b) Sick leave with pay for illness or injury of a family member, subject to the limitations in Section D.4 of this Article.
- c) Enforced quarantine of the employee in accordance with community health regulations.
- d) As required by law, to allow a victim of domestic violence and/or a victim of sexual assault to obtain relief or attempt to obtain relief to help ensure his or her health, safety, or welfare, or that of his or her child(ren), to a limit of 24 hours or three (3) days in a calendar year. This maximum does not limit the amount of sick leave available for other listed reasons.
- e) As required by law, to allow a victim of domestic violence and/or a victim of sexual assault to seek medical attention, to obtain services from a domestic violence program or psychological counseling, or to participate in safety planning, to a limit of 24 hours or three (3) days in a calendar year. This maximum does not limit the amount of sick leave available for other listed reasons.
- f) Preventive medical, dental and optical examinations where appointments are unavailable or impractical during non-working hours.

g) Complication or disability resulting from or contributed to any pregnancy, termination of pregnancy, or recovery therefrom.

- a. ~~Personal illness or incapacity resulting from causes beyond the employee's control or from maternity. In the event of absence from work due to a work-related injury, an employee may receive pay for accrued Sick Leave to the extent necessary to supplement worker's compensation payments to effectively raise the employee's pay received to the level of full time pay. For a new employee who, at the time of a work-related injury, has not yet earned three days of Sick Leave, up to three days of Sick Leave may be advanced from anticipated future Sick Leave accruals as required to meet this described use.~~
- b. ~~Illness of a member of an employee's immediate family (defined as father, mother, domestic partner, sister, brother, spouse or children) and of sufficient nature to require the employee's personal care and attention.~~
- e. ~~Medical appointments and preventive medical, dental, and optical examinations for the employee and the employee's minor children or incapacitated spouse or domestic partner where appointments are unavailable or impractical during non-working hours.~~
- d. ~~As otherwise provided in the Family Medical Leave Act and Pregnancy Disability Act Policies of the City.~~

4. Limitations And Related Provisions.

- a. An employee may use Sick Leave, in an amount not to exceed one-half of their annual accrual, or six days, to attend to an illness of a family member child, parent spouse or domestic partner of the employee. This includes attending to the serious injury or illness of a family member covered under the Family Medical Leave Act and/or California Family Rights Act.
- b. For the purposes of using sick leave under this Article, "family member" shall mean an employee's parent, child, spouse, registered domestic partner, parent-in-law, sibling, grandchild, or grandparent.
- c. In the event of absence from work due to a work-related injury, an employee may receive pay for accrued Sick Leave to the extent necessary to supplement worker's compensation payments to effectively raise the employee's pay received to the level of full-time pay. For a new employee who, at the time of a work-related injury, has not yet earned three days of Sick Leave, up to three days of Sick Leave may be advanced from anticipated future Sick Leave accruals as required to meet this described use.

5. Sick Leave Abuse.

"Sick leave abuse" shall mean: "any use of sick leave, for purposes other than those identified in this section." Sick leave abuse may subject the employee to disciplinary action as determined necessary to deter future abuse.

6. Pay-out of Sick Leave at Termination of Employment.

- a. Effective July 1, 2012, the City will not pay the employee upon separation in good standing from City employment for unused sick leave accrued on or after July 1, 2012.

Upon separation in good standing from City employment, the City will pay the employee for unused Sick Leave in the following amount: The total number of hours of Sick Leave accumulated multiplied by the hourly rate of pay of the employee at the time of separation, divided by two (2). An employee is not "separating in good standing" if proceedings to terminate the employee have been initiated or concluded in accordance with the provisions of Article 14, Resignation, Termination or Disciplinary Action. When an employee uses sick leave, City will first reduce employee sick leave balances from sick leave accrued after July 1, 2012.

- b. An employee's termination of employment for reasons of illness, verified by doctor certifications relative to the nature, gravity, and duration of the illness (including maternity) may be paid a lump sum for all Sick Leave accrued and unused at the time of such termination.
- c. An employee who retires or otherwise terminates his or her employment after a finding of industrial disability, may not exhaust his or her Sick Leave before the retirement becomes effective.

E. BEREAVEMENT LEAVE.

All Full-Time and ~~Qualified Part-Time~~ Employees shall be allowed a leave of absence with full pay, not to exceed three (3) working days, or five (5) working days if the death occurs out of State, when such absence is due to death in the immediate family. Those in immediate family are: mother, father, grandmother, grandfather, or a grandchild of the employee or of the spouse or domestic partner of the employee, and the spouse, son, domestic partner son-in-law, daughter, daughter-in-law, brother, or sister of the employee, or any relative living in the immediate household of the employee.

F. JURY OR WITNESS DUTY.

1. All employees shall be granted time off to serve, as required by law, on a jury or grand jury if the employee provides reasonable advance notice to the City. Leave with full pay shall be granted to Full-Time and ~~Qualified Part-Time~~ Employees for jury duty or

when called as a witness for a job related law suit. Any compensation received for jury duty, excluding mileage and similar expense reimbursements, shall be remitted to the City. ~~Non-Qualified Part-Time Employees time for jury duty will be unpaid.~~

2. Leave without pay shall be granted to all employees to appear in court or other judicial proceedings as a witness to comply with a valid subpoena or court order.

G. ADMINISTRATIVE LEAVE WITH PAY.

Administrative Leave with Pay may be assigned to employees by the City Manager if it appears to be in the best interest of the City. In the event such leave is assigned, the City Manager will report to the Council the facts and circumstances of such leave as soon as is practicable.

H. DISCRETIONARY LEAVE WITHOUT PAY.

1. Permissible reasons for leave.

Discretionary Leave Without Pay may be granted by the City Manager as follows:

- a. For personal reasons which are approved by the City Manager.
- b. For reason of illness in the event Sick Leave has been exhausted.
- c. In conjunction with Pregnancy Disability or FMLA Leave.
- d. To pursue a course of education which will increase the employee's usefulness as a City employee.

2. Procedure.

- a. The employee shall provide at least 30 days advance notice of the need for leave without pay, whenever possible. If 30 days' notice is not practicable, the employee shall request the leave as soon as practicable.
- b. An employee's request for Discretionary Leave Without Pay shall be submitted to the City Manager, accompanied by a recommendation or an explanation from the Department Head as to how an adequate level of service can be maintained during the employee's absence. The City Manager has the discretion of approving or rejecting the request.
- c. In the case of extended illness the Department Head shall notify the City Manager at such time as the employee has expended all Sick Leave and shall submit a regular status report thereafter pending consideration of termination, disability, retirement, or temporary replacement.

3. Regulations Relative to Discretionary Leave Without Pay are as Follows.

- a. The City Manager may grant Discretionary Leave Without Pay in his or her discretion and only when, in the opinion of the City Manager, it is in the best interest of the City.
- b. In the case of illness, Discretionary Leave Without Pay shall commence at such time as Sick Leave is expended except that the employee may elect to expend any other leave prior to utilizing Discretionary Leave Without Pay.
- c. Except in cases of absence due to illness, Discretionary Leave Without Pay shall be deducted from service time for purposes of computing longevity, time in service, seniority, or for any other purpose.
- d. Vacation or Sick Leave shall not accrue nor shall Holiday Pay be awarded during periods of leave without pay.
- e. Unless the employee notifies the City Manager at the time of the request for Discretionary Leave Without Pay that he or she elects to pay the premiums for continuation of Health, Dental, and Insurance Benefits, those benefits will be terminated beginning with the calendar month following the start of the unpaid leave. If that election is made and the leave is approved, it is the responsibility of the employee to submit payment to the City such that it is received prior to the City processing payment to the insurance carrier. The City will not make a premium payment in anticipation of receipt of the payment from the employee.
- f. Reinstatement of all benefits shall occur at the first opportunity following the employee's return to duty.
- g. Discretionary Leave Without Pay will not normally be approved until Sick Leave (if medically justified), Vacation Leave, and Comp Time have been exhausted.
- h. Retirement benefits shall be adjusted for leave without pay in accordance with Public Employees' Retirement System's (PERS) regulations.
- i. An employee shall, upon completion of authorized leave without pay, be reinstated to the Position held at the time of commencement of leave and at the salary range and step previously held.

**ARTICLE 9
CERTIFICATION AND OTHER BENEFITS**

A. SPECIALIZED SCHOOLS AND TRAINING, AND CERTIFICATION PAY.

1. Specialized Schools and Training.

Individual Full-Time and ~~Qualified Part-Time Association members~~ employees will be reimbursed for up to \$500.00 per year in educational expenses for job-related courses. The total amount reimbursed to all employees in the unit represented by the Association ~~Association members~~ through this program will not exceed \$6,000.00 per year. Employees will be reimbursed on a first-come, first-served basis, subject to the City Manager's determination that a course or training is job-related. This provision does not include payment of fees or tuition for course work taken in pursuit of an academic degree.

2. Certification Pay.

a. In recognition of the fact that certain functions cannot be performed without special governmental certification or licensing, the City will pay Fifty Dollars (\$50.00) per month for:

- "Operator cross-certification" (Class I or above) for employees assigned to the Water Treatment Plant or Waste Water Treatment Plant, enabling those employees to perform duties at the other plant;
- A necessary pesticide certificate, for Public Works employees responsible for pesticide applications programs for the City;
- Certification for back-flow prevention devices for Public Works ~~Water Department~~ employees.
- Playground Inspection Certification for employees working in the Parks Division.
- Arborist Certificate for employees working in the Parks Division.

b. Fifty Dollars (\$50.00) per month and any required physical examinations, the cost to renew the Class B license, and the appropriate time necessary during normal work hours to test for a Class B driver's license, if the Director of Public Works,

on a person-by-person basis, certifies the necessity to the City for such license and the City Manager authorizes.

B. UNIFORMS.

1. As a condition of employment, the City may prescribe appropriate apparel or uniforms to be worn during work hours.
2. The City will provide uniforms to employees in the following Public Works positions: in the Parks, Streets, and Waste Water Treatment Plant Departments: employees working outside Public Works Supervisor, Maintenance Worker I, Maintenance Worker II, Maintenance Worker III, Maintenance Lead Worker, Chief Water Distribution Operator Supervisor, Plant Operator in Training, Plant Operator I, Plant Operator II, Plant Operator III, Chief Plant Operator, including but not limited to Parks, Water Plant and Water Personnel. The uniforms provided shall include five (5) City Polo Shirts and four (4) pairs of City pants/jeans per year. In addition, the City will provide the above listed employees with plus one (1) safety reflective winter coat on initial hire with a replacement coat every 5 years, and one pair of OSHA approved safety steel toed boots or shoes to be replaced when warranted. Any additional uniforms needed shall be supplied at the employee's expense.
3. The parties acknowledge that the uniforms provided are not suitable for everyday wear, and that employees shall wear the provided uniforms only while on duty and traveling to and from work.
4. The City will provide and pay for regular uniform cleaning service of up to five pairs of pants and five shirts per week for the uniforms of the employees listed in 2 above. Streets, Parks, Water, Water Treatment, and Waste Water Treatment employees. The value of this uniform service is \$108.10 per pay period.
5. To comply with the special compensation requirements of CalPERS, the City shall report to CalPERS periodically as earned the value of the required uniforms and cleaning service provided by numbers 2 and 4 above for classic members (as defined by CalPERS) – the total value to be reported to CalPERS is: \$10.71 per pay period for the uniforms, and \$108.10 per pay period for the cleaning service. For classic members, the City and employees will be required to make required employer and employee contributions based on this special compensation in the applicable employer/employee contribution amounts. For example, classic members will be required to make the required employee contribution on this amount. Pursuant to CalPERS regulations, the value of uniforms and uniform cleaning for new members (as defined by CalPERS) does not count as special compensation.

C. TOOLS AND EQUIPMENT.

1. For employees, except the City Mechanic, all items of essential equipment and tools will be provided by the City, except that an employee may elect to provide all or any part of his/her own equipment and tools.
2. City-owned equipment and tools shall be used solely in the exercise of official City business.
3. The City Mechanic will personally furnish all hand tools necessary for normal general maintenance to vehicles and equipment. The city will reimburse the Mechanic for one-half (1/2) the Mechanic's cost of hand tools, up to One Hundred Fifty Dollars (\$150.00) per year.
4. Care of Tools and Equipment.

Each employee having care or custody of City-owned property (including money) or equipment has a responsibility to take appropriate care of the property or equipment, including safeguarding it against theft or damage. Any employee becoming aware of the theft of, or malicious damage to City-owned property or equipment shall immediately report it to the Police Department.

**ARTICLE 10
HEALTH, DENTAL, LIFE AND DISABILITY INSURANCE**

A. HEALTH INSURANCE.

The City will pay provide medical insurance for each Full-Time ~~and Qualified Part-Time~~ Employee and his or her eligible dependents. City is currently a member of Redwood Empire Municipal Insurance Fund (REMIF) and subject to their decisions regarding type and number of plans offered. Should REMIF propose material changes to the insurance plans, City will meet and confer on medical insurance options.

B. DENTAL INSURANCE.

The City will pay the full premium for dental insurance benefits for each Full-Time ~~and Qualified Part-Time~~ Employee and all dependent family members.

C. VISION INSURANCE.

Subject to REMIF approval, the City will obtain and pay the full premium for a REMIF Vision Plan for all Full-Time ~~and Qualified Part-Time~~ Employees.

D. LIFE INSURANCE.

The City will pay the full premium for a \$25,000.00 life insurance plan to cover each Full-Time ~~and Qualified Part-Time~~ Employee. At the employee's expense, an employee has the option to increase the amount of life insurance coverage up to an additional \$20,000.00.

E. SUPPLEMENTAL LIFE INSURANCE.

The City does not provide, however Full-Time ~~and Qualified Part-Time~~ Employees may purchase additional supplemental life insurance.

F. DISABILITY INSURANCE.

The City will pay the full premium for the California State Disability Insurance program primary disability insurance plan covering each Full-Time ~~and Qualified Part-Time~~ Employee.

**ARTICLE 11
RETIREMENT, SOCIAL SECURITY, DEFERRED
COMPENSATION AND DEPENDENT CARE ASSISTANCE**

A. PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CalPERS).

~~Unit members~~ Employees covered by this MOU are provided retirement benefits under the California Public Employees' Retirement System (CalPERS) as described in this Article 11, Section A.

1. Tier One: 2% at 55 Retirement Program – Bargaining Unit Members Employees Hired Before July 1, 2012 (Tier 1 Classic Members)

This Section 1 (including subsections) shall apply to ~~employees~~ bargaining unit members hired before July 1, 2012:

a. 2% at 55 Pension Formula

The "2% @ 55" retirement program will be available to ~~employees~~ bargaining unit members covered by this Section.

b. Final Compensation Based On 12-Month Period

For the purposes of determining a retirement benefit, final compensation for ~~employees~~ bargaining unit members covered by this Section ~~11.21~~ shall mean the highest twelve (12) consecutive month period as specified in Government Code Section 20042.

c. Required Employee Bargaining Unit Member Contributions

i. Member Contribution

~~Bargaining unit members~~ Employees covered by this Section ~~11.2~~ shall continue to pay, through payroll deduction, the full 7.0% member contribution.

ii. Pension Cost Sharing

Effective January 9, the first full pay period in January 2016, ~~bargaining unit members~~ employees covered by this Section ~~11.2~~ shall pay, through payroll deduction, the full 7.0% member contribution and an additional 1% of PERSable compensation toward the City's required contribution for a total contribution of 8% toward the normal cost of pension benefits as permitted by Government Code Section 20516.

2. Tier Two: 2% at 60 Retirement Program for EmployeesBargaining Unit Members- Hired On or After July 1, 2012, and Before December 31, 2012, and EmployeesUnit Members Qualified for Reciprocity (Tier Two Classic Members)

This Section ~~44.32~~ (including subsections) shall apply to ~~employeesbargaining-unit members~~ hired on or after July 1, 2012, and before January 1, 2013. In addition, this Section ~~44.32~~ (including subsections) shall apply to ~~employeesbargaining-unit members~~ hired on or after January 1, 2013, who are qualified for pension reciprocity as stated in Government Code Section 7522.02(c) and related CalPERS reciprocity (Classic Member) requirements:

- a. 2% at 60 Pension Formula

The “2% @ 60” retirement program will be available to ~~employeesbargaining-unit members~~ covered by this Section ~~44.32~~.

- b. Final Compensation Based On 36-Month Period

For the purposes of determining a retirement benefit, final compensation for ~~bargaining-unit members~~~~employees~~ covered by this Section ~~44.32~~ shall mean the highest annual average pensionable compensation earned during thirty-six (36) consecutive months of service.

- c. Required EmployeeBargaining Unit Member Contributions

- i. EmployeesBargaining-unit members covered by this Section ~~44.32~~ shall continue to pay, through payroll deduction, the 7.0% member contribution.

- ii. Pension Cost Sharing

Effective the first full pay period in January 2016, ~~employeesbargaining-unit members~~ covered by this Section ~~44.32~~ shall pay, through payroll deduction, the full 7.0% member contribution and an additional 1% of PERSable compensation toward the City’s required contribution for a total contribution of 8% toward the normal cost of pension benefits as permitted by Government Code Section 20516.

3. Tier Three: 2% at 60-62 PEPR Retirement Tier Required For EmployeesBargaining Unit Members Hired On or After January 1, 2013 and Not Qualified For Reciprocity (Not a Classic Member)

This Section ~~344.4~~ (including subsections) shall apply to ~~employeesbargaining-unit members~~ who were hired on or after January 1, 2013, and who do not qualify for pension reciprocity (not a Classic Member) as stated in Government Code Section 7522.02(c).

a. 2% at 62 Pension Formula

The “2% @ 62” retirement program will be available to ~~employeesbargaining unit members~~ covered by this Section ~~311.4~~.

b. Final Compensation Based On 36-Months

Effective January 1, 2013, for the purposes of determining a retirement benefit, final compensation for ~~employeesbargaining unit members~~ covered by this Section ~~311.4~~ shall mean the highest annual average pensionable compensation earned during thirty-six (36) consecutive months of service as required by Government Code Section 7522.32.

c. Required EmployeeBargaining Unit Member Contributions

i. Required 50% of Normal Costs

As required by Government Code Section ~~7522.30~~~~7522.04~~(~~g~~), effective January 1, 2013, ~~employeesbargaining unit members~~ covered by this Section ~~311.4~~ shall pay, through payroll deduction, fifty percent (50%) of normal costs.

ii. Pension Cost Sharing

Effective the first day of the first full pay period in January 2016, in addition to paying 50% of normal costs as described above, ~~employeesbargaining unit members~~ covered by this Section ~~311.4~~ shall pay, through payroll deduction, an additional 1.0% of PERSable compensation toward the City’s normal cost of pension benefits as permitted by Government Code Section 20516.

4. Cost Sharing Implementation – All Tiers

The parties acknowledge that CalPERS mandates an election of unit members, separate from ratification of this MOU, to provide for this cost sharing pursuant to Government Code Section 20516. As soon as practicable after the effective date of this MOU, the City will initiate the contract amendment process. Upon approval and agreement from the bargaining unit and completion of the City’s amendment to the CalPERS contract, ~~unit member~~~~employee~~ contributions will be made pursuant to Government Code Section 20516, Unit Member Cost Sharing of Additional Benefits. If the contract amendment is not complete before the effective date of the cost sharing described in Sections ~~A(1)(c)(ii), A(2)(c)(ii), and A(3)(c)(ii)~~~~11.2.3.2, 11.3.3.2, and 11.4.3.2~~, the cost sharing shall be implemented outside of a CalPERS contract amendment as authorized by Government Code Section 20516(f) and shall extend beyond the expiration of this MOU and establish the status quo for purposes of future negotiations. The Union and the City

will take all actions necessary to implement the pension cost sharing agreement described in Sections- A(1)(c)(ii), A(2)(c)(ii), and A(3)(c)(ii) ~~11.2.3.2, 11.3.3.2, and 11.4.3.2.~~

5. Converting Sick Leave Balance

An employee ~~unit member~~ who retires may convert his/her unused sick leave balance to service credit as provided by Government Code Section 20965. Any accrued unused sick leave credit that is paid out at termination pursuant to Article 8(D)(6) will not be available for conversion to service credit.

6. Other Options Included In CalPERS Contract

Employees ~~Unit members~~ shall be eligible for other options included in the City's contract with CalPERS as stated in that contract, and allowed by law.

7. Implementation of Internal Revenue Code Section 414(h)(2)

As permitted by Internal Revenue Code Section 414(h)(2) and Government Code Section 20516, each employee ~~unit member~~ shall pay, through payroll deductions, the PERS contributions described in this Article 11 with state and federal income tax on the PERS member contribution deferred to the extent permitted by Internal Revenue Code, 26 USC Section 414(h)(2).

8. All Provisions Subject to Requirements of Law

The parties recognize and agree that the City is required to comply with all requirements of law governing the CalPERS retirement program, including, but not limited to eligibility and reporting requirements. In implementing this MOU and related practices, the City will comply with the requirements of law, and those legal requirements prevail over any inconsistent prior practices or MOU terms.

**ARTICLE 12
BENEFITS ON TERMINATION/RETIREMENT**

Upon termination/retirement of employment, all benefits provided by the City to an employee shall be terminated with the following exceptions:

A. COBRA CONTINUATION.

A terminated employee may be entitled to certain insurance coverage opportunities under the federally mandated COBRA Program.

B. CONTINUATION OF CERTAIN INSURANCE POLICIES.

Upon retirement, an employee enrolled in an insurance program (other than life insurance) maintained or sponsored by the City, may continue to be enrolled in such program subject to the conditions set forth below.

1. Conditions.

- a. That continued enrollment has the approval of the insurance company concerned.
- b. Enrollment will cease at such time as the City terminates or converts an insurance program.
- c. The retired employee shall either regularly reimburse the City for the full premium payment or make payments directly to the insurance company.
- d. Unused Sick Leave, Vacation Leave and/or Comp Time may be credited toward health insurance premium in the manner set forth below.

2. Use of Accrued Sick Leave, Vacation Leave and Comp Time to Offset Premiums.

Retiring employees have the option of applying 100% of their unused sick leave accrued prior to July 1, 2012, Vacation Leave and/or Comp Time toward the payment of continuation insurance premiums, to the extent allowed by law. The total number of hours of leave shall be multiplied by the hourly rate of the employee at the time of retirement. The City will first apply Sick Leave, then Vacation Leave and finally Comp Time to the payment of the premiums. If the employee dies before the Sick Leave, Vacation Leave and/or Comp Time is depleted, the City will make a lump sum payment, less applicable withholdings, to the employee's estate, at the following rates: the remaining Sick Leave multiplied by the employee's hourly rate at retirement multiplied by .50; the remaining Vacation Leave and/or Comp Time multiplied by the employee's hourly rate at retirement.

ARTICLE 13 GRIEVANCE PROCEDURE

A. GRIEVANCE DEFINED.

A grievance is a formal allegation by a member of the Association or by the Association on behalf of a member, regarding an alleged violation of a specific provision of this MOU during its term, excluding all City ordinances, resolutions, rules and regulations, the subject of which are not specifically covered by the provisions of this MOU. This grievance procedure shall not apply to discipline, including the content of performance evaluations, layoff, demotion, reprimand, transfer, denial of reinstatement or denial of step increase. This grievance procedure shall be the exclusive means of resolving contract grievances of employees covered by this MOU.

B. PROCEDURE.

1. Step 1: Informal Discussion.

Within ten (10) calendar days of the occurrence of an act in dispute or within ten (10) calendar days of when a member should reasonably have become aware of the occurrence of the act in dispute, an employee shall discuss it with his or her immediate Supervisor, who shall investigate and attempt to resolve the matter. The Supervisor shall give the employee an oral reply within five (5) calendar days after the discussion. If the employee is not satisfied with the response, he or she may proceed to Step 2.

2. Step 2: Department Head Determination.

Any dispute not resolved at Step 1 may be submitted to the Department Manager in writing within ten (10) calendar days after the Supervisor's response in Step 1. The written statement should cite the specific provision of this MOU in dispute. A copy of the written statement shall be provided to the affected employee's immediate Supervisor. Within five (5) calendar days thereafter, a meeting shall be scheduled with the employee and the Department Head who shall attempt to resolve the matter. The Department Head shall give the employee a written reply within five (5) calendar days after such meeting. If the employee is not satisfied with the response, he or she may proceed to the next step.

3. Step 3: City Manager Review.

Any dispute not resolved at Step 2 may be submitted in writing to the City Manager, with copies of the Step 2 response, within five (5) calendar days after the Department Manager's response. The City Manager shall provide written confirmation of receipt of the dispute to the employee, and shall schedule a meeting within five (5) calendar days, to discuss the matter with the employee. After consideration of the facts, the City

Manager shall give his or her written decision to the employee within ten (10) calendar days after the meeting.

4. City Council Review.

If the employee is not satisfied with the decision, the employee may request a hearing before the City Council. Such request for hearing must be submitted in writing within fifteen (15) days of receipt of the City Manager's decision and shall include in detail the facts giving rise to the general grievance and all supporting documentation necessary for City Council consideration. Management shall calendar on the City Council Agenda such request and supporting documentation within thirty (30) days. The matter may be heard in open or closed session as permitted by law. The City Council shall have the following options: (1) ~~R~~refuse to hear the appeal; (2) ~~M~~ake a decision on the documentation submitted; or (3) ~~H~~old a hearing after which they shall make a decision.

The decision of the City Council shall be final.

C. DEADLINES.

The parties may mutually agree to extend any of the above deadlines in writing. Either party may extend the deadlines for reasons of prolonged illness, canceled meetings, or in response to other unavoidable circumstances.

ARTICLE 14
RESIGNATION, TERMINATION AND DISCIPLINARY ACTION

A. RESIGNATION.

An employee wishing to leave his or her service to the City in good standing, shall file with the Department Head, at least two (2) weeks prior to leaving City service, a written resignation stating the effective date and reasons for leaving. The resignation shall be forwarded to the Personnel Office with a Personnel Action Form. Failure to give two (2) weeks' notice shall be entered upon the service record of the employee and may be cause for denying future employment by the City. The resignation of an employee who fails to give the required notice shall be reported immediately to the Human Resources Manager by the Department Head.

B. EXIT INTERVIEW.

1. Any person leaving City employment shall ~~have the opportunity to meet with be interviewed by the City Manager.~~ The purpose of ~~the meetings~~ such an interview shall be to allow the City Manager to receive, and the employee the opportunity to provide, the employee's candid observation of City employment in order to help improve personnel management and departmental functioning. Such interviews normally shall be conducted no earlier than fifteen (15) days prior to nor more than fifteen (15) days later than the employee's effective date of retirement or termination of employment. ~~Such exit interview shall be private, involving only the employee and the City Manager.~~

2. ~~In addition, the employee may request a similar interview with any two (2) members of the City Council. No one shall be present at this meeting except the employee and the members of the Council. No comments made during such interview shall be published nor revealed by those in attendance to any other persons except in Executive Session of the City Council.~~

C. DISCIPLINARY AUTHORITY.

~~A Non-Qualified Part-Time Employee may be disciplined or discharged by his or her Department Head without right of appeal. A Full-Time or Qualified Part-Time Employee may be disciplined or discharged by his or her Department Head, but shall have the right to appeal the discipline or discharge for final determination by -or the City Manager as set forth below, with discharge requiring City Manager review before imposition.~~

D. PROBATIONARY, NON-QUALIFIED PART-TIME, CONTRACT, AND TEMPORARY EMPLOYEES.

1. In accordance with the City's policy on Probationary Employees, Probationary Employees are not entitled to the Disciplinary Procedures or Appeal rights set forth in this Article 14. Probationary Employees are at-will employees and may be disciplined or terminated at-will, without notice and without cause. The City has no obligation to limit its

reasons for discipline or termination to those set forth in Subparagraph H. The City's willingness to discipline or terminate an employee in accordance with this Article 14 does not alter the at-will status of the Probationary Employee's employment.

~~2. Non-Qualified Part Time, Contract, and Temporary Employees are not entitled to the Disciplinary Procedures or Appeal rights set forth in this Article 14. Non-Qualified Part Time, Contract, and Temporary Employees are at will employees and may be disciplined or terminated at will, without notice and without cause. The City has no obligation to limit its reasons for discipline or termination to those set forth in Subparagraph H. The City's willingness to discipline or terminate an employee in accordance with this Article 14 does not alter the at will status of the Non-Qualified Part Time, Contract, or Temporary Employee's employment.~~

E. DISCIPLINARY ACTIONS.

For employees who have passed the probationary period the City generally will apply principles of progressive discipline in response to actions constituting cause for discipline that reasonably are subject to remediation. However, the City may discipline employees without progression, up to and including termination, in instances where the City reasonably determines that the action at issue is sufficiently serious and/or remediation is not appropriate.

The following are appropriate disciplinary actions that may be taken as corrective measures.

1. Reprimand.

An employee may be reprimanded by his or her Supervisor, Department Head, or the City Manager. A reprimand may be either verbal or written. A note may be made of a verbal reprimand and placed in the employee's personnel file, and a written reprimand will be placed in the employee's personnel file. Grounds for reprimand include, but are not limited to those listed in Subparagraph H below. Reprimands are not subject to Discipline Procedures and the right to Appeal. However, the employee has the right to meet with the Supervisor/Department Head/City Manager who issued the reprimand before the reprimand is placed in the employee's personnel file. The employee may also rebut the reprimand by providing a written statement which will be included in the employee's personnel file along with the written reprimand.

2. Suspension.

An employee may be suspended by his or her Department Head ~~or the City Manager~~. Suspension may be imposed for disciplinary purposes or may be imposed pending investigation and possible discharge. While the matter is being investigated, employee shall continue to receive salary and benefits. Suspension shall be for a fixed period of time. Grounds for suspension include, but are not limited to: those listed in Subparagraph H below. Suspension of ~~Full-Time and Qualified Part Time~~ Employees who have completed their Probationary Period is subject to Discipline Procedures and the right to Appeal.

3. Reduction in Salary.

A Department Head/~~City Manager~~ may reduce the salary of an employee for disciplinary reasons, provided that such reduction shall be to a step or percentage within the salary range of the Classification held by the employee. A new Anniversary date (for purpose of salary increases only) shall be established as of the effective date of the reduction in salary, unless the reduction is for a specified period of time, in which case the Anniversary date would not change, or unless otherwise recommended by the Department Head ~~and approved by the City Manager~~. Reductions in salary of Full-Time ~~and Qualified Part-Time~~ Employees who have completed their Probationary Period are subject to Discipline Procedures and the right to Appeal.

4. Demotion.

A Department Head/~~City Manager~~ may demote an employee for disciplinary reasons, to any Classification with a lower salary, provided the employee meets the minimum qualifications for the lower-level class. The employee shall not be eligible for promotion for a period of six (6) months unless otherwise recommended by the Department Head ~~and approved by the City Manager~~. Disciplinary demotions of Full-Time ~~and Qualified Part-Time~~ Employees who have completed their Probationary Period are subject to Discipline Procedures and the right to Appeal.

5. Dismissal.

A Department Head/~~City Manager~~ may dismiss an employee for Cause, as set forth in Subparagraph H, below. ~~A decision to dismiss an employee by his or her Department Head must be reviewed by the City Manager before imposition.~~ Dismissal of Full-Time ~~and Qualified Part-Time~~ Employees who have completed their Probationary Period is subject to Discipline Procedures and the right to Appeal.

F. DISCIPLINARY PROCEDURE.

1. Initial Investigation.

An alleged violation of policy, procedure, rules, regulations, directives, orders, or laws shall be investigated by the employee's Supervisor, ~~Department Head,~~ or other designated investigator ~~designee before the employee may be subject to discipline for the violation.~~ The investigator shall complete a written report of the investigation, including the employee's statement, the specific violations, all available facts related to the alleged violation(s), and statements of witnesses, if any. The investigator may recommend appropriate discipline. ~~If the Department Head is not the investigating Supervisor, the Supervisor shall forward all written information and other documentation to the Department Head. The Department Head may investigate further to insure that all facts are adequately documented. Based on the information received in the investigation~~ considered, the Supervisor ~~Department Head~~ shall determine appropriate disciplinary action.

2. Notice of Proposed Discipline.

The ~~Supervisor~~~~Department Head~~ (or ~~City Manager~~ when applicable) shall provide written notice of the proposed disciplinary action to the affected employee. The notice of proposed discipline shall contain the following information:

- A statement which clearly defines the intent to take action and the specific action to be taken;
- The date the action is intended to take effect;
- A statement of the rule(s) or regulation(s) that has/have allegedly been violated;
- A statement of the specific action, charge(s), and facts on which the proposed action is based;
- Copies of the written materials, reports, and documents considered by the Department Head in his/her decision to impose the proposed action.
- Notice of the employee's right to respond to the charges, verbally or in writing, to the ~~Department Head~~~~City Manager~~ within seven (7) calendar days of receipt of the Notice of Proposed Discipline. A statement that the failure to respond within the prescribed time period following receipt of the Notice of Proposed Discipline shall constitute a waiver of the right to respond and the proposed discipline will be imposed.

3. Proposed Discipline Deferred.

If the employee or designated representative requests the right to respond, either orally or in writing, the imposition of proposed discipline shall be deferred until after a pre-disciplinary (Skelly) hearing.

4. Pre-Disciplinary (Skelly) Hearing.

Where a written or oral response has been ~~electionelected~~, the ~~Department Head~~~~City Manager~~ shall schedule, coordinate, and conduct a Pre-Disciplinary Hearing within ten (10) calendar days of the employee's request. The purpose of the hearing is for the employee to provide additional information and facts relevant to the alleged violation in order for the ~~Department Head~~~~City Manager~~ to have all the facts prior to making a final decision regarding the proposed disciplinary action. The employee may elect to have representation at the hearing. If the employee fails to appear at or provide a written statement for the Pre-Disciplinary Hearing, his or her right to appeal the proposed discipline is forfeited.

5. Notice of Disciplinary Action.

Within seven (7) working days of the Pre-Disciplinary Hearing, the Department Head~~City Manager~~ will notify the affected employee with a written Notice of Disciplinary Action. The Disciplinary Action will have been made following a factual finding and review of all the information provided. If the Department Head~~City Manager~~ determines not to impose any disciplinary action, he or she will notify the employee of this as well. The Notice of Disciplinary Action shall state the disciplinary action, the date it will take effect, and the employee's right to appeal, if any. Disciplinary actions may be imposed prior to hearing the employee's Appeal hearing.

6. Paid Administrative Leave.

The ~~City Manager~~Department Head shall have the right to put any employee on immediate paid administrative leave pending investigation and processing of any potential disciplinary action.

7. Exclusions.

The provisions of this Article 14 shall not apply to reductions in pay which are part of a general plan to reduce salaries and wages or to eliminate positions, employee reclassifications, reprimand, transfers without loss of pay, performance evaluations, or economic layoffs. Nor do the provisions of this Article 14 apply to Probationary Employees.

G. APPEAL.

1. Right of Appeal.

An employee who has received a Notice of Disciplinary Action that provides for the right to appeal, may, within fourteen (14) calendar days of its receipt, appeal the decision pursuant to the procedures set forth below~~to the City Council~~. An employee, who fails to appeal the disciplinary action~~to the City Council~~ within the fourteen (14) day time period, forfeits his or her appeal and the disciplinary action shall be final and binding.

2. Procedure.

In order to Appeal the Disciplinary Action, the employee shall file, with the City ~~Manager Council~~, a written answer to the charges contained in the Notice of Proposed Disciplinary Action and/or the Notice of Disciplinary Action and request the right to appeal the City's disciplinary action (collectively, the "Request to Arbitrate"). Upon receipt of the Request to Arbitrate, the City ~~Manager Council~~ shall initiate the Appeal process.

3. Appointment of Hearing Panel~~an Arbitrator.~~

- a. The Hearing Panel shall consist of one person selected by the City, one person selected by the Association, and a neutral chairperson selected jointly by the

~~City and the Association parties to the selection of the arbitrator shall be the City and the employee. The employee may represent himself or herself, be represented by counsel, or represented by the Association.~~

- b. The neutral panel chairperson~~arbitrator~~ shall be selected jointly by the parties within fourteen (14) calendar days of receipt by the City Manager ~~Council~~ of the employee's Request to Appeal~~Arbitrate~~.
- c. If the parties are unable to mutually agree on a neutral panel chairperson~~arbitrator~~ within the fourteen-day~~day~~ period, the City shall solicit a list of seven (7) ~~arbitrators~~neutrals from the State of California Mediation/Conciliation Service. After receipt of the list, the parties shall, with the City striking first, alternately strike ~~arbitrator's~~arbitrators' names from the list until one ~~arbitrator~~ remains. The parties shall make every effort to complete the striking process within ten (10) calendar days of receipt of the list from the State.
- d. If the neutral~~arbitrator~~ selected declines appointment or is otherwise unavailable, a new list shall be requested as described above and the process repeated within the same time period, unless the parties can otherwise mutually agree on the selection of a neutral chairperson~~an arbitrator~~.
- e. The cost of the neutral~~arbitrator~~ shall be shared equally, with fifty percent (50%) of the ~~arbitrator's~~ fee paid by the City and fifty percent (50%) of the ~~arbitrator's~~ fee paid by the Association ~~or the affected employee~~.

4. Pre-Hearing Matters.

~~The arbitration hearing shall be held at the earliest administratively convenient date, taking into consideration the availability of the panel members~~arbitrator and the availability of counsel and witnesses. The arbitration hearing shall be private. The panel~~arbitrator~~ may, prior to or during the hearing, grant a continuance for any reason the panel~~he or she~~ believes to be important in order to reach a fair and proper decision. Neither party shall have *ex parte* communications with the neutral panel chairperson~~arbitrator~~.

5. Conduct of the Hearing.

- a. The hearing shall be conducted in the manner most conducive to the determination of the truth. Both the City and the employee may be represented by legal counsel, or may elect to proceed without counsel. The employee may choose to be represented by an Association representative.
- b. The panel~~arbitrator~~ shall determine the relevancy, weight, and credibility of the testimony and evidence. The ~~arbitrator~~ panel shall not be bound by the

technical rules of evidence. The panel arbitrator shall base ~~his or her~~its finding on the preponderance of the evidence. The City shall have the burden of proof.

- c. Each side will be permitted an opening statement and closing argument. The City shall first present its witnesses and evidence to sustain the charges and the employee will then present his/her witness(es) and evidence to rebut the charges.
- d. A court reporter will be retained by the City to make a transcript of the hearing. No audio or video tape recording will be permitted. The employee or his/her representative may obtain a copy of the transcript of the hearing upon request and at his/her own cost.
- e. Each side will be allowed to examine and cross-examine witnesses. The employee filing the appeal may be called and examined as if under cross-examination.
- f. The panel arbitrator shall, if requested by either party, subpoena witnesses and/or require production of other relevant records or material evidence. The panel arbitrator may consider the records of any relevant prior disciplinary actions against the employee, as long as those actions are final.

6. Findings of the ~~Arbitrator~~Panel.

After the conclusion of the hearing, the hearing panel arbitrator shall prepare a recommended decision, based on ~~its~~his or her findings of fact and application of law, and forward it to the City, the employee, and the Association-Council. The recommended decision shall set forth which charges the panel arbitrator sustains or does not sustain and the reason(s) for the ~~arbitrator panel~~'s decision. The panel's findings and recommended decision must be supported by a majority of the panel members (i.e., at least two panel members must agree on each finding or recommendation).

7. Decision of the City Manager~~Council~~.

After receiving and considering the recommendation of the hearing panel arbitrator, the City Manager~~Council~~ may sustain or reject any or all of the charges filed against the employee. The City Manager~~Council~~ may sustain, reject or modify the disciplinary action invoked against the employee. However, the City Manager~~Council~~ may not increase the severity of the discipline originally invoked by the City.

H. REASONS FOR REPRIMAND, DISCIPLINE, DEMOTION, SUSPENSION, OR DISCHARGE INCLUDE:

The following are deemed sufficient cause to warrant disciplinary action. However, cause to discipline an employee is not limited to these reasons alone:

- Absence without prior approval or excessive tardiness.
- ~~—Addiction to or being under the influence of illegal drugs.~~
- Use of, or being under the influence of illegal drugs or alcohol ~~on City property,~~ while on City business, or during work hours, or while representing the City.
- Violation of the City's anti-discrimination, ~~—and/or—~~anti-harassment policies and/or workplace violence policies.
- Failure to maintain any employment qualification, including but not limited to ~~Loss of driver's license when possession is a prerequisite to employment. or other~~ certifications.
- Theft, pilferage, or misuse of City property.
- Falsification of public records.
- ~~—Conduct unbecoming an employee in the public service.~~
- Dishonesty.
- Disorderly or immoral conduct.
- ~~—Incapacity due to mental or physical disability~~
- Incompetence.
- Failure to meet expected performance standards.
- Neglecting to perform expected job duties.
- Inability to perform the essential duties of the job (with reasonable accommodation, if required by law) ~~that cannot be reasonably accommodated available.~~
- Insubordination or willful or disobedience.
- ~~—Drinking alcoholic beverages or being intoxicated while on duty.~~

- Negligence or willful damage to public property or the personal property of another employee.
- Fraud in securing employment.
- Discourteous treatment of the public or other employees.
- Conviction of a felony (including pleas of guilty and nolo contendere), or a conviction of a misdemeanor (including pleas of guilty) involving moral turpitude where the misdemeanor conviction is related to the position held.
- Violation of any reasonable regulation, policy, rule, SOP, or order.
- Violation of the City's policy against violence in the workplace. Failure to maintain satisfactory working relationships with supervisors, employees, contractors, or the public.
- Interference with the work performance of others.
- Acceptance of bribes or extortion.
- Acceptance of any gift, reward, or other form of compensation in addition to regular compensation for performance of official duties other than as provided for by written City policy.
- Illegal gambling on City property or during working hours.

**ARTICLE 15
LAYOFF PROCEDURE**

The procedures set forth in the City of St. Helena Layoffs and Furloughs Policy shall apply during the term of this MOU. ~~City and SHEA shall develop a layoff procedure by January 31, 2013 in a sidebar letter negotiated after 2012-2013 Memorandum of Understanding adoption for use with this MOU and for incorporation into the body of the next Memorandum of Understanding.~~

**ARTICLE 16
SEPARABILITY**

Notwithstanding any provisions of this MOU to the contrary, in the event that any Article or Subsections thereof of this MOU shall be declared invalid by any Court of competent jurisdiction or by any applicable State or Federal law or regulation, or shall a decision by any Court of competent jurisdiction or any applicable State or Federal law or regulation diminish the benefits provided by this MOU or impose additional obligations on the City, the parties shall meet and confer or negotiate on the Articles and Subsections thereof affected. All other provisions of this MOU shall continue in full force and effect.

ARTICLE 17
TERM & COMPLETION OF NEGOTIATIONS

Following approval by the City and the Association and ratification by the City Council, the term of this MOU shall commence on ~~July 1, 2013~~ January 1, 2016 and shall expire on December 31, ~~2017~~2015.

Negotiations for the subsequent agreement will commence in time to be concluded by November 30, ~~2017~~2015.

During the term of this Agreement, the Association and the City agree that neither party shall be obligated to meet and confer with respect to any subject or matter covered by this Agreement, except as follows:

- The parties agree to meet and confer on any mandatory subjects of bargaining (as defined by the MMBA) associated with any City-proposed changes to the Employee Handbook and/or related policies and procedures;
- The parties may mutually agree to meet and confer on any topic.

**ARTICLE 18
SIGNATURES**

This Memorandum of Understanding has been ratified and adopted pursuant to the recommendation of the following representatives:

ST. HELENA EMPLOYEES ASSOCIATION

REPRESENTATIVE

REPRESENTATIVE

CITY OF ST. HELENA

Approved by the City Council by Resolution Numbers _____

CITY MANAGER

City of St. Helena
SHEA Salary Schedule
FY 2015-2016 - includes Jan 2016 4% increase

Position	Range		A	B	Steps C	D	E
Office Assistant (75%)	31.3	ANNUAL	40,667	42,700	44,835	47,077	49,431
Accounting Assistant I		MONTHLY	3,389	3,558	3,736	3,923	4,119
Office Assistant		PAY PERIOD	1,694.44	1,779.17	1,868.12	1,961.53	2,059.61
Library Assistant I *		HOURLY	19.551	20.529	21.555	22.633	23.765
Maintenance Worker I	32.1	ANNUAL	41,487	43,561	45,740	48,027	50,428
		MONTHLY	3,457	3,630	3,812	4,002	4,202
		PAY PERIOD	1,728.63	1,815.06	1,905.81	2,001.11	2,101.16
		HOURLY	19.946	20.943	21.990	23.090	24.244
Library Assistant II *	32.8	ANNUAL	42,219	44,330	46,546	48,873	51,317
		MONTHLY	3,518	3,694	3,879	4,073	4,276
		PAY PERIOD	1,759.11	1,847.06	1,939.42	2,036.39	2,138.21
		HOURLY	20.297	21.312	22.378	23.497	24.672
Plant Operator in Training *	33.6	ANNUAL	43,070	45,224	47,485	49,859	52,352
Maintenance Worker I-Water Dist *		MONTHLY	3,589	3,769	3,957	4,155	4,363
		PAY PERIOD	1,794.60	1,884.33	1,978.55	2,077.47	2,181.35
		HOURLY	20.707	21.742	22.829	23.971	25.169
Building Permit Technician I *	36.2	ANNUAL	45,959	48,257	50,670	53,204	55,864
Recreation Coordinator		MONTHLY	3,830	4,021	4,223	4,434	4,655
		PAY PERIOD	1,914.97	2,010.72	2,111.25	2,216.82	2,327.66
		HOURLY	22.096	23.201	24.361	25.579	26.858
Accounting Assistant II	37	ANNUAL	46,887	49,231	51,692	54,277	56,991
		MONTHLY	3,907	4,103	4,308	4,523	4,749
		PAY PERIOD	1,953.60	2,051.28	2,153.85	2,261.54	2,374.62
		HOURLY	22.542	23.669	24.852	26.095	27.399
Senior Library Assistant	37.9	ANNUAL	47,952	50,350	52,867	55,511	58,286
		MONTHLY	3,996	4,196	4,406	4,626	4,857
		PAY PERIOD	1,998.00	2,097.90	2,202.80	2,312.94	2,428.58
		HOURLY	23.054	24.207	25.417	26.688	28.022
Plant Operator I - Wastewater*	38.5	ANNUAL	48,676	51,110	53,665	56,348	59,166
Plant Operator I - Water *		MONTHLY	4,056	4,259	4,472	4,696	4,930
		PAY PERIOD	2,028.16	2,129.57	2,236.05	2,347.85	2,465.24
		HOURLY	23.402	24.572	25.801	27.091	28.445
Accounting Assistant III	39	ANNUAL	49,287	51,752	54,339	57,056	59,909
		MONTHLY	4,107	4,313	4,528	4,755	4,992
		PAY PERIOD	2,053.64	2,156.32	2,264.14	2,377.34	2,496.21
		HOURLY	23.696	24.881	26.125	27.431	28.802
Librarian I*	39.1	ANNUAL	49,411	51,881	54,475	57,199	60,059
Lib Assoc Bilingual Services		MONTHLY	4,118	4,323	4,540	4,767	5,005
		PAY PERIOD	2,058.77	2,161.71	2,269.80	2,383.29	2,502.45
		HOURLY	23.755	24.943	26.190	27.499	28.874

* Unauthorized/unfilled positions

SHEA Salary Schedule
FY16 Jan 2016 increase 4%

City of St. Helena
SHEA Salary Schedule
FY 2015-2016 - includes Jan 2016 4% increase

Position	Range		A	B	Steps C	D	E
Administrative Assistant	39.3	ANNUAL	49,658	52,141	54,748	57,485	60,360
		MONTHLY	4,138	4,345	4,562	4,790	5,030
		PAY PERIOD	2,069.08	2,172.53	2,281.16	2,395.22	2,514.98
		HOURLY	23.874	25.068	26.321	27.637	29.019
Maintenance Worker II	40	ANNUAL	50,533	53,060	55,713	58,499	61,424
		MONTHLY	4,211	4,422	4,643	4,875	5,119
		PAY PERIOD	2,105.56	2,210.84	2,321.38	2,437.45	2,559.32
		HOURLY	24.295	25.510	26.785	28.124	29.531
Equipment Operator/Maint Worker III *	40.4	ANNUAL	51,041	53,593	56,272	59,086	62,040
		MONTHLY	4,253	4,466	4,689	4,924	5,170
		PAY PERIOD	2,126.70	2,233.03	2,344.68	2,461.92	2,585.01
		HOURLY	24.539	25.766	27.054	28.407	29.827
Building Permit Technician II	40.5	ANNUAL	51,168	53,727	56,413	59,234	62,195
		MONTHLY	4,264	4,477	4,701	4,936	5,183
		PAY PERIOD	2,132.01	2,238.61	2,350.55	2,468.07	2,591.48
		HOURLY	24.600	25.830	27.122	28.478	29.902
Maintenance Lead Worker Accounting Assistant/Building Tech *	40.8	ANNUAL	51,553	54,131	56,837	59,679	62,663
		MONTHLY	4,296	4,511	4,736	4,973	5,222
		PAY PERIOD	2,148.04	2,255.45	2,368.22	2,486.63	2,610.96
		HOURLY	24.785	26.024	27.326	28.692	30.126
Maintenance Worker II-Water Dist	41.6	ANNUAL	52,593	55,223	57,984	60,883	63,927
		MONTHLY	4,383	4,602	4,832	5,074	5,327
		PAY PERIOD	2,191.38	2,300.95	2,416.00	2,536.80	2,663.64
		HOURLY	25.285	26.549	27.877	29.271	30.734
Plant Operator II - WW Plant Operator II - Water Maintenance Lead Worker-Water Dist	42.4	ANNUAL	53,654	56,337	59,154	62,112	65,217
		MONTHLY	4,471	4,695	4,929	5,176	5,435
		PAY PERIOD	2,235.60	2,347.38	2,464.74	2,587.98	2,717.38
		HOURLY	25.795	27.085	28.439	29.861	31.354
Librarian II	42.6	ANNUAL	53,923	56,619	59,450	62,423	65,544
		MONTHLY	4,494	4,718	4,954	5,202	5,462
		PAY PERIOD	2,246.79	2,359.13	2,477.08	2,600.94	2,730.98
		HOURLY	25.924	27.221	28.582	30.011	31.511
Project Coordinator/Admin Asst. * Building Permit Technician III *	43.2	ANNUAL	54,737	57,474	60,347	63,365	66,533
		MONTHLY	4,561	4,789	5,029	5,280	5,544
		PAY PERIOD	2,280.70	2,394.74	2,514.47	2,640.20	2,772.21
		HOURLY	26.316	27.632	29.013	30.464	31.987
Plant Operator III - Water	43.3	ANNUAL	54,874	57,617	60,498	63,523	66,699
		MONTHLY	4,573	4,801	5,042	5,294	5,558
		PAY PERIOD	2,286.40	2,400.72	2,520.76	2,646.80	2,779.14
		HOURLY	26.382	27.701	29.086	30.540	32.067

* Unauthorized/unfilled positions

SHEA Salary Schedule
FY16 Jan 2016 increase 4%

City of St. Helena
SHEA Salary Schedule
FY 2015-2016 - includes Jan 2016 4% increase

Position	Range		A	B	Steps C	D	E
Recreation Supervisor	43.5	ANNUAL	55,148	57,906	60,801	63,841	67,033
		MONTHLY	4,596	4,825	5,067	5,320	5,586
		PAY PERIOD	2,297.85	2,412.74	2,533.38	2,660.05	2,793.05
		HOURLY	26.514	27.839	29.231	30.693	32.227
Accounting Technician	43.8	ANNUAL	55,563	58,341	61,258	64,321	67,537
		MONTHLY	4,630	4,862	5,105	5,360	5,628
		PAY PERIOD	2,315.13	2,430.88	2,552.43	2,680.05	2,814.05
		HOURLY	26.713	28.049	29.451	30.924	32.470
Senior Librarian	44.2	ANNUAL	56,121	58,927	61,873	64,967	68,215
		MONTHLY	4,677	4,911	5,156	5,414	5,685
		PAY PERIOD	2,338.36	2,455.28	2,578.05	2,706.95	2,842.30
		HOURLY	26.981	28.330	29.747	31.234	32.796
Equipment Mechanic	44.7	ANNUAL	56,826	59,667	62,650	65,783	69,072
		MONTHLY	4,735	4,972	5,221	5,482	5,756
		PAY PERIOD	2,367.74	2,486.13	2,610.43	2,740.96	2,878.00
		HOURLY	27.320	28.686	30.120	31.626	33.208
Plant Operator III - Water & WW Building Technician III/Office Manager *	47.4	ANNUAL	60,789	63,828	67,020	70,371	73,889
		MONTHLY	5,066	5,319	5,585	5,864	6,157
		PAY PERIOD	2,532.87	2,659.51	2,792.49	2,932.11	3,078.72
		HOURLY	29.225	30.687	32.221	33.832	35.524
Jr. Engineer Assistant Planner HR Manager / Acctg Technician II	49	ANNUAL	63,266	66,430	69,751	73,239	76,901
		MONTHLY	5,272	5,536	5,813	6,103	6,408
		PAY PERIOD	2,636.10	2,767.91	2,906.30	3,051.62	3,204.20
		HOURLY	30.417	31.937	33.534	35.211	36.972
Public Works Supervisor	49.9	ANNUAL	64,704	67,940	71,336	74,903	78,648
		MONTHLY	5,392	5,662	5,945	6,242	6,554
		PAY PERIOD	2,696.01	2,830.81	2,972.35	3,120.97	3,277.02
		HOURLY	31.108	32.663	34.296	36.011	37.812
Public Works Supervisor-PARKS	51.9	ANNUAL	68,018	71,418	74,989	78,739	82,676
		MONTHLY	5,668	5,952	6,249	6,562	6,890
		PAY PERIOD	2,834.06	2,975.77	3,124.55	3,280.78	3,444.82
		HOURLY	32.701	34.336	36.053	37.855	39.748
Associate Planner*	52	ANNUAL	68,188	71,597	75,177	78,936	82,882
		MONTHLY	5,682	5,966	6,265	6,578	6,907
		PAY PERIOD	2,841.15	2,983.21	3,132.37	3,288.98	3,453.43
		HOURLY	32.782	34.422	36.143	37.950	39.847
Chief Plant Operator - Water Chief Plant Operator - Wastewater Chief Water Distribution Operator	53.4	ANNUAL	70,613	74,144	77,851	81,744	85,831
		MONTHLY	5,884	6,179	6,488	6,812	7,153
		PAY PERIOD	2,942.22	3,089.33	3,243.80	3,405.99	3,576.29
		HOURLY	33.949	35.646	37.428	39.300	41.265

* Unauthorized/unfilled positions

SHEA Salary Schedule
FY16 Jan 2016 increase 4%

City of St. Helena
SHEA Salary Schedule
FY 2016-2017 - includes Jan 2017 2.5% increase

Position	Range		A	B	Steps C	D	E
Office Assistant (75%)	31.3	ANNUAL	41,683	43,767	45,956	48,254	50,666
Accounting Assistant I		MONTHLY	3,474	3,647	3,830	4,021	4,222
Office Assistant		PAY PERIOD	1,736.80	1,823.64	1,914.83	2,010.57	2,111.10
Library Assistant I *		HOURLY	20.040	21.042	22.094	23.199	24.359
Maintenance Worker I	32.1	ANNUAL	42,524	44,651	46,883	49,227	51,689
		MONTHLY	3,544	3,721	3,907	4,102	4,307
		PAY PERIOD	1,771.85	1,860.44	1,953.46	2,051.13	2,153.69
		HOURLY	20.444	21.467	22.540	23.667	24.850
Library Assistant II *	32.8	ANNUAL	43,274	45,438	47,710	50,095	52,600
		MONTHLY	3,606	3,786	3,976	4,175	4,383
		PAY PERIOD	1,803.09	1,893.24	1,987.90	2,087.30	2,191.66
		HOURLY	20.805	21.845	22.937	24.084	25.288
Plant Operator in Training *	33.6	ANNUAL	44,147	46,355	48,672	51,106	53,661
Maintenance Worker I-Water Dist *		MONTHLY	3,679	3,863	4,056	4,259	4,472
		PAY PERIOD	1,839.47	1,931.44	2,028.01	2,129.41	2,235.88
		HOURLY	21.225	22.286	23.400	24.570	25.799
Building Permit Technician I *	36.2	ANNUAL	47,108	49,464	51,937	54,534	57,260
Recreation Coordinator		MONTHLY	3,926	4,122	4,328	4,544	4,772
		PAY PERIOD	1,962.84	2,060.98	2,164.03	2,272.24	2,385.85
		HOURLY	22.648	23.781	24.970	26.218	27.529
Accounting Assistant II	37	ANNUAL	48,059	50,462	52,985	55,634	58,416
		MONTHLY	4,005	4,205	4,415	4,636	4,868
		PAY PERIOD	2,002.44	2,102.57	2,207.70	2,318.08	2,433.98
		HOURLY	23.105	24.260	25.473	26.747	28.084
Senior Library Assistant	37.9	ANNUAL	49,151	51,608	54,189	56,898	59,743
		MONTHLY	4,096	4,301	4,516	4,742	4,979
		PAY PERIOD	2,047.95	2,150.35	2,257.87	2,370.76	2,489.30
		HOURLY	23.630	24.812	26.052	27.355	28.723
Plant Operator I - Wastewater*	38.5	ANNUAL	49,893	52,387	55,007	57,757	60,645
Plant Operator I - Water *		MONTHLY	4,158	4,366	4,584	4,813	5,054
		PAY PERIOD	2,078.86	2,182.81	2,291.95	2,406.55	2,526.87
		HOURLY	23.987	25.186	26.446	27.768	29.156
Accounting Assistant III	39	ANNUAL	50,520	53,046	55,698	58,483	61,407
		MONTHLY	4,210	4,420	4,641	4,874	5,117
		PAY PERIOD	2,104.98	2,210.23	2,320.74	2,436.78	2,558.62
		HOURLY	24.288	25.503	26.778	28.117	29.523
Librarian I*	39.1	ANNUAL	50,646	53,178	55,837	58,629	61,560
Lib Assoc Bilingual Services		MONTHLY	4,220	4,432	4,653	4,886	5,130
		PAY PERIOD	2,110.24	2,215.76	2,326.54	2,442.87	2,565.01
		HOURLY	24.349	25.566	26.845	28.187	29.596

* Unauthorized/unfilled positions

SHEA Salary Schedule
FY17 Jan 2017 increase 2.5%

City of St. Helena
SHEA Salary Schedule
FY 2016-2017 - includes Jan 2017 2.5% increase

Position	Range		A	B	Steps C	D	E
Administrative Assistant	39.3	ANNUAL	50,899	53,444	56,117	58,922	61,869
		MONTHLY	4,242	4,454	4,676	4,910	5,156
		PAY PERIOD	2,120.81	2,226.85	2,338.19	2,455.10	2,577.86
		HOURLY	24.471	25.694	26.979	28.328	29.744
Maintenance Worker II	40	ANNUAL	51,797	54,387	57,106	59,961	62,959
		MONTHLY	4,316	4,532	4,759	4,997	5,247
		PAY PERIOD	2,158.20	2,266.11	2,379.42	2,498.39	2,623.31
		HOURLY	24.902	26.147	27.455	28.828	30.269
Equipment Operator/Maint Worker III *	40.4	ANNUAL	52,317	54,933	57,679	60,563	63,591
		MONTHLY	4,360	4,578	4,807	5,047	5,299
		PAY PERIOD	2,179.86	2,288.86	2,403.30	2,523.47	2,649.64
		HOURLY	25.152	26.410	27.730	29.117	30.573
Building Permit Technician II	40.5	ANNUAL	52,448	55,070	57,823	60,715	63,750
		MONTHLY	4,371	4,589	4,819	5,060	5,313
		PAY PERIOD	2,185.31	2,294.58	2,409.31	2,529.77	2,656.26
		HOURLY	25.215	26.476	27.800	29.190	30.649
Maintenance Lead Worker Accounting Assistant/Building Tech *	40.8	ANNUAL	52,842	55,484	58,258	61,171	64,230
		MONTHLY	4,403	4,624	4,855	5,098	5,352
		PAY PERIOD	2,201.75	2,311.83	2,427.42	2,548.80	2,676.23
		HOURLY	25.405	26.675	28.009	29.409	30.880
Maintenance Worker II-Water Dist	41.6	ANNUAL	53,908	56,603	59,434	62,405	65,526
		MONTHLY	4,492	4,717	4,953	5,200	5,460
		PAY PERIOD	2,246.17	2,358.48	2,476.40	2,600.22	2,730.23
		HOURLY	25.917	27.213	28.574	30.003	31.503
Plant Operator II - WW Plant Operator II - Water Maintenance Lead Worker-Water Dist	42.4	ANNUAL	54,996	57,745	60,633	63,664	66,848
		MONTHLY	4,583	4,812	5,053	5,305	5,571
		PAY PERIOD	2,291.49	2,406.06	2,526.36	2,652.68	2,785.32
		HOURLY	26.440	27.762	29.150	30.608	32.138
Librarian II	42.6	ANNUAL	55,271	58,035	60,936	63,983	67,182
		MONTHLY	4,606	4,836	5,078	5,332	5,599
		PAY PERIOD	2,302.96	2,418.11	2,539.01	2,665.96	2,799.26
		HOURLY	26.573	27.901	29.296	30.761	32.299
Project Coordinator/Admin Asst. * Building Permit Technician III *	43.2	ANNUAL	56,105	58,911	61,856	64,949	68,196
		MONTHLY	4,675	4,909	5,155	5,412	5,683
		PAY PERIOD	2,337.72	2,454.60	2,577.33	2,706.20	2,841.51
		HOURLY	26.974	28.322	29.738	31.225	32.787
Plant Operator III - Water	43.3	ANNUAL	56,246	59,058	62,011	65,111	68,367
		MONTHLY	4,687	4,921	5,168	5,426	5,697
		PAY PERIOD	2,343.56	2,460.74	2,583.78	2,712.97	2,848.62
		HOURLY	27.041	28.393	29.813	31.303	32.869

* Unauthorized/unfilled positions

SHEA Salary Schedule
FY17 Jan 2017 increase 2.5%

City of St. Helena
SHEA Salary Schedule
FY 2016-2017 - includes Jan 2017 2.5% increase

Position	Range		A	B	Steps C	D	E
Recreation Supervisor	43.5	ANNUAL	56,527	59,353	62,321	65,437	68,709
		MONTHLY	4,711	4,946	5,193	5,453	5,726
		PAY PERIOD	2,355.30	2,473.06	2,596.71	2,726.55	2,862.88
		HOURLY	27.176	28.535	29.962	31.460	33.033
Accounting Technician	43.8	ANNUAL	56,952	59,800	62,790	65,929	69,226
		MONTHLY	4,746	4,983	5,232	5,494	5,769
		PAY PERIOD	2,373.00	2,491.65	2,616.24	2,747.05	2,884.40
		HOURLY	27.381	28.750	30.187	31.697	33.282
Senior Librarian	44.2	ANNUAL	57,524	60,400	63,420	66,591	69,920
		MONTHLY	4,794	5,033	5,285	5,549	5,827
		PAY PERIOD	2,396.82	2,516.66	2,642.50	2,774.62	2,913.35
		HOURLY	27.656	29.038	30.490	32.015	33.616
Equipment Mechanic	44.7	ANNUAL	58,246	61,159	64,217	67,427	70,799
		MONTHLY	4,854	5,097	5,351	5,619	5,900
		PAY PERIOD	2,426.93	2,548.28	2,675.69	2,809.48	2,949.95
		HOURLY	28.003	29.403	30.873	32.417	34.038
Plant Operator III - Water & WW Building Technician III/Office Manager *	47.4	ANNUAL	62,309	65,424	68,695	72,130	75,736
		MONTHLY	5,192	5,452	5,725	6,011	6,311
		PAY PERIOD	2,596.19	2,726.00	2,862.30	3,005.41	3,155.68
		HOURLY	29.956	31.454	33.027	34.678	36.412
Jr. Engineer Assistant Planner HR Manager / Acctg Technician II	49	ANNUAL	64,848	68,091	71,495	75,070	78,823
		MONTHLY	5,404	5,674	5,958	6,256	6,569
		PAY PERIOD	2,702.01	2,837.11	2,978.96	3,127.91	3,284.31
		HOURLY	31.177	32.736	34.373	36.091	37.896
Public Works Supervisor	49.9	ANNUAL	66,322	69,638	73,120	76,776	80,615
		MONTHLY	5,527	5,803	6,093	6,398	6,718
		PAY PERIOD	2,763.41	2,901.58	3,046.66	3,199.00	3,358.95
		HOURLY	31.886	33.480	35.154	36.911	38.757
Public Works Supervisor-PARKS	51.9	ANNUAL	69,718	73,204	76,864	80,707	84,743
		MONTHLY	5,810	6,100	6,405	6,726	7,062
		PAY PERIOD	2,904.91	3,050.16	3,202.67	3,362.80	3,530.94
		HOURLY	33.518	35.194	36.954	38.802	40.742
Associate Planner*	52	ANNUAL	69,892	73,387	77,056	80,909	84,954
		MONTHLY	5,824	6,116	6,421	6,742	7,080
		PAY PERIOD	2,912.18	3,057.79	3,210.67	3,371.21	3,539.77
		HOURLY	33.602	35.282	37.046	38.899	40.843
Chief Plant Operator - Water Chief Plant Operator - Wastewater Chief Water Distribution Operator	53.4	ANNUAL	72,379	75,998	79,797	83,787	87,977
		MONTHLY	6,032	6,333	6,650	6,982	7,331
		PAY PERIOD	3,015.78	3,166.56	3,324.89	3,491.14	3,665.69
		HOURLY	34.797	36.537	38.364	40.282	42.296

* Unauthorized/unfilled positions

SHEA Salary Schedule
FY17 Jan 2017 increase 2.5%

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Report to the City Council
Council Meeting of January 12, 2016

Agenda Section: New Business

Subject: Consideration and Proposed Approval of a Resolution approving a City of St. Helena Volunteer Policy & Procedures Handbook

CEQA Status: Not a project

**Prepared By: Mari Martinez, St. Helena Public Library Volunteer Coordinator
Chris Kreiden, St. Helena Public Library Director**

Approved By: Jennifer Phillips, City Manager

BACKGROUND

A number of City of St. Helena departments, like the Library and Parks and Recreation, benefit from the help of volunteers. These volunteers assist staff in various operational duties and with special projects. Volunteers serve as ambassadors for the City and help provide the community with an understanding of how the City and its departments work to serve the public. To properly channel the talent and resources that volunteers bring to the City, all aspiring and current volunteers need coordination and clear guidelines.

During this past summer, the Library assessed its volunteer program and determined that a volunteer handbook containing policies and procedures along with what volunteers and the Library should expect from each other was needed. During the creation of a Library Volunteer Handbook it was determined that the City of St. Helena should have standard volunteer forms and policies that could be applied to all departments, those who currently have volunteers and those that may have them in the future. To ensure the success of the City's various volunteer programs, a city-wide Volunteer Handbook has been developed. Each department can then create their own supplement to this handbook which reflects each department's individuality and their own unique job descriptions.

DISCUSSION

The purpose of this handbook is to give volunteers an overview of the City's policies and procedures concerning volunteers. This handbook provides those interested in volunteering with the City a better understanding of what their role and responsibilities as a volunteer will be. This handbook also provides them with the City's expectations

concerning volunteers. In addition, this handbook gives clear direction for each City Department on how to recruit, coordinate, and manage volunteers. Standard policies and procedures regarding risk management, liability issues, and volunteers are made available for all in the Volunteer Handbook.

Key elements included in the City Volunteer Handbook are:

- The role and responsibilities of volunteers, including confidentiality, attendance, and behavior.
- The steps involved in becoming a City volunteer, including background checks and fingerprinting, the interview, orientation, training and evaluation processes.
- The forms that need to be completed to apply to become a volunteer, including the City of St. Helena Waiver & Release Form.
- The regulations and policies pertaining to the recruitment of volunteers under the age of 18.
- Procedures for disciplinary action and dismissal and those covering injury and accidents.

FISCAL IMPACT

Adopting the City of St. Helena Volunteer Policy & Procedures Handbook will have no fiscal impact on the City's budget. The handbook will support and improve the efforts in the recruitment, coordination, and management of volunteers.

RECOMMENDED ACTION

The City Council adopt the resolution and approve the City of St. Helena Volunteer Policy & Procedures Handbook for immediate implementation.

ATTACHMENTS

Attachment A - Resolution

Attachment B - City of St. Helena Volunteer Policy & Procedures Handbook

CITY OF ST. HELENA
RESOLUTION NO. 2016-_____

**APPROVING A CITY OF ST. HELENA
VOLUNTEER POLICY & PROCEDURES HANDBOOK**

RECITALS

- A. The City is committed to safe, effective, and meaningful engagement of community volunteers in order to build community spirit, meet civic objectives, and increase the satisfaction of the public in all areas of City service; and
- B. City departments benefit from the help of talented volunteers in the community; and
- C. To ensure the success of the City's various volunteer programs, a city-wide Volunteer Handbook was developed (Exhibit A).
- D. The purpose of this handbook is to give volunteers an overview of the City's policies and procedures concerning volunteers.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

- 1. The City Council approves the City of St. Helena Volunteer Policy & Procedures Handbook.

Approved at a Regular Meeting of the St. Helena City Council on January 12, 2016 by the following vote:

Mayor Galbraith:	_____
Vice Mayor White:	_____
Councilmember Crull:	_____
Councilmember Dohring:	_____
Councilmember Pitts:	_____

APPROVED:

ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk

VOLUNTEER POLICY & PROCEDURES HANDBOOK



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1480 MAIN STREET
ST. HELENA, CALIFORNIA 94574
(707) 967-2792 FAX: (707) 963-7748

Dear Volunteer:

It is a special pleasure for me to take this opportunity to welcome you and to thank you for your interest in offering your services as a volunteer with the City of St. Helena. We hope that you will find volunteering with the City to be an enjoyable and rewarding experience; enough that you'll decide to join our ranks of those who have volunteered with us for many years.

Your generous gifts of time, energy, special skills and expertise are deeply appreciated. Your help as a volunteer allows the City to offer a higher level of service to the citizens of our community than we would otherwise be able to provide. Most importantly, you help our staff directly in the work that you accomplish for us.

Yours is a significant contribution to the quality of life in St. Helena and for these splendid gifts, we thank you.

Sincerely,

Alan Galbraith
Mayor

Jennifer Phillips
City Manager

THE VOLUNTEER PROGRAM & CITY DEPARTMENTS

CITY OF ST. HELENA VOLUNTEER PROGRAM

The City Volunteer Program provides an opportunity for community members to share their expertise and actively support the City staff with various projects which serve the citizens of St. Helena.

This handbook is designed to help provide you with an overview of how our City functions as well as an informational guide to the policies and procedures for volunteering with the City of St. Helena. Our staff will strive to make your experience volunteering with the City rewarding and enjoyable.

THE CITY OF ST. HELENA

The City of St. Helena is a General Law City with a Council-Manager form of government. This type of government consists of an elected City Council and a City Manager, who is appointed by the Council. The City Council sets policy for the City of St. Helena and the City Manager and staff are responsible for carrying out that policy. The City Manager oversees the work of the following Departments:

CITY MANAGER'S OFFICE	967-2792
HUMAN RESOURCES	968-2753
LIBRARY	963-5244
POLICE DEPARTMENT	967-2850
FIRE DEPARTMENT	967-2880
FINANCE DEPARTMENT	968-2751
PLANNING & COMMUNITY DEVELOPMENT	967-2792
PUBLIC WORKS DEPARTMENT	968-2658
RECREATION DEPARTMENT	963-5706

RESPONSIBILITIES OF CITY STAFF & VOLUNTEERS

ROLE OF STAFF

One of the finest resources within the City is its dedicated and well-trained staff. A City staff member will serve as your direct supervisor.

Your Supervisor agrees to:

- Provide all necessary orientation, training and supervision for your volunteer assignment;
- To provide the volunteer with a *Volunteer Service Assignment Description* and clear instructions;
- To change the volunteer assignment or add new duties only through mutual agreement between the volunteer and supervisor;
- Keep the volunteer informed of any changes in schedule or agency hours of operation;
- Validate and initial volunteer sign in log;
- Conduct a periodic oral evaluation of volunteer's performance;
- Keep records of length of service, maintain a volunteer file and provide the volunteer with a letter of reference when requested;
- Give prior notice if volunteer work is ending or being interrupted.

ROLE OF VOLUNTEERS

Volunteers enhance and enrich the capabilities of City staff and provide valuable support and assistance to the St. Helena Community. Volunteer jobs within the City are varied. Volunteers are an extension of the total City program, not a substitute for staff.

A City Volunteer agrees to:

- Become familiar with and adhere to the policies and procedures as set forth in this handbook;
- Follow the duties and directions as provided by the staff supervisor in the Volunteer Service Assignment description;
- Provide at least 24 hours notice if you are unable to work (*except in an emergency*);
- Protect confidential information and exercise good judgment when acting on the City's behalf;
- Accept supervision with a willingness to learn and willingness to ask questions about things not understood;
- Give prior notice if resigning or interrupting service.

STEPS TO BECOMING A CITY VOLUNTEER

VOLUNTEER APPLICATION

Prospective volunteers must complete a Volunteer Application available in the office of each department or from the City Manager's Office. Applicants must possess the qualifications established for the position and must be able to perform the specified duties. For volunteers under the age of 18, a parent or guardian must complete and sign the parental information at the bottom of the form before a minor can participate in the program.

VOLUNTEER SERVICE ASSIGNMENT DESCRIPTION

All volunteer positions have a written assignment description identifying the general function, qualification requirements, primary responsibilities, and time requirements. Volunteers are required to possess the experience and other requirements as specified in their assignment description. Be sure to read your assignment description carefully to ensure that it matches your skills, interests, and time availability.

BACKGROUND CHECK AND FINGERPRINTING

Prospective volunteers under consideration may be subject to a background check, especially those interested in working with children.

INTERVIEW

Staff Supervisor will conduct an initial interview with each prospective volunteer to determine whether a match exists between the applicant's skills and the position available. Volunteers may be referred to another department if a job position suited for the volunteer is not available at the time or they may be placed on a waiting list.

ORIENTATION

New City volunteers are provided an orientation to help them gain familiarity with the City procedures, as well as to welcome them as part of the team.

TRAINING

Each volunteer will receive specific training on how to do his/her job. Some positions will include on-the-job mentoring with an experienced volunteer or staff person. Be sure to ask any questions you have. Don't assume anything! We want you to be successful.

EVALUATIONS

Periodic oral evaluations for all volunteers will be made to help determine if the volunteer is satisfied or comfortable with the job duties they have been given, and how they are relating to their supervisor and performing their duties. Volunteers are given the opportunity to make comments and suggestions on assignment improvements as well.

VOLUNTEER POLICY & PROCEDURES

EQUAL OPPORTUNITY

The City of St. Helena Volunteer Program welcomes volunteers of all backgrounds and abilities and does not discriminate on the basis of race, religion, origin, ancestry, gender, marital status, sexual orientation, age, disability, or any other inappropriate basis in its volunteer selection process. Volunteers have equal access to available positions for which they are qualified and possess the ability to do the job.

ANTI-DISCRIMINATION & SEXUAL HARASSMENT POLICY

The City of St. Helena holds a zero tolerance policy toward any form of discrimination as listed above or sexual harassment in the workplace. Sexual harassment includes, but is not limited to, unwelcome sexual advances, slurs, jokes, and other verbal, visual or physical conduct of a sexual or demeaning nature. In addition to being responsible for their own conduct, directors and supervisors must ensure that their employees and volunteers contribute to a work environment that is free of discrimination or sexual harassment.

It is, therefore, extremely important that any volunteer who believes they have been discriminated against or subject to sexual harassment must report it immediately to their direct supervisor or City Manager's Office so it can be dealt with appropriately.

DRUG FREE/SMOKE FREE WORKPLACE

Use of alcohol or illegal drugs in the workplace is prohibited, as is the abuse of any drug or alcohol, or reporting for duty under the influence of drugs or alcohol. Smoking is allowed in designated locations only.

CONFIDENTIALITY

All information discussed or work completed within the course of a volunteer assignment is considered strictly confidential. Volunteers are required to uphold this policy. Only materials deemed to be in the Public Record can be disseminated. When in question, ask your supervisor.

VOLUNTEERS UNDER THE AGE OF 18

The City encourages the participation of youth in City and community activities. Young people aged 14 and over may apply to volunteer for the City in positions for which they are qualified, if they have written parental permission. Young volunteers are expected to abide by all City program policies and procedures. A child under 14 may volunteer only if their parent or guardian is present at all times (supervising the child's duties) and participates in the required training. The parent or guardian must sign the Volunteer Application, and go through the process of becoming a volunteer with their child.

SUPERVISION

Each volunteer will have an on-site contact and is expected to follow the procedures established by that staff member. Your job description identifies your supervisor, who is responsible for day-to-day management and guidance of your work, and will be available for consultation and assistance according to their schedule. Your supervisor will provide on-going feedback. Please feel free to ask any questions of this person or report any problems or concerns you have about your assignment. Disagreements with staff should never be discussed in public; they should be resolved in private between the two individuals. Unresolved disputes should be referred to the supervisor for final action.

COMMUNICATION

It is very important to keep open communication between the volunteer and supervisor. Please take a few minutes at the beginning of each day of work to check with your supervisor to find out if there are any announcements or changes for which you need to be aware. Important information must sometimes be distributed to volunteers on short notice. Volunteers are asked to report changes in personal information (i.e., address, phone number, etc.) to the supervisor in a timely fashion.

SIGN IN LOG

Accurate records of time and attendance must be kept for all volunteers. Volunteers are responsible for keeping track of time worked during their volunteer assignment and for signing in and out in the "Sign-In Log" provided in your department. The "Sign-In Log" is used to track volunteer hours for various purposes such as reporting volunteer statistics on grant applications, organizing special events, or in writing reference letters. The "Sign-In Log" represents the only permanent record of volunteer time.

ATTENDANCE

We encourage you to keep your time commitments; the staff is counting on your support and participation. We depend on our volunteers to report for their assignment on time and complete the work agreed to each day. If you are sick or unable to volunteer due to a planned vacation, please notify your immediate supervisor as soon as possible.

PARKING

City Hall Volunteers: Free parking is available in the lot behind City Hall between the St. Helena Fire Department and Lyman Park. Library Volunteers: Parking is available behind the Library and also along Library Lane. We do ask that you please leave the spaces in front of the Library open for Library patrons. Park and Recreation Volunteers: Free parking is available at all of our public parks.

Please note that if you opt to park on any City street, please check the street signs to be certain that you are not parked in a limited parking area. We are not able to waive parking tickets in the event you should receive one.

USE OF CITY VEHICLE

A volunteer's assignment in the City may require him/her to drive a City-owned vehicle on City business. City-owned vehicles shall only be driven by appropriately licensed volunteers who have been authorized by the City Manager. Volunteers must hold a valid California driver's license, provide the City with a copy of their current DMV record, and sign that they received, read and will abide by the City of St. Helena Driving Vehicles on City Business Policies and Procedures.

USE OF PRIVATELY OWNED VEHICLE ON CITY BUSINESS

Should a volunteer assignment require him/her to drive a privately owned vehicle on City business, the volunteer must complete and sign an Authorization to Use Privately Owned Automobiles on City of St. Helena Business form. The volunteer must hold a valid California Driver's License, provide a copy of Auto Liability Insurance, vehicle must be equipped with seat belts and be in safe mechanical condition.

COMPUTER, INTERNET & TELEPHONE USE

Please remember that the City is a place of business and your volunteer work is a job. All work completed on City computers is considered official business, confidential and property of the City. It is requested that you keep phone conversations professional, brief and quiet, and personal cell phone use should be kept to a minimum during work hours.

DISCIPLINARY PROCEDURES

Volunteers, in their capacity as unpaid staff, are expected to meet the same standards of professionalism required of City staff. Volunteers who do not meet the requirements of their volunteer assignment or violate the policies established in this handbook are subject to dismissal. Efforts to correct problems of this nature will be discussed by the volunteer and the City staff member. Unresolved situations are referred to the City Manager for review and final decision.

RESIGNATIONS / LETTERS OF RECOMMENDATION

When you have decided to end your volunteer experience with us, we ask that you please notify your designated supervisor two weeks in advance so that there is time to fill the pending vacancy.

We are happy to provide a letter of recommendation to those volunteers who have satisfactorily served the City. Please make your request for a letter to your supervisor at the time of your two weeks notice.

HAVE FUN!

The satisfaction of our volunteers is important to us. Please feel free to let your staff supervisor know if you are having any difficulties, or with any suggestions, comments, or questions of concern. We hope you enjoy your volunteer experience.

HEALTH & SAFETY INJURY / ACCIDENT PROCEDURES

HEALTH AND SAFETY

Because safety is everyone's job, volunteers are asked to be alert at all times to safety hazards. As part of your orientation and training you will receive a copy of the City's Illness and Prevention Policy (IIPP). Unsafe conditions should be reported to your supervisor rather than being handled by volunteers. Please notify your supervisor of any assignment which may cause you physical discomfort or which could lead to personal injury, so that the situation can be rectified or the volunteer can be transferred to a more suitable assignment.

A Medical Emergency requiring immediate assistance, the volunteer should proceed to the Emergency Room.

All injuries, whether minor or serious, are to be reported directly to your supervisor immediately. Your supervisor will complete a Supervisors Report of Injury Form which is forwarded to the Administrative Services Manager in the City Manager's Office.

First aid kits and fire extinguishers are visibly located in each department.

An Emergency Evacuation requires immediate departure of the building. Please exit the building in an orderly fashion and meet your department staff at a pre-designated area away from glass or possible falling objects. Ask your supervisor where your department exterior meeting area is located. Practice evacuation drills are held periodically.

WORK INJURY COVERAGE

As part of the initial paperwork for your volunteer assignment, you completed and signed a form Volunteer Work Injury Coverage to determine whether you are volunteering as a City Volunteer or Other Agency Volunteer.

City Volunteers are covered for work related injuries by the City's Worker's Compensation Insurance administered through Redwood Empire Municipal Insurance Fund (REMIF) (707) 938-2388. During your initial volunteer paperwork you had the option to Pre-select a Treating Physician for a work related injury, and you have the option to submit this designation any time during your volunteer period. However please be aware, this form must be signed by your doctor and on file with the Administrative Services Department prior to any work injury or illness in order to receive initial treatment from your chosen physician. If you did not pre-select a physician, the City Worker's Compensation medical provider is JobCare Occupational Health (non-emergency) or St. Helena Hospital Emergency (707) 963-3611.

Other Agency Volunteers who are working on a volunteer assignment with the City of St. Helena through another agency are covered for work injuries per the volunteer's agreement with the primary agency. It is important that you report any work related injuries to said agency as soon as possible.

HOLIDAY SCHEDULE

HOLIDAYS

The following is a list of holidays observed by the City of St. Helena. Please note if an authorized holiday falls on a Saturday, the immediately preceding Friday will be observed, and if an authorized holiday falls on a Sunday, the following Monday will be observed as the holiday.

DAYS OF OBSERVANCE

NEW YEAR'S DAY	JANUARY 1 ST
MARTIN LUTHER KING	THIRD MONDAY IN JANUARY
PRESIDENT'S DAY	THIRD MONDAY IN FEBRUARY
CESAR CHAVEZ	MARCH 31 ST
MEMORIAL DAY	LAST MONDAY IN MAY
INDEPENDENCE DAY	JULY 4 TH
LABOR DAY	FIRST MONDAY IN SEPTEMBER
VETERAN'S DAY	NOVEMBER 11 TH
THANKSGIVING DAY	FOURTH THURSDAY IN NOVEMBER
FRIDAY AFTER THANKSGIVING	
CHRISTMAS EVE DAY	DECEMBER 24 TH
CHRISTMAS DAY	DECEMBER 25 TH



Adult Volunteer Application

The City of St. Helena Volunteer Waiver & Release Form must be returned with this application. No applications will be considered without the City's Waiver & Release Form. Please refer to the City of St. Helena's Volunteer Handbook for expectations, requirements, & rules of the City's Volunteer Program. Available positions for volunteers may be found in the City's website.

Volunteer Program

Those who can, do.

Those who can do more, volunteer.

-Unknown author

OFFICE USE ONLY:

Received date: _____

Interview date: _____

Orientation date: _____

Any other training: _____

Start date: _____

This form was updated 10/2015

First & Last Name: _____

Street Address: _____ City: _____

Phone: _____ Email Address: _____

Best times to reach you:

☐ Morning
☐ Afternoon
☐ Evening

Emergency Contact Name: _____

Phone: _____

If you were referred to us, which organization referred you? (Court or Employer) _____

Education Completed:

_____ High School _____ College & Degree(s) _____

Have you ever volunteered with the City before? _____ If so, please state the Department and date on which you volunteered and what tasks did you do?

Please describe other work/volunteer experiences; include names of organizations and duties.

Special Skills/Hobbies or Interests:

☐ Computers	☐ Research	☐ Art
☐ Video	☐ Filing	☐ Genealogy
☐ Photography	☐ Storytelling	☐ Sports
☐ Typing	☐ Book mending/repair	☐ Languages
☐ Graphics	☐ Public Relations	Other: _____
☐ Working with children	☐ Gardening	

Fluent languages (other than English):

Please indicate what days/times you are available to volunteer

☐ Mondays ☐ Tuesdays ☐ Wednesdays ☐ Thursdays ☐ Fridays ☐ Saturdays ☐ Sundays

Time availability: From _____ a.m./ p.m To: _____ a.m./ p.m.

Are there any limitations that may restrict your volunteering?

Which open volunteer position(s) are you interested in?

Sign if you agree with the following: Please read carefully before signing.

I certify that all statements made in this form are true and complete to the best of my knowledge and belief. I agree and understand any misstatement or omission of material fact on this application may be cause for forfeiture of all my rights to volunteer at the City of St. Helena.

I have read, understand and agree with the requirements and policies on the City of St. Helena's Volunteer Handbook and the position I am applying for. I understand that the City of St. Helena reserves the right to select & retain volunteers based on the needs of the City Departments.

I am aware and understand City reserves the right to investigate any criminal record history of people who may work with children. I hereby authorize the City of St. Helena and the California Department of Justice to review state and local records to determine if I have been convicted of any crimes for the limited purpose of determining whether I can engage in volunteer activities with children.

In the event of an emergency, I authorize the City of St. Helena to notify my emergency contact.

Signature: _____ Date: _____



City of St. Helena Volunteer Waiver and Release

Please read and sign this Waiver and Release form to volunteer for the City of St. Helena. If you are the parent or legal guardian of a minor volunteer under the age of 18, please complete the entire form and "Section C - Release by the parent or legal guardian of any Volunteer under the age of 18," on behalf of the minor.

Section A

Volunteer Name (Herein "Volunteer")	Home Phone	Mobile Phone
Address	City	State Zip
Email		
Emergency Contact: Name and Phone Number		
Volunteer activity includes but is not limited to the following (Please provide a brief description of the work you will be doing):		
Would you like to be contacted about additional volunteer opportunities with the City of St. Helena? ☐ Yes		

Section B

It is my intention to perform voluntary services without compensation for the City of St. Helena ("City").

Assumption of Risk - I hereby assume all risks of participating in this volunteer activity and full responsibility for my conduct and actions, including any injury to myself or others or damage to property that may result while volunteering, and I understand that the City is not responsible for conditions that I create myself or those created by other volunteers or participants.

I EXPRESSLY ASSUME ALL RISK OF THE ACTIVITY OF VOLUNTEERING MY SERVICES FOR THE CITY OF ST. HELENA.

Workers' Compensation - I have been advised that the City's policy is to cover volunteers as employees of the City for the purposes of workers' compensation benefits. I also understand that under workers' compensation laws, workers' compensation benefits will be my sole remedy in the event that I am injured while performing volunteer activities for the City.

Loss of Personal Property - I understand that the environment and conditions in which I am volunteering may cause damage to my personal property. I acknowledge that the City is not responsible for any loss or damage to my personal property used while volunteering my services or brought to the place where I volunteer for the City. I agree that I will not file any claims against the City for any personal property loss or damage for whatever cause.

Release - With the exception of these workers' compensation benefits, I hereby waive all actions, proceedings, alternative dispute resolution procedures, demands, claims, and causes of action, and other means of recovery, of whatever nature, for injuries to person (including without limitation death, dismemberment, and emotional distress), or damages (whether to person, property or business and including without limitation all forms of monetary recovery, whether for general,

special, compensatory, or punitive damages, loss of earnings, loss of earning capacity, loss of profits or other damages of whatever nature), known or unknown, existing or future, arising from or in any way related to my participation in the Volunteer Activity or the use of any product created in connection with my participation in the Volunteer Activity for education, promotional, advertising or other purposes for the benefit of the City, its departments, and its agencies. I expressly acknowledge that I am familiar with Section 1542 of the California Civil Code which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

I expressly waive and relinquish any rights and benefits which I may have under Section 1542 of the California Civil Code, or any state or federal statute or common law principle to similar effect, to the full extent that such rights and benefits may be lawfully waived pertaining to the subject matter of the waiver and release set forth in this paragraph. I understand and acknowledge the significance and consequences of this specific waiver of Section 1542 of the California Civil Code.

Indemnification - I hereby agree, on behalf of myself, and my heirs, executors, administrators, and assigns, to indemnify, defend (with legal counsel) and hold harmless the City, its officials, officers, employees, agents, volunteers, and contractors from and against any and all actions, proceedings, alternative dispute procedures, demands, and causes of action of whatever nature, costs and expenses (including attorneys' fees), judgments, orders, decrees, liens and other encumbrances, liabilities, injuries to person (including without limitation death, dismemberment, and emotional distress), damages (whether to person, property, or business, including without limitation, all forms of monetary recovery, whether for general, special, compensatory, or punitive damages, loss of earnings, loss of earning capacity, loss of profits or other damages of whatever nature), known or unknown, existing or future, caused by my negligence or willful misconduct.

Knowing and Voluntary Execution - I have carefully read this Waiver and Release and fully understand its contents. I understand that this is a release of liability and a contract between myself and the City of St. Helena and that I am giving up valuable legal rights and I knowingly and voluntarily give up these rights of my own free will. I represent that I have had the opportunity to seek the advice of my own independent legal counsel. I am volunteering at the City at my own risk.

This Waiver and Release is entered into the date below at St. Helena, California.

Signature

Date

Section C: Release by the parent or legal guardian of any Volunteer under the age of 18

Parent or Legal Guardian Name (Herein "Legal Guardian")	Mobile Phone	Emergency Contact
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I, am the Legal Guardian of the minor Volunteer listed above. I hereby authorize my child to participate in the volunteer activity Identified in Section A. I understand that my child may incur bodily injury, personal injury, illness, death, or property damage by volunteering for the activity described above. I have read and understand Section B of this Waiver and Release. By my signature below, I agree to all the terms of Section B on behalf of my child. I agree that the waivers and releases of Section B apply to me and any actions, claims, or demands that I may bring, in my own name or on behalf of my child, arising from my child's participation in the volunteer activity described above, excepting any workers' compensation claims as described above.

This Waiver and Release is entered into on the date below at St. Helena, California.

Parent or Legal Guardian Signature

Date

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Report to the City Council
Council Meeting of January 12, 2016

Agenda Section: New Business

Subject: Appeal by Gott's Roadside of Administrative Decision for Billing of Sewer Base Rates and Sewer Commodity Rates at 933 Main Street from June 2013 to July 2015.

CEQA Status: Not a CEQA Project

Prepared By: April Mitts, Finance Director

Approved By: Jennifer Phillips, City Manager

BACKGROUND

In July 2015, the Finance Department began an audit of its utility accounts. This audit included verification of rates being charged.

Through this audit it was discovered several businesses were not being charged the correct sewer base rate or sewer commodity (usage) rates. Once this error was discovered the base rate was corrected in the system effective July 2015 and the customers were back-billed for sewer base rates and sewer commodity rates for the past three years. According to the City Attorney, three years is as far back as the City may go to recover such charges, pursuant to the applicable statute of limitations, Code of Civil Procedure section 338.

DISCUSSION

The sewer audit identified Gott's Roadside as never being charged sewer base and sewer commodity rates. Subsequently the rates were corrected.

The process for Gott's Roadside to connect to the City of St. Helena's (City) sewer system began in 2004 when Joel and Duncan Gott, operators of Taylor's Refresher located at 933 Main Street, filed an application for Design Review and Variance to construct a 352 square foot building to house two restrooms and broom closet. Construction contracts provided by Joel Gott in relation to this project list the name and location of the project as Gotts Roadside at 933 Main Street and all City utility billing documentation lists Gott's Roadside as the account owner for 933 Main Street. For the purpose of this discussion any reference to Gott's Roadside or Taylor's Refresher refer to the same entity.

Finance staff originally calculated back-billing due for Gott's Roadside to be \$100,425.58 for sewer base rates and sewer commodity rates from June 2012 to July 2015. Prior to notifying Gott's Roadside by mail, City Manager Phillips contacted Joel Gott informing him of the recent audit regarding the sewer rates for his business. Mr. Gott requested a meeting with City Manager Phillips and Finance Director Mitts to discuss the back-billing for the sewer base rates and sewer commodity rates.

At the meeting with Ms. Phillips and Ms. Mitts, Mr. Gott provided information establishing that Gott's Roadside connected to the City's sewer system on or around June 2013. Finance staff recalculated the rates based on the information provided and determined Gott's Roadside had not been billed from June 16, 2013 to July 15, 2015 for a total of \$67,904.81 for connection and use of the City's sewer system.

On October 13, 2015 the Finance Department sent a letter via Certified Mail to Gott's Roadside providing notification of the under-billing (Attachment A).

On November 10, 2015 Joel Gott provided a letter to the City appealing the decision to back-bill Gott's Roadside from June 16, 2013 to July 15, 2015 (Attachment B). In the appeal Mr. Gott states that in an effort to provide customers with more than one bathroom, Gott's Roadside worked from 2004 to 2013 and spent over \$75,000 to upgrade their sewer system to tie in to the City sewer, as required by Design Review and Variance No. 2004-32 (Attachment C). (We discuss the history of the Design Review and Variance No. 2004-32 decision later in this document.) In his appeal Mr. Gott further states they were never notified that the City would charge a higher sewer rate and that if they had known that their sewer rates would increase close to \$30,000 annually they might have decided to remain on the septic system. Prior to connecting to the City's sewer system in 2013 Gott's Roadside was on a septic system, did not utilize the City's sewer system, and thus paid \$0.00 on their monthly utility bill for sewer usage.

Design Review and Variance No. 2004-32

Prior to 2013 Gott's Roadside was on septic. As a condition of construction of the restrooms and broom closet, connection to the City's sewer system was required per City Municipal Code 13.20.070.

On July 20, 2004 the Planning Commission approved Design Review and Variance No. 2004-32 allowing Taylor's Refresher to construct a 352 sq. ft. building to house two restrooms and a broom closet.

In its resolution approving the Design Review and Variance, the Planning Commission made the following findings:

- A. One bathroom is not sufficient to accommodate the business volume at Taylor's Refresher. City regulations limit the expansion of the facilities, thereby creating a hardship for the owner's, staff and the customers.

- B. Taylor's Refresher became a legal nonconforming use because the regulations were modified after the business was established. As a nonconforming use, the business has been unable to expand to meet code requirements for bathrooms. In order to accommodate the success of Taylor's Refresher, additional restrooms are necessary from a public health point of view. It is unlikely that denying such a request will stop people from frequenting Taylor's and will certainly cause continued hardship and frustration for both patrons and owners alike. Adequacy of bathroom facilities is not considered a special privilege.
- C. The authorization of the Variance will not be of substantial detriment to adjacent properties, located some distance away on adjacent properties.../...The new facility will not materially impair the purpose and intent of this title or the public interest, rather it will support public health by providing enough bathrooms to accommodate demand. The construction of the facility does not adversely affect the intention of the General Plan; rather supports service delivery and public health.
- D. The circumstance facing Taylor's Refresher is unique to this piece of property and would not be reasonably practicable to make broad regulatory changes to support this type of request for others.
- E. The Unified Building Code requires one bathroom per twenty-five seats. Taylor's currently has 125 seats, requiring five stalls, but only has one. The existing condition is detrimental to the public health. The new facilities will be in compliance with code.

In addition Section 3, item 13 of Design Review and Variance No. 2004-32, states, "The applicant shall enter into an agreement with the City of St. Helena for and connect to the municipal sanitary sewer system. Such connection shall be constructed and approved prior to occupancy of the proposed building."

As part of the condition of approval of Joel and Duncan Gott's request to add two restrooms and a broom closet on the property located at 933 Main Street a connection to the City's municipal sanitary sewer system was required as stated in Design Review and Variance No. 2004-32 and City Municipal Code 13.20.070. City Municipal Code 13.20.020 further states, "Owners of property shall pay to the city a charge based on user categories for the connection of the property to the public sewage system in the amounts set forth in Table 3 for every month or any fraction thereof." Under State law (Government Code section 65009), the Gott's were required to state any objection to the conditions of their approval to the Planning Commission during the approval process, and to bring any legal challenge within 90 days after the decision. They are

also deemed to be on notice of the City's adopted charges that would be required as a result of the sewer connection condition.

When Gott's Roadside connected in 2013 the sewer base rate and commodity (usage) rate should have been applied to the account for 933 Main Street. Although there was an error in not charging Gott's Roadside immediately they were charged by law with notice of the correct charges, and also have been using the City's sewer system since that time.

Waste Water Enterprise Fund (571)

Money collected for sewer base rates and sewer commodity rates are placed in the Waste Water Enterprise Fund (571). This fund is used to account for operations that are financed and operated in a manner similar to private enterprises where the intent of the City is that the costs of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges. Proposition 218 requires that charges not exceed the costs of service and are proportionate (i.e., classes of customers pay their relative fair shares). When the City adopted the sewer rate structure the rates were based on a study which provided supporting evidence and analysis for the rates to be charged. The purpose of the study is to ensure City utility enterprises are meeting financial obligations for ongoing operations, debt service, and capital improvements necessary to maintain the sewer system. The sewer rate structure adopted by City Council allows the City to provide wastewater services in a responsible manner and to meet financial obligations under the existing agreements and contracts. When an entity makes a new connection to the City's sewer system a greater burden is placed on the infrastructure which is the reason rates are charged to customers. Although Gott's Roadside had not been billed for connection to the City's sewer system, they have been utilizing the system and adding an additional burden to this system. For example, the City recently had to clean and repair a sewer pump station downstream from Gott's Roadside due to excessive grease build up. Additionally, City staff has visited Gott's Roadside to inspect and educate their employees on proper grease disposal as this impacts the City's sewer system.

Justification for Denial of Appeal

1. Gott's Roadside filed an application for an expansion and was made aware of the required connection to the City's sewer system through Design Review and Variance No. 2004-32. Like all users of City services, Gott's Roadside was charged with constructive notice of the City's correct rates.
2. Gott's Roadside completed the required work for connection to the City's sewer system and did make the connection on or around June 2013. Gott's Roadside has been utilizing the City's sewer system since that time and placing an additional burden on the existing sewer system.

3. Sewer rates are charged proportionate to use to ensure all customers pay their fair share for ongoing operations, debt service, and capital improvements necessary to maintain the sewer system.
4. Prior to connection to the City's sewer system Gott's Roadside paid \$0.00 towards the City's sewer system as they were on septic. Although Gott's Roadside appeal (Attachment B) states, "We were never notified of a higher sewer rate. More than three times what our other business sewer rate was at the carwash" they were notified through Design Review and Variance No. 2004-32 that the connection was required. Any connection to a City sewer system will lead to appropriate charges. Since Gott's Roadside previously paid \$0.00 in their monthly utility bill and has paid sewer rates for other businesses it is reasonable to assume they would expect their monthly utility billing to show charges for sewer use as well as an increase in their bill when the connection to the sewer system was complete. Moreover, as stated above, the law charges customers with constructive notice of the correct rates adopted by the City.

FISCAL IMPACT

- Option 1 - Deny appeal by Gott's Roadside – no fiscal impact
- Option 2 - Approve appeal by Gott's Roadside for partial reimbursement of back-billing from June 2013 to July 2015 – amount to be reimbursed based on Council recommendation
- Option 3 - Approve appeal by Gott's Roadside for full reimbursement of back-billing from June 2013 to July 2015 – reimbursement to Gott's Roadside totaling \$67,904.81

RECOMMENDED ACTION

Staff recommends that the City Council adopt the accompanying resolution accepting Option 1 to deny the appeal by Gott's Roadside.

If Council's determination is not to accept Option 1, Staff recommends that the Council should articulate its reasons and direct Staff to prepare a resolution, for adoption at a subsequent Council meeting, memorializing the Council's rationale and intended decision.

ATTACHMENTS

- Attachment A – Letter to Gott's Roadside dated October 12, 2015
- Attachment B – Appeal by Gott's Roadside
- Attachment C – Design Review and Variance No. 2004-32
- Attachment D – Resolution for Option 1



City of St. Helena

*'We will conduct city affairs on behalf of our citizens
using an open and creative process'*

Attachment A

1480 Main Street
St. Helena, CA 94574
Phone (707) 967-2792
Fax (707) 963-7748
www.ci.st-helena.ca.us

October 12, 2015

Gott's Roadside
Attn: Joel Gott
933 Main St.
St. Helena, CA

Regarding: Sewer Commodity Charges at 933 Main Street
Water Account #007318-000

Dear Joel,

Thank you for your assistance in providing information on when Gott's Roadside connected to the City of St. Helena's sewer system. After reviewing the information you presented as well as City records an adjustment to the initial balance due of \$100,425.58 has been made. The new total amount underbilled is \$67,904.81. Based on the information provided the City can reasonably conclude Gott's Roadside connected to the City's sewer system in June 2013; therefore the sewer commodity and sewer base rate has been re-assessed beginning June 16, 2013.

As a reminder this notice of underbilling is a result of a recent audit where it came to our attention that water account #007318-000 was not assessed the sewer commodity rate or sewer base rate for the property. The sewer commodity fee is based on the type of business at the service address, the current use permit for 933 Main Street, St. Helena is a restaurant.

An adjustment has been made to your account in the amount of \$67,904.81. This represents the amount you were underbilled since connecting to the City's sewer system in June 2013. A spreadsheet detailing this adjustment has been attached for your records. If you are unable to pay the entire amount, you may request a payment plan with the City.

Each citizen of the City of St. Helena has a right to appeal this decision by submitting a timely letter of appeal to the City Council. For your convenience a copy of the City's appeal process is listed on the following page. Please contact our City Clerk, Cindy Black, at 707-967-2792 for more information on the appeal process.

We apologize for any inconvenience this may cause you. If you have any questions, please feel free to call me at (707) 968-2745.

Sincerely,

A handwritten signature in dark ink, appearing to read "April Mitts".

April Mitts
Finance Director
(enclosure)



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13.04.180 Appeals.

A. **Procedure Generally.** Any person who shall have a right to appeal as provided in any section of this chapter or Chapters 13.08 and 13.12 or who shall be dissatisfied with any determination hereafter made by the superintendent may, at any time within thirty (30) days after such determination, appeal to the city council by giving written notice to the superintendent and to the city clerk, setting forth the determination with which such person is dissatisfied. The city council may, at any time, upon its own motion, appeal from any determination made by the superintendent hereunder. In the event of any such appeal, the superintendent shall transmit to the city council a report upon the matter appealed. The city council shall cause notice to be given, at least ten (10) days prior to the time fixed for such hearing to all persons affected by such appeal, of the time and place fixed by the city council for hearing such appeal. The city council shall direct the city clerk to mail a written notice, postage prepaid, to all such persons whose addresses are known to the city council.

B. **Refunds.** Pending decisions upon any appeal relative to the amount of any charge under this chapter or Chapters 13.08 and 13.12, the person making such appeal shall pay such charge. After the appeal is heard, the city council shall order refunded to the person making such appeal such amount, if any, as the city council shall determine should be refunded. (Prior code § 18.18)

STATEMENT PERIOD 06/16/2013 - 07/15/2013					STATEMENT PERIOD 06/16/2013 - 07/15/2013				
Total Consumption:		290			Total Consumption:		290		
Water Cons Tier 1:					Water Cons Tier 1:				
	36	x	4.16	149.76		36	x	4.16	149.76
Water Cons Tier 2:					Water Cons Tier 2:				
	254	x	6.24	1584.96		254	x	6.24	1584.96
				1734.72					1734.72
Sewer Commodity:					Sewer Commodity:				
	0	x	10.82	0.00		290	x	10.82	3137.80
Water Consumption:					Water Consumption:				
				1734.72					1734.72
Water Base Rate:					Water Base Rate:				
				25.50					25.50
Sewer Commodity:					Sewer Commodity:				
				0.00					3137.80
Sewer Base Rate:					Sewer Base Rate:				
				0.00					933.24
				1760.22					5831.26
Total Charges Billed:					Total Correct Billing:				
				1760.22					5831.26
					Amount Under Billed: 4071.04				

STATEMENT PERIOD 07/16/2013 - 08/15/2013					STATEMENT PERIOD 07/16/2013 - 08/15/2013				
Total Consumption:		271			Total Consumption:		271		
Water Cons Tier 1:					Water Cons Tier 1:				
	36	x	4.16	149.76		36	x	4.16	149.76
Water Cons Tier 2:					Water Cons Tier 2:				
	235	x	6.24	1466.40		235	x	6.24	1466.40
				1616.16					1616.16
Sewer Commodity:					Sewer Commodity:				
	0	x	10.82	0.00		271	x	10.82	2932.22
Water Consumption:					Water Consumption:				
				1616.16					1616.16
Water Base Rate:					Water Base Rate:				
				25.50					25.50
Sewer Commodity:					Sewer Commodity:				
				0.00					2932.22
Sewer Base Rate:					Sewer Base Rate:				
				0.00					933.24
				1641.66					5507.12
Total Charges Billed:					Total Correct Billing:				
				1641.66					5507.12
					Amount Under Billed: 3865.46				

STATEMENT PERIOD 08/16/2013 - 09/15/2013					STATEMENT PERIOD 08/16/2013 - 09/15/2013				
Total Consumption:		258			Total Consumption:		258		
Water Cons Tier 1:					Water Cons Tier 1:				
	36	x	4.16	149.76		36	x	4.16	149.76
Water Cons Tier 2:					Water Cons Tier 2:				
	222	x	6.24	1385.28		222	x	6.24	1385.28
				1535.04					1535.04
Sewer Commodity:					Sewer Commodity:				
	0	x	10.82	0.00		258	x	10.82	2791.56
Water Consumption:				1535.04	Water Consumption:				1535.04
Water Base Rate:				25.50	Water Base Rate:				25.50
Sewer Commodity:				0.00	Sewer Commodity:				2791.56
Sewer Base Rate:				0.00	Sewer Base Rate:				933.24
				1560.54					5285.34
Total Charges Billed:				1560.54	Total Correct Billing:				5285.34
					Amount Under Billed: 3724.80				

STATEMENT PERIOD 09/16/2013 - 10/15/2013					STATEMENT PERIOD 09/16/2013 - 10/15/2013				
Total Consumption:		206			Total Consumption:		206		
Water Cons Tier 1:					Water Cons Tier 1:				
	36	x	4.16	149.76		36	x	4.16	149.76
Water Cons Tier 2:					Water Cons Tier 2:				
	170	x	6.24	1060.80		170	x	6.24	1060.80
				1210.56					1210.56
Sewer Commodity:					Sewer Commodity:				
	0	x	10.82	0.00		206	x	10.82	2228.92
Water Consumption:				1210.56	Water Consumption:				1210.56
Water Base Rate:				25.50	Water Base Rate:				25.50
Sewer Commodity:				0.00	Sewer Commodity:				2228.92
Sewer Base Rate:				0.00	Sewer Base Rate:				933.24
				1236.06					4398.22
Total Charges Billed:				1236.06	Total Correct Billing:				4398.22
					Amount Under Billed: 3162.16				

STATEMENT PERIOD 10/16/2013 - 11/15/2013					STATEMENT PERIOD 10/16/2013 - 11/15/2013				
Total Consumption: 160					Total Consumption: 160				
Water Cons Tier 1:					Water Cons Tier 1:				
36	x	4.16	149.76		36	x	4.16	149.76	
Water Cons Tier 2:					Water Cons Tier 2:				
124	x	6.24	773.76		124	x	6.24	773.76	
			923.52					923.52	
Sewer Commodity:					Sewer Commodity:				
	x	10.82	0.00		160	x	10.82	1731.20	
Water Consumption: 923.52					Water Consumption: 923.52				
Water Base Rate: 25.50					Water Base Rate: 25.50				
Sewer Commodity: 0.00					Sewer Commodity: 1731.20				
Sewer Base Rate: 0.00					Sewer Base Rate: 933.24				
			949.02					3613.46	
Total Charges Billed: 949.02					Total Correct Billing: 3613.46				
					Amount Under Billed: 2664.44				
STATEMENT PERIOD 11/16/2013 - 12/15/2013					STATEMENT PERIOD 11/16/2013 - 12/15/2013				
Total Consumption: 99					Total Consumption: 99				
Water Cons Tier 1:					Water Cons Tier 1:				
36	x	4.16	149.76		36	x	4.16	149.76	
Water Cons Tier 2:					Water Cons Tier 2:				
63	x	6.24	393.12		63	x	6.24	393.12	
			542.88					542.88	
Sewer Commodity:					Sewer Commodity:				
	x	10.82	0.00		99	x	10.82	1071.18	
Water Consumption: 542.88					Water Consumption: 542.88				
Water Base Rate: 25.50					Water Base Rate: 25.50				
Sewer Commodity: 0.00					Sewer Commodity: 1071.18				
Sewer Base Rate: 0.00					Sewer Base Rate: 933.24				
			568.38					2572.80	
Total Charges Billed: 568.38					Total Correct Billing: 2572.80				
					Amount Under Billed: 2004.42				

STATEMENT PERIOD 12/16/2013 - 01/15/2014				STATEMENT PERIOD 12/16/2013 - 01/15/2014			
Total Consumption:	87			Total Consumption:	87		
Water Cons Tier 1/Prior Rate:				Water Cons Tier 1/Prior Rate:			
25.548 x 4.16		106.28		25.548 x 4.16		106.28	
Water Cons Tier 1/New Rate:				Water Cons Tier 1/New Rate:			
10.452 x 4.26		44.53		10.452 x 4.26		44.53	
Water Cons Tier 2/Prior Rate:				Water Cons Tier 2/Prior Rate:			
36.194 x 6.24		225.85		36.194 x 6.24		225.85	
Water Cons Tier 2/New Rate:				Water Cons Tier 2/New Rate:			
14.806 x 6.40		94.76		14.806 x 6.40		94.76	
		471.41				471.41	
Sewer Commodity/Prior Rate:				Sewer Commodity/Prior Rate:			
x 10.82		0.00		61.742 x 10.82		668.05	
Sewer Commodity/New Rate:				Sewer Commodity/New Rate:			
x 11.09		0.00		25.258 x 11.09		280.11	
		0.00				948.16	
Water Consumption:		471.41		Water Consumption:		471.41	
Water Base Rate/Prior Rate:		13.18		Water Base Rate/Prior Rate:		13.18	
Water Base Rate/New Rate:		12.65		Water Base Rate/New Rate:		12.65	
Sewer Commodity:		0.00		Sewer Commodity:		948.16	
Sewer Base Rate/Prior Rate:		0.00		Sewer Base Rate/Prior Rate:		466.65	
Sewer Base Rate/New Rate:		0.00		Sewer Base Rate/New Rate:		478.35	
		497.24				2390.40	
Total Charges Billed:		497.24		Total Correct Billing:		2390.40	
				Amount Under Billed: 1893.16			

STATEMENT PERIOD 01/16/2014 - 02/15/2014					STATEMENT PERIOD 01/16/2014 - 02/15/2014				
Total Consumption:		92			Total Consumption:		92		
Water Cons Tier 1:					Water Cons Tier 1:				
	36	x	4.26	153.36		36	x	4.26	153.36
Water Cons Tier 2:					Water Cons Tier 2:				
	56	x	6.40	358.40		56	x	6.40	358.40
				511.76					511.76
Sewer Commodity:					Sewer Commodity:				
		x	11.09	0.00		92	x	11.09	1020.28
Water Consumption:				511.76	Water Consumption:				511.76
Water Base Rate:				26.14	Water Base Rate:				26.14
Sewer Commodity:				0.00	Sewer Commodity:				1020.28
Sewer Base Rate:				0.00	Sewer Base Rate:				956.57
				537.90					2514.75
Total Charges Billed:				537.90	Total Correct Billing:				2514.75
					Amount Under Billed:				
									1976.85
STATEMENT PERIOD 02/16/2014 - 03/15/2014					STATEMENT PERIOD 02/16/2014 - 03/15/2014				
Total Consumption:		63			Total Consumption:		63		
Water Cons Tier 1:					Water Cons Tier 1:				
	36	x	4.26	153.36		36	x	4.26	153.36
Water Cons Tier 2:					Water Cons Tier 2:				
	27	x	6.40	172.80		27	x	6.40	172.80
				326.16					326.16
Sewer Commodity:					Sewer Commodity:				
		x	11.09	0.00		63	x	11.09	698.67
Water Consumption:				326.16	Water Consumption:				326.16
Water Base Rate:				26.14	Water Base Rate:				26.14
Sewer Commodity:				0.00	Sewer Commodity:				698.67
Sewer Base Rate:				0.00	Sewer Base Rate:				956.57
				352.30					2007.54
Total Charges Billed:				352.30	Total Correct Billing:				2007.54
					Amount Under Billed:				
									1655.24

STATEMENT PERIOD 03/16/2014 - 04/15/2014					STATEMENT PERIOD 03/16/2014 - 04/15/2014				
Total Consumption: 104					Total Consumption: 104				
Water Cons Tier 1:					Water Cons Tier 1:				
	36	x	4.26	153.36		36	x	4.26	153.36
Water Cons Tier 2:					Water Cons Tier 2:				
	68	x	6.40	435.20		68	x	6.40	435.20
				<u>588.56</u>					<u>588.56</u>
Sewer Commodity:					Sewer Commodity:				
	0	x	11.09	0.00		104	x	11.09	1153.36
Water Consumption: 588.56					Water Consumption: 588.56				
Water Base Rate: 26.14					Water Base Rate: 26.14				
Sewer Commodity: 0.00					Sewer Commodity: 1153.36				
Sewer Base Rate: 0.00					Sewer Base Rate: 956.57				
				<u>614.70</u>					<u>2724.63</u>
Total Charges Billed: 614.70					Total Correct Billing: 2724.63				
					Amount Under Billed: 2109.93				
STATEMENT PERIOD 04/16/2014 - 05/15/2014					STATEMENT PERIOD 04/16/2014 - 05/15/2014				
Total Consumption: 160					Total Consumption: 160				
Water Cons Tier 1:					Water Cons Tier 1:				
	36	x	4.26	153.36		36	x	4.26	153.36
Water Cons Tier 2:					Water Cons Tier 2:				
	124	x	6.40	793.60		124	x	6.40	793.60
				<u>946.96</u>					<u>946.96</u>
Sewer Commodity:					Sewer Commodity:				
	0	x	11.09	0.00		160	x	11.09	1774.40
Water Consumption: 946.96					Water Consumption: 946.96				
Water Base Rate: 26.14					Water Base Rate: 26.14				
Sewer Commodity: 0.00					Sewer Commodity: 1774.40				
Sewer Base Rate: 0.00					Sewer Base Rate: 956.57				
				<u>973.10</u>					<u>3704.07</u>
Total Charges Billed: 973.10					Total Correct Billing: 3704.07				
					Amount Under Billed: 2730.97				

STATEMENT PERIOD 05/16/2014 - 06/15/2014					STATEMENT PERIOD 05/16/2014 - 06/15/2014				
Total Consumption:		212			Total Consumption:		212		
Water Cons Tier 1:					Water Cons Tier 1:				
	36	x	4.26	153.36		36	x	4.26	153.36
Water Cons Tier 2:					Water Cons Tier 2:				
	176	x	6.40	1126.40		176	x	6.40	1126.40
				1279.76					1279.76
Sewer Commodity:					Sewer Commodity:				
	0	x	11.09	0.00		212	x	11.09	2351.08
Water Consumption:				1279.76	Water Consumption:				1279.76
Water Base Rate:				26.14	Water Base Rate:				26.14
Sewer Commodity:				0.00	Sewer Commodity:				2351.08
Sewer Base Rate:				0.00	Sewer Base Rate:				956.57
				1305.90					4613.55
Total Charges Billed:				1305.90	Total Correct Billing:				4613.55
					Amount Under Billed:				
					3307.65				
STATEMENT PERIOD 06/16/2014 - 07/15/2014					STATEMENT PERIOD 06/16/2014 - 07/15/2014				
Total Consumption:		203			Total Consumption:		203		
Water Cons Tier 1:					Water Cons Tier 1:				
	36	x	4.26	153.36		36	x	4.26	153.36
Water Cons Tier 2:					Water Cons Tier 2:				
	167	x	6.40	1068.80		167	x	6.40	1068.80
				1222.16					1222.16
Sewer Commodity:					Sewer Commodity:				
	0	x	11.09	0.00		203	x	11.09	2251.27
Water Consumption:				1222.16	Water Consumption:				1222.16
Water Base Rate:				26.14	Water Base Rate:				26.14
Sewer Commodity:				0.00	Sewer Commodity:				2251.27
Sewer Base Rate:				0.00	Sewer Base Rate:				956.57
				1248.30					4456.14
Total Charges Billed:				1248.30	Total Correct Billing:				4456.14
					Amount Under Billed:				
					3207.84				

STATEMENT PERIOD 07/16/2014 - 08/15/2014					STATEMENT PERIOD 07/16/2014 - 08/15/2014				
Total Consumption: 244					Total Consumption: 244				
Water Cons Tier 1:					Water Cons Tier 1:				
36	x	4.26	153.36		36	x	4.26	153.36	
Water Cons Tier 2:					Water Cons Tier 2:				
208	x	6.40	1331.20		208	x	6.40	1331.20	
			1484.56					1484.56	
Sewer Commodity:					Sewer Commodity:				
0	x	11.09	0.00		244	x	11.09	2705.96	
Water Consumption: 1484.56					Water Consumption: 1484.56				
Water Base Rate: 26.14					Water Base Rate: 26.14				
Sewer Commodity: 0.00					Sewer Commodity: 2705.96				
Sewer Base Rate: 0.00					Sewer Base Rate: 956.57				
			1510.70					5173.23	
Total Charges Billed: 1510.70					Total Correct Billing: 5173.23				
					Amount Under Billed: 3662.53				
STATEMENT PERIOD 08/16/2014 - 09/15/2014					STATEMENT PERIOD 08/16/2014 - 09/15/2014				
Total Consumption: 192					Total Consumption: 192				
Water Cons Tier 1:					Water Cons Tier 1:				
36	x	4.26	153.36		36	x	4.26	153.36	
Water Cons Tier 2:					Water Cons Tier 2:				
156	x	6.40	998.40		156	x	6.40	998.40	
			1151.76					1151.76	
Sewer Commodity:					Sewer Commodity:				
0	x	11.09	0.00		192	x	11.09	2129.28	
Water Consumption: 1151.76					Water Consumption: 1151.76				
Water Base Rate: 26.14					Water Base Rate: 26.14				
Sewer Commodity: 0.00					Sewer Commodity: 2129.28				
Sewer Base Rate: 0.00					Sewer Base Rate: 956.57				
			1177.90					4263.75	
Total Charges Billed: 1177.90					Total Correct Billing: 4263.75				
					Amount Under Billed: 3085.85				

STATEMENT PERIOD 09/16/2014 - 10/15/2014					STATEMENT PERIOD 09/16/2014 - 10/15/2014				
Total Consumption: 160					Total Consumption: 160				
Water Cons Tier 1:					Water Cons Tier 1:				
36	x	4.26	153.36		36	x	4.26	153.36	
Water Cons Tier 2:					Water Cons Tier 2:				
124	x	6.40	793.60		124	x	6.40	793.60	
			<u>946.96</u>					<u>946.96</u>	
Sewer Commodity:					Sewer Commodity:				
0	x	11.09	0.00		160	x	11.09	1774.40	
Water Consumption: 946.96					Water Consumption: 946.96				
Water Base Rate: 26.14					Water Base Rate: 26.14				
Sewer Commodity: 0.00					Sewer Commodity: 1774.40				
Sewer Base Rate: 0.00					Sewer Base Rate: 956.57				
			<u>973.10</u>					<u>3704.07</u>	
Total Charges Billed: 973.10					Total Correct Billing: 3704.07				
					Amount Under Billed: 2730.97				
STATEMENT PERIOD 10/16/2014 - 11/15/2014					STATEMENT PERIOD 10/16/2014 - 11/15/2014				
Total Consumption: 127					Total Consumption: 127				
Water Cons Tier 1:					Water Cons Tier 1:				
36	x	4.26	153.36		36	x	4.26	153.36	
Water Cons Tier 2:					Water Cons Tier 2:				
91	x	6.40	582.40		91	x	6.40	582.40	
			<u>735.76</u>					<u>735.76</u>	
Sewer Commodity:					Sewer Commodity:				
0	x	11.09	0.00		127	x	11.09	1408.43	
Water Consumption: 735.76					Water Consumption: 735.76				
Water Base Rate: 26.14					Water Base Rate: 26.14				
Sewer Commodity: 0.00					Sewer Commodity: 1408.43				
Sewer Base Rate: 0.00					Sewer Base Rate: 956.57				
			<u>761.90</u>					<u>3126.90</u>	
Total Charges Billed: 761.90					Total Correct Billing: 3126.90				
					Amount Under Billed: 2365.00				

STATEMENT PERIOD 11/16/2014 - 12/15/2014					STATEMENT PERIOD 11/16/2014 - 12/15/2014					
Total Consumption:		108			Total Consumption:		108			
Water Cons Tier 1:					Water Cons Tier 1:					
36	x	4.26	153.36		36	x	4.26	153.36		
Water Cons Tier 2:					Water Cons Tier 2:					
72	x	6.40	460.80		72	x	6.40	460.80		
			614.16					614.16		
Sewer Commodity:					Sewer Commodity:					
	x	11.09	0.00		108	x	11.09	1197.72		
Water Consumption:				614.16	Water Consumption:				614.16	
Water Base Rate:				26.14	Water Base Rate:				26.14	
Sewer Commodity:				0.00	Sewer Commodity:				1197.72	
Sewer Base Rate:				0.00	Sewer Base Rate:				956.57	
			640.30					2794.59		
Total Charges Billed:				640.30	Total Correct Billing:				2794.59	
					Amount Under Billed:					2154.29

STATEMENT PERIOD 12/16/2013 - 01/15/2014				STATEMENT PERIOD 12/16/2013 - 01/15/2014			
Total Consumption:	76			Total Consumption:	76		
Water Cons Tier 1/Prior Rate:				Water Cons Tier 1/Prior Rate:			
18.5801 x	4.26	79.15		18.5801 x	4.26	79.15	
Water Cons Tier 1/New Rate:				Water Cons Tier 1/New Rate:			
17.418 x	4.37	76.12		17.418 x	4.37	76.12	
Water Cons Tier 2/Prior Rate:				Water Cons Tier 2/Prior Rate:			
20.645 x	6.40	132.13		20.645 x	6.40	132.13	
Water Cons Tier 2/New Rate:				Water Cons Tier 2/New Rate:			
19.355 x	6.57	127.16		19.355 x	6.57	127.16	
		414.56				414.56	
Sewer Commodity/Prior Rate:				Sewer Commodity/Prior Rate:			
x	11.09	0.00		39.2251 x	11.09	435.01	
Sewer Commodity/New Rate:				Sewer Commodity/New Rate:			
x	11.38	0.00		36.773 x	11.38	418.48	
		0.00				853.48	
Water Consumption:		414.56		Water Consumption:		414.56	
Water Base Rate/Prior Rate:		12.98		Water Base Rate/Prior Rate:		12.98	
Water Base Rate/New Rate:		13.49		Water Base Rate/New Rate:		13.49	
Sewer Commodity:		0.00		Sewer Commodity:		853.48	
Sewer Base Rate/Prior Rate:		0.00		Sewer Base Rate/Prior Rate:		478.35	
Sewer Base Rate/New Rate:		0.00		Sewer Base Rate/New Rate:		490.80	
		441.03				2263.66	
Total Charges Billed:		441.03		Total Correct Billing:		2263.66	
				Amount Under Billed: 1822.63			

STATEMENT PERIOD 01/16/2015 - 02/15/2015					STATEMENT PERIOD 01/16/2015 - 02/15/2015				
Total Consumption:		80			Total Consumption:		80		
Water Cons Tier 1:					Water Cons Tier 1:				
	36	x	4.37	157.32		36	x	4.37	157.32
Water Cons Tier 2:					Water Cons Tier 2:				
	44	x	6.57	289.08		44	x	6.57	289.08
				<u>446.40</u>					<u>446.40</u>
Sewer Commodity:					Sewer Commodity:				
		x	11.38	0.00		80	x	11.38	910.40
Water Consumption:				446.40	Water Consumption:				446.40
Water Base Rate:				26.82	Water Base Rate:				26.82
Sewer Commodity:				0.00	Sewer Commodity:				910.40
Sewer Base Rate:				0.00	Sewer Base Rate:				981.44
				<u>473.22</u>					<u>2365.06</u>
Total Charges Billed:				<u>473.22</u>	Total Correct Billing:				<u>2365.06</u>
					Amount Under Billed: 1891.84				
STATEMENT PERIOD 02/16/2015 - 03/15/2015					STATEMENT PERIOD 02/16/2015 - 03/15/2015				
Total Consumption:		86			Total Consumption:		86		
Water Cons Tier 1:					Water Cons Tier 1:				
	36	x	4.37	157.32		36	x	4.37	157.32
Water Cons Tier 2:					Water Cons Tier 2:				
	50	x	6.57	328.50		50	x	6.57	328.50
				<u>485.82</u>					<u>485.82</u>
Sewer Commodity:					Sewer Commodity:				
		x	11.38	0.00		86	x	11.38	978.68
Water Consumption:				485.82	Water Consumption:				485.82
Water Base Rate:				26.82	Water Base Rate:				26.82
Sewer Commodity:				0.00	Sewer Commodity:				978.68
Sewer Base Rate:				0.00	Sewer Base Rate:				981.44
				<u>512.64</u>					<u>2472.76</u>
Total Charges Billed:				<u>512.64</u>	Total Correct Billing:				<u>2472.76</u>
					Amount Under Billed: 1960.12				

STATEMENT PERIOD 03/16/2015 - 04/15/2015					STATEMENT PERIOD 03/16/2015 - 04/15/2015				
Total Consumption: 176					Total Consumption: 176				
Water Cons Tier 1:					Water Cons Tier 1:				
36	x	4.37	157.32		36	x	4.37	157.32	
Water Cons Tier 2:					Water Cons Tier 2:				
140	x	6.57	919.80		140	x	6.57	919.80	
			1077.12					1077.12	
Sewer Commodity:					Sewer Commodity:				
0	x	11.38	0.00		176	x	11.38	2002.88	
Water Consumption: 1077.12					Water Consumption: 1077.12				
Water Base Rate: 26.82					Water Base Rate: 26.82				
Sewer Commodity: 0.00					Sewer Commodity: 2002.88				
Sewer Base Rate: 0.00					Sewer Base Rate: 981.44				
			1103.94					4088.26	
Total Charges Billed: 1103.94					Total Correct Billing: 4088.26				
					Amount Under Billed: 2984.32				
STATEMENT PERIOD 04/16/2015 - 05/15/2015					STATEMENT PERIOD 04/16/2015 - 05/15/2015				
Total Consumption: 167					Total Consumption: 167				
Water Cons Tier 1:					Water Cons Tier 1:				
36	x	4.37	157.32		36	x	4.37	157.32	
Water Cons Tier 2:					Water Cons Tier 2:				
131	x	6.57	860.67		131	x	6.57	860.67	
			1017.99					1017.99	
Sewer Commodity:					Sewer Commodity:				
0	x	11.38	0.00		167	x	11.38	1900.46	
Water Consumption: 1017.99					Water Consumption: 1017.99				
Water Base Rate: 26.82					Water Base Rate: 26.82				
Sewer Commodity: 0.00					Sewer Commodity: 1900.46				
Sewer Base Rate: 0.00					Sewer Base Rate: 981.44				
			1044.81					3926.71	
Total Charges Billed: 1044.81					Total Correct Billing: 3926.71				
					Amount Under Billed: 2881.90				

STATEMENT PERIOD 05/16/2015 - 06/15/2015					STATEMENT PERIOD 05/16/2015 - 06/15/2015				
Total Consumption:		175			Total Consumption:		175		
Water Cons Tier 1:					Water Cons Tier 1:				
	36	x	4.37	157.32		36	x	4.37	157.32
Water Cons Tier 2:					Water Cons Tier 2:				
	139	x	6.57	913.23		139	x	6.57	913.23
				1070.55					1070.55
Sewer Commodity:					Sewer Commodity:				
	0	x	11.38	0.00		175	x	11.38	1991.50
Water Consumption:					Water Consumption:				
				1070.55					1070.55
Water Base Rate:					Water Base Rate:				
				26.82					26.82
Sewer Commodity:					Sewer Commodity:				
				0.00					1991.50
Sewer Base Rate:					Sewer Base Rate:				
				0.00					981.44
				1097.37					4070.31
Total Charges Billed:					Total Correct Billing:				
				1097.37					4070.31
					Amount Under Billed: 2972.94				

STATEMENT PERIOD 06/16/2015 - 07/15/2015					STATEMENT PERIOD 06/16/2015 - 07/15/2015				
Total Consumption:		179			Total Consumption:		179		
Water Cons Tier 1:					Water Cons Tier 1:				
	36	x	4.37	157.32		36	x	4.37	157.32
Water Cons Tier 2:					Water Cons Tier 2:				
	143	x	6.57	939.51		143	x	6.57	939.51
				1096.83					1096.83
Sewer Commodity:					Sewer Commodity:				
	0	x	11.38	0.00		179	x	11.38	2037.02
Water Consumption:					Water Consumption:				
				1096.83					1096.83
Water Base Rate:					Water Base Rate:				
				26.82					26.82
Sewer Commodity:					Sewer Commodity:				
				0.00					2037.02
Sewer Base Rate:					Sewer Base Rate:				
				0.00					981.44
				1123.65					4142.11
Total Charges Billed:					Total Correct Billing:				
				1123.65					4142.11
					Amount Under Billed: 3018.46				



November 9, 2015

April Mitts
Finance Director
City of St. Helena
1480 Main Street
St. Helena, CA 94574

Dear April,

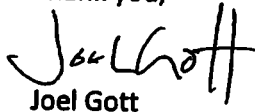
I am writing this letter to officially appeal the adjustment that was made to our account over two years after connecting to the city's sewer system.

In an effort to provide customers with more than one bathroom, we worked from 2004 to 2013 and spent over \$75,000 to upgrade our sewer system to tie in to the city sewer. At the 2004 City Council meeting this connection was required by the city as one of the contingencies to build additional restrooms. We were never notified of a higher sewer rate. More than three times what our other business sewer rate was at the carwash.

Also, had we known that our new fees would be an increase close to \$30,000 annually we probably would have remained on the septic system. Moving forward we can now adjust our operations to reflect the more expensive rates, but we have no way to 'regain' for what we are now being billed for in the last 27 months. We respectfully ask that you take this in to consideration when reviewing our appeal.

Please let me know if you have any questions.

Thank you,


Joel Gott

DESIGN REVIEW AND VARIANCE NO. 2004-32

**DESIGN REVIEW AND VARIANCE OF THE CITY OF ST. HELENA
STATE OF CALIFORNIA, GRANTED TO TAYLOR'S REFRESHER
LOCATED AT 933 MAIN STREET**

PROPERTY OWNER: Dean and Jean Nicholson, Virginia Toogood
APN: 009-180-006 and 009-180-005

Recitals

A. Joel and Duncan Gott, operators of Taylor's Refresher, submitted an application for Design Review and a Variance to construct a 352 sq. ft. building to house two restrooms and a broom closet. The proposed structure is to be located on the north-west portion of the lawn area. The existing restaurant structure includes one unisex bathroom that is utilized by both patrons and employees. The additional bathrooms are proposed to address code problems and health concerns.

The new facility has been designed to match the architectural theme of the main building. Drinking fountains and a hand-washing sink are proposed on the exterior of the structure.

A Variance is required because Taylor's Refreshers is a legal non-conforming use.

B. The Planning Commission of the City of St. Helena, State of California, considered the project at the meeting of July 20, 2004. The Planning Commission approved the Design Review and Variance on the following basis:

Resolution

Section 1. The Planning Commission hereby finds that this project is exempt from the California Environmental Quality Act pursuant to Section 15303 Class 3 of the CEQA Guidelines, which exempts the construction of small new facilities not exceeding 2500 sq. ft in floor area.

Section 2. The Planning Commission makes the following findings for a Variance:

- A. A hardship peculiar to the property, not created by any act of the owner, exists. In this context, personal, family or financial difficulties, loss of prospective profits and neighboring violations, are not hardships justifying a Variance;

One bathroom is not sufficient to accommodate the business volume at Taylor's Refresher. City regulations limit the expansion of the facilities, thereby creating a hardship for the owner's, staff and the customers.

- B. The Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant which are possessed by other properties in the same district and in the same vicinity; and that a Variance, if granted, would not constitute a special privilege of the recipient not enjoyed by his or her neighbors;

Taylor's Refresher became a legal nonconforming use because the regulations were modified after the business was established. As a nonconforming use, the business has been unable to expand to meet code requirements for bathrooms. In order to accommodate the success of Taylor's Refresher, additional restrooms are necessary from a public health point of view. It is unlikely that denying such a request will stop people from frequenting Taylor's and will certainly cause continued hardship and frustration for both patrons and owners alike. Adequacy of bathroom facilities is not considered a special privilege.

- C. The authorization of the Variance will not be of substantial detriment to adjacent properties and will not materially impair the purpose and intent of this title or the public interest, nor adversely affect the General Plan;

The authorization of the Variance will not be of substantial detriment to adjacent properties, located some distance away on adjacent properties. The parcel of land upon which Taylor's is located is approximately 3 acres. A carwash is located to the south west of the restaurant; commercial uses are located to the south on an adjacent property and a dwelling is located on an adjacent property to the west. The location of the new facilities is within the fenced lawn area adjacent to the existing structure. The new facility will not materially impair the purpose and intent of this title or the public interest, rather it will support public health by providing enough bathrooms to accommodate demand. The construction of the facility does not adversely affect the intention of the General Plan; rather supports service delivery and public health.

- D. The condition or situation of the specific piece of property for which the Variance is sought is not so general or recurrent in nature as to make reasonably practicable the formulation of a general regulation for such condition or situation.

The circumstances facing Taylor's Refresher is unique to this piece of property and would not be reasonably practicable to make broad regulatory changes to support this type of request for others.

- E. The Variance and any buildings or structures permitted by the Variance will not be detrimental to the public health, safety and welfare of the community. (Prior code § 27.449)

The Unified Building Code requires one bathroom per every twenty-five seats. Taylor's currently has 125 seats, requiring five stalls, but only has one. The existing condition is detrimental to the public health. The new facilities will be in compliance with code.

Section 3. The Design Review and Variance for the above described use is granted subject to compliance with the following conditions. Permit shall be in conformance with all City ordinances,

rules, regulations and policies in effect at the time of issuance of a building permit. The conditions noted below are particularly pertinent to this permit and shall not be construed to permit violation of other laws and policies not so listed.

1. The Design Review and Variance shall be vested within one (1) year from the date of approval. A building permit for the use allowed under this Design Review and Variance shall have been obtained within one (1) year from the effective date of the Design Review and Variance or the permit shall expire. The permit may be extended for up to two (2) one-year periods pursuant to the St. Helena Municipal Code, Section 17.08.030, Extension of Permits and Approvals.
2. This permit is valid for this use only. New permits must be applied for upon any change in use. These permits will expire if the use is discontinued pursuant to then existing ordinances and regulations.
3. The Design Review and Variance shall not become effective until fourteen (14) calendar days after approval, providing that the action is not appealed by the City Council or any other interested party within that 14 day period.
4. All required fees, including planning fees, development impact fees, building fees, toilet retrofit fees, and St. Helena Unified School District fees shall be paid prior to issuance of building permit. Pursuant to City Council Resolution 2003-65, the owner and applicant are informed of the following:

In recognition of the need for additional affordable housing, and to mitigate the effects of this development on the supply and demand of affordable housing, the permittee shall be subject to a Housing Impact Fee, an inclusionary requirement, an in-lieu fee, and/or similar fair and appropriate mechanisms, to provide funds for or to develop additional affordable housing, should such mechanisms be established by the City.

The development impact fees are estimated at \$5,741.12. If the Inclusionary Housing ordinance is adopted, the project will be subject to a housing impact fee that could range between \$1,421.20 to \$5,684.80.
5. Compliance with all permit conditions shall occur in accordance with specific regulations but in all cases no later than prior to occupancy or initiation of use unless another time is set by law or by this approval. Occupancy or final inspection of a project may be withheld if all conditions, including payment of fees for services rendered by the City, are not met.
6. The applicant will defend and indemnify and hold the City, its agents, officers, and employees harmless of any claim, action or proceedings to attack, set aside, void an approval so long as the City promptly notifies the applicant of any such claim, action, or proceedings and the City cooperates fully in the defense of the action or proceedings.
7. Provided they are in general compliance with the Design Review and Variance permit, minor modification may be approved by the Planning Director.

8. This Design Review and Variance shall run with the land and shall be binding upon all parties having any right, title or interest in the real property or any part thereof, their heirs, successors and assigns, and shall inure to their benefit and benefit of the City of St. Helena.
9. The primary purpose of this review is for compliance with the General Plan and Zoning Ordinance. The owner/applicant is responsible for meeting with the Building Official / Fire Inspector to review compliance with Building and Fire Codes, including fire protection systems and the accessibility standards of Title 24.
10. Construction shall be in compliance with plans marked Exhibits A-D dated 7/20/04.
11. Consistent with St. Helena Municipal Code Article IV, Water Conservation Section 18.44, New Development, requires retrofitting the equivalent of 4 single-family dwelling units or payment of an in-lieu fee of approximately \$3,370.00 prior to receiving final approval of the project. Appeals to this requirement may be made pursuant to Article IV, Section 18.46. The exact number of retrofits may change dependent upon final floor area submitted for the building permit.
12. The applicant shall enter into an agreement with the City of St. Helena for potable water service consistent with historic use. Potable water shall not be used for landscape irrigation.
13. The applicant shall enter into an agreement with the City of St. Helena for and connect to the municipal sanitary sewer system. Such connection shall be constructed and approved prior to occupancy of the proposed building. (See copy of pertinent portion of existing sanitary sewer system drawing attached). As part of such agreement, the applicant shall install, maintain, and keep an up-to-date maintenance log for a grease trap or clarifier of 1,500-gallon capacity in conformance with City of St. Helena Municipal Code Section 13.24.100 (see attached). In the event that the connection to the municipal sanitary sewer system is infeasible, the applicant shall seek review and approval of an expanded septic system with Napa County Environmental Management prior to issuance of building permits.
14. A portion of the parcel is within the 1998 FEMA FIRM 100-year flood zone (Zone AE) (see attached copy of portion of FIRM). St. Helena Municipal Code Section 15.52.150 Standards apply to all construction.
15. Applicant(s) shall submit in writing the disposition of all existing water well(s) within the parcel(s) (Chapter 13.16 St. Helena Municipal Code). If one or more wells are to be abandoned, or abandoned and have not been properly destroyed, the Applicant shall provide the City with a true and correct copy of a Permit approved by the Napa County Department of Environmental Management for destruction of the well(s) in conformance with the applicable State of California Water Well Standards as well as confirmation of such destruction in the form of a true and correct copy of the State of California Department of Water Resources Form-188 filed by the Applicant's contractor for each such destruction.

16. Prior to any work being conducted within the State or City right-of-way, the applicant shall obtain an Encroachment Permit from the appropriate Agency.
17. If any hazardous waste is encountered during the construction of this project, all work shall be immediately stopped and the Napa County Environmental Health Department, the Fire Department, the Police Department, and the City Inspector shall be notified immediately. Work shall not proceed until clearance has been issued by all of these agencies.
18. If archeological remains are unearthed during grading, all work shall halt until an archeologist is contacted and mitigation measures developed.
19. The developer shall keep adjoining public streets free and clean of project dirt, mud, materials, and debris during the construction period, as is found necessary by the City Engineer.
20. Exterior lighting shall be directed or shielded to prevent glare onto the public roadway or adjacent properties.
21. To reduce disturbance of residents in the project vicinity, construction activities which generate noise that can be heard at the property line of any parcel of real property within the City limits shall be limited to 8:00 a.m. to 5:00 p.m. Monday through Saturday. Delivery of materials/equipment and cleaning and servicing of machines/equipment shall be limited to 7:00 a.m. to 6:00 p.m. Exceptions to these time restrictions may be granted by the Public Works Director for one of the following reasons: (1) inclement weather affecting work, (2) emergency work, or (3) other work, if work and equipment will not create noise that may be unreasonably offensive to neighbors as to constitute a nuisance. The City Engineer must be notified and give approval in advance of such work. No construction activities shall occur on Sundays or federal or local holidays that generate noise that can be heard at the property line of any parcel of real property within the City limits.

Section 4. The City Clerk is hereby directed to record this Design Review and Variance at the office of the County Recorder of the County of Napa.

I HEREBY CERTIFY that the foregoing Design Review and Variance was duly and regularly approved by the Planning Commission of the City of St. Helena at a regular meeting of said Planning Commission held on July 20, 2004 the following roll call vote:

AYES: Commissioners Katz, Novak, Oldford, McCrea, Chairman Philippakis

NOES: None

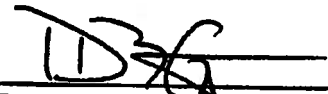
ABSENT: None



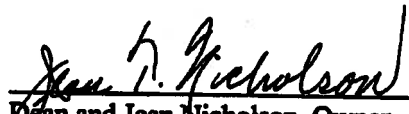
Carol Poole, Planning Director



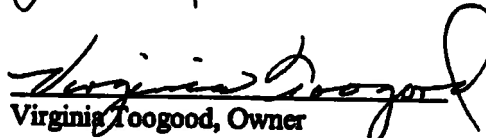
Jeel Gott, Applicant



Duncan Gott, Applicant



Dean and Jean Nicholson, Owner



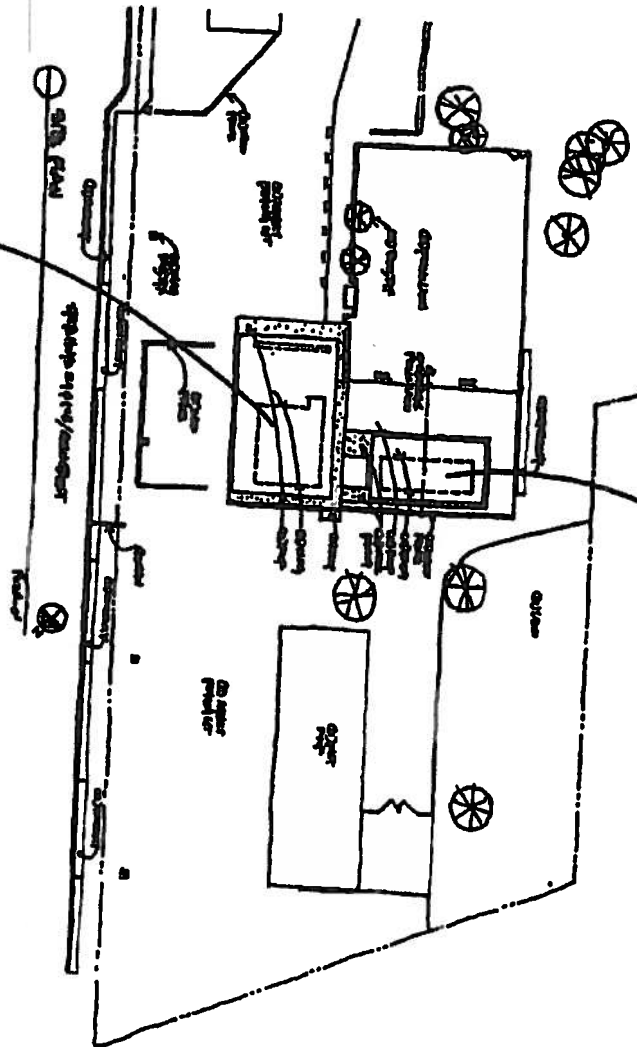
Virginia Toogood, Owner

(01)

existing
restaurant
building

New
restroom
building

Exhibit A 7/20/04



RECEIVED

JUL 13 2004

PLANNING DEPT.
CITY OF ST. HELENA

A101

TAYLOR'S REFRESHER

900 Main Street, St. Helena, California

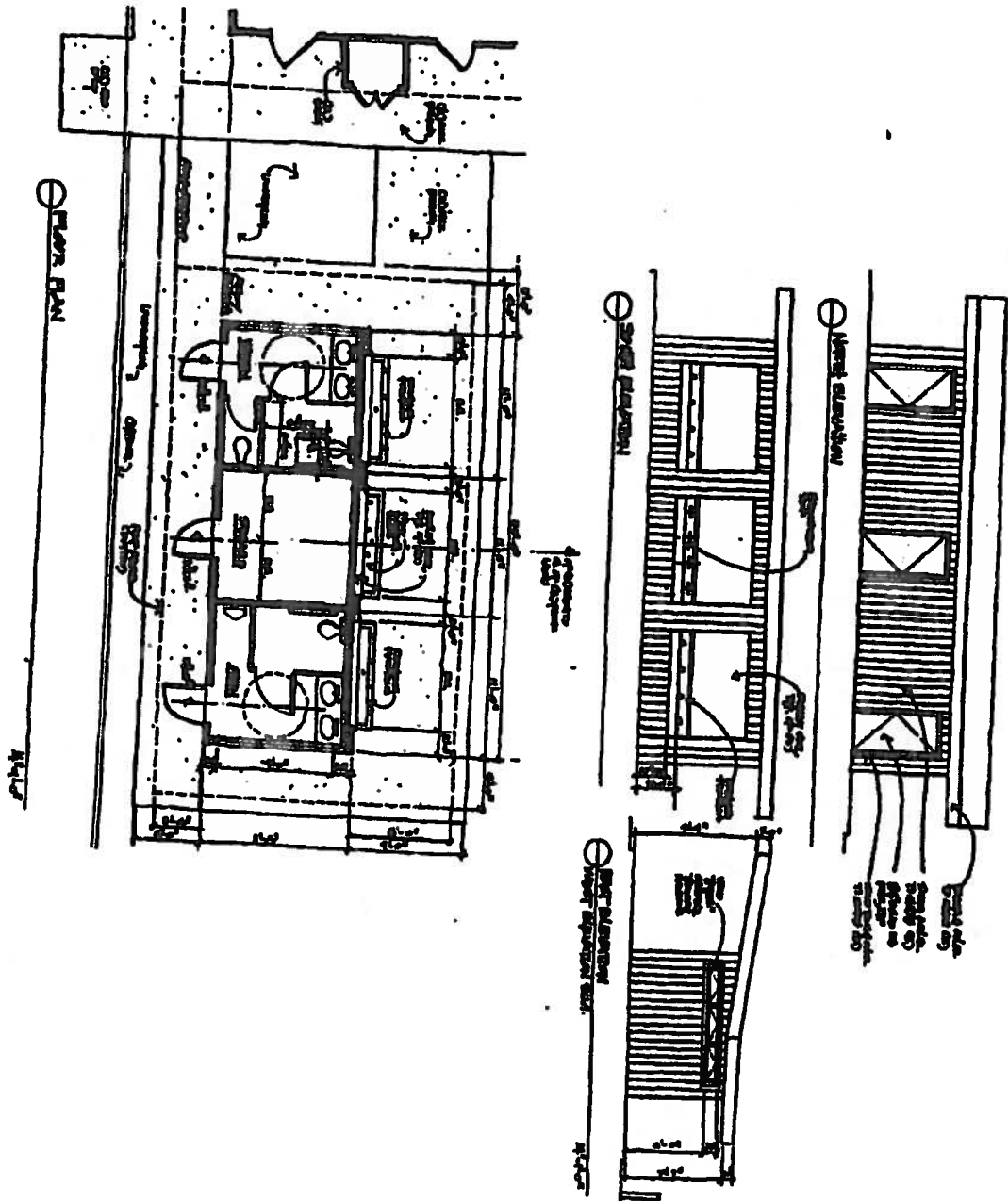


Exhibit B 7/20/04

A2.01

TAYLOR'S REFRESHER

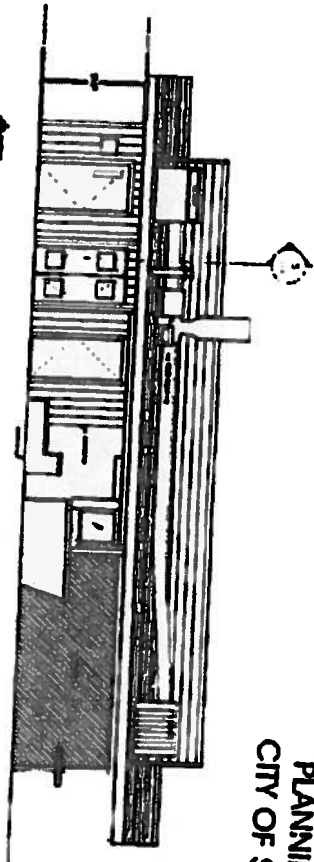
823 Main Street, St. Helena, California

RECEIVED

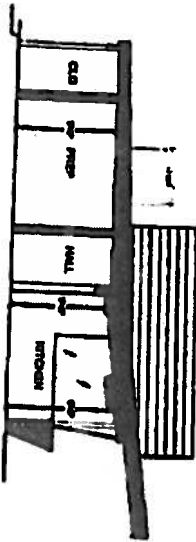
JUL 13 2004

PLANNING DEPT
CITY OF ST. HELEN

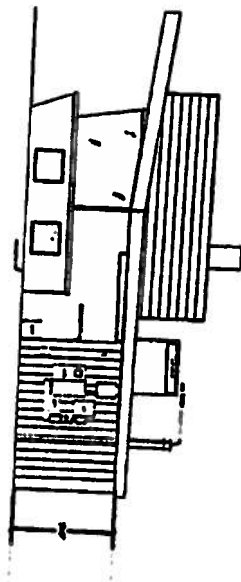
12



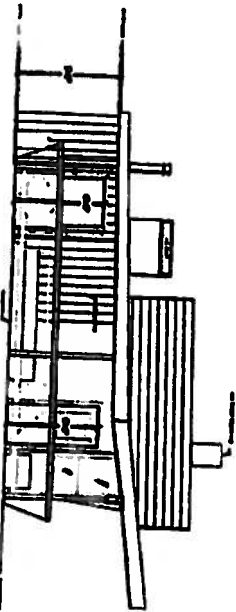
③ EXISTING WEST ELEVATION



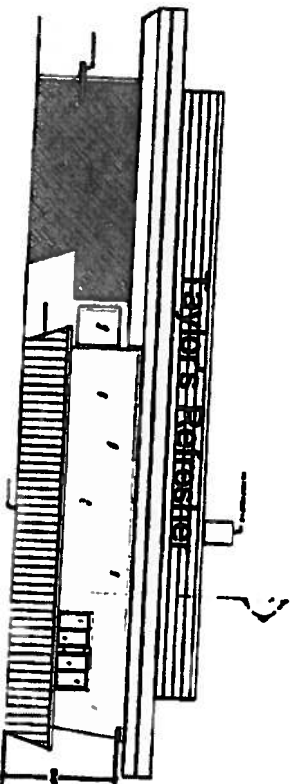
③ EXISTING SECTION



② EXISTING NORTH ELEVATION



① EXISTING SOUTH ELEVATION



① EXISTING EAST ELEVATION

Existing Restaurant

Exhibit C 7/20/04

A3.1

TAYLOR'S REFRESHER 933 MAIN STREET ST HELENA, CA

EXISTING ELEVATIONS & SECTION

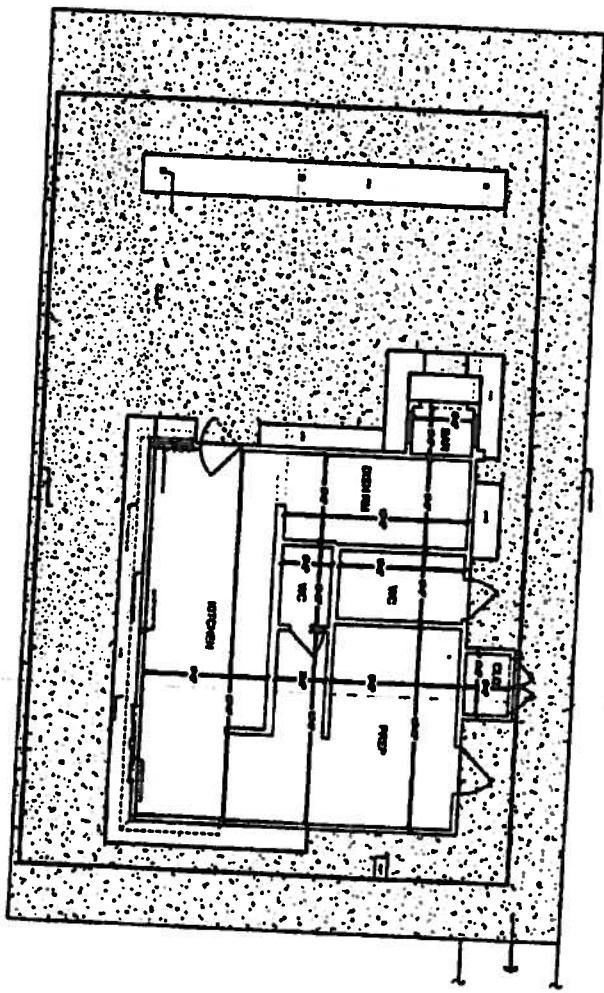
ASBUILT, LLC
PH 865.318-0080
ASBUILT@SERVICES.COM
APRIL 26, 2004
REV 0
REV 002_SPOWING

13

JUL 13 2004

RECEIVED

PLANNING DEPT
CITY OF ST. HELENA



① EXISTING FLOOR PLAN

Floor plan of existing restaurant.

Exhibit D 7/20/04

13
Taylor's Refresher
933 Main Street
St. Helena, CA 94574

A2.1	DEPT NO	TAYLOR'S REFRESHER 933 MAIN STREET, ST HELENA, CA	ASBUILT, LLC PH 800.310-0000 ASBUILTSERVICE.COM
		EXISTING FLOOR PLAN	APPRO. 30.0000 REV 1 REF 300_SF000000

CITY OF ST. HELENA

RESOLUTION NO. 2016-_____

**RESOLUTION UPHOLDING ADMINISTRATIVE DECISION
FOR BILLING OF SEWER BASE RATES AND SEWER
COMMODITY RATES AT 933 MAIN STREET FROM JUNE
2013 TO JULY 2015, DENYING APPEAL AND ADOPTING
FINDINGS IN SUPPORT THEREOF**

The City Council of the City of St. Helena hereby resolves as follows:

1. The City Council makes the following findings with respect to the administrative appeal by Gott's Roadside (the "Appellant" or "Gott's Roadside") with respect to back-billing of sewer base rates and sewer commodity rates at 933 Main Street from June 2013 to July 2015:
 - A. City Council reviews appeals for billing relating to the water and sewer service systems - St. Helena Municipal code Title 13, Chapter 13, Section 13.04.180;
 - B. The property located at 933 Main Street (the "Property") has been connected to the City of St. Helena sewer system since June 2013;
 - C. In July 2015 City staff conducted an audit of its utility accounts;
 - D. During this audit it was discovered several businesses, including Appellant, were not being charge the correct sewer base rate and sewer commodity rate;
 - E. City staff corrected the accounts in July 2015;
 - F. In October 2015, after meeting first with Appellant to fully discuss the City's proposed decision and to hear Appellant's input, City staff notified Appellant that it would back-bill Gott's Roadside for its use of the City sewer system from June 2013 to July 2015 at the correct rates adopted by the City Council; Appellant connected to the City's sewer system in June 2013, and has used it since;
 - G. On November 9, 2015 the Appellant filed an appeal for back-billing adjustment made to their account in the amount of \$67,904.81.
 - H. Gott's Roadside/Appellant applied to the City in 2004 for permission to construct a 352 square foot building to house two restrooms and broom closet. The Planning Commission granted Appellant's application and approved a Design Review and Variance No. 2004-32. As a condition of that approval, the Planning Commission imposed the following conditions, and adopted findings, requiring Gott's Roadside/Appellant to connect to the City's sewer.

- a. One bathroom is not sufficient to accommodate the business volume at Taylor's Refresher. City regulations limit the expansion of the facilities, thereby creating a hardship for the owner's, staff and the customers.
 - b. Taylor's Refresher became a legal nonconforming use because the regulations were modified after the business was established. As a nonconforming use, the business has been unable to expand to meet code requirements for bathrooms. In order to accommodate the success of Taylor's Refresher, additional restrooms are necessary from a public health point of view. It is unlikely that denying such a request will stop people from frequenting Taylor's and will certainly cause continued hardship and frustration for both patrons and owners alike. Adequacy of bathroom facilities is not considered a special privilege.
 - c. The authorization of the Variance will not be of substantial detriment to adjacent properties, located some distance away on adjacent properties.../...The new facility will not materially impair the purpose and intent of this title or the public interest, rather it will support public health by providing enough bathrooms to accommodate demand. The construction of the facility does not adversely affect the intention of the General Plan; rather supports service delivery and public health.
 - d. The circumstance facing Taylor's Refresher is unique to this piece of property and would not be reasonably practicable to make broad regulatory changes to support this type of request for others.
 - e. The Unified Building Code requires one bathroom per twenty-five seats. Taylor's currently has 125 seats, requiring five stalls, but only has one. The existing condition is detrimental to the public health. The new facilities will be in compliance with code.
- I. This condition was consistent with Municipal Code Chapter 13.20.020, and Municipal Code 13.20.070. Gott's Roadside/Appellant did not object to this condition during the Planning Commission proceedings, and under State law (Government Code section 65009), it's time to challenge the condition, which is now final and binding, has lapsed.
 - J. All persons and entities which use City services are charged with constructive notice of the legally adopted rates for the services they use. While Gott's Roadside/Appellant claims the City never told it what the rates would be for sewer services it decided to use, it was constructively on notice of the rates, and in any event should have investigated and asked what the rates were when the Planning Commission imposed the connection condition and again when Gott's Roadside/Appellant actually connected to the sewer in 2013 and began using the service.

- K. The City's rates, which were the subject of a rate study, are based on the costs of operating the system; the rates for all rate payers depend on all users of the system who burden the system paying their share. Gott's Roadside has used and burdened the sewer system since its connection in June 2013.
2. The City Council therefore upholds the administrative decision back-billing Gott's Roadside/Appellant in the amount of \$67,904.81 for sewer services at 933 Main Street from June 2015. The Council further denies Gott's Roadside administrative appeal of that administrative decision.

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows: The evidence shows that Gott's Roadside is responsible for the full use of the City's sewer system per Design Review and Variance No. 2004-32, Municipal Code Chapter 13.20.020, and Municipal Code 13.20.070. The City Council therefore denies Gott's Roadside administrative appeal for a back-billing adjustment made to their account in the amount of \$67,904.81 for sewer services at 933 Main Street.

Approved at a Regular Meeting of the St. Helena City Council on January 12, 2016, by the following vote:

Mayor Galbraith:	_____
Vice Mayor White:	_____
Councilmember Crull:	_____
Councilmember Dohring:	_____
Councilmember Pitts:	_____

APPROVED:

ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk

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**Report to the City Council
Meeting of January 12, 2016**

Agenda Section: New Business

Subject: 2016 City Council assignments to various City and Napa County Boards and Commissions

CEQA Status: Not a CEQA project

Prepared By: Cindy Black, City Clerk

Approved By: Jennifer Phillips, City Manager

BACKGROUND

Council Members sit on various collaborative agency committees which include:

- a. City/SHUSD/Chamber/NVC (Monrovia)
- b. St. Helena Sewer District No. 1
- c. Association of Bay Area Governments (ABAG) - Executive Board
- d. Association of Bay Area Governments (ABAG) - General Assembly
- e. Napa Valley Tourism Corporation/ St. Helena Tourism Improvement District (SHTID)
- f. League of California Cities – North Bay Division
- g. Napa County City Selection Committee
- h. Napa County Flood Control and Water Conservation District
- i. Napa County Gang & Youth Violence Commission
- j. Napa County Local Agency Formation Commission (LAFCO)
- k. Napa County Transportation and Planning Agency (NCTPA)
- l. Napa County Watershed Information Center & Conservancy (WICC)

DISCUSSION

It is appropriate for the City Council to annually review the intergovernmental City Council assignments.

FISCAL IMPACT

None

RECOMMENDED ACTION

Affirm or recommend appointment to the:

- a. City/SHUSD/Chamber/NVC (Monrovia)
- b. Association of Bay Area Governments (ABAG) - General Assembly Alternate
- c. Napa Valley Tourism Corporation/ St. Helena Tourism Improvement District (SHTID)
- d. Napa County City Selection Committee Alternate

Make recommendation to the Napa County Board of Supervisors to affirm or recommend new member:

- a. Napa County Gang & Youth Violence Commission
- b. Napa County Transportation and Planning Agency (NCTPA) Primary and Alternate
- c. Napa County Watershed Information Center & Conservancy (WICC) Primary and Alternate
- d. Upper Valley Waste Management Board

ATTACHMENTS

Attachment 1 – 2015 Intergovernmental City Council Assignments

2015 St. HELENA INTERGOVERNMENTAL CITY COUNCIL ASSIGNMENTS

MAYOR/COUNCIL COMMITTEE ASSIGNMENTS:				
City/SHUSD/Chamber/NVC (Monrovia)		Date/Time & Location	Contact	Primary
- Meet to discuss interests in common - No Compensation		Meets: Qtrly	(707) 967-2701 Erica Madrigal	Mayor Galbraith Pitts Staff: City Manager Finance Director
				Alternate
700 Form Filers				
Not Required				
St. Helena Sewer District No. 1				
- Meets as needed 11-08-1984 Resolution 1984-597 Establishing Sewer District No. 1 and 1984-598 Description				All
Association of Bay Area Governments (ABAG) - Executive Board				
- Appointed by the City Selection Committee - To enhance the quality of life in the San Francisco Bay Area by leading the region in advocacy, collaboration, and excellence in planning, research and member services - Agency membership dues based on population - Compensation - \$150.00 per Meeting	101 Eighth St. Oakland CA 94607 Meets: 7.00 p.m., 3rd Thursday of every other month		(510) 464-7900 Fred Castro	Mayor Galbraith Term Expires 06/30/16
Association of Bay Area Governments (ABAG) - General Assembly				
- St. Helena City Council appoints member and alternate, no term limit - To enhance the quality of life in the San Francisco Bay Area by leading the region in advocacy, collaboration, and excellence in planning, research and member services - Agency membership dues based on population	101 Eighth St. Oakland CA 94607 Meets: Annually		(510) 464-7900	Mayor Galbraith Vice Mayor White
Not Required				
Napa Valley Tourism Corporation (Umbrella for Napa County)				
St. Helena Tourism Improvement District (SHTID) - Elected official appointed by the St. Helena City Council 7 members from St. Helena (4-members of lodging, 1-Chamber of Commerce, 1-Elected Official and 1-City Manager) Membership includes: - Kevin Dimond, Harvest Inn - Mark Hoffmeister, Wydown Hotel - Jennifer Phillips, City Manager - Chair - Marcelle Adderley, Inn at Southbridge - General Manager - Pam Simpson, Chamber Rep - Executive Director - Piretta Therene, El Borita Hotel - GM - Sharon Cruik, City Councilmember - No Compensation	Meets: Qtrly Southbridge		Catherine Heywood 707-260-0112	Cruik Staff: City Manager
Not Required				

2015 ST. HELENA INTERGOVERNMENTAL CITY COUNCIL ASSIGNMENTS

MAYOR/COUNCIL COMMITTEE ASSIGNMENTS:					
Date/Time & Location		Contact	Primary	Alternate	700 Form Filers
League of California Cities – North Bay Division		P.O. Box 458, Mill Valley, CA 94941 Meets: Quarterly	All		Not Required
- To maintain a central office of information and research for matters pertaining to City government and to influence legislation that affects cities - Agency membership dues required - No Compensation					
Napa County City Selection Committee		1195 Third Street, Suite 310, Napa 94558 Meets: 1:00pm, 3rd Tuesday of the month, Quarterly	Mayor Galbraith (Delegate)	Vice-Mayor White	Not Required
- In counties where 2 or more cities are incorporated, this Committee appoints city representatives to certain boards, commissions and agencies as prescribed by law (Section 50270, CA Gov't Code) - Representative must be Mayor (per above Gov't. Code) - No Compensation					
Napa County Flood Control and Water Conservation District		1195 Third Street, Room 305, Napa 94558 Meets: 1:30 a.m., 1st and 3rd Tuesday of the Month *Flood Control is located at 804 1st Street, Napa	Mayor Galbraith	Vice-Mayor White	Required
- Mission is the conservation and management of flood and storm waters to protect life and property; the maintenance of the County watershed using the highest level of environmentally sound practices, and to provide coordinated planning for water supply needs for the community. - Representative must be Mayor - Bylaws - No Compensation					
Napa County Gang & Youth Violence Commission		Location Changes Meets: 4:30 p.m., on 3rd Wednesdays, As needed/no less than quarterly	Mayor Galbraith Staff: Police Chief		Not Required
- Prevention, intervention & suppression of gang violence - City Council makes appointee recommendation to the Napa County Board of Supervisors - No Compensation					
Napa County League of Governments (NCLOG)		Location rotates Meets: 6:00 p.m., 2nd Thursday of the month, Quarterly	All		Not Required
- No Compensation - Bylaws - Mayors of the City and County rotate the Chair position					
Napa County Local Agency Formation Commission (LAFCO)		1195 Third Street, Napa 94558 Meets: 4:00p.m., 1st Thursday of the month *LAFCO is located at 1030 Seminary, Napa	Pitts Term Expires 5/1/2017		Required Mail to: Kathy Mabry 1030 Seminary St, Suite B Napa CA 94558
- City Selection Committee makes appointment - Four-Year Term Gov Code, Informal Policy Two-Year Rotation \$125 per meeting					

2015 St. HELENA INTERGOVERNMENTAL CITY COUNCIL ASSIGNMENTS

MAYOR/COUNCIL COMMITTEE ASSIGNMENTS:				
	Date/Time & Location	Contact	Primary	Alternate
Napa County Transportation and Planning Agency (NCTPA)				
• 2 Members and 1 alternate (1-Mayor with City Council appointing the other/primary member and alternate) • Bylaws	Meets: 1:30p.m., 3rd Wednesday of the month 625 Burnell Street, Napa 94559	Karrie Sanderlin (707) 259-8633 or Kate Miller	Mayor Galbraith Vice Mayor White Staff: City Manager Public Works Director	Dohring
Napa Valley Transportation Authority (NVTA)				
• NCTPA and NVTA are the same body • 2 Members • Oversees the Transportation Sales Tax Expenditure Plan	Meets: 1:30p.m., 3rd Wednesday of the month 625 Burnell Street, Napa 94559	Karrie Sanderlin (707) 259-8633 or Kate Miller	Vice Mayor White Staff: City Manager Public Works Director	Dohring
Napa County Watershed Information Center & Conservancy (WICC)				
• City Council makes appointment recommendation to the Board of Supervisors • No Compensation • BOS Resolution 02-202	Meets: 4:00p.m., 4th Thursday of the month 1125 Third Street, 2nd Floor Conference Room, Napa 94558	Jeff Sharp, Liaison Gladys or Nadine	Vice Mayor White	Dohring
Upper Valley Waste Management Board				
• City Council makes appointment recommendation to the Board of Supervisors	Meets: 1:30p.m., 3rd Monday of the month Yountville Town Council Chambers	Alice Ramirez, Board Clerk (707) 259-6716	Crull	Dohring
				700 Form Fillers Required Mail to: Board Secretary 625 Burnell Street Napa CA 94559
				Required Mail to: Board Secretary 625 Burnell Street Napa CA 94559

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Report to the City Council
Council Meeting of January 12, 2016

Agenda Section: New Business

Subject: Status Update of Reissuance of National Pollution Discharge Elimination System Permit and Issuance of Cease and Desist Order for the Wastewater Treatment and Reclamation Plant

CEQA Status: This action is not a CEQA Project

Prepared By: Steven Palmer, PE – Director of Public Works/City Engineer

Approved By: Jennifer Phillips, City Manager

BACKGROUND

The City has operated the wastewater treatment and reclamation plant (WWTRP) under Regional Water Quality Control Board Order No. R2-2010-0105, also referred to as National Pollution Discharge Elimination System (NPDES) Permit CA0038016, since 2010. This permit term is ending and, as required by State law, the City filed a Report of Waste Discharge as application for a new permit in 2015.

The San Francisco Bay Regional Water Quality Control Board (Regional Board) issued a draft permit and cease and desist order for a public comment period which closed on November 23, 2015. The Regional Board will consider adopting the draft permit and draft cease and desist order at its meeting on January 13, 2016. The Regional Board staff report for the January 13 meeting is available on their website at the following link:

http://www.waterboards.ca.gov/sanfranciscobay/board_info/agendas/2016/January/6ab_ssr.pdf

DISCUSSION

The Regional Board's approach to the reissuance of this permit is to issue a new permit with more stringent effluent discharge limits for biochemical oxygen demand (BOD) and total suspended solids (TSS) that the City's WWTRP cannot currently meet on a consistent basis; and simultaneously issue a cease and desist order (CDO) with a time schedule for the City to modify the WWTRP to meet the new, more stringent limits.

The most significant changes in the new permit, also known as a tentative order (TO), are reducing the BOD limits from 45 mg/L to 25 mg/L weekly average (30 mg/L to 15

mg/L monthly); and TSS limits from 45 mg/L to 20 mg/L weekly average (30 mg/L to 15 mg/L monthly).

The CDO allows the City to continue complying with the current effluent limits for BOD and TSS, while it complies with the following Task and Time Schedule.

Task	Deadline
a. Submit a Draft Feasibility Study that analyzes various options to meet the NPDES permit effluent limits in Table 1. The study shall analyze all of the options described in the March 2015 Wastewater Facilities Evaluation Update and include other options that would achieve compliance. For each option considered, evaluate (i) the anticipated effectiveness and reliability of the treatment, (ii) the amount of time it will take to implement, (iii) the ability to produce recycled water (recycled water uses to be considered shall include those that offset local potable water use or provide environmental enhancement, including but not limited to turf and vineyard irrigation) or the additional efforts required to produce such recycled water, and (iv) the costs.	September 1, 2016
b. Submit a Final Feasibility Study that addresses any Executive Officer comments on the Draft Feasibility Study and identifies a preferred option.	December 1, 2016
c. Submit a Draft Workplan for implementation of the preferred option identified in task 2.b and a schedule for implementation. Include a plan and schedule for funding the project.	June 1, 2017
d. Submit a Final Workplan that addresses any Executive Officer comments on the Draft Workplan required by task 2.c	September 1, 2017
e. Submit notification documenting the beginning of implementation of the Final Workplan.	March 1, 2019
f. Submit documentation of the completion of Final Workplan implementation and begin operation of the new or modified treatment system.	September 1, 2020
g. Submit a report evaluating the effectiveness of the new or modified treatment system and whether it is likely to meet the requirements of the NPDES permit. If the system appears unlikely to meet the requirements of the NPDES permit, identify and implement measures to ensure compliance.	December 1, 2020
h. Achieve full compliance with the 2016 Permit effluent limits listed in Table 1 of this Cease and Desist Order	February 28, 2021

This task and time schedule requires the City to comply with the new effluent limits by February 28, 2021. The first task is to prepare a feasibility study to evaluate means to meet the new discharge limits, discuss the potential for recycled water production and use, and provide a recommendation to the Regional Board. The improvements

identified by the feasibility study could include constructing a solids management system, algae removal system, or advanced secondary treatment.

City staff has reviewed the TO and the CDO, and provided comments to the Regional Board (Attachment 1). The most significant comment from the City was that a CDO is not required, and the time schedule in the CDO could be included in the TO instead. The Regional Board addressed most of the City's comments, but continues to assert that Regional Board policy does not allow compliance schedules in the TO in this instance, and a CDO is required. The Regional Board response to the City's comments is included as Attachment 2.

The Regional Board will take action on the TO and CDO at its board meeting on January 13, 2016. The only comment letter presented to the Board is the comment letter from the City, and the action is listed on the uncontested agenda. City staff will attend the meeting, but does not intend to contest or oppose the adoption of the TO and CDO.

FISCAL IMPACT

In order to comply with the TO and CDO, the City will need to prepare a feasibility study and workplan which are currently not budgeted. As consultants are selected to prepare these documents, City staff will request needed budget adjustments from the City Council.

Additionally, the City will need to construct significant improvements to the WWTRP. The total cost of these improvements is currently unknown. While the Fiscal Year 2015/2016 operating budget and the 2015-2020 Capital Improvement Plan include some improvement projects at the WWTRP; the currently programmed amount is not sufficient to comply with the CDO and additional funding will likely be needed. This will be evaluated more thoroughly during preparation of the feasibility study and workplan.

RECOMMENDED ACTION

No action is required at this time. This item is for information only.

ATTACHMENTS

1. City Comment Letter
2. Regional Board Response to City Comments



City of St. Helena

*"We will conduct city affairs on behalf of our citizens
using an open and creative process."*

1480 Main Street
St. Helena, CA 94574
Phone: (707) 967-2792
Fax: (707) 963-7748

www.cityofsthelelena.org

November 23, 2015

Vince Christian
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612
By email: VChristian@waterboards.ca.gov

**Subject: City of St. Helena Comments on Tentative Orders for the City of St. Helena
Wastewater Treatment and Reclamation Plant - Reissuance of NPDES Permit
No. CA0038016 and Issuance of a Cease and Desist Order**

Dear Mr. Christian:

The City of St. Helena has reviewed the Tentative Orders (TO) issued by the Regional Water Board for a reissued discharge permit and a cease and desist order to compel treatment plant modifications. The attached comments are being submitted to meet the November 23, 2015 deadline for your consideration.

The attached comments focus mainly on whether there is a need for a CDO rather than a time schedule in the permit, as well as the City's belief that it is not appropriate to assume or mandate the types of actions that will be necessary to meet advanced secondary treatment standards. Additionally, the City has concerns with the inclusion of water reclamation permit violations in the context of the separate matter of NPDES permit reissuance. The City appreciates the Regional Water Board staff's efforts on these matters. The City will continue to maintain and operate its wastewater treatment facilities to ensure production of high quality effluent while practicing responsible stewardship of the Upper Napa River.

The City would like to meet with you to discuss our attached comments on these Tentative Orders. Please contact me at 707-968-2624 (or by email, SPalmer@cityofsthelelena.org) to schedule a convenient time, or if you have any questions on the attached comments.

Sincerely,

Steven Palmer, P.E.
Public Works Director/City Engineer

Attachment 1 – Comments on Reissuance of NPDES Permit No. CA0038016

November 20, 2015
Page 2

Attachment 1.1 – Process Flow Diagram (.jpg format)

Attachment 2 – Comments on Issuance of Cease and Desist Order

Cc: Bill Johnson, wjohnson@waterboard.ca.gov
Lila Tang, ltang@waterboards.ca.gov
Kristine Corneillie, KrisC@lwa.com

ATTACHMENT 1

November 23, 2015

City of St. Helena
Wastewater Treatment and Reclamation Facility

Comments Regarding the Reissuance of NPDES Permit No. CA0038016

The City of St. Helena (City) appreciates the opportunity to submit the following comments on the Tentative Order (TO) released for review and comment on October 21, 2015.

For suggested revisions to the text of the TO, underline is shown for suggested additions, and ~~strike-out~~ is shown for suggested deletions. The City requests that any changes based on comments to the Tentative Order, also be made in the Fact Sheet.

Comments Regarding Tentative Order

1. The collections system is thoroughly covered by other requirements and should not be regulated or subject to argument that it is regulated, under this NPDES Permit.

The City agrees that it is subject to the general collection system WDRs as adopted and amended by the State Water Board as well as prohibitions against unauthorized discharge that exist in state and federal law. It causes confusion and may create unnecessary risk to the City to restate the already-existing requirements, and the cross-references in section VI.A.5.b. to Appendices of the permit are not applicable and/or create uncertainty relative to compliance with the State Water Board WDRs and the City's Sewer System Management Plan (SSMP). The City recommends the deletion of discharge prohibition III.E. and section VI.A.5.b. and that the Regional Water Board simply reference, in the Findings, that the collection system and SSOs are addressed in separate WDRs and implementing measures.

III. DISCHARGE PROHIBITIONS

~~E. Any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.~~

VI. PROVISIONS

C. Special Provisions

5. Special Provisions for Municipal Facilities

~~b. Collection System Management. The Discharger shall properly operate and maintain its collection system (see Attachment D section I.D). The Discharger shall report any noncompliance (see Attachment D sections V.E.1 and V.E.2) and mitigate any discharge from its collection system that violates this Order (see Attachment D section I.C).~~

~~The Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (General Collection System WDRs), State Water Board Order No. 2006-0003 DWQ as amended by State Water Board Order No. WQ 2013-0058 EXEC, has requirements for operation and maintenance of separate sanitary sewer collection~~

~~systems and for reporting and mitigating sanitary sewer overflows from the separate sanitary sewer portion of the Discharger's collection system. While the Discharger must comply with both the General Collection System WDRs and this Order, the General Collection System WDRs more clearly and specifically stipulate requirements for operation and maintenance and for reporting and mitigating sanitary sewer overflows. Implementation of the General Collection System WDRs for proper operation and maintenance and mitigation of sanitary sewer overflows will satisfy the corresponding federal NPDES requirements specified in Attachment D (as supplemented by Attachment G). Following the notification and reporting requirements in the General Collection System WDRs will satisfy NPDES the corresponding reporting requirements specified in Attachment D (as supplemented by Attachment G) for sanitary sewer overflows from the separate sanitary sewer portion of the collection system.~~

2. The frequency of BOD and TSS effluent sampling is inconsistent with the influent sampling requirements and with other dischargers to the Napa River.

The City requests that the BOD and TSS effluent sampling required in **Table E-3. Effluent Monitoring – Monitoring Location EFF-001** be changed to once per week (1/Week) to be consistent with the influent sampling conducted to calculate percent removals for BOD and TSS, and as is found in other nearby Napa River discharger permits. A greater than 1/Week frequency does not provide additional benefit beyond the one paired influent sampling, and is therefore is not an efficient use of City funds.

Table E-3. Effluent Monitoring—Monitoring Location EFF-001

Parameter	Units	Sample Type	Minimum Sampling Frequency
Flow ^[1]	MGD	Continuous	Continuous/D
Biochemical Oxygen Demand (5-day @ 20°C)	mg/L	C-24	3/Week 1/Week
Total Suspended Solids	mg/L	C-24	3/Week 1/Week

3. Please replace Attachment C with the attached process flow diagram which includes the City's sampling locations EFF-001 and REC-001, and a more accurate depiction of effluent flow paths.

See attached .jpg file for insertion into the Final Order.

4. Table F-4 includes violations of Order 87-090, which this Tentative Order is not replacing nor revising. It is not appropriate to highlight violations of a separate permit during the reissuance of Permit No. CA0038016.

The City is working towards addressing the violations italicized in Table F-4 and would like this list of violations related to the reclamation permit removed from this Order. There is no precedent for including violations of a separate order, and the inclusion results in a negative bias towards the wastewater treatment and reclamation plant performance.

5. The Permit should not state that any specific upgrade for advanced secondary treatment is absolutely necessary.

The Permit specifies that the City will be upgrading the wastewater treatment and reclamation plant to advanced secondary treatment. However, the main goal is to meet more stringent effluent limitations for BOD and TSS which are consistent with advanced secondary treatment standards. If the City is able to meet these effluent limitations with process modifications, that may be the path chosen. Table 3 in the CDO specifies the completion of a Feasibility Study. At the time of Study completion, the City will decide what the path forward will be for complying with these more stringent effluent limitations. Therefore, the City requests that the permit language be edited to indicate that the wastewater treatment and reclamation plant processes will be modified "to comply with advanced secondary treatment standards," rather than saying the City will or implying that it must upgrade facilities in any specific way.

FACT SHEET

II. FACILITY DESCRIPTION

E. Planned Changes

To comply with the advanced secondary treatment limitations for BOD and TSS in Table 4 of this Order, the Discharger will upgrade the plant to meet advanced secondary treatment standards~~from secondary treatment to advanced secondary treatment.~~

Concurrent with adoption of this Order, the Regional Water Board considered a cease and desist order containing a time schedule of tasks to achieve effluent quality consistent with advanced secondary treatment.

Page F-13.

- An equivalent level of protection is provided when the discharge ~~receives~~ meets effluent quality standards consistent with advanced-secondary treatment. The BOD and TSS effluent limits in Table 4 of the Order reflect advanced secondary treatment standards.

ATTACHMENT 2

November 23, 2015

City of St. Helena
Wastewater Treatment and Reclamation Facility

Comments Regarding the Issuance of Cease and Desist Order

The City of St. Helena (City) appreciates the opportunity to submit the following comments on the tentative Cease and Desist Order (CDO) released for review and comment on October 21, 2015.

For suggested revisions to the text of the tentative CDO, underline is shown for suggested additions, and ~~strike-out~~ is shown for suggested deletions.

Comments Regarding Tentative Cease and Desist Order – Substantive

1. A CDO is inappropriate; A time schedule can and should be included in the Permit

It is unnecessary and inappropriate to impose a CDO based on anticipated exceedances of newly-imposed effluent limitations for BOD and TSS. The Regional Water Board can instead include a schedule for compliance in the body of the permit, and the interim limits in the CDO can be included as interim limits in the permit.

The Fact Sheet (p. F-13) explains that the Regional Water Board would be imposing new BOD and TSS limits based on a changed application or interpretation of the Basin Plan. Obviously, the City must meet effluent limitations that the Board adopts, but it is unduly harsh to also place the City in immediate violation of the new requirements. This also creates unnecessary risk of legal liability. By contrast, if the time schedule and interim limits were included in the permit itself, the compliance obligations and schedule can be the same as if they were in a CDO, but the City would not face the negative consequences of non-compliance with the permit or an enforcement action.

In addition, the compliance schedule should not mandate a means of compliance. Task a. in Table 3 refers to "modify or rebuild" options; task c. refers to a workplan for construction task e. refers to "beginning of construction"; task f. refers to "completion of construction" and task g. refers to "the new treatment system." The City acknowledges that facilities construction or modification may be necessary. But it is also possible that other activities such as operational modifications, or a combination of actions, can result in compliance. The Regional Water Board can impose effluent limitations but may not prescribe the method of compliance. Task a. should be modified to simply refer to "various options to meet the NPDES permit effluent limitations..." Tasks c., e. and f. should refer to "compliance actions" rather than "construction." Task g. should (in both sentences) refer to the "effectiveness of the treatment system." Finally, the date for Task c. appears to be a mistake, as it occurs before Task a. and Task b. This error then propagates through the rest of the time schedule. Appropriate modifications to the dates are provided below.

Table 3: Tasks and Time Schedule

Task	Deadline
a. Submit a Draft Feasibility Study that analyzes various options to modify or rebuild the Plant so that the discharge will meet the NPDES permit effluent limits in Table 1. The study shall analyze all of the options described in the March 2015 <i>Wastewater Facilities Evaluation Update</i> and include other options that would achieve meet advanced secondary treatment <u>standards</u> . For each option considered, evaluate (i) the anticipated effectiveness and reliability of the treatment, (ii) the amount of time it will take to implement, (iii) the ability to produce recycled water (recycled water uses to be considered shall include those that offset local potable water use or provide environmental enhancement, including but not limited to turf and vineyard irrigation) or the additional efforts required to produce such recycled water, and (iv) the costs.	September 1, 2016
b. Submit a Final Feasibility Study that addresses any Executive Officer comments on the Draft Feasibility Study and identifies a preferred option.	December 1, 2016
c. Submit a Draft Workplan for construction of the preferred option identified in task b and a schedule for implementation. Include a plan and schedule for funding the project.	June 1, 2016 <u>2017</u>
d. Submit a Final Workplan that addresses any Executive Officer comments on the Draft Workplan required by task c.	September 1, 2016 <u>2017</u>
e. Submit notification documenting the beginning of construction <u>compliance actions</u> .	September 1, 2018 <u>March 1, 2019</u>
f. Submit documentation of the completion of construction <u>compliance actions</u> and begin operation of the new <u>modified</u> treatment system.	March 1 <u>September 1, 2020</u>
g. Submit a report evaluating the effectiveness of the new <u>modified</u> treatment system and whether the new system is likely to meet the requirements of the NPDES permit. If the effectiveness of the modified <u>new</u> system appears unlikely to meet the requirements of the NPDES permit, identify and implement measures to ensure compliance.	May 31, 2020 <u>December 1, 2020</u>
h. Achieve full compliance with the 2016 NPDES Permit effluent limitations listed in Table 1 of this Cease and Desist Order.	February 28, 2021

2. The CDO should not state that an upgrade to advanced secondary treatment is absolutely necessary.

The Cease and Desist Order specifies that the City will be upgrading the wastewater treatment and reclamation plant to advanced secondary treatment. However, the main goal is to meet more stringent effluent limitations for BOD and TSS which are consistent with advanced secondary treatment standards. If the City is able to meet these effluent limitations with process modifications, that may be the path chosen. Table 3 in the CDO specifies the completion of a Feasibility Study. At the time of Study completion, the City will decide what the path forward will be for complying with these more stringent effluent limitations. Therefore, the City requests that the permit language be edited to indicate that the wastewater treatment and reclamation plant processes will be modified "to comply with advanced secondary treatment standards," rather than saying the City will or implying that it must upgrade facilities in any specific way.

3. Basin Plan Table 4-1, Discharge Prohibition 1, prohibits discharges...the Regional Water Board determined that the Discharger must provide equivalent protection when discharging to the Napa River by providing treated effluent that meets advanced secondary treatment standards. Therefore, the 2016 NPDES Permit imposed new, more stringent biochemical

oxygen demand (BOD) and total suspended solids (TSS) effluent limitations reflective of advanced secondary treatment standards.

- 3. The analysis of potential compliance issues with new BOD and TSS limits appears to be incorrect. Additionally, pointing out elevated BOD and TSS values measured in water sent to the reclamation field does not seem to be an appropriate comparison in the context of the NPDES permit and puts a negative bias on the perceived performance of the wastewater treatment and reclamation plant.**

It appears that the BOD and TSS monthly average limits comparison were not counted correctly. All samples collected for BOD (or TSS) in a month should be averaged to compare to the monthly average limit. If this average exceeds the monthly limit, then that is one (1) violation. From January 2010 through August 2015, there are only 68 months, which means there is a potential for maximum of 68 violations of a monthly limit.

Additionally, it is not appropriate to call out the elevated BOD and TSS values measured in samples of water that is sent to the reclamation field. The reclamation field is managed under a separate permit, Order 87-090, which has a BOD maximum limit of 40 mg/L, and no limitation for TSS.

Page 2:

4. The Plant is currently designed to provide only secondary treatment, not advanced secondary treatment. Plant effluent monitoring data from January 2010 through August 2015 show ~~many~~ instances when the Discharger would not immediately comply with the new BOD and TSS effluent limitations. Of the ~~161~~ 21 days when BOD and TSS samples were collected (~~140 days when discharging to the irrigation fields and 21 days when discharging to the river~~), ~~84 results were~~ 1 result was above the new monthly average BOD limit, ~~47~~ 0 were above the new weekly ~~maximum~~ average BOD limit, ~~118~~ 3 were above the new monthly average TSS limit, and ~~96 were~~ 1 was above the new weekly average TSS limit.

Note, if the Regional Water Board does not intend to remove the sample results from water sent to the reclamation field from this analysis, the correct results are:

Of the 140 days when BOD and TSS samples were collected when discharging to the irrigation fields, 40 results were above the new monthly average BOD limit, 47 were above the new weekly average BOD limit, 54 were above the new monthly average TSS limit, and 96 were above the new weekly average TSS limit.

Typographical/Non-Substantive Comments on Cease and Desist Order

- 3. The City also submits the following editorial comments:**

Page 1:

The following paragraph should state that "tidal" waters are over 40 miles away, rather than "non-tidal" and also that the Discharger is being required to provide treated effluent that

meets advanced secondary standards, rather than absolutely requiring advanced secondary treatment.

3. Basin Plan Table 4-1, Discharge Prohibition 1, prohibits discharges to non-tidal waters. The Napa River is non-tidal in the vicinity of St. Helena. Basin Plan section 4.2 provides for exceptions to Basin Plan Discharge Prohibition 1 under certain circumstances, including when an inordinate burden would be placed on the Discharger relative to the beneficial uses protected, and an equivalent level of environmental protection can be achieved by alternate means. In reissuing the 2016 NPDES Permit, the Regional Water Board found that requiring the Discharger to build an outfall to ~~non~~-tidal waters (over 40 miles away) or to not discharge under any circumstances, including wet weather, would impose an undue burden. In granting the exception, the Regional Water Board determined that the Discharger must provide equivalent protection when discharging to the Napa River by providing treated effluent that meets advanced secondary treatment standards. Therefore, the 2016 NPDES Permit imposed new, more stringent biochemical oxygen demand (BOD) and total suspended solids (TSS) effluent limitations reflective of advanced secondary treatment standards.

Page 2:

The reference in the following paragraph should be to the weekly average BOD limit, not the weekly maximum.

4. The Plant is currently designed to provide only secondary treatment, not advanced secondary treatment. Plant effluent monitoring data from January 2010 through August 2015 show many instances when the Discharger would not immediately comply with the new BOD and TSS effluent limitations. Of the 161 days when BOD and TSS samples were collected (140 days when discharging to the irrigation fields and 21 days when discharging to the river), 84 results were above the new monthly average BOD limit, 47 were above the new weekly ~~average maximum~~ BOD limit, 118 were above the new monthly average TSS limit, and 96 were above the new weekly average TSS limit.

The following paragraph should be edited to refer to the City of St. Helena, rather than the City of Calistoga.

5. The Plant currently relies on a series of treatment ponds that use aerobic and anaerobic bacteria to reduce organic matter concentrations. To meet the new BOD and TSS effluent limitations in the 2016 NPDES Permit, the Discharger will likely need to incorporate filtration or another process into its treatment system. Such a process could offer an added benefit if the effluent met requirements for unrestricted recycled water use. In its May 2006 "Plant Upgrade and Water Recycling Design Memorandum," the Discharger identified about 65 acres of turf and 4,700 acres of vineyard area that could potentially be irrigated with recycled water. Of this 4,700 acres, 1,148 acres of vineyard area are within the City of ~~Calistoga~~ St. Helena limits.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

RESPONSE TO WRITTEN COMMENTS on
Tentative Order for Reissuance of NPDES Permit and
Adoption of Tentative Cease and Desist Order for the
City of St. Helena Wastewater Treatment and Reclamation Plant
St. Helena, Napa County

The Regional Water Board received written comments from the City of St. Helena on tentative orders distributed on October 23, 2015, for public comment.

Regional Water Board staff has summarized the comments shown below in *italics* (paraphrased for brevity) and followed each comment with staff's response. For the full content and context of the comments, please refer to the comment letters.

This document also contains staff-initiated revisions.

All revisions to the tentative order are shown with underline text for additions and strikethrough ~~text~~ for deletions.

Comments on Tentative Order for Reissuance of NPDES Permit

Permit Comment 1: *The collection system is covered by the statewide general waste discharge requirements (WDR) for collection systems and should not be regulated by this permit. The duplicative requirements cause confusion and uncertainty.*

Response: We disagree. Publicly-owned treatment works (POTWs), including this facility, are subject to NPDES permits. The federal Clean Water Act and its implementing regulations define "POTW" to include wastewater treatment plants and the sewers, pipes, and other conveyances that convey wastewater to the treatment plants (40 C.F.R. section 403.3[q]). Clean Water Act section 301(b) sets forth POTWs as a class subject to NPDES permit requirements. NPDES regulations at 40 C.F.R. section 122.21(a) similarly identify POTWs as entities subject to regulation. Because the collection system is part of the POTW subject to this permit, it is subject to NPDES permit requirements. Provision VI.C.5.b of the tentative order resolves any inconsistency between the NPDES permit requirements and the statewide WDR (note the staff-initiated editorial revisions below):

... While the Discharger must comply with both the General Collection System WDRs and this Order, the General Collection System WDRs more clearly and specifically stipulate requirements for operation and maintenance and for reporting and mitigating sanitary sewer overflows. Implementation of the General Collection System WDRs for proper operation and maintenance and mitigation of sanitary sewer overflows will satisfy the corresponding federal NPDES requirements... . Following the notification and reporting requirements in the

General Collection System WDRs will satisfy ~~NPDES~~ the corresponding NPDES reporting requirements specified in Attachment D...

Permit Comment 2: *The frequency of biochemical oxygen demand (BOD) and total suspended solids (TSS) effluent monitoring should be reduced from three times per week to once per week to match the influent monitoring frequency and the monitoring frequencies for other Napa River dischargers.*

Response: We disagree. While other Napa River dischargers have less frequent monitoring requirements, they also have more reliable advanced secondary treatment systems. The City's effluent monitoring indicates that its treatment is highly variable, which warrants more frequent monitoring. Monitoring three times per week is not excessive since monitoring is only required when discharging to the river.

We agree that the influent monitoring frequency should match the effluent monitoring frequency. We revised Monitoring and Reporting Program (MRP) Table E-2 as follows:

Table E-2. Influent Monitoring

Parameter	Units	Sample Type	Minimum Sampling Frequency
Flow ^[1]	MGD	Continuous	Continuous/D
Biochemical Oxygen Demand (5-day @ 20°C)	mg/L	C-24	3+/Week ^[2]
Total Suspended Solids	mg/L	C-24	3+/Week ^[2]

Permit Comment 3: *Attachment C should be replaced with a process flow diagram that shows the monitoring locations for EFF-001 and REC-001.*

Response: We agree and revised Attachment C.

Permit Comment 4: *It is inappropriate to include violations of Order No. 87-090 in Table F-4. The City is working on addressing those violations. Including them may result in negative bias toward wastewater treatment and reclamation plant performance.*

Response: We disagree. Fact Sheet Table F-4 describes the City's recent compliance history. While violations of Order No. 87-090 were not violations of the NPDES permit, they do reflect the reliability of treatment plant performance. This information supports the findings regarding treatment reliability in Fact Sheet section IV.A.6. Nevertheless, to more clearly distinguish the two types of violations, we separated them in Table F-4 in Fact Sheet section II.D.1 as shown below:

Treatment Plant. The table below lists violations from November 2010 through August 2015 of the previous order and, ~~where noted in italics~~, Order No. 87-090, which regulates discharge of the treated effluent to land.

Table F-4. Effluent Limitation Violations

Date	Violation	Unit	Effluent Limit	Reported Value
<i>NPDES Permit Violations</i>				
11/04/2010	Total Coliform 5-Sample Moving Median	MPN/100 mL	23	30

11/19/2010	Total Coliform 5-Sample Moving Median	MPN/100 mL	23	30
11/20/2010	Total Coliform 5-Sample Moving Median	MPN/100 mL	23	30
11/24/2010	Total Coliform 5-Sample Moving Median	MPN/100 mL	23	30
11/30/2010	Total Coliform 5-Sample Moving Median	MPN/100 mL	23	30
12/28/2010	Copper Daily Maximum	µg/L	24	123
09/27/2012	Total Coliform 5-Sample Moving Median	MPN/100 mL	23	37
10/12/2012	Total Coliform Single-Sample Maximum	MPN/100 mL	240	500
10/12/2012	Total Coliform 5-Sample Moving Median	MPN/100 mL	23	30
10/15/2012	Total Coliform 5-Sample Moving Median	MPN/100 mL	23	30
10/15/2012	Total Coliform 5-Sample Moving Median	MPN/100 mL	23	50
10/15/2012	Total Coliform 5-Sample Moving Median	MPN/100 mL	23	30
10/23/2012	Total Coliform 5-Sample Moving Median	MPN/100 mL	23	50
12/26/2012	Residual Chlorine Daily Maximum	mg/L	0.0	0.4
12/27/2012	Residual Chlorine Daily Maximum	mg/L	0.0	0.1
05/22/2013	Total Coliform 5-Sample Moving Median	MPN/100 mL	23	30
05/23/2013	Total Coliform 5-Sample Moving Median	MPN/100 mL	23	30
10/25/2013	Total Coliform 5-Sample Moving Median	MPN/100 mL	23	50
10/30/2013	Total Coliform 5-Sample Moving Median	MPN/100 mL	23	50
10/31/2013	Total Coliform 5-Sample Moving Median	MPN/100 mL	23	50
02/12/2014	Total Coliform 5-Sample Moving Median	MPN/100 mL	23	33
02/13/2014	Total Coliform 5-Sample Moving Median	MPN/100 mL	23	33
02/14/2014	Total Coliform 5-Sample Moving Median	MPN/100 mL	23	33
12/22/2014	Cyanide, Total (as CN) 30-Day Average	µg/L	15	16
Water Reclamation Requirements (Order No. 87-090) Violations				
12/24/2010	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	76
03/02/2012	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	>220
06/28/2012	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	43
07/03/2012	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	43
09/17/2012	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	42
09/25/2012	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	44
10/08/2012	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	87
06/12/2013	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	42
06/20/2013	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	49
09/03/2013	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	45
09/20/2013	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	44
10/04/2013	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	101
10/11/2013	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	51
11/08/2013	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	46
12/04/2013	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	67
12/13/2013	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	54
05/01/2014	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	46
06/01/2014	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	46
06/17/2014	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	51
08/08/2014	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	70
08/28/2014	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	59
09/09/2014	Biochemical Oxygen Demand Daily Maximum ^(H)	mg/L	40	59

11/25/2014	Biochemical Oxygen Demand Daily Maximum ^{HH}	mg/L	40	81
11/26/2014	Biochemical Oxygen Demand Daily Maximum ^{HH}	mg/L	40	61
12/09/2014	Biochemical Oxygen Demand Daily Maximum ^{HH}	mg/L	40	111
12/10/2014	Biochemical Oxygen Demand Daily Maximum ^{HH}	mg/L	40	124
03/12/2015	Biochemical Oxygen Demand Daily Maximum ^{HH}	mg/L	40	76

Footnote:^{HH} Violation of Order No. 87-090.

Permit Comment 5: *The permit should not specify any particular upgrade for advanced secondary treatment. The tentative cease and desist order would require a feasibility study. The City will decide its path for compliance after the feasibility study is complete.*

Response: We agree. To clarify, when we refer to “advanced secondary treatment,” we mean achieving the BOD and TSS effluent limits set forth in Table 4 of the tentative order. There is no other regulatory definition for “advanced secondary treatment standards” so we refrain from using that term. We revised Fact Sheet section II.E as follows:

To comply with the ~~advanced secondary treatment~~ new limitations for BOD and TSS in Table 4 of this Order, which reflect pollutant levels achievable by implementing the Discharger will upgrade the plant from secondary treatment to advanced secondary treatment, the Discharger will upgrade the plant. Concurrent with adoption of this Order, the Regional Water Board considered a cease and desist order containing a time schedule of tasks to achieve advanced secondary treatment.

We revised Fact Sheet section IV.A.6 (sixth bullet) as follows:

An equivalent level of protection is provided when the discharge ~~receives advanced secondary treatment. The~~ meets the BOD and TSS effluent limits in Table 4 of the Order, which reflect advanced secondary treatment.

Staff-Initiated Revisions:

In addition to making minor editorial and formatting revisions, we made the following staff-initiated revisions:

We revised section IV.D of the Order as follows (to be consistent with the Basin Plan Table 4-3, which requires a three-sample median minimum survival of 90 percent):

Whole Effluent Acute Toxicity. ~~The survival rate at Discharge Point No. 001 shall not be less than 70 percent, with compliance measured at Monitoring Location EFF-001 as described in the MRP. A bioassay test showing less than 70 percent survival represents a violation of this effluent limit. Discharges at Discharge Point No. 001 shall meet the following acute toxicity limitations, with compliance measured at Monitoring Location EFF-001 as described in the MRP:~~

1. A three-sample median value of not less than 90 percent survival; and
2. A single-sample maximum value of not less than 70 percent survival.

These acute toxicity limitations are defined as follows:

- **Three-sample median.** A bioassay test showing survival of less than 90 percent represents a violation of this effluent limit if one of the past two bioassay tests also shows less than 90 percent survival.
- **Single sample maximum.** A bioassay test showing survival of less than 70 percent represents a violation of this effluent limit.

If the Discharger can demonstrate that toxicity exceeding the levels cited above is caused by ammonia... .

We revised MRP Table E-3 as follows:

Table E-3. Effluent Monitoring—Monitoring Location EFF-001

Parameter	Units	Sample Type	Minimum Sampling Frequency
Flow ^[1]	MGD	Continuous	Continuous/D
⋮	⋮	⋮	⋮
Copper	µg/L	C-24	1/Month
Cyanide ^[8]	µg/L	<u>Grab</u> C-24	1/Month
River Flow-to-Effluent Flow Ratio ^[9]	---	Calculated	1/Day

We revised Fact Sheet section IV.C.2.a.iii (second paragraph) as follows:

To translate the un-ionized ammonia objectives, pH, salinity, and temperature data were obtained from the Napa River from December 2010 through December 2012 ~~the RMP station nearest to the outfall (BG30)~~. The un-ionized fraction of total ammonia was calculated as follows: ...

Comments on Tentative Cease and Desist Order (CDO)

CDO Comment 1: *A CDO is inappropriate. The Regional Water Board should instead include a compliance schedule within the permit that includes interim requirements and a timeline to achieve compliance. It is unduly harsh to place the City in immediate violation of new more-stringent BOD and TSS effluent limits. This creates an unnecessary risk of legal liability.*

The Regional Water Board can impose effluent limitations but may not prescribe the method of compliance. Table 3 Tasks (a) and (g) should not mandate modifying or rebuilding the treatment system. Table 3 Tasks (e) and (f) should not mandate new construction. Although new construction may be necessary, compliance may also be achieved by other means.

The deadline for Table 3 Task (c) appears to be a mistake since it occurs before the deadline for Tasks (a) and (b). This error is propagated through the rest of the time schedule.

Response: We mostly disagree, but we did revise the text in some instances as described below.

A compliance schedule within the permit is not authorized. California's "Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits" (State Water Board Resolution No. 2008-0025, Compliance Schedule Policy) authorizes compliance schedules only for "an existing discharger to implement a new, revised, or newly interpreted water quality objective or criterion in a water quality standard that results in a permit limitation more stringent than the limitation previously imposed." Prohibitions are not considered to be water quality objectives or criteria, and while the Compliance Schedule Policy recognizes that Regional Water Boards may delay the effective date of newly adopted prohibitions, the Compliance Schedule Policy does not otherwise authorize compliance schedules for prohibitions.

Here, the more stringent BOD and TSS limits are not derived from a new, revised, or newly interpreted water quality objective or criterion. Instead, they result from consistent interpretations of the existing Basin Plan Discharge Prohibition 1, which prohibits discharges to non-tidal waters, and the applicable exception, which allows non-tidal discharges where the prohibition would inordinately burden a discharger and an alternative discharge site, a higher level of treatment, or improved treatment reliability could provide environmental protection equivalent to enforcing the prohibition (Basin Plan table 4-1 and section 4.2).

Although the previous order authorized the City's discharges under this exception, the City's compliance history over the past permit term indicates that existing treatment performance is unreliable. Moreover, readily available pollution control measures can result in higher levels of treatment that better equate to the environmental protection achieved by not discharging at all. Thus, absent improvements to plant performance, granting the exception to the discharge prohibition would be inappropriate.

The more stringent effluent limits set forth in the tentative order will both encourage implementation of a higher level of treatment and facilitate improved treatment reliability, thereby offering the City a means to comply with the exception to Basin Plan Discharge Prohibition 1 and to continue discharging. The alternative would be that the City would have to cease discharging altogether to comply with the discharge prohibition.

Use of a compliance schedule is not authorized because the new effluent limits reflect a determination of the applicability of a prohibition, not a water quality objective or standard. However, this CDO provides a time schedule for the City's implementation activities. In accordance with Water Code section 13385, subdivision (j)(3), the CDO will exempt the City from mandatory minimum penalties if the City complies with this time schedule.

The tentative CDO is written to provide the City with flexibility in how it complies with the new BOD and TSS limits, as required under Water Code section 13360. Although it may be possible for the City to meet the new BOD and TSS limits without major new construction, existing plant performance indicates that modifications are necessary, at a minimum, and new processes are probably needed, as indicated in the City's recent engineering reports (see tentative CDO Findings 5 and 6). We revised Table 3 as follows (note that we corrected the deadlines):

Table 3: Tasks and Time Schedule

Task	Deadline
a. Submit a Draft Feasibility Study that analyzes various options to modify or rebuild the Plant so that the discharge will meet the NPDES permit effluent limits in	September 1, 2016

Task	Deadline
Table 1. The study shall analyze all of the options described in the March 2015 <i>Wastewater Facilities Evaluation Update</i> and include other options that would achieve <u>compliance advanced secondary treatment</u> . For each option considered, evaluate (i) the anticipated effectiveness and reliability of the treatment, (ii) the amount of time it will take to implement, (iii) the ability to produce recycled water (recycled water uses to be considered shall include those that offset local potable water use or provide environmental enhancement, including but not limited to turf and vineyard irrigation) or the additional efforts required to produce such recycled water, and (iv) the costs.	
b. Submit a Final Feasibility Study that addresses any Executive Officer comments on the Draft Feasibility Study and identifies a preferred option.	December 1, 2016
c. Submit a Draft Workplan for construction <u>implementation</u> of the preferred option identified in task 2.b and a schedule for implementation. Include a plan and schedule for funding the project.	June 1, 2016 <u>2017</u>
d. Submit a Final Workplan that addresses any Executive Officer comments on the Draft Workplan required by task 2.c.	September 1, 2016 <u>2017</u>
e. Submit notification documenting the beginning of <u>implementation of the Final Workplan</u> construction .	September 1, 2018 <u>March 1, 2019</u>
f. Submit documentation of the completion of <u>Final Workplan implementation</u> construction and begin operation of the new <u>or modified</u> treatment system.	March <u>September 1, 2020</u>
g. Submit a report evaluating the effectiveness of the new <u>or modified</u> treatment system and whether it the new system is likely to meet the requirements of the NPDES permit. If the new system appears unlikely to meet the requirements of the NPDES permit, identify and implement measures to ensure compliance.	May 31 <u>December 1, 2020</u>
h. Achieve full compliance with the 2016 NPDES Permit effluent limitations listed in Table 1 of this Cease and Desist Order.	February 28, 2021

CDO Comment 2: *The CDO should not imply that an upgrade to advanced secondary treatment is absolutely necessary. Finding 3 should be revised to state that the City must meet advanced secondary treatment standards.*

Response: We disagree for the reasons indicated in our response to Permit Comment 5. Nevertheless, we revised Finding 3 as follows:

Basin Plan Table 4-1, Discharge Prohibition 1, prohibits discharges to non-tidal waters. ... In reissuing the 2016 Permit, the Regional Water Board found that requiring the Discharger to build an outfall to ~~non~~-tidal waters (over 40 miles away) or to not discharge under any circumstances, including wet weather, would impose an undue burden. In granting the exception to the discharge prohibition, the Regional Water Board determined that the Discharger must provide equivalent protection when discharging to the Napa River by ensuring that treated effluent meets the limits in Table 1 below ~~providing advanced secondary treatment~~. Therefore, the 2016 Permit imposed new, more stringent biochemical oxygen demand (BOD) and total suspended solids (TSS) effluent limitations reflective of levels that can be met by implementing advanced secondary treatment:

CDO Comment 3: *The analysis of potential compliance issues with the new BOD and TSS limits appears to be incorrect. Comparing BOD and TSS values discharged to the irrigation field to NPDES limits puts a negative bias on treatment plant performance. It also appears that the*

BOD and TSS monthly average limits comparison is incorrect. All samples collected in a month should be averaged.

Response: We disagree regarding the usefulness of the irrigation discharge data. As discussed in our response to Permit Comment 4, the treatment processes do not change depending on discharge location. All the performance data are useful in evaluating the likely feasibility of compliance with the new limits. The reason that most of the available data were collected while discharging to the irrigation fields versus the river was that discharges to the river only occur during wet weather, and the drought conditions during most of the last permit term meant that there were not many wet weather days.

We agree that monthly average results should be compared to average monthly limits. Of 66 monthly results, 40 exceed the new BOD limit and 58 exceed the new TSS limit. Because samples were collected roughly weekly, individual results can be compared to the weekly average effluent limits. Of 142 results, 47 exceed the new BOD limits and 95 exceed the new TSS limits. The BOD and TSS sampling results are shown below in Attachment 1.

We revised Finding 4 as follows:

The Plant is currently designed to provide only secondary treatment, not advanced secondary treatment. Plant effluent monitoring data from January 2010 through August 2015 show many instances when the Discharger would not immediately comply with the new BOD and TSS effluent limitations. Of 66 monthly results, 40 exceed the new monthly BOD limit and 58 exceed the new monthly TSS limit. Because samples were collected roughly weekly, individual results can be compared to the weekly average effluent limits. Of 162 results, 47 exceed the new weekly BOD limit and 95 exceed the new weekly TSS limits. Of the 161 days when BOD and TSS samples were collected (140 days when discharging to the irrigation fields and 21 days when discharging to the river), 84 results were above the new monthly average BOD limit, 47 were above the new weekly maximum BOD limit, 118 were above the new monthly average TSS limit, and 96 were above the new weekly average TSS limit.

CDO Comment 4: *The City noted some typographical errors and made some non-substantive comments.*

Response: We changed Findings 3 and 4 as shown in our responses to CDO Comments 2 and 3. We also revised Finding 5 as follows:

The Plant currently relies on a series of treatment ponds that use aerobic and anaerobic bacteria to reduce organic matter concentrations. ... Of these this 4,700 acres of vineyard area, 1,148 acres of vineyard area are within the City of St. Helena Calistoga limits.

Attachment 1

BOD and TSS concentrations from January 2010 through August 2015. The values in **bold** are above the weekly averages (25 mg/L for BOD, 20 mg/L for TSS).

2010			2011			2012			2013			2014			2015		
Date	BOD	TSS	Date	BOD	TSS	Date	BOD	TSS	Date	BOD	TSS	Date	BOD	TSS	Date	BOD	TSS
1/7	12	22	1/7	13	9	1/5	15	21	1/14	<5	10	1/2	33	23	1/14	11	<6
1/26	10	12	1/21	6	15	1/24	18	22	1/18	8	11	1/15	27	<6	1/20	9	7
2/4	9	14	2/8	<5	33	2/2	22	29	2/11	<5	<3	3/10	23	32	1/21	24	25
2/25	25	31	2/23	8	23	2/22	7	13	2/21	8	10	3/20	13	10	1/27	28	35
3/2	8	21	4/13	<5	16	3/2	>220	3	3/4	19	18	4/7	22	28	2/8	18	10
3/17	16	17	4/20	<5	24	3/19	14	43	3/12	12	24	4/18	12	13	2/20	8	19
4/2	7	10	5/10	<5	29	4/16	<5	12	3/14	9	28	5/1	46	17	2/26	13	12
4/15	6	9	5/25	19	50	4/25	<5	15	4/3	16	24	5/14	40	113	3/5	<5	19
5/6	12	12	6/2	12	45	5/2	6	7	4/15	20	19	6/17	51	132	3/12	76	21
5/27	7	32	6/15	8	29	5/9	<5	4	5/1	20	19	6/26	31	36	4/2	21	32
6/18	15	25	7/21	14	42	6/7	<5	30	5/7	20	22	7/3	25	56	4/22	17	19
6/28	26	20	7/29	6	38	6/28	43	72	6/5	36	19	7/11	54	129	5/1	16	28
7/14	25	41	8/3	20	72	7/3	43	40	6/12	42	18	8/20	70	40	5/8	16	24
7/28	21	35	8/25	25	55	7/31	20	14	6/20	49	22	8/28	59	24	5/20	14	27
8/6	13	34	9/16	<16	35	8/1	21	23	7/3	29	22	9/9	59	188	6/2	9	22
8/20	17	24	9/22	17	32	8/31	27	52	7/11	33	12	11/25	81	53	6/3	5	18
9/10	15	34	10/19	14	65	9/19	42	55	7/17	23	27	11/26	61	53	7/2	32	28
9/30	32	60	10/28	15	45	9/25	44	57	8/1	38	35	12/9	111	42	7/10	27	27
10/7	39	33	11/2	6	38	9/27	34	50	8/7	<5	76	12/10	124	42	8/7	22	33
10/27	21	33	11/16	17	65	10/8	87	128	8/14	30	46				8/12	21	60

Attachment 2

2010			2011			2012			2013			2014			2015		
Date	BOD	TSS	Date	BOD	TSS	Date	BOD	TSS	Date	BOD	TSS	Date	BOD	TSS	Date	BOD	TSS
11/12	33	42	12/8	12	53	10/26	23	19	9/3	45	19				8/20	22	49
11/30	<5	21	12/27	12	26	10/30	11	10	9/11	16	47						
12/24	76	20				11/5	13	9	9/20	44	61						
						11/13	13	15	10/4	101	47						
						12/10	18	18	10/11	51	40						
									11/1	34	34						
									11/8	46	30						
									11/13	39	34						
									12/4	67	22						
									12/13	54	34						