



AGENDA
REGULAR MEETING OF THE CITY COUNCIL AND
JOINT MEETING OF THE CLOVERDALE COMMUNITY DEVELOPMENT SUCCESSOR AGENCY BOARD OF DIRECTORS

TUESDAY, JANUARY 12, 2016

CLOSED SESSION 5:30 p.m.

CLOSED SESSION LOCATION: CITY HALL CONFERENCE ROOM, 124 N. CLOVERDALE BLVD. CLOVERDALE, CA 95425

PUBLIC BUSINESS SESSION: 6:30 p.m.

**PUBLIC BUSINESS SESSION LOCATION: CLOVERDALE PERFORMING ARTS CENTER, 209 N. CLOVERDALE BLVD.,
CLOVERDALE, CA 95425**

The Cloverdale City Council welcomes you to its meetings that are typically scheduled for the 2nd and 4th Tuesday of the month. Your interest and participation are encouraged and appreciated. ***Please silence all pagers, cellular telephones and other communications devices upon entering the meeting.***

ADDRESSING THE CITY COUNCIL:

When asked to do so by the Mayor, those wishing to address the City Council are asked to step up to the podium. Speak directly into the microphone so everyone in the audience can hear your comments and so they'll be recorded into the official record. State your name and City of Residence for the record. Per City Council Policy, three (3) minutes are typically allotted to each speaker. However, Council may at its discretion revise the amount of time allotted. Public comments will normally be received after staff presentations on an agenda item and before the City Council starts deliberations. A Talking Tips sheet is available for your use.

We may disagree, but we will be respectful of one another.
All comments will be directed to the issue at hand, and addressed to the City Council.
Personal attacks are unacceptable.

DISABLED OR SPECIAL NEEDS ACCOMMODATION: In compliance with the Americans with Disabilities Act, if you need assistance to attend or participate in a City Council meeting, please contact the City Clerk's office at 894-2521. Notification at least 48-hours prior to the meeting will assist the City Clerk in assuring that reasonable accommodations are made to provide accessibility to the meeting.

WAIVER WARNING: If you challenge decisions/directions of the City Council in court, you may be limited to raising only those issues you or someone else raised at public hearings(s) described in this Agenda, or in written correspondence delivered to the City of Cloverdale at, or prior to, the public hearing(s).

CLOSED SESSION

CLOSED SESSION: 5:30 pm

OPENING:

- Call to Order
- Roll Call
- Agenda Review - Closed Session (Changes and/or Deletions)

PUBLIC COMMENTS ON CLOSED SESSION AGENDA:

Prior to adjournment into Closed Session, the public may speak on items to be addressed in Closed Session.

RECESS TO CLOSED SESSION:

CONFERENCE WITH LABOR NEGOTIATOR

(Government Code Section 54957.6)

Labor Negotiator: Paul Cayler, City Manager; James M. Andersen, Acting Assistant City Manager; and Jose M. Sanchez, City Attorney

Employee Organizations: Cloverdale Classified Service Employees Association

CONVENE PUBLIC BUSINESS SESSION – 6:30 p.m.

OPENING:

- Call to Order
- Pledge of Allegiance
- Roll Call
- Report out of Closed Session – Actions Taken
- Conflict of Interest Declaration
- Agenda Review – Regular Session (Changes and/or Deletions)

PUBLIC COMMENTS:

Any person wishing to speak to the City Council on any item not listed on the agenda may do so at this time. Members of the public have the right to speak on any items on the Council Agenda during that item. Pursuant to the Brown Act, the City Council is not allowed to consider issues or take action on any item not listed on the agenda. Each person wishing to speak must go to the podium when advised by the Mayor and speak directly into the microphone.

PROCLAMATIONS / PRESENTATIONS:

1. **Presentation of Plaque to Councilmember Cox- Cayler**

CONSENT CALENDAR:

All items under Consent Calendar will be considered together by one action of the Council unless any Council Member or member of the public requests that an item be removed and considered separately.

2. **Minutes of Previous Meeting November 10, 2015 - Moore**
3. **Minutes of Previous Meeting December 1, 2015 - Matlock**
4. **Claim Against the City – Silvia and Federico Contreras- Cayler**
5. **Approval of Write-Off of Uncollectible Account Receivable for Nuisance Abatement at 10 Orange Drive – Cavallari**

6. Approval of biennially review and update to the City of Cloverdale Conflict-of-Interest Code- Cayler

COMMUNICATIONS: None.

Council may discuss at this time written communications sent to Council members since the last council meeting. Written communication to be discussed will be listed below, if any.

PUBLIC HEARINGS:

- 7. Approval of Ordinance of the City Council of Cloverdale Amending Cloverdale Municipal Code Title 18 (Zoning Ordinance), Chapter 18.09, to add "Article III. Marijuana," Section 18.09.300, "Medical Marijuana," prohibiting commercial marijuana (cannabis) activities and regulating the cultivation of medical marijuana by qualified patients and primary caregivers and the delivery of medical marijuana within the City; and an Ordinance Amending Chapter 9.36, "Marijuana," of the Cloverdale Municipal Code, Section 9.36.020, "Definitions," and Section 9.36, "Outdoor Cultivation of Marijuana Prohibited," to Reference the Cloverdale Zoning Ordinance for Definitions and Regulations related to the Cultivation of Marijuana- Cramer/ Cayler**

Recommendation: Staff recommends:

1. Motion introducing and waiving the first reading of Ordinance 701-2016 of the City Council of Cloverdale Amending Cloverdale Municipal Code Title 18 (Zoning Ordinance), Chapter 18.09, to add "Article III. Marijuana," Section 18.09.300, "Medical Marijuana," Prohibiting Commercial Marijuana (Cannabis) Activities and Regulating the Cultivation of Medical Marijuana by Qualified Patients and Primary Caregivers and the Delivery of Medical Marijuana Within the City; and
2. Motion introducing and waiving the first reading of Ordinance 701-2016, of the City Council of Cloverdale Amending Chapter 9.36, "Marijuana," of the Cloverdale Municipal Code, Section 9.36.020, "Definitions," and Section 9.36, "Outdoor Cultivation of Marijuana Prohibited," to Reference the Cloverdale Zoning Ordinance for Definitions and Regulations related to the Cultivation of Marijuana.

NEW BUSINESS:

- 8. Authorize the City Manager to Execute a Professional Services Agreement with C&S Companies for the Preparation of the Airport Taxiway Reconstruction Project – Cayler**

Recommendation: Based on City Council direction from the December 8, 2015 meeting, Staff recommends that the City Council take action on this adopt the proposed resolution.

- 9. Authorize the City Manager to Execute Profession Services Agreement with Collaborative Design Architects, Inc. for Master Planning Service at the "Thyme Square" Property – Cayler**

Recommendation: Staff recommends that the City Council adopt the attached resolution, thus authorizing the City Manager to execute a professional services agreement with Collaborative Design Architects.

- 10. Discussion and Possible Direction on City Council 2016 Subcommittee, Joint Committee and Regional Board/Committee Appointments- Cayler**

Recommendation: Staff recommends that the City Council discuss the recommended committee appointments and give direction for final appointments.

11. Second Amendment to the At-Will Employment Agreement between the City and Paul Cayler for Employment as City Manager- Sanchez

Recommendation: Staff recommends that by motion, approve the Resolution approving the Second Amendment to the At-Will Employment Agreement for City Manager services and authorize the Mayor to sign the Agreement on behalf of the City.

SUBCOMMITTEE ITEMS:

12. Background information on a proposed Professional Services Agreement with RMC Water and Environment to provide assistance to the city throughout the reissuance process for the city's National Pollution Discharge Elimination System (NPDES) permit for discharge of treated wastewater- Apdoca

13. Background information on a proposed Professional Services Agreement with Brelje & Race Consulting Civil Engineers to Prepare Bid Documents, Assessment and Provide Construction Management Services for a Biosolids Removal Project- Apodaca

SUBCOMMITTEE REPORTS: (VERBAL REPORTS: 15 minutes)

- Airport - Next Meeting: February 2, 2016, 8:00 am
- Finance, Administration & Police - Next Meeting: January 28, 2016, 2:00 pm.
- Planning & Community Development - Next Meeting: February 16, 2016, 4:00 pm.
- Public Works - Next Meeting: January 26, 2016, 10:30 am.
- Joint City/Fire District - Next Meeting: February 26, 2016, 5:30 pm.
- Joint City/School District- Next Meeting: January 25, 2016, 5:00 pm.

COUNCIL REPORTS (INCLUDING STUDENT LIAISON): (VERBAL REPORTS: 15 minutes)

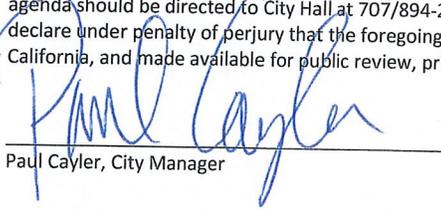
LEGISLATIVE REPORT: None.

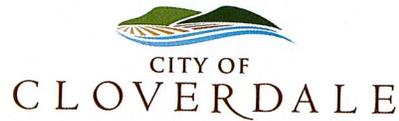
CITY MANAGER/CITY ATTORNEY REPORT: None.

COUNCIL DIRECTION ON FUTURE AGENDA ITEMS:

ADJOURNMENT: Adjourn to a regular meeting of the City Council and Cloverdale Community Development Successor Agency, Tuesday, January 26, 2016, for Closed Session at 5:30 p.m. (at the City Hall Conference Room 124 N. Cloverdale Blvd., Cloverdale, CA 95425) and Public Business Session at 6:30 p.m. (at the Cloverdale Performing Arts Center 209 N. Cloverdale Blvd., Cloverdale, CA 95425).

The City does not transcribe its proceedings. Anyone who desires a verbatim record of this meeting should arrange for attendance by a court reporter or for other acceptable means of recordation. Such arrangements will be at the sole expense of the individual requesting the recordation. Questions about this agenda should be directed to City Hall at 707/894-2521. State of California, County of Sonoma, City of Cloverdale. CERTIFICATION I, Paul Cayler, do hereby declare under penalty of perjury that the foregoing agenda was posted on the outdoor bulletin board at the City Hall, 124 N. Cloverdale Blvd., Cloverdale, California, and made available for public review, prior to or on this 7th day of January, 2016, at or before 5:00 p.m.


Paul Cayler, City Manager



**DRAFT MINUTES
SPECIAL MEETING OF THE CITY COUNCIL AND
JOINT MEETING OF THE CLOVERDALE COMMUNITY DEVELOPMENT SUCCESSOR AGENCY BOARD OF DIRECTORS**

TUESDAY, NOVEMBER 10, 2015

CLOSED SESSION 5:30 p.m.

CLOSED SESSION LOCATION: CITY HALL CONFERENCE ROOM, 124 N. CLOVERDALE BLVD. CLOVERDALE, CA 95425

PUBLIC BUSINESS SESSION: 6:30 p.m.

**PUBLIC BUSINESS SESSION LOCATION: CLOVERDALE SENIOR MULTIPURPOSE CENTER, 311 MAIN ST.
CLOVERDALE, CA 95425**

CLOSED SESSION: 5:30 pm

OPENING:

- Call to Order: Mayor Cox called the meeting to order at 5:30 p.m.
- Roll Call: Present – Councilmember Palla, Vice Mayor Brigham, Councilmember Russell, Councilmember Wolter, Mayor Cox.
- Agenda Review - Closed Session (Changes and/or Deletions): None

PUBLIC COMMENTS ON CLOSED SESSION AGENDA:

Mayor Cox opened and closed the public comment period; no comments were received

RECESS TO CLOSED SESSION:

CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION (1)

Pursuant to California Government Code Section 54956.9(d)(2)

Number of Cases: 1

CONFERENCE WITH LABOR NEGOTIATOR

(Government Code Section 54957.6)

Labor Negotiator: Paul Cayler, City Manager; James M. Andersen, Acting Assistant City Manager; and Jose M. Sanchez, City Attorney

Employee Organizations: Cloverdale Classified Service Employees Association, Cloverdale Police Officers' Association, and Cloverdale Dispatchers' Association.

CONVENE PUBLIC BUSINESS SESSION – 6:30 p.m.

OPENING:

- Call to Order: Mayor Cox called the meeting to order at 6:40 p.m.
- Pledge of Allegiance
- Roll Call: Present – Councilmember Palla, Vice Mayor Brigham, Councilmember Russell, Councilmember Wolter, Mayor Cox.
- Report out of Closed Session – Actions Taken: No reportable action
- Conflict of Interest Declaration: None
- Agenda Review – Regular Session (Changes and/or Deletions): None

City Manager Cayler recommended moving item 5 forward on the agenda. He surmised that some of the audience present was there to address a Professional Services Agreement with C&S Companies for the preparation of the Airport Taxiway Reconstruction Project, and noted that Staff is recommending continuing this item to the next regular Council meeting on December 9, 2015. He also announced that a special meeting would be held on December 8, 2015 at 5:30, in the Performing Arts Center, for the purpose of discussing the Airport and the Laulima Proposal.

Action: Motion was made by Councilmember Palla and seconded by Councilmember Russell to move item 5 forward to be prior to the Public Comments Section. The motion passed unanimously (5-ayes – Councilmember Palla, Vice Mayor Brigham, Councilmember Russell, Councilmember Wolter, Mayor Cox; 0-noes).

5. Continue to December 9, 2015 a Resolution of the City Council of the City of Cloverdale Authorizing the City Manager to Execute a Professional Services Agreement with C&S Companies for the Preparation of the Airport Taxiway Reconstruction Project– Cayler

Action: Motion was made by Councilmember Palla and seconded by Councilmember Russell to continue item 5, regarding the approval of a Professional Services Agreement with C&S Companies for the preparation of the Airport Taxiway Reconstruction Project, to the December 9, 2015 regular Council meeting. The motion passed unanimously (5-ayes – Councilmember Palla, Vice Mayor Brigham, Councilmember Russell, Councilmember Wolter, Mayor Cox; 0-noes)

PUBLIC COMMENTS:

Mayor Cox opened and closed the public comment period on this item, as there was none.

PUBLIC COMMENTS:

Mayor Cox opened public comment period on any other item not on the agenda.

Marshall Kelly, Cloverdale, extended a public apology to City Manager, Paul Cayler, for remarks he made at the last Council meeting regarding airport financial information being proprietary. He stated he followed Mr. Cayler's advice and he was able to locate desired information on the City website and from Joanne Cavallari, the City Finance Manager. He stated Ms. Cavallari was very helpful in providing five years of financial statements and a summary statement for the Cloverdale Airport. City Manager Cayler thanked Mr. Kelley.

Steve Nurse, Cloverdale, stated he previously asked Council if TOT tax could be measured prior to, during, and after the Red Bull event. He stated that he realized it was probably an unreasonable request due to the City man hours required to gather such data so he decided to do his own research and was shocked to find that TOT was maxed out due to the lack of availability in the hotels in the City of Cloverdale from the beginning of April through October. He suggested the City needed more hotel rooms and to increase publicity for future events.

CONSENT CALENDAR:

1. Minutes of Previous Meeting August 19, 2015

Action: Motion was made by Vice Mayor Brigham and seconded by Councilmember Palla to approve the consent calendar. The motion passed (5-ayes – Councilmember Palla, Vice Mayor Brigham, Councilmember Russell, Councilmember Wolter, Mayor Cox; 0-noes)

NEW BUSINESS:

2. Consideration of Resolution No. 065-2015 of the City Council Designating the Times and Places for Holding Regular Meetings of the City of Cloverdale City Council, the Cloverdale Community Development Successor Agency Board of Directors, and the City of Cloverdale Planning Commission

City Manager Cayler commented that the Council had previously discussed changing the designated day for regular meeting times, in part, to better accommodate participation by Council members in recurring regional meetings. Mr. Cayler stated that Staff presented possible challenges for the Council to consider prior to changing the day of its regular meetings, including agenda preparation, potential staff and Council member conflicts, the availability of the current meeting location, and any impact on public participation. Staff was directed to bring the item back for discussion and possible action. Mr. Cayler reported that changing the regular City Council meetings to the second and fourth Tuesdays of each month was determined to be the best choice.

Action: Motion was made by Councilmember Palla to adopt Resolution No. 065-2015 of the City Council of the City of Cloverdale approving Tuesdays as the designated days for holding the regular meeting of the City of Cloverdale City Council, the Cloverdale Community Development Successor Agency Board of Directors, and the City of Cloverdale Planning Commission and was seconded by Vice Mayor Brigham. The motion passed unanimously by roll call vote (5-ayes – Councilmember Palla, Vice Mayor Brigham, Councilmember Russell, Councilmember Wolter, and Mayor Cox; 0-noes; 0-absent).

PUBLIC COMMENTS:

Mayor Cox opened and closed the public comment period on this item, as there was none.

3. Presentation of Proposed Changes to the Cloverdale Senior Multipurpose Center License Agreement

City Manager Cayler presented this item to discuss a proposal from the Cloverdale Senior Multipurpose Center requesting to modify the terms of the Center's license agreement. Mr. Cayler reported that the property the Center is using through a lease agreement is owned by the City. The requested license agreement provisions were discussed, which include extending the term of the license agreement, maintaining the annual consideration, hours of operation, special events, and allowing the Center to be used by Sonoma State University Osher Lifelong Learning Institute. Mr. Cayler stated the Center would like to hold up to 12 special events per year for members, to celebrate anniversaries, retirements, etc. He reported that under the new agreement the Center would not need to obtain the City Manager's approval prior to holding events. Mr. Cayler noted the proposed amendments to the license agreement do not change any of the City's duties and responsibilities for maintaining the building. Mr. Cayler added that this item is brought before the Council for the purpose of gathering Council input and for a "first touch" review.

Colleen Hale, Executive Director of Senior Center, came to the podium to discuss the request and answer questions. She clarified some of the details of request, such as extending usage hours for special events, noting that the request is not for extending hours for regular daily operations.

Councilmember Russell thanked Ms. Hale and the Senior Center Board of Directors and everyone involved in the Senior Center stating the Center is marvelous. She stated she is in favor of this agreement provided that the neighbors do not have a problem with evening hours, adding that Cloverdale needs more Community facilities for holding events. She stated she is excited about bringing in the Osher Lifelong Learning Institute, adding that she has heard wonderful things about the Institute.

Councilmember Wolter also thanked Ms. Hale for the outstanding job she is doing at the Senior Center. He commented that when facility was built in early 2000, there were concerns from the neighbors at that time regarding the hours of operation. He asked Ms. Hale about input from the neighbors. She responded that she met with one neighbor to discuss concerns about extended hours. Councilmember Wolter voiced approval for the agreement but asked the City Manager to inform the Council if complaints should be received.

Councilmember Palla agreed that Ms. Hale and the Board are doing a tremendous job with the Senior Center. He also voiced approval for the agreement but requested that language be added to reinstate the right of the City Manager to review and approve special events if complaints do come in down the road. He added that he does not anticipate any problems but noted it would be a good idea to have a mechanism in place in case the City is bombarded with complaints.

Vice Mayor Brigham stated she does not have any problems with the agreement.

Mayor Cox agreed with the Councilmembers, adding that the programs at the Senior Center are fabulous. He asked about the scheduling of the possible 12 special events that could be after hours per year and wondered if they would be one per month or could fall all in one month. Ms. Hale responded that she is envisioning one per month but pointed out that some events, such as memorial receptions, could change the planned schedule.

PUBLIC COMMENTS:

Brooke Green, Cloverdale, stated that she is a neighbor and former employee of the Senior Center and her only concern is about parking. She requested that neighbors continue to be involved and have opportunity for input.

City Manager Cayler thanked Council for their input and commented that he will work with Ms. Hale and the City Attorney to prepare an agreement amendment that will be brought before the Council at a later date for approval.

City Manager Cayler stated that he had a sense that many people in the audience were in attendance for item number 4 on marijuana cultivation noting that the item could take a length of time. He commented that Mr. Charter from Petaluma Animal Services was also in attendance for item 6 and suggested moving that item forward since Mr. Charter has to travel a distance and item 5 will likely not take very long.

Mayor Cox commented that he thought the suggestion was appropriate and commented that he appreciated the people who are present for the marijuana presentation but it would be good to dispense with item 6 quickly; thus moved to go to item 6.

6. Consideration of Resolution No 066-2015 of the City Council of the City of Cloverdale Authorizing the City Manager to Execute a Professional Services Agreement with Petaluma Animal Services Foundation for the Animal Control Services

City Finance Manager, Joanne Cavallari, discussed the proposed agreement. Ms. Cavallari reported that currently the City's Community Services Officer (CSO) acts as animal control officer during normal business hours, Monday through Friday between 8:00 am and 5:00 pm. with after-hours calls being handled by Police Dispatch. She noted the present animal control program has challenges with the collection of unpaid licensing fees, and coverage for the CSO on weekends, sick leave or vacation. The proposed agreement would transfer the annual licensing program to Petaluma Animal Services Foundation and provide the City with weekend services, emergency services, transportation of unclaimed animals from our local facility to Petaluma, and abatement services, in exchange for retaining the revenue from the annual license fees. She added that the Finance, Admin and Police Subcommittee reviewed the agreement at their 10/22/15 meeting and recommended that the item be considered by the full City Council.

City Manager Cayler acknowledged Finance Manger Cavallari and Police Chief Cramer for their hours of hard work and thanked Mr. Charter and the non-profit animal foundation for creating a services agreement tailored to fit Cloverdale's needs. Mr. Cayler discussed the necessity for an abatement program and the importance of having professional staff trained in dealing with vicious animals. He also assured the public that the City would continue to have an ongoing relationship with Dr. Biery in Cloverdale to hold animals for 72 hours before surrendering the animal to Petaluma for easier retrieval.

Councilmember Palla questioned if a resident will still able to license dogs locally. Mr. Charter responded that anyone could have the option to license online as well. Councilmember Palla expressed that some residents may not use computers and Mr. Charter offered the option to set up City Staff to allow them to enter their organization's data system for the purpose of licensing or the option to set up a drop box in City Hall. Mr. Charter also discussed adoption of the animals, explaining their organization's live release rate for 2014 was just under 99%, which is in the top 1% nationally.

Councilmember Russell commented that she has heard very good things about the Petaluma Animal Services Foundation. She suggested that the information regarding the services be provided on the City's website.

Mayor Cox commented that this enforces the need for the public to put tags with name and phone number on their pets along with licenses to make animals easier to return should they be picked up.

PUBLIC COMMENTS:

Mayor Cox opened and closed the public comment period on this item, as there was none.

Action: Motion was made by Councilmember Russell to adopt Resolution No. 066-2015 of the City Council of the City of Cloverdale authorizing the City Manager to execute a Professional Services Agreement with Petaluma Animal Services Foundation for animal control services and was seconded by Councilmember Palla. The motion passed unanimously by roll call vote (5-ayes – Councilmember Palla, Vice Mayor Brigham, Councilmember Russell, Councilmember Wolter, and Mayor Cox; 0-noes; 0-absent).

4. Presentation on Medical Marijuana Use and Legal Cultivation and Proposed Ordinance

Chief Cramer presented this item, shared a Medical Marijuana Cultivation Brochure, PowerPoint presentation and discussed the details of the first draft of a comprehensive Medical Marijuana Cultivation Ordinance. He stated that the ordinance provides processes for individual personal use, cultivation for commercial purposes and deliveries. He discussed Governor Brown's new marijuana cultivation legislation, how it impacts Cloverdale and suggestions for moving forward to balance the needs of medical marijuana patients with the quality of life needs of the community. The Medical Marijuana Regulation and Safety Act stipulates permitting and licensing system for commercial cultivation, manufacturing, transporting, testing, and retail sales of medical marijuana through the State with local government input to create local permitting process. Chief Cramer reported that this legislation takes effect January 2016 and that local government must have a cultivation ordinance in place by March 1, 2016 in order to preserve local control; as a result this ordinance has been crafted.

Councilmember Wolter stated that the State's required 600 foot minimum distance between a cultivation and a schools doesn't seem far enough. Chief Cramer stated that although the State only requires 600 feet, the ordinance requires 1000 feet. Councilmember Wolter stated he would like to see an overview of schools, the library, and Boys and Girls Club and surrounding area to see what a 1000 foot setback would include. He also asked if the County can tax on top of the City tax. The Chief clarified that the law states the County can tax but does not have a provision for the City to tax. City Attorney Sanchez confirmed this and commented that other Cities have moved to adopt taxes to go before voters for approval. He went on to comment that this draft ordinance is to serve as a starting point with the intention of gathering input and modifying as deemed necessary to bring back a final version for approval. City Manager Cayler reiterated that the ordinance has to be effective by March 1st noting that the Council will have limited time to provide input and adopt an ordinance due to timeline restrictions for first and second readings and public noticing.

Councilmember Russell praised Chief Cramer's presentation and commented that she attended a meeting where Assembly member Jerry Wood and Senator Mike McGuire spoke regarding the new legislation and the discussed the urgency for local control. She further noted that there would be some cleanup legislation to follow. Councilmember Russell stated she will also be joining the Mayor and City Manager to attend the League of Cities meeting on Nov 16th, which should provide more information in terms of what local cities can do.

Councilmember Palla asked for clarification regarding the restrictions set forth per owner/one acre maximum and the possibility of multiple parcels, expressing concerns about the number of possible plants in a given geographical area. Chief Cramer responded that limitations are set forth in the ordinance and include restrictions on zoning and setbacks. Councilmember Palla also asked about prequalification and ways to identify drivers who would be transporting the marijuana within the City, noting the importance of being able to identify those who

are authorized to make deliveries to determine if the drivers are bona fide and legit. He agreed that local control is very important and stressed the importance of meeting the deadlines to ensure the City has local control. He suggested that it may be necessary to pass the ordinance knowing that the Council will have to modify at a later date. He commented that the Council can't afford to get hung up on a few small things and miss the deadline.

City Attorney Sanchez agreed, stating the idea is to craft something as close as possible now to get the permit process in place knowing that amendments to the code may be necessary anyway due to upcoming changes in legislation. He suggested the Council provide guidance on key areas in the draft ordinance for the purpose of developing the final version.

Vice Mayor Brigham discussed areas of the ordinance that she found unacceptable, such as permits requiring the Planning Department or Council approval, noting that a person's medical needs prescribed by their doctor should not be before the public. She stated oversight and compliance with the laws should be the responsibility of the Police Department only. Councilmember Russell agreed. Vice Mayor Brigham also had issue with the structure requirements and the setback requirements, noting that the 100 foot setback would prevent most Cloverdale residence from being able to grow marijuana due to their lot sizes. She voiced that the limit should be at least two plants instead of one since one plant could die. She stated that she liked the basics of the ordinance but requested edits and provided Chief Cramer with a copy of the ordinance with the suggested edits. The Council requested a copy of her edits; she responded that she would be happy to provide them with copies. Chief Cramer responded acknowledging that Vice Mayor Brigham's concerns are valid but informed her that the ordinance exempts anyone growing less than 30 plants, thus eliminating most of the concerns she voiced (excluding the structure and setback concerns).

Councilmember Palla thanked Chief Cramer for the ordinance, stating that it is an excellent draft; however, he shares some of Vice Mayor Brigham's concerns. He stated his biggest concern is for safety, security, and crime control. Chief Cramer commented that the intent of requiring the detached, enclosed structure is to provide security. Vice Mayor Brigham discussed the expense of the required enclosed structure and the hardship it could mean to medical marijuana patients. Councilmember Russell suggested the structure could be a challenge for renters also.

Councilmember Wolter asked what the next step should be and what is needed from the Council. Chief Cramer stated that he welcomes the Council's input to develop the final version that will go to City Attorney for review.

PUBLIC COMMENTS:

Patrick King, Cloverdale, owner of the Soil King Garden Center, stated the Vice Mayor Brigham hit it on the head. He stated that in his business he deals with this situation every day and it's his passion. He commented that he advises patients, many of them elderly, who are trying to grow medical marijuana. He would love to see patients be able to have two to four plants in their backyard without having to spend thousands of dollars on a building. He also discussed the expense of the lights to grow indoors and the organic benefits of growing outdoors. He thanked Chief Cramer for the presentation and his work, but noted that the ordinance is not taking care of our community and is contributing to an environment that creates illegal grows. He suggested the option of using a greenhouse rather than the proposed enclosed structure. He also suggested looking at other cities as examples, such as Ukiah, Sebastopol, and the many in the bay area.

Dorian Trainer, Cloverdale, stated that it is important to remember that cannabis is a huge part of our community and this is a good opportunity to open dialogue with the people who are trying to grow it properly.

Leonard Von Hoogenstyn, Cloverdale, stated that he is concerned that there are no dispensaries in Cloverdale. He asked if the March 1st timelines also apply to dispensaries. City Attorney Sanchez responded that the timeline applies to cultivation only.

Jude Byers, Cloverdale, discussed an article she recently read in the Press Democrat, which stated Cloverdale has the highest rate of prescription drug use for narcotics in the County, adding that she is one of them since she recently had surgery. She went on to share that her wife was able to pick up her prescription (a drug that is 10 times stronger than morphine); however, her wife would not be able to pick up medicinal marijuana at the dispensary for her. She added that many of the patients are elderly and unable to pick up their medicines and the need for dispensaries needs to be addressed.

Matt VanBenschoten, Boulder, Colorado, shared that he owns and operates a cannabis extraction facility, which is one of the largest third party processors in the State. He strongly encouraged the Council to look at the Colorado State legislation for concentrated production to use as an example for tailoring legislations here to ensure medicine is meeting guidelines and safe for consumption.

Jammie King, Cloverdale, introduced herself as the face of the medical marijuana patient, the person who lives with it every day. She shared that marijuana provides quality of life for her. She stated that she gave up narcotics a year ago because they were ruining her body. She commented that she lives with pain waiting for the approval of the surgery she needs. She implored the Council to keep those who need the medical marijuana in mind as they develop the ordinance.

Michelle Winterbottom, Cloverdale, asked the Council to consider approving growing marijuana outdoors. Adding that there are people all over town growing outdoors for their own use already so why not approve it so the police would know who is legally growing when they are called to a house. She went on to say, as far as the smell is concerned, her whole neighborhood smell likes skunk because there are skunks that live in the storm drains. Noting that if she can live with the smell of the skunks, she can live with the smell of pot. She requested a copy of the Vice Mayor's edits on the ordinance, suggesting it be made available to the public. Discussion ensued regarding avenues to keep the public updated on progress of the ordinance. Councilmember Russell suggested making the PowerPoint slides available on the City's website. City Manager Cayler agreed to post the slides on the City's webpage.

Mayor Cox closed public comment on this item adding that the Council received lot of good comments and will be using the input to refine the draft.

City Manager Cayler stated that the Council has made a good start regarding modifying the ordinance, adding that Chief Cramer will distribute copies of Vice Mayor Brigham's suggested edits tomorrow for all to review. He emphasized the need to deal with cultivation now and revisit dispensaries at a later date.

City Attorney Sanchez and the Council discussed the timelines that must be met to adopt by the State's deadline.

7. City of Cloverdale Social Media Policy

Chief Cramer presented this informational item stating that although the Police Department has an internal Social Media Policy, the City as a whole does not currently have a policy in place. He discussed the need to have a media policy for the City and shared some of the details of the policy, adding that the proposed policy is straight forward and sets forth the procedure and guidelines for the City to properly use social media. He commented that the proposed policy is very similar to the one adopted by other cities.

City Manager Cayler informed the Council that this item was to brief the Council regarding the policy the City intends to implement, explaining the policy has been before the subcommittee already and does not require Council approval.

PUBLIC COMMENTS:

Mayor Cox opened and closed the public comment period on this item, as there was none.

SUBCOMMITTEE REPORTS:

- Airport (Chair, Councilmember Russell and Mayor Cox) - Next Meeting: To be determined.
- Finance, Administration & Police (Chair, Mayor Cox and Vice Mayor Brigham) - Next Meeting: November 19, 2015, 2:00 pm.
- Planning & Community Development (Chair, Councilmember Wolter and Vice Mayor Brigham) - Next Meeting: December 15, 2015, 4:00 pm.
- Public Works (Chair, Mayor Cox and Councilmember Russell) - Next Meeting: scheduled for November 24, 2015, 10:30 am. but will likely be canceled due to the holiday.
- Joint City/Fire District (Chair, Councilmember Palla and Vice Mayor Brigham) - Next Meeting: December 14, 2015, 5:30 pm.
- Joint City/School District (Chair, Councilmember Palla and Councilmember Wolter) – Next Meeting: January 25, 2016, 5:00 pm. (tentative based on the reorganization of the subcommittee assignments).

COUNCIL REPORTS (INCLUDING STUDENT LIAISON):

Councilmember Russell reported that the situation with the Sonoma County Waste Management Agency was discussed at the last Regional Climate Protection Agency (RCPA) and Sonoma County Transit Authority Board meeting, which involves RCPA working with the Transit Board to provide solid waste education outreach planning and policy should the Waste Management Agency dissolve in 2017. She expressed the need to maintain a joint powers authority in some form. She thanked Mark Landman from Cotati who supported her recommendation. She requested the Council to provide any thoughts they may have as she will be voting on the topic at their next Board meeting. Councilmember Russell also shared that the RCPA will be making some presentations on projects they wish to discuss with the Council sometime in January or February.

Councilmember Palla reported that he represents the City on the Mayor Council Association Legislative Committee and they have been making an effort to meet with various legislators. He thanked Mayor Cox for attending one of the meetings that he was unable to attend and discussed an upcoming meeting with Senator McGuire to be held on Tuesday, November 24th at his district office in Santa Rosa. He stated that the meeting is set up for two members per city to attend and asked if another Councilmember would like to attend the meeting with him. Councilmember Palla also reported that the Cloverdale Unified District Board of Trustees is in the process of putting together a comprehensive facility needs assessment to develop a facilities master plan for the entire school district. He shared that a committee has been formed and he will be serving with the first meeting scheduled for Thursday. He commented that this is an outstanding project to put together a 20-year road map and he will keep the Council informed.

Student liaison, Karsyn Stewart, reported: the high school football team made the playoffs and have a home game Friday; basketball will be starting; the solar suitcase competition resulted in the top three finalist receiving a donation to go on a field trip; during the film festival, some of the drama students sent in videos they produced and received awards; seniors are starting college applications with the counselor's assistance. Ms. Stewart informed the Council and public that the seniors are also selling blankets and See's candy for Project Grad and encouraged everyone to purchase these items.

The Council complimented Ms. Stewart on her informative reports

LEGISLATIVE REPORT: None

CITY MANAGER/CITY ATTORNEY REPORT: None

COUNCIL DIRECTION ON FUTURE AGENDA ITEMS:

Councilmember Wolter reported that he will be out of town from November 16th to December 2nd, noting that he will be available by phone and email during that time. He also reported that he was approached by a constituent asking if the Council would consider a No Smoking Policy within the City limits in the future. He discussed the

difficulty in trying to enforce such a policy and suggested a subcommittee look into it. City Manager Cayler stated that the Planning & Community Development Committee would be the appropriate committee. Councilmember Russell said she was also approached about this and agreed it should be moved to subcommittee.

ADJOURNMENT: Adjourn at 9:05 p.m. to a special meeting of the City Council and Cloverdale Community Development Successor Agency, Wednesday, December 8, 2015, for Public Session at 5:30 p.m. (at the Cloverdale Performing Arts Center 209 N. Cloverdale Blvd., Cloverdale, CA 95425).



**DRAFT MINUTES
SPECIAL MEETING OF THE CITY COUNCIL AND
JOINT MEETING OF THE CLOVERDALE COMMUNITY DEVELOPMENT SUCCESSOR AGENCY BOARD OF DIRECTORS
TUESDAY, DECEMBER 1, 2015**

**PUBLIC BUSINESS SESSION 4:00 p.m.
LOCATION: CLOVERDALE CITY HALL CONFERENCE ROOM, 124 N. CLOVERDALE BLVD., CLOVERDALE, CA 95425**

CONVENE PUBLIC BUSINESS SESSION – 4:00 p.m.

OPENING:

- Call to Order: Mayor Cox called the meeting to order at 4:00 p.m.
- Roll Call: Present – Councilmember Palla, Councilmember Russell, Vice Mayor Brigham, and Mayor Cox
Absent: Councilmember Wolter
- Conflict of Interest Declaration: None
- Agenda Review – Regular Session (Changes and/or Deletions): None

PUBLIC COMMENTS:

Mayor Cox opened and closed the public comment period, as there was none.

NEW BUSINESS:

1. **Discussion and Possible Action to Approve a Resolution of the City Council of the City of Cloverdale Approving a Memorandum of Understanding with the Cloverdale Police Officers' Association and Authorizing the City Manager to Execute the Memorandum of Understanding – Cayler**

City Manager, Paul Cayler, presented this item with highlights of the proposed Memorandum of Understanding (MOU), which incorporates all the Side Letter of Agreements to the 2011 MOU, stating the proposed MOU brings a 2% Cost of Living Adjustment (COLA) effective July 1, 2015, with retroactive payments; once the agreement is signed and approved, and there will be an additional 2% COLA July 1, 2016. Mr. Cayler added that the agreement expires June 30, 2017 and achieves many of the goals that the Council set forth in their goalsetting session. Mr. Cayler pointed out clerical errors to the three Resolutions before the Council at this meeting. Mr. Cayler acknowledged that Damian Eglesfield, President of the Cloverdale Police Officers Association, was in attendance.

Mayor Cox opened and closed the public comment period, as there was none.

Action: Motion was made by Councilmember Palla, and was seconded by Councilmember Russell, to adopt Resolution 067-2015, as corrected, approving a Memorandum of Understanding with the Cloverdale Police Officers' Association and authorizing the City Manager to execute the Memorandum of Understanding. The motion passed unanimously by those present (4-ayes – Councilmember Palla, Vice Mayor Brigham, Councilmember Russell, Mayor Cox; 0-noes; 1-absent - Councilmember Wolter).

2. Discussion and Possible Action to Approve a Resolution of the City Council of the City of Cloverdale Approving a Memorandum of Understanding with the Cloverdale Dispatchers' Association and Authorizing the City Manager to Execute the Memorandum of Understanding – Cayler

City Manager, Paul Cayler, presented this item, highlighting that the terms and COLA are the same as the MOU for the Police Officers' Association, that language from the adopted Side Letters has been incorporated, and other changes including cleaning up and clarifying of language, as well as the addition of Martin Luther King, Jr.'s, birthday to the list of applicable holidays.

Mayor Cox opened and closed the public comment period, as there was none.

Action: Motion was made by Councilmember Palla, and was seconded by Vice Mayor Brigham, to adopt Resolution 068-2015, as corrected, approving a Memorandum of Understanding with the Cloverdale Dispatchers' Association and authorizing the City Manager to execute the Memorandum of Understanding. The motion passed unanimously by those present (4-ayes – Councilmember Palla, Vice Mayor Brigham, Councilmember Russell, Mayor Cox; 0-noes; 1-absent - Councilmember Wolter).

3. Discussion and Possible Adoption of a Resolution Amending and Superseding the Compensation Plan for Unaffiliated Employees – Cayler

City Manager, Paul Cayler, stated that this item is a slightly different action, even though the net results are the same. Mr. Cayler stated the resolution before the Council makes the adjustment for those unaffiliated employees to receive a 2% COLA that would be retroactive to July 1, 2015, as well as a second 2% adjustment effective July 1, 2016. Mr. Cayler added that the last COLA adjustment for unaffiliated employees was in 2007.

Jim Andersen, Interim Assistant City Manager, noted that the footer on the compensation plan refers back to when it was adopted in 2011 and this has been corrected on the copy to be executed.

Mayor Cox opened the public comment period.

LaReva Myles, Cloverdale, asked about funding sources for the increases.

City Manager Cayler stated that the majority of costs related to the dispatchers and the POA come out of the general fund and that the PERS obligations may be paid from the ad valorem tax.

Ms. Myles asked about the pension shortfall reported in the Press Democrat.

Mr. Cayler answered that there is a pension obligation deficit and that he believed the article in the Press Democrat was correct.

Ms. Myles asked if the increases would impact the ability to provide reserves.

Mr. Cayler confirmed that action may erode how much the City has as a reserve at the end of the year.

Councilmember Palla commented that reserves are a Council priority.

Ms. Myles voiced concern about increased expenses versus available revenues.

Councilmember Russell stressed the importance of retaining officers.

Action: Motion was made by Councilmember Palla, and was seconded by Councilmember Russell, to adopt Resolution 069-2015, as corrected, amending and superseding the compensation plan for unaffiliated employees. The motion passed unanimously by those present (4-ayes – Councilmember Palla, Vice Mayor Brigham, Councilmember Russell, Mayor Cox; 0-noes; 1-absent - Councilmember Wolter).

COUNCIL DIRECTION ON FUTURE AGENDA ITEMS: None.

ADJOURNMENT: Mayor Cox adjourned the meeting at 4:24 p.m. to a special meeting of the City Council and Cloverdale Community Development Successor Agency, Tuesday, December 8, 2015, for Public Business Session at 5:30 p.m. (at the Cloverdale Performing Arts Center 209 N. Cloverdale Blvd., Cloverdale, CA 95425).



**City Council/Successor Agency
Agenda Item Summary**

Agenda Item: 4
Meeting Date: January 12, 2016

Agenda Section

Consent

Staff Contact

Paul Cayler, City Manager

Agenda Item Title

Claim Against the City – Silvia and Federico Contreras

Summary

On December 2, 2015, the City received a claim from Silvia and Federico Contreras via Attorney Melinda Guzman for the wrongful death of Angelica Contreras, which occurred on June 5-6, 2015.

Options

None.

Budget/Financial Impact

None.

Subcommittee Recommendation

None.

Recommended Council Action

By motion order, reject claim from Silva and Federico Contreras.

Attachments:

- 1) Claim Form received from Silvia and Federico Contreras via Attorney Melinda Guzman on December 2, 2015

cc:



CITY OF CLOVERDALE

124 N. Cloverdale Blvd., Cloverdale, CA 95425

CLAIM FOR MONEY OR DAMAGES AGAINST THE CITY OF CLOVERDALE

RESERVE FUNDING STAMP CITY OF CLOVERDALE RECEIVED

Date Received

DEC 02 2015

This claim must be presented, as prescribed by the Government Code of the State of California, by the claimant or a person acting on his/her behalf and shall show the following:

If additional space is needed to provide your information, please attach sheets, identifying the paragraphs(s) being answered.

1. The Name and Post Office address of the Claimant:

Name of Claimant Silvia and Federico Contreras

Post Office Address: c/o Melinda Guzman

Melinda Guzman Professional Corporation

455 University Avenue, Suite 330, Sacramento, CA 95825

2. Post Office address to which the person presenting the claim desires notices to be sent:

Name of Addressee: Melinda Guzman, Esq.

Telephone: (916) 448-0448

Post Office Address: 455 University Avenue, Suite 330

Sacramento, CA 95825

3. The date, place and other circumstances of the occurrence or transaction, which gave rise to the claim asserted.

Date of Occurrence: June 5-6, 2015

Time of Occurrence: Approx. Midnight

Location: Cloverdale, CA

Circumstances giving rise to this claim: PLEASE SEE ATTACHED.

4. General description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of the presentation of the claim.

PLEASE SEE ATTACHED.

5. The name or names of the public employee or employees causing the injury, damage, or loss, if known.

Unknown at this time.

6. **If amount claimed totals less than \$10,000:** The amount claimed if it totals less than ten thousand dollars (\$10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed.

Amount Claimed an basis for computation:

If amount claimed exceeds \$10,000: If the amount claimed exceeds ten thousand dollars (\$10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case. A limited civil case is one where the recovery sought, exclusive of attorney fees, interest and court costs does not exceed \$25,000. An unlimited civil case is one in which the recovery sought is more than \$25,000. (see CCP § 86.)

Limited Civil Case

Unlimited Civil Case

You are required to provide the information requested above in order to comply with Government Code § 910

7. Claimant(s) Date(s) of Birth:

Silvia Contreras - July 1, 1973; Federico Contreras - March 22, 1967.

8. Name, address and telephone number of any witnesses to the occurrence or transaction with gave rise to the claim asserted:

Please see Traffic Collision Report.

9. If the claim involves medical treatment for a claimed injury, please provide the name, address, and telephone number of any doctors or hospitals providing treatment:

Wrongful Death Claim.

If applicable, please attach any medical bills or reports or similar documents supporting your claim.

10. If the claim relates to an automobile accident:

Claimant(s) Auto Ins. Co.:

Telephone:

Address

Insurance Policy No.:

Insurance Broker/Agent

Telephone:

Address

Claimant's Veh. Lic No.: _____ Vehicle Make/Year: _____

Claimant's Drivers Lic. No.: _____ Expiration: _____

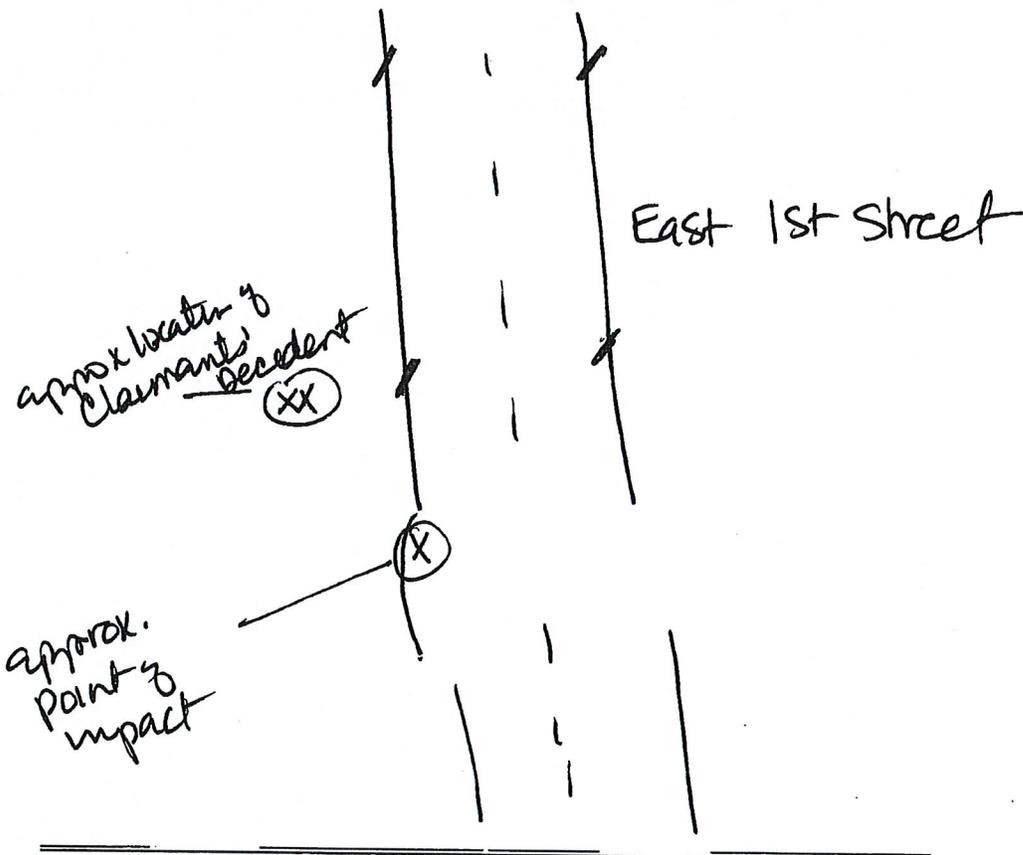
If applicable, please attach any repair bills, estimates, or similar documents, supporting your claim.

READ CAREFULLY

For all accident claims, place on following diagram, name of streets, including North, East, South, and West: indicate place of accident by "X" and by showing house numbers or distances to street corners. If City/Agency Vehicle was involved, designate by letter "A" location of City/Agency Vehicle when you first saw it, and by "B" location of yourself or your vehicle when you first saw City/Agency

Vehicle; location of City/Agency vehicle at time of accident by "A-1" and location of yourself or your vehicle at the time of the accident by "B-1" and the point of impact by "X"

NOTE: if diagrams below do not fit the situation, attach hereto a proper diagram signed by claimant.



Warning: Presentation of a false claim is a felony (Penal Code § 72). Pursuant to CCP § 1038, the City/Agency may seek to recover all costs of defense in the event an action is filed which is later determined not to have been brought in good faith and with reasonable cause.

Signature: *Mirinda Guzman*

Date: 12/1/2015



1 MELINDA GUZMAN, SBN: 137678
2 **MELINDA GUZMAN PROFESSIONAL CORPORATION**
3 455 University Avenue, Suite 330
4 Sacramento, CA 95825
5 Tele: (916) 448-0448
6 Fax: (916) 448-8628

7
8 Attorneys for Claimants
9 Silvia and Federico Contreras

10
11 BEFORE THE CITY COUNCIL OR OTHER GOVERNING BODY
12 CITY OF CLOVERDALE, CALIFORNIA

13 In the matter of the claim of Silvia and
14 Federico Contreras,
15 against the,
16 City of Cloverdale.

17 **ATTACHMENT TO CLAIM FOR
18 DAMAGES**

19 **TO THE CITY COUNCIL OR OTHER GOVERNING BODY, CITY OF CLOVERDALE,**

20 Silvia and Federico Contreras hereby make a claim for damages for the wrongful death of their
21 daughter, Angelica Contreras, as the result of a vehicle to person collision that occurred on or
22 about June 5-6, 2015 .5 miles west of River Road in Cloverdale, California. Claimants hereby
23 make a claim and allege as follows:

24 1. Claimants' names are Silvia and Federico Contreras, and their address is 69 Clark
25 Avenue, Cloverdale, California 95425.

26 2. The address to which Claimants desire all correspondence and notices in this
27 matter to be sent in the address of their attorney, as follows:

28 c/o Melinda Guzman, Esq.
Melinda Guzman Professional Corporation
455 University Avenue, Suite 330
Sacramento, CA 95825

3. On or about June 5 – 6, 2015, Cloverdale Police Department responded to a call for
service involving a potential automobile accident or other events. Cloverdale Police Department

1 responded, conducted an investigation into an accident scene and failed to discover that Claimants'
2 decedent, Angelica Contreras, had been present at the scene of the accident, that she was missing
3 from the scene and they failed to conduct any investigation whatsoever on her
4 whereabouts. Furthermore, Cloverdale Police Department also failed to conduct a thorough
5 investigation into the accident scene, because had it done so, it would have and should have
6 discovered the body of Claimants' decedent, Angelica Contreras, who had been thrown
7 approximately 50 feet from the alleged point of impact of the subject automobile accident. It is
8 unknown whether Claimants' decedent had died at the scene of the accident prior to the time of
9 the response to the scene, and on information and belief, Claimants believe that she had not died
10 by the time of their response and that she could have been saved had she been discovered.
11 Instead, Claimants' decedent's body was found the following day and she had already died.

12 4. The negligence of Cloverdale Police Department caused or contributed to the death
13 of Claimants' decedent Angelica Contreras for which Claimants are entitled to damages in an
14 amount to be ascertained or proven at a later time.

15 5. Claimants' allegations are made based upon information available at this time and
16 with good faith. The Traffic Collision Report has not yet been produced to Claimants and upon
17 receipt of said Traffic Collision Report this claim may be amended to provide additional information.

18 6. As a direct result of the dangerous conditions of public property enumerated herein,
19 Claimants' decedent Angelica Contreras, suffered severe injuries and died, all in excess of \$10,000.
20 This will be an unlimited civil case.

21 9. In addition, the City of Cloverdale failed to properly investigate the accident which
22 occurred. That resulted in a failure to secure evidence and to properly document the facts and
23 circumstances of the accident, all of which resulted in a violation of civil rights to Claimants and

24 ///
25 ///
26 ///
27 ///
28 ///

1 their decedent Angelica Contreras.

2 WHEREFORE, Claimant requests that the City of Cloverdale approve this Claim.

3
4 DATED: 12/2, 2015

MELINDA GUZMAN PROFESSIONAL CORPORATION

5
6 By: 
7 MELINDA GUZMAN
8 Attorney for Claimants
9 Silvia and Federico Contreras

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City Council
Agenda Item Summary

Agenda Item: 5
Meeting Date: January 12, 2016

Agenda Section	Staff Contact
Consent	Joanne Cavallari, Finance Manager

Agenda Item Title
Approval of Write-Off of Uncollectible Account Receivable for Nuisance Abatement at 10 Orange Drive

Summary

In October of 2012 a Notice to Vacate was filed by the City for several substandard rental units located at 10 Orange Drive in Cloverdale. The owner of the property, Russell Cooper, was invoiced \$27,966.67 by the City for legal fees (\$16,156.75), building inspections (\$4,219.50), and relocation expenses of the tenants (\$7,590.42).

Prior to the time that the City advanced relocation expenses to the tenants, they filed a lawsuit against Mr. Cooper. When the case settled they were paid a substantial settlement. As a part of the settlement agreement the tenants stated that they would indemnify and defend Mr. Cooper for all liens arising from the claims made in the Civil Case. Upon receipt of the City's request for reimbursement, Mr. Cooper submitted the claim to his insurance company, which in turn referred the matter to its legal counsel. See attached correspondence from Mr. Cooper's attorney.

The City Attorney has reviewed the facts of this matter. If the City were to pursue reimbursement of relocation expenses from Mr. Cooper, the former tenants would be held responsible. The likelihood of collecting this debt from these low-income families is minimal.

In order to recover the legal fees and building inspections, additional time and resources would need to be expended to substantiate the claims.

According to the City's policy for writing off uncollectible accounts receivable, accounts with a value exceeding \$25,000 must be approved by the City Council.

Staff is asking that the Council approve the writing-off of this account.

Options:

Attempt to collect from former tenants.

Budget/Financial Impact:

The General Fund would incur a bad debt expense of \$27,966.67.

Subcommittee Recommendation:

None.

Recommended Council Action:

By motion, approve the writing off of the above delinquent account receivable.

Attachments:

Letter from Alison Crane, attorney for Russell Cooper

cc:

RECEIVED
CITY OF CLOVERDALE
2014 AUG 28 AM 11:26

August 27, 2014

Krystle Lindberg
City of Cloverdale
124 North Cloverdale Blvd.
Cloverdale, California 95425

Re: Invoice No: 5053
Subject Property: 10 Orange Drive, Cloverdale, California
Property Owner: Russell Cooper
Our File No.: SFE02-13102

Dear Ms. Lindberg:

My office is writing on behalf of Mr. Russell Cooper with regard to the City of Cloverdale's invoice for expenses the City incurred during the nuisance abatement on Mr. Cooper's property located at 10 Orange Drive. After evaluating the documentation of the charges billed by the City related to the Final Order dated January 17, 2013, we are disputing the charges and request that the City provide additional information regarding its reimbursement demand.

As outlined in your correspondence dated April 14, 2014, the City's charges fall into three categories: (1) relocation benefits paid by the City on behalf of Mr. Cooper to his former tenants of Units 5 and 9; and (2) charges incurred by the City through the work of its employees and by third parties. The following provides the basis upon which Mr. Cooper disputes the City's abovementioned invoice for reimbursement.

Relocation Benefits

Pursuant to California Health and Safety Code section 17975, any tenant who is displaced from a residential rental unit as a result of an order to vacate shall be entitled to receive relocation benefits from the owner. (Health & Saf. Code §17975.2.) If an owner of a property fails, neglects, or refuses to pay relocation payments to a displaced tenant, the local enforcement agency may advance relocation payments. (Health & Saf. Code §17975.5(a).) The local enforcement agency shall be entitled to recover from the owner any amount paid to a tenant, a penalty equal to the sum of one-half the amount so paid for failure to make timely payment to the displaced tenant, and the local enforcement agency's costs, including direct and indirect costs, of administering the provision of benefits to the displaced tenant. (*Id.*)

RICHARD S. DIESTEL
JAMES M. TREPPA
ALISON M. CRANE
STEVEN E. MCDONALD
JEFFREY V. TA

LEIGHTON M. BLEDSOE
(1903-1993)

ROBERT S. CATHCART
(1909-2007)

L. JAY PEDERSEN
(1950-2012)

DAVIN R. BACHO
NICHOLAS J. BERNATE
JACY C. DARDENE
ERROL C. DAHS
CATHLIN M. EMBETTI
COLIN W. LARSON
STEVIE B. NEWTON
DAVIS J. REILLY
JAMES L. SHEA
TESSA K. WEEKS

601 CALIFORNIA STREET
16TH FLOOR
SAN FRANCISCO
CALIFORNIA 94108-2805
(415) 981-5411 TEL.
(415) 981-0352 FAX

Krystle Lindberg
Subject Property: 10 Orange Drive, Cloverdale, California
Property Owner: Russell Cooper
August 27, 2014
Page 2

The former tenants were not entitled to relocation expenses

Health and Safety Code section 17975.4(a) prohibits the payment of relocation benefits to any tenant who has caused or substantially contributed to the condition giving rise to the order to vacate, nor shall any relocation benefits be payable to a tenant if any guest or invitee of the tenant has caused or substantially contributed to the condition giving rise to the order to vacate.

Here, the tenants significantly contributed to the conditions giving rise to the City's order to vacate and eventual advance of relocation benefits. The excessive number of people living in Units 5 and 9 put significant strain on the subject property resulting in rapidly deteriorating conditions that would not otherwise exist. Rather than alerting Mr. Cooper to the damage they caused in the units, the former tenants hid the conditions and their illegal tenancies from him.

Therefore, Mr. Cooper is not liable for reimbursement of relocation expenses the City advanced to the tenants who formerly resided in Units 5 and 9 of the subject property since they were not entitled to relocation expenses in the first place for substantially contributing to the conditions which gave rise to the City's order to vacate and subsequent advance of relocation expenses.

Even if the tenants were entitled to relocation expenses, the City must be reimbursed for relocation expenses by other parties

Health and Safety Code section 17975.10 requires that when a local code enforcement agency seeks reimbursement upon advancing relocation payments to displaced tenants when the owner fails, neglects, or refuses to pay relocation payments, the local code enforcement agency must first explore the potential of using funds from any available federally-funded program that provides tenant relocation assistance in cases of local code enforcement activities. The City is therefore required by California State Law to explore the potential of using funds from available federally-funded programs that provide tenant relocation assistance before seeking reimbursement for relocation benefits.

Additionally, if the City fails to acquire funds and be reimbursed by a federally-funded program, then the former tenants are rightfully responsible for reimbursing the City since they were compensated by not only the City by way of the relocation expenses but also by Mr. Cooper through settlement of a civil litigation matter brought by the former tenants against Mr. Cooper for the conditions which they complained about to the City.

On October 2, 2013, prior to the request to the City for relocation expenses, the tenants filed a lawsuit against Mr. Cooper for claims predicated on the exact same conditions which the City eventually issued an order to vacate and advanced relocation benefits for. The matter was filed in Sonoma County Superior Court, Case No. SCV-252448 (hereinafter referred to as the "Civil Case").

Krystle Lindberg
Subject Property: 10 Orange Drive, Cloverdale, California
Property Owner: Russell Cooper
August 27, 2014
Page 3

Ultimately, the Civil Case settled and the tenants were paid a substantial settlement sum pursuant to a written agreement between the tenants and Mr. Cooper. The Settlement Agreement states that in exchange for settlement proceeds paid on behalf of Mr. Cooper, the tenants are required to indemnify and defend Mr. Cooper for all liens arising out of the claims made in the Civil Case.

Specifically, Paragraph 7 of the Mutual Release and Settlement Agreement signed by all parties to the Civil Case states:

Plaintiffs further agree that in exchange for the [settlement] payment set forth in paragraph 1, Plaintiffs will indemnify and defend Defendants against any and all liens for services provided to Plaintiffs, and each of them, whether based in statute, contract or equity, arising out of the injuries and claims referenced in the Civil Case. Plaintiffs will release and hold Defendants . . . free and harmless from any and all such liens.

Further, Paragraph 8 of the Mutual Release and Settlement Agreement states:

In further consideration for the [settlement] payment set forth in paragraph 1, Plaintiffs, the Law Offices of Donald Ziskin, and the Law Offices of Christian Fierro, jointly and severally, agree to save, defend, hold harmless, and indemnify Defendants from and against (i) any and all claims, demands, actions, causes of action, damages and costs (including attorneys' fees) arising out of any lien claim pertaining to the facts or claims asserted in or related to the Complaint; (ii) any and all liens that may apply to the settlement provided for herein; [and] (iii) any and all claims for subrogation, indemnity and/or contribution from any persons or entities relating to payments paid to Plaintiff in connection with the facts or claims asserted in or related to the Complaint.

Therefore, with regard to the relocation benefits, reimbursement should be sought from the tenants since the Settlement Agreement between the former tenants and Mr. Cooper requires the tenants to indemnify and defend Mr. Cooper against any and all liens provided to them, "whether based in statute, contract or equity, arising out of the injuries and claims referenced in the Civil Case," and also to "save, defend, hold harmless, and indemnify [Mr. Cooper] from and against . . . any and all claims for subrogation, indemnity and/or contribution from any persons or entities relating to payments paid to Plaintiff in connection with the facts or claims asserted in or related to the Complaint."

For the reasons stated above, Mr. Cooper is not liable for reimbursement of relocation expenses the City advanced to the former tenants of Units 5 and 9 of the subject property.

Krystle Lindberg
Subject Property: 10 Orange Drive, Cloverdale, California
Property Owner: Russell Cooper
August 27, 2014
Page 4

Charges Incurred by City through the Work of Its Employees and of Third Parties

The remaining charges the City seeks reimbursement for relate to the City's handling of the nuisance abatement process. These charges include hourly rates for the work conducted by employees of the City, including the City Manager, Community Development Director, Accounting Assistant, and Planning Technician. Additionally, the remaining charges include hourly rates for the work of third parties, including Coastland Civil Engineering who conducted building inspections for purposes of code enforcement and assessing water discharge and Meyers Nave who provided legal services relating to nuisance abatement of the subject property.

However, the only basis the City has presented in support of reimbursement of these charges is found in the City's Final Order issued on January 17, 2013, which sets forth the City's findings and orders to vacate and abate the issues on the subject property. Notably, the City fails to provide any legal basis which requires or authorizes the reimbursement of such expenses.

Therefore, please provide the legal authority the City relies upon in seeking reimbursement for such expenses. Moreover, the invoices and supporting documentation the City provides fails to present any description of the work done in furtherance of the nuisance abatement. Thus, in addition to the legal basis for demanding such reimbursement, please also provide a thorough accounting of the expenses, including specific descriptions of the activities and tasks involved in generating such costs so the reasonableness of same can be evaluated.

Please contact our office should you wish to discuss this matter.

Very truly yours,

BLEDSON, CATHCART, DIESTEL,
PEDERSEN & TREPPA, LLP



Alison M. Crane

AMC/ECD:ame

cc: Russell Cooper



**City Council/Successor Agency
Agenda Item Summary**

Agenda Item: 6
Meeting Date: January 12, 2016

Agenda Section

Consent

Staff Contact

Paul Cayler, City Clerk

Agenda Item Title

Consideration of Resolution No. 001-2016 Amending Resolution No. 035-2010 Adopted on September 22, 2012 and Adopting Exhibit B to the City's Conflict-Of-Interest Code to Specify the Current Positions Designated to Report Financial Interests Pursuant to the Code

Summary

The City is required to biennially review and update as necessary its Conflict-of-Interest Code pursuant to California Government Code section 87300 and following. Section 87200 of the Government Code lists specific positions, such as City Council members, who are subject to Fair Political Practices Commission ("FPPC") reporting requirements. The Government Code also requires that any positions within the City that involve making or participating in making decisions that may foreseeably have a material effect on any defined financial interest be separately listed. These positions are also subject to the Conflict-of-Interest Code. Exhibit B to the City's Conflict-of-Interest Code contains a list of positions designated to report that are in addition to the required reporters set forth in Government Code section 87200.

The FPPC regulations include consultants and employees in newly created positions that make or participate in making such decisions and whose positions are not yet listed in an agency's conflict-of-interest code (See 2 Cal. Code Regs. § 18219). Attached is Exhibit B to the Conflict-of-Interest Code that reflects the current positions designated to report in addition to those positions required to report pursuant to Government Code Section 87200.

Options

1. Adopt the attached resolution amending the Conflict-of-Interest Code.
2. Revise the attached resolution amending the Conflict-of-Interest Code and adopt the revised resolution.
3. Provide direction to staff to prepare alternate amendments that reflect current positions designated to report for resubmission within 60 days.

Budget/Financial Impact

N/A

Subcommittee Recommendation

N/A

Recommended Council Action

Adopt the attached resolution amending the Conflict-of-Interest Code to reflect current positions designated to report

Attachments:

1. Resolution No. 001-2016 Amending Conflict-of-Interest Code
 2. Exhibit B to Conflict-of-Interest Code – Positions Designated to Report
-

**CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 001-2016**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE
AMENDING RESOLUTION NO. 035-2012 ADOPTED ON SEPTEMBER 22, 2012 AND ADOPTING
EXHIBIT B TO THE CITY'S CONFLICT-OF-INTEREST CODE TO SPECIFY THE CURRENT POSITIONS
DESIGNATED TO REPORT FINANCIAL INTERESTS PURSUANT TO THE CODE**

Whereas, pursuant to section 87300, *et seq.* of the California Government Code, the City of Cloverdale is required to adopt and promulgate a Conflict-of-Interest Code; and

Whereas, pursuant to Government Code section 87302, the City's Conflict-of-Interest Code must specifically enumerate the positions within the City, other than those specified in Government Code section 87200, that involve the making or participating in making of decisions that may foreseeably have a material effect on any financial interest, and, for each such enumerated position, the Conflict-of-Interest Code must state the specific types of investments, business positions, interests in real property and sources of income that are reportable; and

Whereas, Government Code section 87306.5 requires that local agencies review their conflict-of-interest codes biennially and submit any proposed amendments to the code reviewing body by October 1 of each even-numbered year; and

Whereas, on September 22, 2012, the City Council of the City of Cloverdale adopted Resolution No. 035-2012, adopting by reference the Model Conflict-of-Interest Code developed by the Fair Political Practices Commission ("FPPC"); and

Whereas, attached to Resolution No. xxx-2016 is Exhibit B, which lists the positions within the City, other than those specified in Government Code section 87200, that are required to report specified financial interests; and

Whereas, the FPPC regulations include within the definition of "Designated Employees" consultants and employees in newly created positions that make or participate in making decisions and whose specific positions are not yet listed in an agency's conflict-of-interest code; and

Now, Therefore, Be It Resolved as follows:

Section 1: The above recitals are true and correct findings of the Cloverdale City Council.

Section 2: Resolution No. 035-2012, adopted on September 22, 2012, is hereby amended to update Exhibit B to the City's Conflict-of-Interest Code, which is attached hereto and incorporated herein and which lists positions within the City in addition to those set forth in Government Code Section 87200 that are subject to the provisions of the Conflict-of-Interest Code and their disclosure categories.

Section 3: This resolution shall take effect immediately.

It is hereby certified that the foregoing Resolution No. 001-2016 was duly introduced and duly adopted by the City Council of the City of Cloverdale at its regular meeting held on the 12th day of January, 2016, by the following voice vote: (ayes – noes – absent)

AYES :

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTESTED:

Mary Ann Brigham, Mayor

Linda Moore, Deputy City Clerk

Attachment: Exhibit B to Conflict-of-Interest Code

Exhibit "B" 2016

Positions Designated to Report	Disclosure Category
Finance Manager	All designated positions shall file Form 700 (FPPC Form) or its equivalent, and all designated positions shall complete all categories of said form.
Assistant City Manager/Community Development Director	
Public Works Director/City Engineer	
Chief of Police	
City Clerk	
Planning Commissioner – Alternate	
Successor Agency Board Member	

Agenda Section Regular	Staff Contact Paul Cayler, City Manager
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Agenda Item Title

An Ordinance of the City Council of Cloverdale Amending Cloverdale Municipal Code Title 18 (Zoning Ordinance), Chapter 18.09, to add "Article III. Marijuana," Section 18.09.300, "Medical Marijuana," prohibiting commercial marijuana (cannabis) activities and regulating the cultivation of medical marijuana by qualified patients and primary caregivers and the delivery of medical marijuana within the City; and an Ordinance Amending Chapter 9.36, "Marijuana," of the Cloverdale Municipal Code, Section 9.36.020, "Definitions," and Section 9.36, "Outdoor Cultivation of Marijuana Prohibited," to Reference the Cloverdale Zoning Ordinance for Definitions and Regulations related to the Cultivation of Marijuana.

Summary

Due to recent changes in the law, staff has prepared Ordinances amending the Cloverdale Municipal Code to prohibit commercial marijuana activity such as dispensaries and commercial cultivation in all zones, and regulating the cultivation of medical marijuana by qualified patients and primary caregivers in specific residential zones. The Ordinance also regulates the delivery of medical marijuana. The Ordinances are necessary to clarify and regulate qualified patient or primary caregiver cultivation within the City in a safe and effective manner. The Ordinances are also necessary to preserve local control for any future regulation, should the City wish to regulate commercial marijuana activity at a later date.

Background Regarding Medical Marijuana Laws

In 1970, Congress enacted the Controlled Substance Act which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States. Marijuana is still considered illegal under federal law as it exists today.

In 1996, the voters of the State of California approved Proposition 215, which is codified as Health and Safety Code Section 11362.5, et seq., also known as "The Compassionate Use Act of 1996", which creates a limited exception from criminal liability 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. Proposition 215 expressly anticipates the enactment of additional local legislation. It provides: "[n]othing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for non-medical purposes." (Health & Safety Code section 11362.5(b)(2).)

The Medical Marijuana Program (the "MMP"), enacted by the California Legislature in 2003 and codified in Health & Safety Code section 11362.7 et seq., establishes the term "qualified patient," as a person whose physician has recommended the use of marijuana to treat a serious illness or any other illness for which marijuana provides relief. (Health & Safety Code section 11362.7(f); see also section 11362.5(b)(1)(a).) The MMP also establishes the term "primary caregiver," defined as a person who is designated by a qualified patient and "has consistently

assumed responsibility for the housing, health, or safety of the patient.” (Health & Safety Code section 11362.7(d); see also section 11362.5(e).) Either a qualified patient or a primary caregiver for a qualified patient has immunity from State criminal liability for possession of marijuana. (Health & Safety Code section 11362.7(c).)

The MMP also lists quantity restrictions at “*no more than eight ounces of dried marijuana (buds only) and no more than six mature or twelve immature marijuana plants per patient.*” (11362.77(a) H&S) The law also allows for cities and counties to increase these quantities (thus, the Sonoma County guidelines of thirty (30) marijuana plants and/or three (3) pounds processed marijuana).

In 2008, the City Council adopted Ordinance 660-2008, adding Chapter 9.36 to the City of Cloverdale Municipal Code, which prohibited outdoor cultivation within the City limits of Cloverdale. This section of the Ordinance was written to promote the public health, safety and welfare by protecting City residents from the offensive odor and unreasonable risk of crime from outdoor cultivation of marijuana. The Ordinance also prohibited dispensaries within the City limits of Cloverdale. The Ordinance was written to protect citizens from the secondary impacts associated with medical marijuana dispensaries, including, but not limited to, increased public consumption of marijuana and the potential for increased marijuana DUIs, illegal resale of marijuana obtained at low cost from dispensaries, loitering, fraud in obtaining or using medical marijuana identification cards, robbery, assault, and other crimes; also preventing increased demands for police response resulting from activities at medical marijuana dispensaries and parcels where outdoor marijuana cultivation occurs, thereby avoiding reduction of the ability of the City’s public safety officers to respond to other calls for service. Chapter 9.36 did not address commercial cultivation for distribution.

Following the enactment of Proposition 215 and Senate Bill (“SB”) 420, there was extensive litigation regarding the extent that cities and counties could regulate medical marijuana. In 2013, the California Supreme Court finally settled the issue. In *City of Riverside v Inland Empire Patients Health and Wellness Center, Inc.*, (2013) 56 Cal.4th 729, the California Supreme Court held that cities have the authority to ban medical marijuana uses within their boundaries and prohibit any use that constitutes a violation of state or federal law. The unanimous decision states that marijuana statutes have a narrow reach – they do not create a “*right to use marijuana without hindrance or inconvenience.*” Further, marijuana statutes do not override zoning, licensing, or police powers. Health & Safety Code section 11362.775 does not confer the “*unfettered right to cultivate or dispense marijuana anywhere they choose.*” The Honorable Justice Baxter wrote, “*We cannot lightly assume the voters or the Legislature intended to impose a ‘one size fits all’ policy, whereby each and every one of California’s diverse counties and cities must allow the use of local land for such purpose.*” In the same year, following the *Riverside* case, the Third District Court of Appeal held cities have the authority to ban marijuana cultivation within their boundaries. Thus, it is now settled that cities have the authority to ban both marijuana dispensaries and cultivation under the law as it exists today. (*Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975).

Changes in the Law Requiring Land Use Regulations or Ordinance

On October 9, 2015, three (3) bills (Assembly Bill (“AB”) 243, AB 266, and SB 643) related to medical marijuana were signed into law by Governor Brown. The three (3) bills were joined and signed as a package (known as the “Medical Marijuana Regulation & Safety Act” or the “MMRSA”). The legislation created a comprehensive statewide regulatory license system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis. All licenses must also be approved by local governments. AB 243, which relates to cultivation of marijuana, provides that “***[i]f a local city, county, or city and county does not have land use regulations or ordinances prohibiting the cultivation of marijuana, either expressly or otherwise under the 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.***” Thus, if an ordinance regulating or prohibiting marijuana cultivation is adopted by March 1, 2016, cities still retain local control through their police power and land use authority. Consistent with current law, the new MMRSA will not impact the City’s ability to prohibit or regulate medical dispensaries or cultivation.

Recently, the author of AB 243, Assembly Member Wood, issued a letter indicating that he will be proposing an amendment to the bill removing the March 1, 2016 deadline. Unfortunately, the amendment has not yet been passed and it does not appear that the amendment will be passed before the March 1, 2016 deadline; therefore, that deadline is still in effect and requires cities to regulate or prohibit marijuana cultivation by March 1, 2016 deadline.

Need for New Local Regulations

Over the past five (5) years, medical marijuana laws have been used by residents in Cloverdale to skirt the law, to grow marijuana illegally for commercial sale, and for personal use beyond medical purposes. This is typically achieved by subjects obtaining Proposition 215 cards from multiple medical marijuana patients and using these cards to grow additional marijuana for commercial sale. The unclear distinction between medical and illegal commercial cultivation and the lack of regulation for medical marijuana cultivation creates difficulties for law enforcement and the community by: (1) enabling large indoor cultivation areas in homes which reduces the quality and quantity of housing; (2) increasing building and fire code violations, thus exposing residents and endangering first responders and neighbors to potential hazards; (3) exposing residents to health hazards from mold and water damage; (4) creating increased nuisance conditions in neighborhoods; and (5) increasing other illegal activities such as the frequency of home invasion robbers, gun use; and a loss of neighborly community.

Recent trends indicate an increase in the use of homes in Cloverdale for cultivation for illegal commercial sale, caregiver, and for qualified patients. Since 2010, we have seen a slow and steady increase of documented illegal outdoor cultivations. Most, if not all, cultivations encountered by law enforcement failed to comply with current Ordinance and/or State law.

Public Workshops

The City Council held public workshops on November 10, 2015 and December 8, 2015 to discuss the need for new regulations related to the cultivation of medical marijuana. The crafting of the attached Ordinance was the result of public input and City Council concerns.

On December 16, 2015, the Planning Commission held a public hearing to discuss the proposed Ordinance. At that meeting, the Planning Commission discussed the Ordinance and the various provisions contained therein, and ultimately voted 4-1 to recommend that the City Council adopt the above referenced Ordinance with proposed modifications. The modifications related to 1) the inclusion of cultivation by a qualified patient or primary caregiver on parcels with a detached single-family dwelling located in R-3 zones; and 2) the small growth exception set forth in Section 18.09.300 (F) be amended to limit the cultivation to three (3) plants regardless of the how many qualified patients or primary caregivers reside on the property.

Proposed Ordinances

The proposed Zoning Ordinance would comply with the MMRSA and allow the City to retain local control and prevent the State from becoming the sole licensing authority of medical marijuana cultivation within the City.

The following is a summary of the proposed Zoning Code amendments and regulations on commercial marijuana activity, cultivation of medical marijuana and delivery of medical marijuana with the proposed recommendations from the Planning Commission underlined:

❖ *Commercial Marijuana Activity Prohibited*

Commercial marijuana activities or commercial medical marijuana activities of all types including, but not limited to, dispensaries, collectives, cooperatives, transportation, distribution, cultivation, manufacturing, testing and processing are expressly prohibited in all zoning districts, planned developments and all specific and master plan areas in the City of Cloverdale. However, deliveries of medical marijuana conducted in compliance with subsection 18.09.300(H) of this Section shall be exempt.

❖ **Qualified Patient/Primary Caregiver Cultivation in Detached Structure – Cultivation Permit Required**

A qualified patient or primary caregiver may cultivate medical marijuana in a detached structure subject to all of the following requirements:

- Cultivation shall occur inside one (1) detached structure in an area not exceeding one-hundred (100) square feet.
- Cultivation inside the detached structure shall not exceed thirty (30) marijuana plants (three (3) pounds processed marijuana) regardless of how many qualified patients or primary caregivers reside on the parcel.
- Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling. Parcels containing duplexes or multi-family dwellings, such as apartment buildings, shall not be allowed to cultivate medical marijuana.
- Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling, located in an area of the City zoned for Residential Use, Planned Development, and Planned Unit Development (R-1, R-2, R-3, R-R, PD and PUD as set forth in Title 18).
- The qualified patient or primary caregiver shall reside full-time on the premises where the cultivation of marijuana occurs.
- If the qualified patient or primary caregiver is a tenant on the parcel where he/she wishes to cultivate marijuana, the qualified patient or primary caregiver shall obtain written permission with a signature of the owner of the property authorizing the qualified patient or primary caregiver to cultivate marijuana on the property.
- No cultivation of marijuana shall occur within six hundred (600) feet of any school. The six hundred (600) feet shall be measured from the closest property line of the school to the closest property line of the cultivating parcel.
- No marijuana growth shall be visible from the right of way.
- All cultivated marijuana shall use only certified organic residual pesticides, herbicides, and fungicides.
- All cultivation of marijuana shall require a Cultivation Permit from the Chief of Police.

❖ **Qualified Patient/Primary Caregiver Cultivation – Small Grow Exception – No Cultivation Permit Required**

Any qualified patient or primary caregiver who cultivates three (3) or less marijuana plants for medical purposes as authorized by State law shall not be required to cultivate in a detached structure and shall not be required to obtain a Cultivation Permit from the Chief of Police if all of the following requirements are met:

- Cultivation of three (3) or less marijuana plants, per parcel, either indoors or outdoors, regardless of how many qualified patients or primary caregivers reside on the parcel.

- Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling. Parcels containing duplexes or multi-family dwellings, such as apartment buildings, shall not be allowed to cultivate medical marijuana.
- Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling, located in an area of the City zoned for Residential Use, Planned Development, and Planned Unit Development (R-1, R-2, R-3, R-R, PD and PUD as set forth in Title 18).
- The qualified patient or primary caregiver shall reside full-time on the premises where the cultivation of marijuana occurs.
- If the qualified patient or primary caregiver is a tenant on the parcel where he/she wishes to cultivate marijuana, the qualified patient or primary caregiver shall obtain written permission with a signature of the owner of the property authorizing the qualified patient or primary caregiver to cultivate marijuana on the property.
- No marijuana growth shall be visible from the right of way.
- Any outdoor cultivation shall maintain a minimum of a ten (10) foot setback from any property line.
- If cultivation occurs inside the residence, the residence must be in full compliance with all City codes and regulations, including the Building Code and Fire Code.
- Cultivation shall remain, at all times, a secondary or accessory use of the residence and the primary purpose of the residence shall at all times be as a dwelling.
- All cultivated marijuana shall use only certified organic residual pesticides, herbicides, and fungicides.

❖ **Delivery of Marijuana**

- Deliveries of marijuana into the City of Cloverdale shall be permitted so long as the delivering dispensary obtains a City business license for delivery of marijuana and shall be in conformance with all of the following:
 - The delivery of marijuana shall be to a qualified patient or primary caregiver.
 - The amount of marijuana delivered to any single parcel shall not exceed eight (8) ounces for any single delivery.
 - Deliveries can only be conducted between the hours of 8 a.m. to 8 p.m.
 - Deliveries shall be from a point of origin outside of the City to a residence in the City.
 - A dispensary wishing to make deliveries must obtain a State license, when such license is made available by the State, to conduct deliveries.
 - Deliveries shall be made by an employee of the dispensary and said employee shall carry with him/her at all times a physical copy of the City Business License and State license, and the shipping manifest, when such manifests are available.

City Council can accept or reject the modifications made by the Planning Commission and make any changes to the proposed Ordinance that Council deems appropriate. If the City Council makes changes that were not discussed or considered at the Planning Commission, the new Ordinance may need to go back to the Planning Commission for recommendation; this would prevent the City from meeting the March 1, 2016 deadline. Given the discussions at the Planning Commission hearing and the Ordinance, there is a lot of flexibility for the City Council to make changes.

Staff recommends that the Council act on January 12, 2016 in order to retain local control by prohibiting commercial marijuana activities, including commercial cultivation and dispensaries. It is critical for the City to adopt an ordinance regulating or prohibiting marijuana cultivation and have it be in effect by March 1, 2016.

It is very likely that the City will have to amend or at least, re-visit marijuana regulations again in 2016 when the Department of Food and Agriculture publishes its regulations for cultivation of marijuana. Additionally, there is a 2016 ballot initiative for recreational use of marijuana, entitled the "Control, Regulate, and Tax Adult Use of Marijuana Act," which may affect the landscape of medical marijuana regulations. Finally, the City may amend after March 1, 2016, to further clarify limitations and regulations or to allow commercial marijuana activity with regulations.

Attached is also a proposed Ordinance amending Chapter 9.36, "Marijuana," of the Cloverdale Municipal Code. The Ordinance makes two minor amendments in order for Chapter 9.36 to be consistent with the proposed changes to the City's Zoning Ordinance. The proposed amendments to Chapter 9.36 are necessary to harmonize both Sections of the Municipal Code that relate to marijuana by keeping the definitions for both Sections 9.36.020 and 18.09.300 (B) the same and by clearly indicating that the regulation of medical marijuana cultivation shall be governed by Section 18.09.300. If approved by the City Council, the Ordinance will only amend Section 9.36.020, "Definitions," and Section 9.36.050, "Outdoor Cultivation of Marijuana Prohibited," to simply reference the new Zoning Ordinance Sections dealing with medical marijuana.

Budget/Financial Impact

No financial impact at this time. There may be a financial impact in the future if the City Council decides to call a special election.

Subcommittee Recommendation

N/A

Recommended Council Actions

1. Motion introducing and waiving the first reading of Ordinance 701-2016 of the City Council of Cloverdale Amending Cloverdale Municipal Code Title 18 (Zoning Ordinance), Chapter 18.09, to add "Article III. Marijuana," Section 18.09.300, "Medical Marijuana," Prohibiting Commercial Marijuana (Cannabis) Activities and Regulating the Cultivation of Medical Marijuana by Qualified Patients and Primary Caregivers and the Delivery of Medical Marijuana Within the City; and
2. Motion introducing and waiving the first reading of Ordinance 701-2016, of the City Council of Cloverdale Amending Chapter 9.36, "Marijuana," of the Cloverdale Municipal Code, Section 9.36.020, "Definitions," and Section 9.36, "Outdoor Cultivation of Marijuana Prohibited," to Reference the Cloverdale Zoning Ordinance for Definitions and Regulations related to the Cultivation of Marijuana.

Attachments:

1. Power Point Presentation by Chief Cramer
 2. Draft Ordinance amending Zoning Ordinance
 3. Draft Ordinance with Red-Lines showing Planning Commission Recommendations
 4. Draft Ordinance amending Cloverdale Municipal Code Chapter 9.36
 5. Planning Commission Resolution
 6. California League of Cities Brochure
 7. California League of Cities FAQ Sheet
 8. Proof of Publication
-
-

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CITY OF
CLOVERDALE



Marijuana Cultivation Ordinance
City Council Reading #1 - 1/12/16
Blending Local Compliance With State Legislation





CITY OF CLOVERDALE



1

Brief Re-cap of Timeline

2

Primary Caregiver Definition

3

Medical Marijuana Cultivation Ordinance Highlights

4

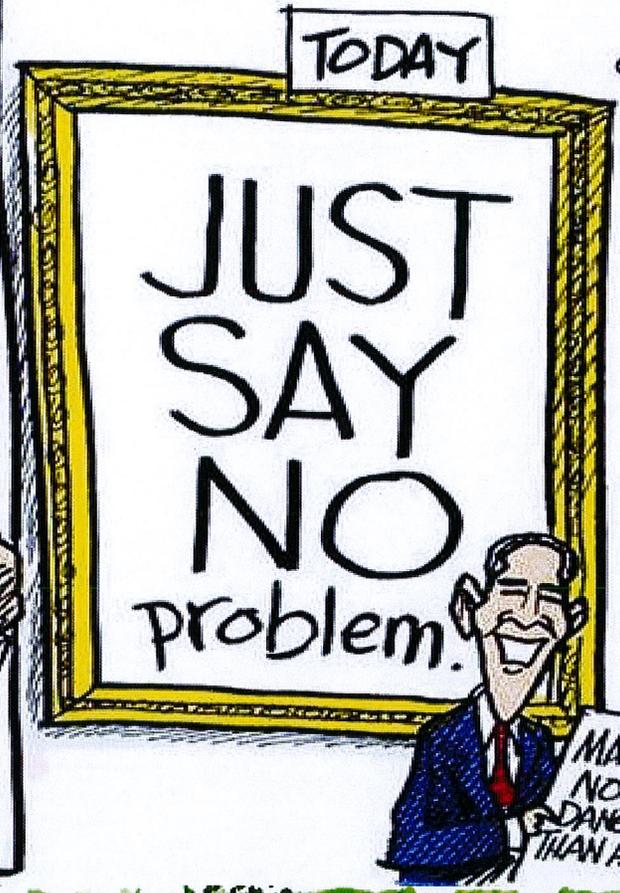
Moving Forward – Next Steps



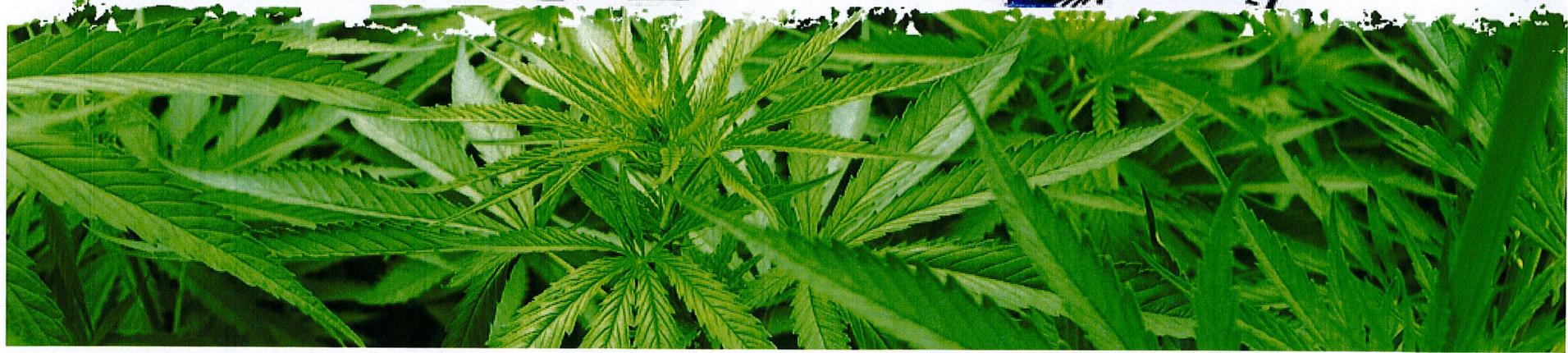
Medical Marijuana Regulation & Safety Act

City Council Timeline





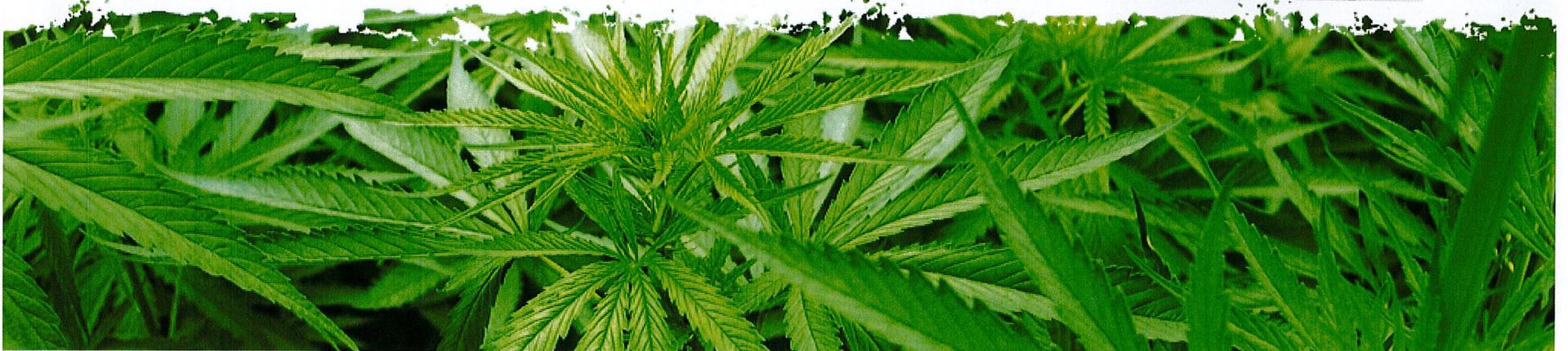
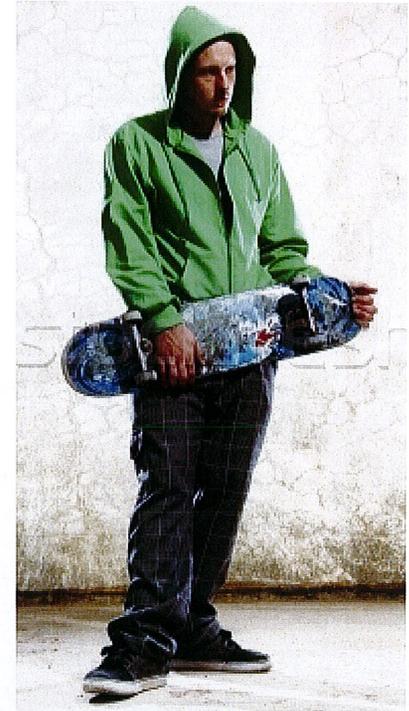
ALFREDO SANCHEZ
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Protected Individuals: Qualified Patients

- Patient = Anyone with a recommendation from a licensed CA physician.
- A recommendation, either oral or written [for] . . . any other illness for which marijuana provides relief.

H.S. § 11362.5



Definition of Primary Caregiver

➤ 11362.5(e) H&S states:

A person who (1) has been designated by the patient; and (2) has consistently assumed responsibility for housing, health, or safety of patient.

➤ A Primary Caregiver must have provided caregiving:

- consistently;
- independent of any assistance in taking medical marijuana; and
- at or before the time he or she assumed responsibility for assisting with medical marijuana

➤ *Requires an existing, established relationship – not after the fact to immunize previous cultivation or possession for sale*

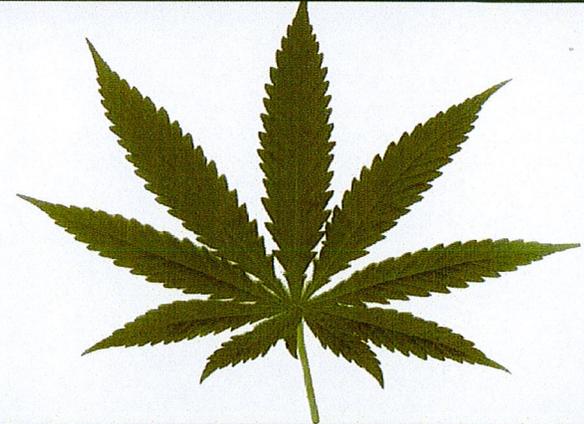
People v. Mentch (2008) 45 Cal.4th 274



“Primary caregiver” does not mean the defendant’s ‘primary dope-dealer.’

- *People ex. rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1395-1398.
- *People v. Mentch* (2008) 45 Cal.4th 274.
- *People v. Archer* (2009) 179 Cal.App.4th 298.

MEDICINAL
MARIJUANA
RECOMMENDATIONS

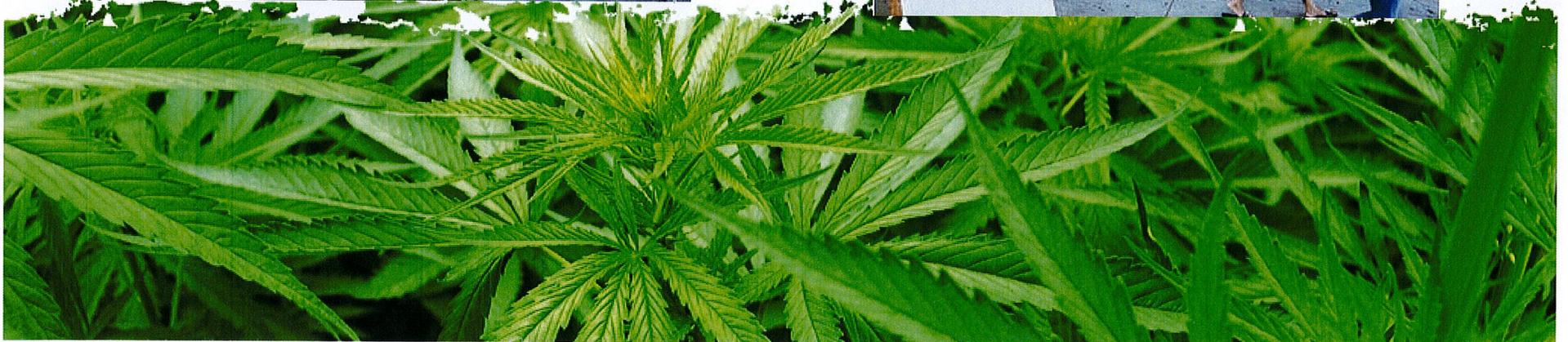
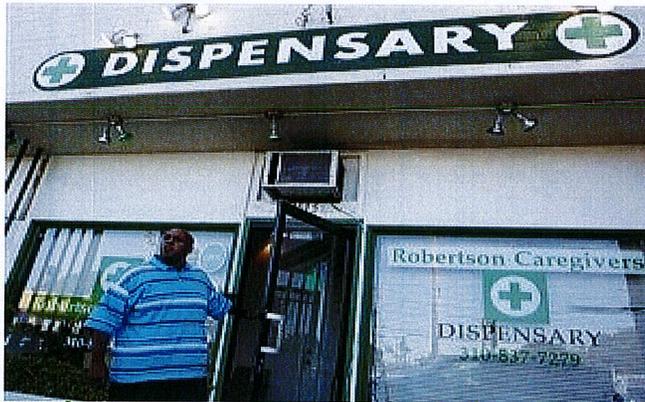


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Marijuana Stores are NOT Primary Caregivers

- Cannabis clubs (dispensaries) do not qualify as “primary caregivers.” *People v. Peron* (1997) 59 Cal.App.4th 1383
- A person who supplies a “qualified patient” with medical marijuana” (without doing more) is not a “primary caregiver.” *People v. Mentch* (2008) 45 Cal.4th 274



Nor are Vendors or Suppliers

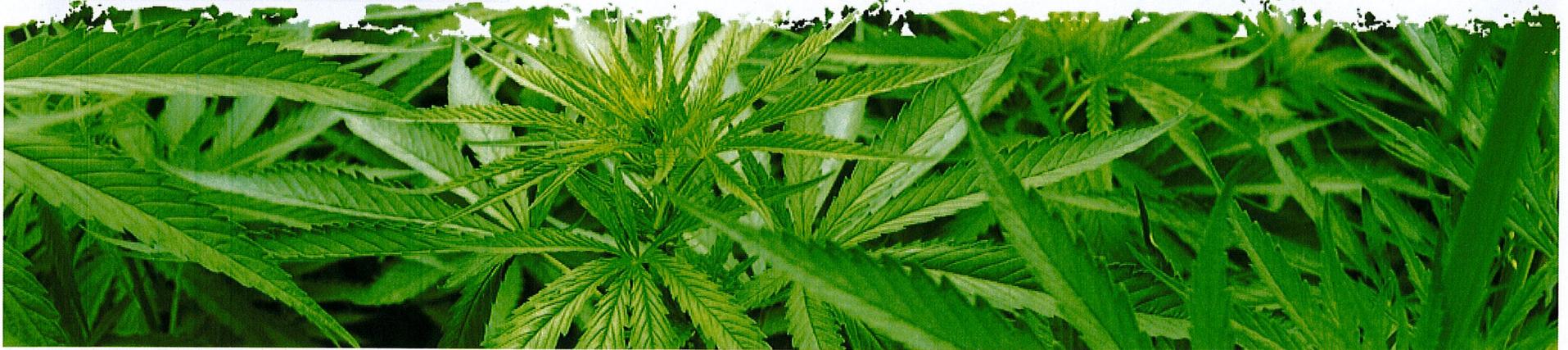
- Defendant did not qualify as a “primary caregiver” by growing marijuana to supply to a cannabis club.
People v. Galambos (2002) 104 Cal.App.4th 1147.

Quasi-legal medical marijuana has become a dangerous charade

Bob Morris, on Jun 21, 2012, 9:00 am



Gosh, that sure looks medicinal to me



Medical Marijuana Regulation & Safety Act

RECAP:

- New law - October 2015
- Local Control for Cultivations
- Qualified Patients/Primary Caregivers
- Cultivation & Delivery Restrictions

March 1, 2016 deadline



Cloverdale Planning Commission Presentation

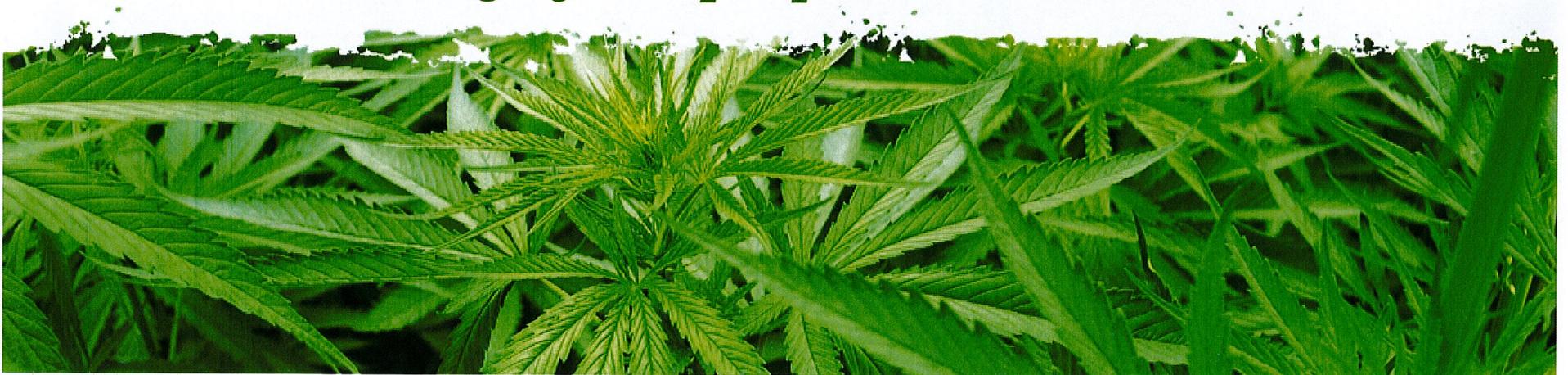
- **Zoning Concerns:** Public & Commissioners' comments expressed concerns about "R3" zoning. Requested single-family dwellings in "R3" zones to be included.
- **Commission Voted 4-1 to Recommend Adopting Ordinance:** Lone dissent expressed concern about quantity limits, parcel limitations, & "rushing" the process without further discussion. Remaining Commissioners recommended City Council adopt Ordinance with minor amendments
- **Amendments incorporated into current draft Ordinance**



Proposed Marijuana Cultivation Ordinance

- Based upon the incomplete current ordinance language, and the new comprehensive State cultivation legislation, staff has proposed City Council maintain **local control** and adopt a comprehensive marijuana cultivation ordinance that balances the medical needs of the patient with the quality of life needs of our community. The ordinance provides the framework necessary to allow personal cultivations & banning commercial cultivations, while regulating cultivations, protecting neighborhoods, and complying with State law.
- Proposed Ordinance regulates **land use** through the Planning Commission.

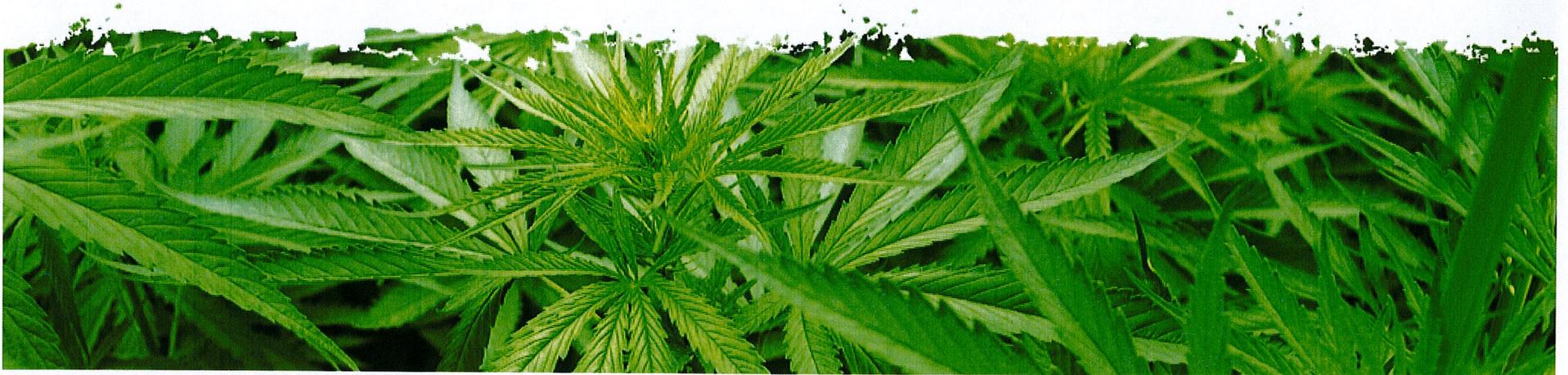
Tonight represents City Council's first formal reading of the proposed Ordinance



Listening to Multiple Perspectives

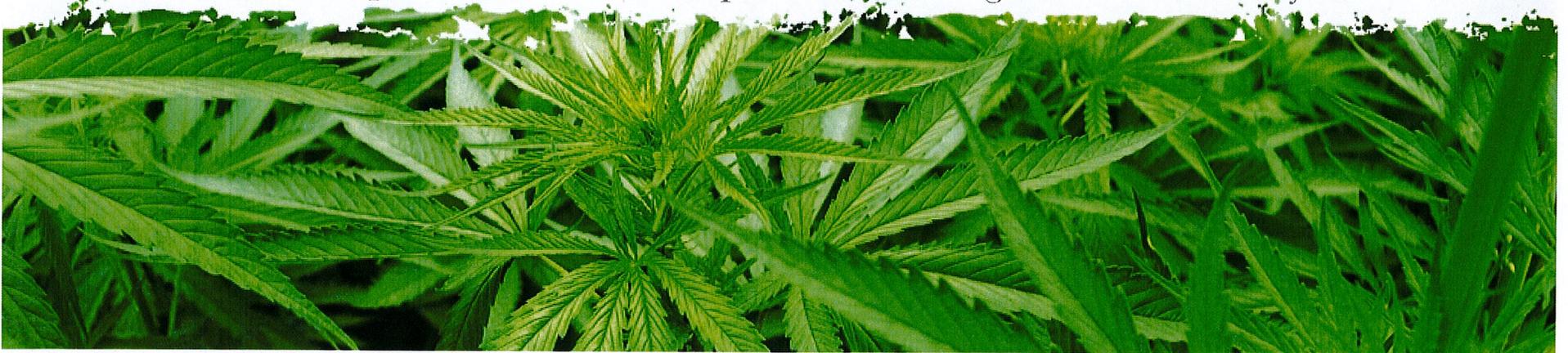
New draft ordinance breakdown

- **Qualified Patient/Primary Caregiver (3 plants)**
 - Exempt from Permit/Licensing Process
 - “Outdoors” or “Canopy” approved
 - Zoning: Residential
- **Qualified Patient/Primary Caregiver (30 plants & 3 lbs processed buds)**
 - “Detached, Fully Enclosed Structure” & permit/license required
 - Zoning: Residential
- **Commercial Cultivation for Distribution (PROHIBITED)**
 - New ordinance bans all commercial cultivation for distribution
 - New ordinance continues the ban on marijuana dispensaries
- **Deliveries by Dispensaries Allowed (with restrictions)**



Ordinance Highlights & Restrictions

- Allows the small individual grower the freedom to grow up to *three (3) plants* without the necessity of permits & licensing restrictions
- Provides garden canopy option for the small individual grower
- Maintains stringent regulations for qualified patients/primary caregivers who grow up to the Sonoma County guidelines (30 plants/3 lbs processed)
- Sets up a local permit process through the police department
- Expands definition of “structure” (“*detached, fully enclosed*”)
- Pays attention to sensitive land uses (600 foot restriction)
- Set-back at 10 feet
- Cultivations restricted to Residential Zones only
- All commercial cultivations prohibited
- Deliveries of medical marijuana allowed with certain restrictions
- Provides compassion for both the patient and the greater community needs



Qualified Patient/Primary Caregiver

- 100 square foot detached fully enclosed structure; one per parcel
- May grow up to Sonoma County guidelines (30 plants/3 lbs processed; 10 x 10)
- Cultivations permitted in Residential Zones only - single family dwellings
- Follow appropriate State Codes (Building, Electrical, Fire)
- Qualified Patient/Primary Caregiver required to live on site
- Tenants require written permission from land owner
- Sensitive land use restrictions (600 feet)
- Sets up a local permit process through the police department
- No marijuana visible from public right-of-way
- State of California cultivation license required



Cultivation Permit

- Issued by Chief of Police
- Application shall include: **(a)** name of qualified patient/primary caregiver; **(b)** identification number; **(c)** proof of ownership of the parcel or written consent of the owner; **(d)** physical cultivation site address; **(e)** # of plants & square footage of cultivation area; **(f)** waste disposal plan; **(g)** signed consent form, authorizing inspections by the Cloverdale Police Department/City Code Enforcement to enter & inspect the structure where marijuana cultivation occurs; and **(h)** potential risk of crime or violence associated with the location & cultivation
- Permit issued in two (2) year increments
- Cultivation Permit may be suspended or revoked for any violation of local or State law
- Appeal process set up to overturn suspension/revocation



Small Cultivation Exemption

- Allows qualified patients/primary caregivers personal cultivation up to *three (3) plants per parcel*
- Outdoor cultivation allowed (with a garden canopy option)
- Indoor cultivation allowed inside residence
- Cultivations permitted in Residential Zones only
- Set-back at *10 feet*
- No local permit or state license required
- No marijuana visible from public right-of-way
- Cultivation shall remain at all times a secondary or accessory use to the residential use of the residence



Land Use Restriction – ZONING

Removing the need for subjective interpretation

Personal MEDICAL marijuana cultivation allowed for *single-family dwellings only*, including:

RR - Rural Residential

R1 - Single Family Residential

R2 - Two Family Residential

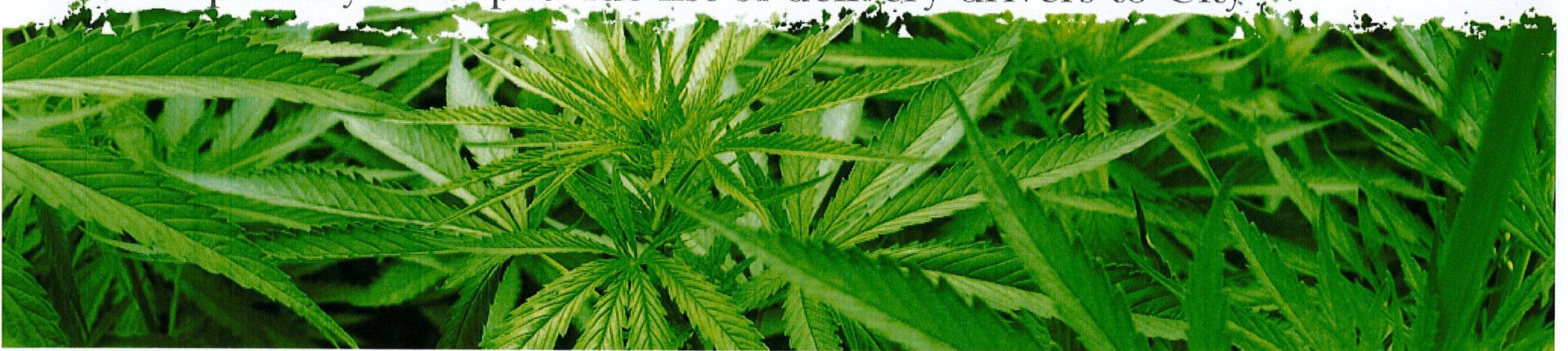
R3 - Multi-family Residential

Or any other areas where single-family dwellings are authorized, including Planned Unit Development (PUD) & Plot Planned (PP) districts.



Medical Marijuana Deliveries

- Delivering dispensary required to obtain a City business license
- The delivery of marijuana shall be to a qualified patient or primary caregiver
- The amount of marijuana delivered to any single parcel shall not exceed eight (8) ounces for any single delivery
- Deliveries can only be conducted between the hours of 8 a.m. to 8 p.m.
- Deliveries shall be from a point of origin outside of the City to a residence in the City
- Delivery driver must be associated with dispensary
- Dispensary must provide list of delivery drivers to City



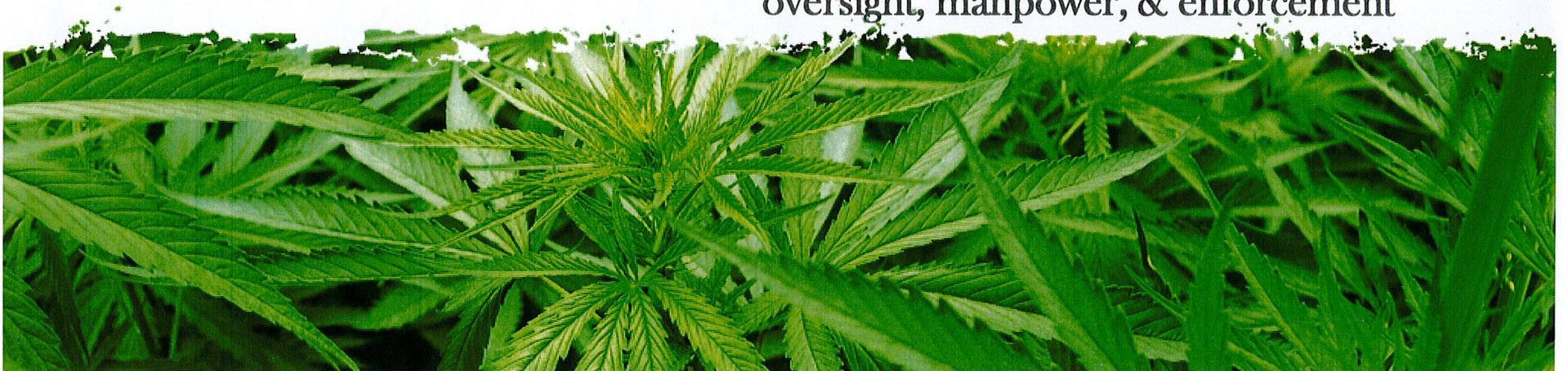
COMMERCIAL CULTIVATIONS PROHIBITED

Thus, we avoid these issues:

- Interference with other commercial businesses
- Ventilation & odor control
- Energy consumption
- Water quality & conservation
- Chemicals & Pesticides
- Track & Trace
- Product purity & potency
- Disposal of marijuana related substances (large scale)

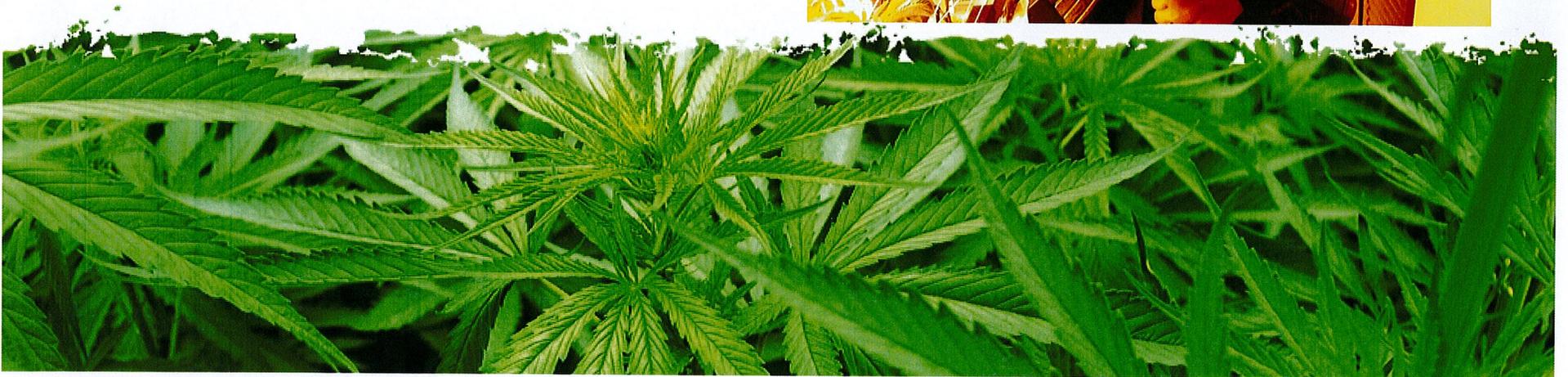
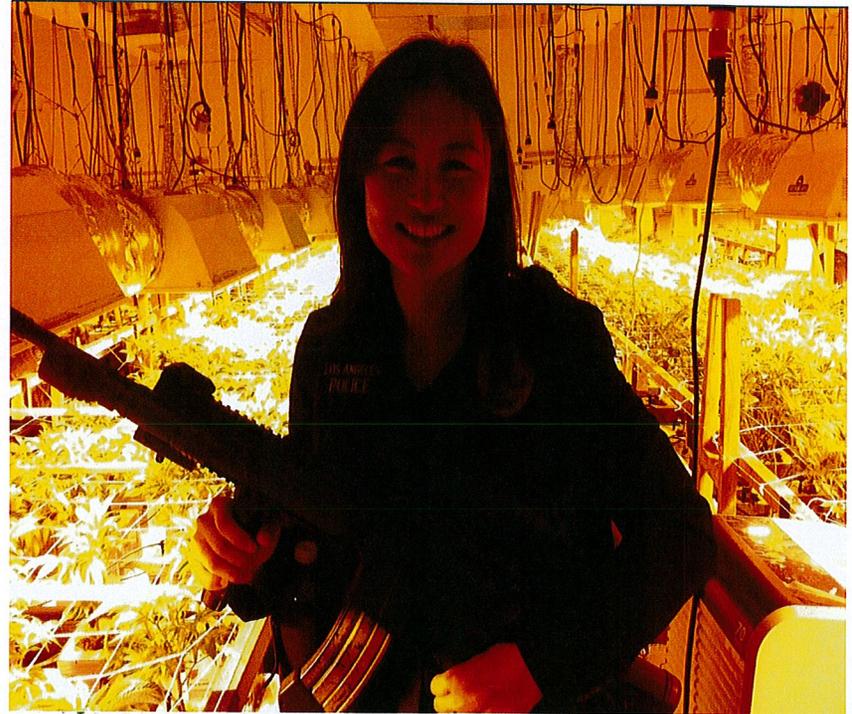


Commercial cultivations require extensive oversight, manpower, & enforcement



Cultivation & Transportation

- It is **illegal** under any circumstances to **sell any marijuana for profit**
- Therefore, it is illegal to **possess for sale, transport, or cultivate** marijuana when it will be **sold for profit**



Coming in 2016?

Storefront
Medical Marijuana “Dispensaries”





CITY OF
CLOVERDALE



Maintain Local Control by:

Allowing Small Personal Cultivations

Regulating Large Personal Cultivations

Banning Commercial Cultivations

March 1, 2016

Timeline

- Second reading & City Council Approval on January 26, 2016

**CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 701-2016**

AN ORDINANCE OF THE CITY COUNCIL OF CLOVERDALE AMENDING CLOVERDALE MUNICIPAL CODE TITLE 18 (ZONING ORDINANCE), CHAPTER 18.09, TO ADD "ARTICLE III. MARIJUANA," SECTION 18.09.300, "MEDICAL MARIJUANA," PROHIBITING COMMERCIAL MARIJUANA (CANNABIS) ACTIVITIES AND REGULATING THE CULTIVATION OF MEDICAL MARIJUANA BY QUALIFIED PATIENTS AND PRIMARY CAREGIVERS AND THE DELIVERY OF MEDICAL MARIJUANA WITHIN THE CITY

WHEREAS, in 1996 voters in the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and entitled "The Compassionate Use Act of 1996" or the "CUA"); and

WHEREAS, the primary purpose of the CUA was to ensure that seriously ill Californians have the right to obtain and use marijuana 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 cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief; and

WHEREAS, in 2004, the State of California also enacted Senate Bill 420 (codified as California Health and Safety Code section 11362.7 et seq. and referred to as "The Medical Marijuana Program" or the "MMP") to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill ("AB") 2650 (2010), and Assembly Bill 1300 (2011), amended the MMP to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances; and

WHEREAS, despite voter approval of the CUA, various problems and uncertainties in the Act impeded law enforcement's ability to interpret and enforce the law, and the uncertainties also hindered persons eligible to use marijuana for medical purposes from accessing marijuana, while many persons took advantage of the Act to use marijuana for recreational and not medical purposes; and

WHEREAS, the CUA is limited in scope, in that it only provides a defense from State criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary caregivers; and

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon local governments to allow, authorize or sanction the establishment and the operation of facilities cultivating, distributing, or processing medical marijuana; and

WHEREAS, in 2008, the City Council adopted Ordinance 660-2008, adding Chapter 9.36 to the City of Cloverdale's Municipal Code, which prohibited outdoor cultivation within the City limits of Cloverdale. Chapter 9.36 was adopted to promote the public health, safety and welfare by protecting City residents from the offensive odor and unreasonable risk of crime from outdoor cultivation of marijuana.

Chapter 9.36 also prohibited dispensaries within the City limits of Cloverdale. The Ordinance was written to protect citizens from the secondary impacts associated with medical marijuana dispensaries, including, but not limited to, increased public consumption of marijuana and the potential for increased marijuana DUIs, illegal resale of marijuana obtained at low cost from dispensaries, loitering, fraud in obtaining or using medical marijuana identification cards, robbery, assaults, and other crimes; also preventing increased demands for police response resulting from activities at medical marijuana dispensaries and parcels where outdoor marijuana cultivation occurs, thereby avoiding reduction of the ability of the City's public safety officers to respond to other calls for service; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land...”. Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App. 4th 975, the Court of Appeal held that “there is no right-and certainly no constitutional right-to cultivate medical marijuana...”. The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority; and

WHEREAS, in October of 2015, the State of California enacted AB 243, AB 266, and Senate Bill (“SB”) 643 in 2015 (commonly and collectively referred to as the Medical Marijuana Regulation and Safety Act or the “MMRSA”). The MMRSA establishes regulation of medical cannabis cultivation, manufacturing, and transportation, as well as create local and state-level licensing systems in California. The MMRSA allows a city to prohibit, through land use regulations or ordinances, the cultivating, delivering, distributing, or processing medical marijuana; and

WHEREAS, the City Council finds that commercial medical marijuana (cannabis) activities, as well as cultivation for personal medical use as allowed by the CUA, MMP and the MMRSA can adversely affect the health, safety, and well-being of City residents. Citywide prohibition of commercial cultivation and regulation of personal cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, under the Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., the use possession and cultivation of marijuana, medical or otherwise, is unlawful and subject to federal prosecution; and

WHEREAS, the limited immunity from specified State marijuana laws provided by the CUA and the MMP does not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, the MMRSA contains language that requires a city to prohibit cultivation uses by March 1, 2016, either expressly or otherwise under the principles of permissive zoning or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if a city wishes to prohibit deliveries; and

WHEREAS, the Planning Commission held a duly noticed public hearing on December 16, 2015, at which time it considered all evidence presented, both written and oral and at the end of the hearing voted to adopt a resolution recommending that the City Council adopt the Ordinance with recommendations for changes to Section 18.09.300 E (d) (allow cultivation in R-3 zones on parcels with detached single-family dwelling) and 18.09.300 F(1) (cultivation of three (3) plants per parcel) and 18.09.300 F(3)(allow cultivation in R-3 zones on parcels with detached single-family dwelling); and

WHEREAS, the City Council will hold a duly noticed public hearing to consider this Ordinance on January 12, 2016, at which time the City Council will consider all evidence presented, both written and oral.

NOW, THEREFORE, the City Council of the City of Cloverdale does ordain as follows:

SECTION 1. Amendment. Amendment of Title 18, Zoning Regulations: Chapter 18.09 is amended to add 18.09.300 and read as follows:

“Article III. Marijuana

18.09.300. Medical Marijuana

A. Purpose and Intent.

It is the purpose and intent of this ordinance to:

1. Assist law enforcement agencies in performing their duties effectively and in accordance with California law.
2. Acknowledge that the cultivation of medical marijuana is illegal under Federal law while granting limited immunity from local prosecution to those medical marijuana cultivation activities that do not violate the restrictions and limitations set forth in this Ordinance.
3. Ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets.
4. Implement State law by providing an equitable approach for regulating the cultivation of medical marijuana in a manner that is consistent with State law and balances the needs of medical patients and their caregivers with the health, safety, morals and general welfare of the residents and businesses within the City.
5. Require that medical marijuana be cultivated in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the public domain, to provide for the health, safety and welfare of the public, to prevent odor created by marijuana plants from impacting adjacent properties, and to ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets.

B. Definitions.

1. “Cannabis” shall have the same meaning as set forth in Business & Professions Code § 19300.5(f) as the same may be amended from time to time.
2. “Caregiver” or “primary caregiver” shall have the same meaning as set forth in Health & Safety Code § 11362.7 as the same may be amended from time to time.
3. “Commercial marijuana activity” shall have the same meaning as that set forth in Business & Professions Code § 19300.5(k) as the same may be amended from time to time.
4. “Cooperative/Collective” shall mean two (2) or more persons collectively or cooperatively cultivating, distributing, using, transporting, possessing, administering, delivering or making available medical marijuana (cannabis), with or without compensation.
5. “Cultivation” shall have the same meaning as set forth in Business & Professions Code § 19300.5(l) as the same may be amended from time to time.
6. “Cultivation site” shall have the same meaning as set forth in Business & Professions Code § 19300.5(x) as the same may be amended from time to time.
7. “Delivery” shall have the same meaning as set forth in Business & Professions Code § 19300.5(m) as the same may be amended from time to time.
8. “Dispensary” shall have the same meaning as set forth in Business & Professions Code § 19300.5(n) as the same may be amended from time to time. For purposes of this Chapter, “Dispensary” shall also include a cooperative/collective.
9. “Dispensing” shall have the same meaning as set forth in Business & Professions Code § 19300.5(o) as the same may be amended from time to time.
10. “Distribution” shall have the same meaning as set forth in Business & Professions Code § 19300.5(p) as the same may be amended from time to time.
11. “Distributor” shall have the same meaning as set forth in Business & Professions Code § 19300.5(q) as the same may be amended from time to time.
12. “Manufacturer” or “Manufacturing” shall have the same meaning as set forth in Business & Professions Code § 19300.5(y) as the same may be amended from time to time.
13. “Manufacturing site” shall have the same meaning as set forth in Business & Professions Code § 19300.5(af) as the same may be amended from time to time.
14. “Marijuana” shall have the same meaning as cannabis as set forth in Business & Professions Code § 19300.5(f) as the same may be amended from time to time.
15. “Medical cannabis,” “medical cannabis product,” or “cannabis product” shall have the same meanings as set forth in Business & Professions Code § 19300.5(ag) as the same may be amended from time to time.

16. “Medical Marijuana Regulation and Safety Act” or the “MMRSA” shall mean the following bills signed into law on October 9, 2015 as the same may be amended from time to time: AB 243, AB 246, and SB 643.

17. “Nursery” shall have the same meaning as set forth in Business & Professions Code § 19300.5(ah) as the same may be amended from time to time.

18. “Person” shall have the same meaning as set forth in Business & Professions Code § 19300.5(aj) as the same may be amended from time to time.

19. “Personal cultivation” or “Cultivation for Personal Use” shall mean cultivation by a qualified patient or primary caregiver for the personal use by the qualified patient or the patients cared for by the primary caregiver.

20. “Parcel” shall mean property assigned a separate parcel number by the Sonoma County assessor.

21. “Qualifying patient” or “Qualified patient” shall have the same meaning as set forth in Health & Safety Code § 11362.7 as the same may be amended from time to time.

22. “School” shall mean any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

23. “Structure” shall mean a building completely enclosed and detached from a residence that complies with the California Building Code, as adopted by the City, and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. Walls and roof must be constructed of solid materials that cannot be easily broken through. Exterior walls must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

24. “Testing laboratory” shall have the same meaning as set forth in Business & Professions Code § 19300.5(z) as the same may be amended from time to time.

25. “Transportation” or “Transport” shall have the same meaning as set forth in Business & Professions Code § 19300.5(am) as the same may be amended from time to time.

26. “Transporter” shall have the same meaning as set forth in Business & Professions Code § 19300.5(aa) as the same may be amended from time to time.

C. Commercial Marijuana Activity Prohibited

Commercial marijuana activities or commercial medical marijuana activities of all types including, but not limited to, dispensaries, collectives, cooperatives, transportation, distribution, cultivation, manufacturing, testing and processing are expressly prohibited in all zoning districts, planned developments and all specific and master plan areas in the City of Cloverdale. However, deliveries of

medical marijuana conducted in compliance with subsection 18.09.300(H) of this Section shall be exempt.

D. Cultivation of Marijuana Prohibited

All cultivation of marijuana and medical marijuana, both indoor and outdoor, is prohibited in all zoning districts, planned developments and all specific master plan areas in the City, except as authorized under Section 18.09.300(E) and Section 18.09.300(F) for qualified patients and primary caregivers.

E. Qualified Patient/Primary Caregiver Cultivation in Detached Structure – Cultivation Permit Required

1. A qualified patient or primary caregiver may cultivate medical marijuana in a detached structure subject to all of the following requirements:

a. Cultivation shall occur inside one (1) detached structure (as defined in Section 18.09.300(B)(23)) in an area not exceeding one-hundred (100) square feet.

b. Cultivation inside the detached structure shall not exceed thirty (30) marijuana plants (three (3) pounds processed marijuana) regardless of how many qualified patients or primary caregivers reside on the parcel.

c. Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling. Parcels containing duplexes or multi-family dwellings, such as apartment buildings, shall not be allowed to cultivate medical marijuana.

d. Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling, located in an area of the City zoned for Residential Use, Planned Development, and Planned Unit Development (R-1, R-2, R-3, R-R, PD and PUD as set forth in Title 18).

e. The qualified patient or primary caregiver shall reside full-time on the premises where the cultivation of marijuana occurs.

f. If the qualified patient or primary caregiver is a tenant on the parcel where he/she wishes to cultivate marijuana, the qualified patient or primary caregiver shall obtain written permission with a signature of the owner of the property authorizing the qualified patient or primary caregiver to cultivate marijuana on the property.

g. No cultivation of marijuana shall occur within six hundred (600) feet of any school. The six hundred (600) feet shall be measured from the closest property line of the school to the closest property line of the cultivating parcel.

h. The detached structure in which cultivation of marijuana will occur must comply with all of the following:

i. All applicable California Building, Electrical and Fire Codes as adopted by the City.

ii. No gas products, including without limitation, CO₂, butane, propane and natural gas) or generators shall be used within the structure.

iii. Structure shall maintain a minimum of a ten (10) foot setback from any property line.

iv. Structure shall not utilize grow lights that exceed 1200 Watts.

v. Structure shall be locked whenever the person responsible for cultivating is not present.

i. No marijuana growth shall be visible from the right of way.

j. Any qualified patient or primary caregiver cultivating marijuana shall maintain an identification card with the State of California for medical marijuana use.

k. Cultivation shall be for personal use (“cultivation for personal use”) and no commercial cultivation of marijuana shall be permitted in any zones.

l. All cultivated marijuana shall use only certified organic residual pesticides, herbicides, and fungicides.

2. Any qualified patient or primary caregiver cultivating marijuana as allowed in this Section 18.09.300(E) of this Chapter (cultivation in detached structure) shall obtain a Cultivation Permit from the Chief of Police, or his/her designee pursuant to Section 18.09.300(G) of this Chapter.

F. Qualified Patient/Primary Caregiver Cultivation – Small Grow Exception – No Cultivation Permit Required

Any qualified patient or primary caregiver who cultivates three (3) or less marijuana plants for medical purposes shall not be subject to the provisions of Section 18.09.300(E) of this Chapter and shall not be required to obtain a Cultivation Permit from the Chief of Police, or his/her designee pursuant to Section 18.09.300(G) if all of the following requirements are met:

1. Cultivation of three (3) or less marijuana plants, per parcel, either indoors or outdoors, regardless of how many qualified patients or primary caregivers reside on the parcel.

2. Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling. Parcels containing duplexes or multi-family dwellings, such as apartment buildings, shall not be allowed to cultivate medical marijuana.

3. Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling, located in an area of the City zoned for Residential Use, Planned Development, and Planned Unit Development (R-1, R-2, R-3, R-R, PD and PUD, as set forth in Title 18).

4. The qualified patient or primary caregiver shall reside full-time on the premises where the cultivation of marijuana occurs.

5. If the qualified patient or primary caregiver is a tenant on the parcel where he/she wishes to cultivate marijuana, the qualified patient or primary caregiver shall obtain written permission with a signature of the owner of the property authorizing the qualified patient or primary caregiver to cultivate marijuana on the property.

6. No marijuana growth shall be visible from the right of way.

7. Any outdoor cultivation shall maintain a minimum of a ten (10) foot setback from any property line.

8. If cultivation occurs inside the residence, the residence must be in full compliance with all City codes and regulations, including the Building Code and Fire Code.

9. Cultivation shall remain at all times a secondary or accessory use of the residence and the primary purpose of the residence shall at all times be as a dwelling.

10. Any qualified patient or primary caregiver cultivating marijuana shall maintain an identification card with the State of California for medical marijuana use.

11. Cultivation shall be for personal use (“cultivation for personal use”) and no commercial cultivation of marijuana shall be permitted in any zones.

12. All cultivated marijuana shall use only certified organic residual pesticides, herbicides, and fungicides.

G. Cultivation Permit from Chief of Police – Only for Cultivation Under Section 18.09.300(E)

Any qualified patient or primary caregiver wishing to cultivate marijuana pursuant Section 18.09.300(E) this Chapter shall obtain a Cultivation Permit from the Chief of Police, or his/her designee.

1. The Cultivation Permit Application shall include the following and the Chief of Police, or his/her designee shall consider:

a. The name of each qualified patient or primary caregiver who participates in the cultivation and their identification number and expiration date of all identification cards issued by the State of California and/or Sonoma County for medical marijuana use.

b. The qualified patient or primary caregiver shall show proof of ownership of the parcel where cultivation is to occur or if the qualified patient or primary caregiver is a tenant, written consent of the owner, which has been notarized by a public notary.

c. The physical site address where the cultivation will occur.

d. The number of plants and square footage of the area that will be cultivated.

e. A waste disposal plan that conforms to the requirements of this Chapter.

f. A signed consent form, authorizing inspections by the Cloverdale Police Department or City Code Enforcement to enter and inspect the structure where marijuana cultivation occurs.

g. The potential risk of crime or violence associated with the location and cultivation.

h. If the qualified patient or primary caregiver cannot meet the regulations set forth in Section 18.09.300 (E) of this Chapter, the Chief of Police may consider additional information and may issue a Permit for Cultivation with specific exemptions.

2. The Chief of Police, or his/her designee, shall charge a fee according to the City's master fee schedule, for the Cultivation Permit. The fee shall be paid at the time the Application for Cultivation Permit is provided to the Chief of Police, or his/her designee.

3. The Permit shall be issued in two (2) year increments and can be renewed thereafter unless the Permit is suspended or revoked.

4. The Cultivation Permit may be suspended or revoked for any violation of local or State law. If the Permittee is issued a Notice of Violation ("NOV"), the following process may occur to suspend or revoke the Cultivation Permit which shall conform to the appeal process set forth in Chapter 1.14 of the Cloverdale Municipal Code:

a. The Chief of Police, or his designee, shall send written notice of the suspension or revocation which shall be served on the Permittee whose Cultivation Permit is to be revoked or suspended by certified mail with the legal violation and supporting facts. The notice shall contain an advisement of the right to request an appeal pursuant to Cloverdale Municipal Code 1.14.070.

b. Any appeal requested pursuant to Cloverdale Municipal Code 1.14.070 shall include an appeal processing fee as set forth in the City's master fee schedule, as that schedule shall be amended from time to time, and shall include a deposit in advance the amount of any penalty. No appeal shall proceed without payment of the fee and deposit of the penalty with the City Clerk at the time the appeal is filed; provided, however, that the City Manager may waive or defer the appeal fee upon written request for good cause shown. Good cause may include severe economic hardship, significant attempts to comply with the notice of violation, and other factors indicating good faith attempts to comply.

c. Suspension or revocation issued pursuant to subsection (4) shall be stayed pending the appeal which is properly and timely filed, unless the City obtains an order from a court of competent jurisdiction requiring or authorizing the abatement of the condition that is the subject of the City's enforcement efforts pursuant to Cloverdale Municipal Code 1.14.080.

d. The appeal hearing shall be conducted in conformance with Cloverdale Municipal Code 1.14.090.

e. The decision and order of the hearing officer shall be issued in conformance with Cloverdale Municipal Code 1.14.100.

f. Any responsible party who is aggrieved by a decision of a hearing officer and who has exhausted the administrative remedies provided in the Cloverdale Municipal Code, or any other

applicable law, shall have the right to seek judicial review of such decision by filing a petition for writ of mandate in accordance with Code of Civil Procedure Section 1094.5 in conformance with Cloverdale Municipal Code 1.14.110.

H. Delivery of Marijuana

Deliveries of marijuana into the City of Cloverdale shall be permitted so long as the delivering dispensary obtains a business license pursuant to Chapter 5.04 of the Cloverdale Municipal Code for delivery of marijuana and shall be in conformance with all of the following:

1. The delivery of marijuana shall be to a qualified patient or primary caregiver.
2. The amount of marijuana delivered to any single parcel shall not exceed eight (8) ounces for any single delivery.
3. Deliveries can only be conducted between the hours of 8 a.m. to 8 p.m.
4. Deliveries shall be from a point of origin outside of the City to a residence in the City.
5. A dispensary wishing to make deliveries must obtain a State license issued pursuant to Business and Professions Code Chapter 3.5, when such license is made available by the State, to conduct deliveries.
6. Deliveries shall be made by an employee of the dispensary and said employee shall carry with him/her at all times a physical copy of the City Business License and State license issued pursuant to Business and Professions Code Chapter 3.5, when such a license is available, and the shipping manifest pursuant to Business and Professions Code Section 11362.777, when such manifests are available.

I. Marijuana Dispensaries Prohibited

The establishment, operation or maintenance of medical marijuana dispensaries in the City of Cloverdale is unlawful and prohibited pursuant to this Section and Chapter 9.36 of the Municipal Code. No permit or any other applicable license or entitlement for use, including but not limited to the issuance of a business license, shall be approved or issued for the establishment, maintenance or operation of a medical marijuana dispensary at any permanent location within the city limits of the city of Cloverdale.

J. Disposal of Marijuana Related Substances

1. All excess marijuana not utilized by the qualified patient or primary caregiver must be disposed of in accordance with the applicable State and local statutes and regulations.
2. Marijuana solid and liquid waste must be stored, secured, managed and disposed of in accordance with the applicable State and local statutes and regulations.
3. Marijuana plant matter waste must be rendered unusable prior to leaving a Permittee's premises. Allowable methods are by grinding and incorporating the marijuana waste with non-consumable, solid waste so the resulting mixture is at least fifty percent (50%) non-marijuana waste.

K. Nuisance

Any use that does not conform with this Chapter, within the City limits of the City of Cloverdale, is unlawful and hereby declared a public nuisance.

1. It is hereby declared to be unlawful and a public nuisance for any person or persons owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City to cultivate medical marijuana except as provided for in this Chapter. Such violations may be abated in accordance with the procedures and remedies in Title 1, Chapter 6 of this code, including the appeal procedure contained therein.

2. Any person who violates a provision of this Chapter is subject to administrative penalties (pursuant to Title 1, Chapter 6 of this code), and any available civil remedies.

3. Any person who violates a provision of this chapter is liable for civil penalties of not less than Two Hundred Fifty Dollars (\$250.00) or more than Twenty-Five Thousand Dollars (\$25,000.00) for each day the violation continues.

L. Enforcement

Any violation of this Chapter shall be enforced by any applicable laws or ordinances, including, but not limited to, Chapter 8.02 of the Cloverdale Municipal Code.

SECTION 2. California Environmental Quality Act (“CEQA”).

The City Council hereby finds that the adoption of this Ordinance is exempt from California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15061(b)(3) of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment because it does not authorize the construction of any new large structures or other physical changes resulting in impacts to the environment. This Ordinance would also limit the number of outdoor plants to a limited amount so there will be no potential for significant water impacts and pesticide application impacts. The larger amounts would need to be in a detached structure therefore would also not result any water impacts or pesticide application impacts. Further, cultivation in detached structures would not be visible and would not result in significant odor issues.

SECTION 3. No Mandatory Duty of Care.

This Ordinance is not intended to, and shall not be construed or given effect in a manner that imposes upon the City or any officer, agent, employee or volunteer, thereof a mandatory duty of care towards persons and property, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section,

subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 5. Effective Date.

This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California.

I hereby certify that the foregoing is a true and complete copy of an ordinance duly and regularly adopted by the City at a regular meeting thereof held on _____, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this ____ day of _____ 2016 by the following roll call vote:

- AYES:**
- NOES:**
- ABSTAIN:**
- ABSENT:**

APPROVED:

ATTEST:

_____,
MaryAnn Brigham, Mayor

_____,
Paul Cayler, City Clerk

2571511.2

**CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. ____-2015**

AN ORDINANCE OF THE CITY COUNCIL OF CLOVERDALE AMENDING CLOVERDALE MUNICIPAL CODE TITLE 18 (ZONING ORDINANCE), CHAPTER 18.09, TO ADD “ARTICLE III. MARIJUANA,” SECTION 18.09.300, “MEDICAL MARIJUANA,” PROHIBITING COMMERCIAL MARIJUANA (CANNABIS) ACTIVITIES AND REGULATING THE CULTIVATION OF MEDICAL MARIJUANA BY QUALIFIED PATIENTS AND PRIMARY CAREGIVERS AND THE DELIVERY OF MEDICAL MARIJUANA WITHIN THE CITY

WHEREAS, in 1996 voters in the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and entitled “The Compassionate Use Act of 1996” or “CUA”); and

WHEREAS, the primary purpose of the CUA was to ensure that seriously ill Californians have the right to obtain and use marijuana 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 cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief; and

WHEREAS, in 2004, the State of California also enacted Senate Bill 420 (codified as California Health and Safety Code section 11362.7 et seq. and referred to as “The Medical Marijuana Program” or “MMP”) to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010), and Assembly Bill 1300 (2011), amended the MMP to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances; and

WHEREAS, despite voter approval of the CUA, various problems and uncertainties in the Act impeded law enforcement’s ability to interpret and enforce the law, and the uncertainties also hindered persons eligible to use marijuana for medical purposes from accessing marijuana, while many persons took advantage of the Act to use marijuana for recreational and not medical purposes; and

WHEREAS, the CUA is limited in scope, in that it only provides a defense from state criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary caregivers; and

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon local governments to allow, authorize or sanction the establishment and the operation of facilities cultivating, distributing, or processing medical marijuana; and

WHEREAS, in 2008, the City Council adopted Ordinance 660-2008, adding Chapter 9.36 to the City of Cloverdale’s Municipal Code, which prohibited outdoor cultivation within the city limits of Cloverdale. Chapter 9.36 was adopted to promote the public health, safety and welfare by

| protecting City residents from the offensive odor and unreasonable risk of crime from outdoor cultivation of

marijuana. Chapter 9.36 also prohibited dispensaries within the city limits of Cloverdale. The Ordinance was written to protect citizens from the secondary impacts associated with medical marijuana dispensaries, including, but not limited to, increased public consumption of marijuana and the potential for increased marijuana DUIs, illegal resale of marijuana obtained at low cost from dispensaries, loitering, fraud in obtaining or using medical marijuana identification cards, robbery, assaults, and other crimes; also preventing increased demands for police response resulting from activities at medical marijuana dispensaries and parcels where outdoor marijuana cultivation occurs, thereby avoiding reduction of the ability of the City's public safety officers to respond to other calls for service; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land...”. Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App. 4th 975, the Court of Appeal held that “there is no right-and certainly no constitutional right-to cultivate medical marijuana...”. The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority; and

WHEREAS, in October of 2015, the State of California enacted AB 243, AB 266, and SB 643 in 2015 (commonly and collectively referred to as the Medical Marijuana Regulation and Safety Act or the “MMRSA”). The MMRSA establishes regulation of medical cannabis cultivation, manufacturing, and transportation, as well as create local and state-level licensing systems in California. The MMRSA allows a city to prohibit, through land use regulations or ordinances, the cultivating, delivering, distributing, or processing medical marijuana; and

WHEREAS, the City Council finds that commercial medical marijuana (cannabis) activities, as well as cultivation for personal medical use as allowed by the CUA, MMP and the MMRSA can adversely affect the health, safety, and well-being of City residents. Citywide prohibition of commercial cultivation and regulation of personal cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, under the Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., the use possession and cultivation of marijuana, medical or otherwise, is unlawful and subject to federal prosecution; and

WHEREAS, the limited immunity from specified State marijuana laws provided by the CUA and MMP does not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, the MMRSA contains language that requires a city to prohibit cultivation uses by March 1, 2016, either expressly or otherwise under the principles of permissive zoning or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if a city wishes to prohibit deliveries; and

WHEREAS, the Planning Commission held a duly noticed public hearing on December 16, 2015, at which time it considered all evidence presented, both written and oral and at the end of the hearing voted to adopt a resolution recommending that the City Council adopt the Ordinance with recommendations for changes to Section 18.09.300 E (d) (allow cultivation in R-3 zones on parcels with detached single-family dwelling) and 18.09.300 F(1) (cultivation of 3 plants per parcel) and 18.09.300 F(3)(allow cultivation in R-3 zones on parcels with detached single-family dwelling) —this Ordinance; and

WHEREAS, the City Council will hold a duly noticed public hearing on this Ordinance on January 5¹², 2016, at which time it will consider all evidence presented, both written and oral.

NOW, THEREFORE, the City Council of the City of Cloverdale does ordain as follows:

SECTION 1. Amendment. Amendment of Title 18, Zoning Regulations: Chapter 18.09 is amended to add 18.09.300 and read as follows:

“Article III. Marijuana

18.09.300. Medical Marijuana

A. Purpose and Intent.

It is the purpose and intent of this ordinance to:

1. Assist law enforcement agencies in performing their duties effectively and in accordance with California law.
2. Acknowledge that the cultivation of medical marijuana is illegal under federal law while granting limited immunity from local prosecution to those medical marijuana cultivation activities that do not violate the restrictions and limitations set forth in this Ordinance.
3. Ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets.
4. Implement state law by providing an equitable approach for regulating the cultivation of medical marijuana in a manner that is consistent with state law and balances the needs of medical patients and their caregivers with the health, safety, morals and general welfare of the residents and businesses within the City.
5. Require that medical marijuana be cultivated in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the public domain, to provide for the health, safety and welfare of the public, to prevent odor created by marijuana plants from impacting adjacent properties, and to ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets.

B. Definitions.

1. “Cannabis” shall have the same meaning as set forth in Business & Professions Code § 19300.5(f) as the same may be amended from time to time.
2. “Caregiver” or “primary caregiver” shall have the same meaning as set forth in Health & Safety Code § 11362.7 as the same may be amended from time to time.
3. “Commercial marijuana activity” shall have the same meaning as that set forth in Business & Professions Code § 19300.5(k) as the same may be amended from time to time..
4. “Cooperative/Collective” shall mean two or more persons collectively or cooperatively cultivating, distributing, using, transporting, possessing, administering, delivering or making available medical marijuana (cannabis), with or without compensation.
5. “Cultivation” shall have the same meaning as set forth in Business & Professions Code § 19300.5(l) as the same may be amended from time to time.
6. “Cultivation site” shall have the same meaning as set forth in Business & Professions Code § 19300.5(x) as the same may be amended from time to time.
7. “Delivery” shall have the same meaning as set forth in Business & Professions Code § 19300.5(m) as the same may be amended from time to time.
8. “Dispensary” shall have the same meaning as set forth in Business & Professions Code § 19300.5(n) as the same may be amended from time to time. For purposes of this Chapter, “Dispensary” shall also include a cooperative/collective.
9. “Dispensing” shall have the same meaning as set forth in Business & Professions Code § 19300.5(o) as the same may be amended from time to time.
10. “Distribution” shall have the same meaning as set forth in Business & Professions Code § 19300.5(p) as the same may be amended from time to time.
11. “Distributor” shall have the same meaning as set forth in Business & Professions Code § 19300.5(q) as the same may be amended from time to time.
12. “Manufacturer” or “Manufacturing” shall have the same meaning as set forth in Business & Professions Code § 19300.5(y) as the same may be amended from time to time.
13. “Manufacturing site” shall have the same meaning as set forth in Business & Professions Code § 19300.5(af) as the same may be amended from time to time.
14. “Marijuana” shall have the same meaning as cannabis as set forth in Business & Professions Code § 19300.5(f) as the same may be amended from time to time.
15. “Medical cannabis,” “medical cannabis product,” or “cannabis product” shall have the same meanings as set forth in Business & Professions Code § 19300.5(ag) as the same may be amended from time to time.

16. “Medical Marijuana Regulation and Safety Act” or the “MMRSA” shall mean the following bills signed into law on October 9, 2015 as the same may be amended from time to time: AB 243, AB 246, and SB 643.

17. “Nursery” shall have the same meaning as set forth in Business & Professions Code § 19300.5(ah) as the same may be amended from time to time.

18. “Person” shall have the same meaning as set forth in Business & Professions Code § 19300.5(a) as the same may be amended from time to time.

19. “Personal cultivation” or “Cultivation for Personal Use” shall mean cultivation by a qualified patient or primary caregiver for the personal use by the qualified patient or the patients cared for by the primary caregiver.

20. “Parcel” shall mean property assigned a separate parcel number by the Sonoma County assessor.

21. “Qualifying patient” or “Qualified patient” shall have the same meaning as set forth in Health & Safety Code § 11362.7 as the same may be amended from time to time.

22. “School” shall mean any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

23. “Structure” shall mean a building completely enclosed and detached from a residence that complies with the California Building Code, as adopted by the City, and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. Walls and roof must be constructed of solid materials that cannot be easily broken through. Exterior walls must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

24. “Testing laboratory” shall have the same meaning as set forth in Business & Professions Code § 19300.5(z) as the same may be amended from time to time.

25. “Transportation” or “Transport” shall have the same meaning as set forth in Business & Professions Code § 19300.5(am) as the same may be amended from time to time.

26. “Transporter” shall have the same meaning as set forth in Business & Professions Code § 19300.5(aa) as the same may be amended from time to time.

C. Commercial Marijuana Activity Prohibited

Commercial marijuana activities or commercial medical marijuana activities of all types including, but not limited to, dispensaries, collectives, cooperatives, transportation, distribution, cultivation, manufacturing, testing and processing are expressly prohibited in all zoning districts, planned

developments and all specific and master plan areas in the City of Cloverdale. However, deliveries of medical marijuana conducted in compliance with subsection 18.09.300(G) of this Section shall be exempt.

D. Cultivation of Marijuana Prohibited

All cultivation of marijuana and medical marijuana, both indoor and outdoor, is prohibited in all zoning districts, planned developments and all specific master plan areas in the City, except as authorized under Section 18.09.300(E) and Section 18.09.300(F) for qualified patients and primary caregivers.

E. Qualified Patient/Primary Caregiver Cultivation in Detached Structure – Cultivation Permit Required

1. A qualified patient or primary caregiver may cultivate medical marijuana in a detached structure subject to all of the following requirements:

a. Cultivation shall occur inside one detached structure (as defined in Section 18.09.300(B)(23)) in an area not exceeding one-hundred (100) square feet.

b. Cultivation inside the detached structure shall not exceed thirty (30) marijuana plants (three (3) pounds processed marijuana) regardless of how many qualified patients or primary caregivers reside on the parcel.

c. Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling. Parcels containing duplexes or multi-family dwellings, such as apartment buildings, shall not be allowed to cultivate medical marijuana.

d. Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling, located in an area of the City zoned for single-family Residential Use, Planned Development, and Planned Unit Development -(R-1, R-2, ~~R-3~~, R-R, PD and PUD as set forth in Title 18).

e. The qualified patient or primary caregiver shall reside full-time on the premises where the cultivation of marijuana occurs.

f. If the qualified patient or primary caregiver is a tenant on the parcel where he/she wishes to cultivate marijuana, the qualified patient or primary caregiver shall obtain written permission with a signature of the owner of the property authorizing the qualified patient or primary caregiver to cultivate marijuana on the property.

g. No cultivation of marijuana shall occur within six hundred (600) feet of any school. The six hundred (600) feet shall be measured from the closest property line of the school to the closest property line of the cultivating parcel.

h. The detached structure in which cultivation of marijuana will occur must comply with all of the following:

i. All applicable California Building, Electrical and Fire Codes as adopted by this City.

ii. No gas products, including without limitation, CO₂, butane, propane and natural gas) or generators shall be used within the structure.

iii. Structure shall maintain a minimum of a ten (10) foot setback from any property line.

iv. Structure shall not utilize grow lights that exceed 1200 Watts.

v. Structure shall be locked whenever the person responsible for cultivating is not present.

i. No marijuana growth shall be visible from the right of way.

j. Any qualified patient or primary caregiver cultivating marijuana shall maintain an identification card with the State of California for medical marijuana use.

k. Cultivation shall be for personal use (“cultivation for personal use”) and no commercial cultivation of marijuana shall be permitted in any zones.

l. All cultivated marijuana shall use only certified organic residual pesticides, herbicides, and fungicides.

2. Any qualified patient or primary caregiver cultivating marijuana as allowed in this Section 18.09.300(E) of this Chapter (cultivation in detached structure) shall obtain a Cultivation Permit from the Chief of Police, or his/her designee pursuant to Section 18.09.300(G) of this Chapter.

F. Qualified Patient/Primary Caregiver Cultivation – Small Grow Exception – No Cultivation Permit Required

Any qualified patient or primary caregiver who cultivates three (3) or less marijuana plants for medical purposes ~~as authorized by State law~~ shall not be subject to the provisions of Section 18.09.300(E) of this Chapter and shall not be required to obtain a Cultivation Permit from the Chief of Police, or his /her designee pursuant to Section 18.09.300(G) if all of the following requirements are met:

1. Cultivation of three (3) or less marijuana plants, per parcel, either indoors or outdoors regardless of how many qualified patients or primary caregivers reside on the parcel.

2. Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling. Parcels containing duplexes or multi-family dwellings, such as apartment buildings, shall not be allowed to cultivate medical marijuana.

3. Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling, located in an area of the City zoned for single-family Residential Use, Planned Development, and Planned Unit Development (R-1, R-2, ~~R-3~~, R-R, PD and PUD, as set forth in Title 18).

34. The qualified patient or primary caregiver shall reside full-time on the premises where the cultivation of marijuana occurs.

45. If the qualified patient or primary caregiver is a tenant on the parcel where he/she wishes to cultivate marijuana, the qualified patient or primary caregiver shall obtain written permission with a signature of the owner of the property authorizing the qualified patient or primary caregiver to cultivate marijuana on the property.

56. No marijuana growth shall be visible from the right of way.

67. Any outdoor cultivation shall maintain a minimum of a ten (10) foot setback from any property line.

68. If cultivation occurs inside the residence, the residence must be in full compliance with all City codes and regulations, including the Building Code and Fire Code.

79. Cultivation shall remain at all times a secondary or accessory use of the residence and the primary purpose of the residence shall at all times be as a dwelling.

810. Any qualified patient or primary caregiver cultivating marijuana shall maintain an identification card with the State of California for medical marijuana use.

911. Cultivation shall be for personal use ("cultivation for personal use") and no commercial cultivation of marijuana shall be permitted in any zones.

1012. All cultivated marijuana shall use only certified organic residual pesticides, herbicides, and fungicides.

G. Cultivation Permit from Chief of Police – Only for Cultivation Under Section 18.09.300(E)

Any qualified patient or primary caregiver wishing to cultivate marijuana pursuant Section 18.09.300(E) this Chapter shall obtain a Cultivation Permit from the Chief of Police, or his/her designee.

1. The Cultivation Permit Application shall include the following and the Chief of Police, or his/her designee shall consider:

a. The name of each qualified patient or primary caregiver who participates in the cultivation and their identification number and expiration date of all identification cards issued by the State of California and/or Sonoma County for medical marijuana use.

b. The qualified patient or primary caregiver shall show proof of ownership of the parcel where cultivation is to occur or if the qualified patient or primary caregiver is a tenant, written consent of the owner, which has been notarized by a public notary.

c. The physical site address where the cultivation will occur.

- d. The number of plants and square footage of the area that will be cultivated.
 - e. A waste disposal plan that conforms to the requirements of this Chapter.
 - f. A signed consent form, authorizing inspections by the Cloverdale Police Department or City Code Enforcement to enter and inspect the structure where marijuana cultivation occurs.
 - g. The potential risk of crime or violence associated with the location and cultivation.
 - h. If the qualified patient or primary caregiver cannot meet the regulations set forth in Section 18.09.300 (E) of this Chapter, the Chief of Police may consider additional information and may issue a Permit for Cultivation with specific exemptions.
2. The Chief of Police, or his/her designee shall charge a fee according to the City's master fee schedule, for the Cultivation Permit. The fee shall be paid at the time the Application for Cultivation Permit is provided to the Chief of Police, or his/her designee.
3. The Permit shall be issued in two (2) year increments and can be renewed thereafter unless the Permit is suspended or revoked.
4. The Cultivation Permit may be suspended or revoked for any violation of local or State law. If the Permittee is issued a Notice of Violation ("NOV") the following process may occur to suspend or revoke the Cultivation Permit which shall conform to the appeal process set forth in Chapter 1.14 of the Cloverdale Municipal Code :
- a. The Chief of Police, or his designee, shall send written notice of the suspension or revocation which shall be served on the Permittee whose Cultivation Permit is to be revoked or suspended by certified mail with the legal violation and supporting facts. The notice shall contain an advisement of the right to request an appeal pursuant to Cloverdale Municipal Code 1.14.070.
 - b. Any appeal requested pursuant to Cloverdale Municipal Code 1.14.070 shall include an appeal processing fee as set forth in the City's master fee schedule, as that schedule shall be amended from time to time, and shall include a deposit in advance the amount of any penalty. No appeal shall proceed without payment of the fee and deposit of the penalty with the city clerk at the time the appeal is filed; provided, however, that the city manager may waive or defer the appeal fee upon written request for good cause shown. Good cause may include severe economic hardship, significant attempts to comply with the notice of violation, and other factors indicating good faith attempts to comply.
 - c. Suspension or revocation issued pursuant to subsection ~~(4)~~ shall be stayed pending the appeal which is properly and timely filed, unless the ~~city~~-City obtains an order from a court of competent jurisdiction requiring or authorizing the abatement of the condition that is the subject of the ~~city's~~-City's enforcement efforts pursuant to Cloverdale Municipal Code 1.14.080.
 - d. The appeal hearing shall be conducted in conformance with Cloverdale Municipal Code 1.14.090.

e. The decision and order of the hearing officer shall be issued in conformance with Cloverdale Municipal Code 1.14.100.

f. Any responsible party who is aggrieved by a decision of a hearing officer and who has exhausted the administrative remedies provided in the Cloverdale Municipal Code, or any other applicable law, shall have the right to seek judicial review of such decision by filing a petition for writ of mandate in accordance with Code of Civil Procedure Section 1094.5 in conformance with Cloverdale Municipal Code 1.14.110.

HG. Delivery of Marijuana

Deliveries of marijuana into the City of Cloverdale shall be permitted so long as the delivering dispensary obtains a business license pursuant to Chapter 5.04 of the Cloverdale Municipal Code for delivery of marijuana and shall be in conformance with all of the following:

1. The delivery of marijuana shall be to a qualified patient or primary caregiver
2. The amount of marijuana delivered to any single parcel shall not exceed eight (8) ounces for any single delivery.
3. Deliveries can only be conducted between the hours of 8 a.m. to 8 p.m.
4. Deliveries shall be from a point of origin outside of the City to a residence in the City.
5. A dispensary wishing to make deliveries must obtain a State license issued pursuant to Business and Professions Code Chapter 3.5, when such license is made available by the State, to conduct deliveries.
6. Deliveries shall be made by an employee of the dispensary and said employee shall carry with him/her at all times a physical copy of the City Business License and State license issued pursuant to Business and Professions Code Chapter 3.5, when such a license is available, and the shipping manifest pursuant to Business and Professions Code Section 11362.777, when such manifests are available.

IH. Marijuana Dispensaries Prohibited

The establishment, operation or maintenance of medical marijuana dispensaries in the City of Cloverdale is unlawful and prohibited pursuant to this Section and Chapter 9.36 of the Municipal Code. No permit or any other applicable license or entitlement for use, including but not limited to the issuance of a business license, shall be approved or issued for the establishment, maintenance or operation of a medical marijuana dispensary at any permanent location within the city limits of the city of Cloverdale.

IJ. Disposal of Marijuana Related Substances

1. All excess marijuana not utilized by the qualified patient or primary caregiver must be disposed of in accordance with the applicable [state-State](#) and local statutes and regulations.

2. Marijuana solid and liquid waste must be stored, secured, managed and disposed of in accordance with the applicable ~~state~~-State and local statutes and regulations.

3. Marijuana plant matter waste must be rendered unusable prior to leaving a Permittee's premises. Allowable methods are by grinding and incorporating the marijuana waste with non-consumable, solid waste so the resulting mixture is at least fifty percent non marijuana waste.

KJ. Nuisance

Any use that does not conform with this Chapter, within the city limits of the ~~city~~-City of Cloverdale, is unlawful and hereby declared a public nuisance.

1. It is hereby declared to be unlawful and a public nuisance for any person or persons owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City to cultivate medical marijuana except as provided for in this Chapter. Such violations may be abated in accordance with the procedures and remedies in Title 1, Chapter 6 of this code, including the appeal procedure contained therein.

2. Any person who violates a provision of this Chapter is subject to administrative penalties (pursuant to Title 1, Chapter 6 of this code), and any available civil remedies.

3. Any person who violates a provision of this chapter is liable for civil penalties of not less than Two Hundred Fifty Dollars (\$250.00) or more than Twenty-Five Thousand Dollars (\$25,000.00) for each day the violation continues.

LK. Enforcement

Any violation of this Chapter shall be enforced by any applicable laws or ordinances, including, but not limited to, Chapter 8.02 of the Cloverdale Municipal Code.

SECTION 2. California Environmental Quality Act ("CEQA").

The City Council hereby finds that the adoption of this Ordinance is exempt from California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15061(b)(3) of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment because it does not authorize the construction of any new large structures or other physical changes resulting in impacts to the environment. This Ordinance would also limit the number of outdoor plants to a limited amount so there will be no potential for significant water impacts and pesticide application impacts. The larger amounts would need to be in a detached structure therefore would also not result any water impacts or pesticide application impacts. Further, cultivation in detached structures would not be visible and would not result in significant odor issues.

SECTION 3. No Mandatory Duty of Care.

This Ordinance is not intended to, and shall not be construed or given effect in a manner that imposes upon the City or any officer, agent, employee or volunteer, thereof a mandatory duty of care towards

persons and property, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 5. Effective Date.

This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California.

I hereby certify that the foregoing is a true and complete copy of an ordinance duly and regularly adopted by the City at a regular meeting thereof held on _____, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this ____ day of _____ 2016 by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

ATTEST:

_____,
MaryAnn Brigham, Mayor

_____,
Paul Cayler, City Clerk

**CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 702-2016**

**ORDINANCE AMENDING TITLE 9, CHAPTER 9.36, "MARIJUANA" OF THE
CLOVERDALE MUNICIPAL CODE, SECTION 9.36.020, "DEFINITIONS," AND SECTION
9.36.050, "OUTDOOR CULTIVATION OF MARIJUANA PROHIBITED" TO REFERENCE
THE CLOVERDALE ZONING ORDINANCE FOR DEFINITIONS AND REGULATIONS
RELATED TO CULTIVATION OF MARIJUANA**

WHEREAS, in 1996 voters in the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and entitled "The Compassionate Use Act of 1996" or the "CUA"); and

WHEREAS, the primary purpose of the CUA was to ensure that seriously ill Californians have the right to obtain and use marijuana 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 cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief; and

WHEREAS, in 2004, the State of California also enacted Senate Bill 420 (codified as California Health and Safety Code section 11362.7 et seq. and referred to as "The Medical Marijuana Program" or "MMP") to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010), and Assembly Bill 1300 (2011), amended the MMP to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances; and

WHEREAS, despite voter approval of the CUA, various problems and uncertainties in the Act impeded law enforcement's ability to interpret and enforce the law, and the uncertainties also hindered persons eligible to use marijuana for medical purposes from accessing marijuana, while many persons took advantage of the Act to use marijuana for recreational and not medical purposes; and

WHEREAS, the CUA is limited in scope, in that it only provides a defense from state criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary caregivers; and

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon local governments to allow, authorize or sanction the establishment and the operation of facilities cultivating, distributing, or processing medical marijuana; and

WHEREAS, in 2008, the City Council adopted Ordinance 660-2008, adding Chapter 9.36 to the City of Cloverdale's Municipal Code, which prohibited outdoor cultivation within the City limits of Cloverdale. Chapter 9.36 was adopted to promote the public health, safety and welfare by protecting City residents from the offensive odor and unreasonable risk of crime from outdoor cultivation of marijuana. Chapter 9.36 also prohibited dispensaries within the City limits of Cloverdale.

The Ordinance was written to protect citizens from the secondary impacts associated with medical marijuana dispensaries, including, but not limited to, increased public consumption of marijuana and the potential for increased marijuana DUIs, illegal resale of marijuana obtained at low cost from dispensaries, loitering, fraud in obtaining or using medical marijuana identification cards, robbery, assaults, and other crimes; also preventing increased demands for police response resulting from activities at medical marijuana dispensaries and parcels where outdoor marijuana cultivation occurs, thereby avoiding reduction of the ability of the City's public safety officers to respond to other calls for service; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land...”. Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App. 4th 975, the Court of Appeal held that “there is no right-and certainly no constitutional right-to cultivate medical marijuana...”. The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority; and

WHEREAS, in October of 2015, the State of California enacted Assembly Bill (“AB”) 243, AB 266, and Senate Bill 643 in 2015 (commonly and collectively referred to as the Medical Marijuana Regulation and Safety Act or the “MMRSA”). The MMRSA establishes regulation of medical cannabis cultivation, manufacturing, and transportation, as well as create local and State-level licensing systems in California. The MMRSA allows a city to prohibit, through land use regulations or ordinances, the cultivating, delivering, distributing, or processing of medical marijuana; and

WHEREAS, the City Council finds that commercial medical marijuana (cannabis) activities, as well as cultivation for personal medical use as allowed by the CUA, MMP and the MMRSA can adversely affect the health, safety, and well-being of City residents. Citywide prohibition of commercial cultivation and regulation of personal cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, the limited immunity from specified State marijuana laws provided by the CUA and MMP does not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, the MMRSA contains language that requires a city to prohibit cultivation uses by March 1, 2016, either expressly or otherwise under the principles of permissive zoning or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if a city wishes to prohibit deliveries; and

WHEREAS, as a result of the MMRSA, City staff drafted proposed a Zoning Ordinance entitled an “Ordinance of the City Council of Cloverdale Amending Cloverdale Municipal Code Title 18 (Zoning Ordinance), Chapter 18.09, to Add “Article III. Marijuana,” Section 18.09.300, “Medical Marijuana ,” Prohibiting Commercial Marijuana (Cannabis) Activities and Regulating the Cultivation

of Medical Marijuana By Qualified Patients and Primary Caregivers and the Delivery of Medical Marijuana Within the City.”

WHEREAS, the Planning Commission held a duly noticed public hearing on December 16, 2015, at which time it considered all evidence presented, both written and oral and at the end of the hearing voted to adopt a resolution recommending that the City Council adopt the Ordinance with recommendations for changes to Section 18.09.300 E (d) (allow cultivation in R-3 zones on parcels with detached single-family dwelling) and 18.09.300 F(1) (cultivation of three (3) plants per parcel) and 18.09.300 F(3)(allow cultivation in R-3 zones on parcels with detached single-family dwelling); and

WHEREAS, on January 12, 2016, the City Council will hold a duly noticed public hearing to consider the adoption of the proposed Zoning Ordinance entitled an “Ordinance of the City Council of Cloverdale Amending Cloverdale Municipal Code Title 18 (Zoning Ordinance), Chapter 18.09, to Add “Article III. Marijuana,” Section 18.09.300, “Medical Marijuana ,” Prohibiting Commercial Marijuana (Cannabis) Activities and Regulating the Cultivation of Medical Marijuana By Qualified Patients and Primary Caregivers and the Delivery of Medical Marijuana Within the City.” . Portions of that Zoning Ordinance conflict with Title 9, Chapter 9.36 of the Cloverdale Municipal Code; and

WHEREAS, it is necessary to amend Title 9, Chapter 9.36 so as to avoid any conflict and to harmonize those portions of the Municipal Code that address marijuana. This Ordinance makes minor amendments to Chapter 9.36 of the Cloverdale Municipal Code, referencing the new Zoning Ordinance provisions regulating the cultivation of medical marijuana.

NOW, THEREFORE, the City Council of the City of Cloverdale does ordain as follows:

SECTION 1. Amendment to Section 9.36.020. Chapter 9.36, “Marijuana,” Section 9.36.020, “Definitions,” of the Cloverdale Municipal Code is hereby amended to read as follows:

“9.36.020. Definitions.

The Definitions that shall be utilized in this Chapter shall be the same Definitions set forth in Title 18, Section 18.09.300(B) that relate to marijuana.”

SECTION 2. Amendment to Section 9.36.050. Chapter 9.36, “Marijuana,” Section 9.36.050, “Outdoor Cultivation of Marijuana Prohibited,” of the Cloverdale Municipal Code is hereby retitled “Cultivation of Marijuana Prohibited,” and amended to read as follows:

“9.36.050. Cultivation of Marijuana prohibited.

All cultivation of marijuana and medical marijuana, both indoor and outdoor, is prohibited in all zoning districts, planned developments and all specific master plan areas in the City, except as authorized under Section 18.09.300(E) and Section 18.09.300(F) of the Cloverdale Municipal Code for qualified patients and primary caregivers.”

SECTION 3. California Environmental Quality Act (“CEQA”).

The City Council hereby finds that the adoption of this Ordinance is exempt from California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15061(b)(3) of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or reasonably foreseeable

indirect physical change in the environment because it does not authorize the construction of any new large structures or other physical changes resulting in impacts to the environment. This Ordinance would also limit the number of outdoor plants to a limited amount so there will be no potential for significant water impacts and pesticide application impacts. The larger amounts would need to be in a detached structure and therefore, would also not result any water impacts or pesticide application impacts. Further, cultivation in detached structures would not be visible and would not result in significant odor issues.

SECTION 4. No Mandatory Duty of Care.

This Ordinance is not intended to, and shall not be construed or given effect in a manner that imposes upon the City or any officer, agent, employee or volunteer, thereof a mandatory duty of care towards persons and property, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 5. Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 6. Effective Date.

This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California.

I hereby certify that the foregoing is a true and complete copy of an ordinance duly and regularly adopted by the City at a regular meeting thereof held on _____, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this ____ day of _____ 2016 by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

ATTEST:

_____,
MaryAnn Brigham, Mayor
2587049.1

_____,
Paul Cayler, City Clerk

**CITY OF CLOVERDALE
PLANNING COMMISSION
RESOLUTION NO. 007-2015**

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CLOVERDALE RECOMMENDING TO THE CITY COUNCIL THE ADOPTION OF AN ORDINANCE AMENDING CLOVERDALE MUNICIPAL CODE TITLE 18 (ZONING ORDINANCE), CHAPTER 18.09, TO ADD "ARTICLE III. MARIJUANA," SECTION 18.09.300, "MEDICAL MARIJUANA," PROHIBITING COMMERCIAL MARIJUANA (CANNABIS) ACTIVITIES AND REGULATING THE CULTIVATION OF MEDICAL MARIJUANA BY QUALIFIED PATIENTS AND PRIMARY CAREGIVERS AND THE DELIVERY OF MEDICAL MARIJUANA WITHIN THE CITY

WHEREAS, in 1996 voters in the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and entitled "The Compassionate Use Act of 1996" or "CUA"); and

WHEREAS, the primary purpose of the CUA was to ensure that seriously ill Californians have the right to obtain and use marijuana 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 cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief; and

WHEREAS, in 2004, the State of California also enacted Senate Bill 420 (codified as California Health and Safety Code section 11362.7 et seq. and referred to as "The Medical Marijuana Program" or "MMP") to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010), and Assembly Bill 1300 (2011), amended the MMP to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances; and

WHEREAS, despite voter approval of the CUA, various problems and uncertainties in the Act impeded law enforcement's ability to interpret and enforce the law, and the uncertainties also hindered persons eligible to use marijuana for medical purposes from accessing marijuana, while many persons took advantage of the Act to use marijuana for recreational and not medical purposes; and

WHEREAS, the CUA is limited in scope, in that it only provides a defense from state criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary caregivers; and

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon local governments to allow, authorize or sanction the establishment and the operation of facilities cultivating, distributing, or processing medical marijuana; and

WHEREAS, in 2008, the City Council adopted Ordinance 660-2008, adding Chapter 9.36 to the City of Cloverdale's Municipal Code, which prohibited outdoor cultivation within the city limits of Cloverdale. Chapter 9.36 was adopted to promote the public health, safety and welfare by protecting City residents from the offensive odor and unreasonable risk of crime from outdoor cultivation of marijuana. Chapter 9.36 also prohibited dispensaries within the city limits of Cloverdale. The Ordinance was written to protect citizens from the secondary impacts associated with medical marijuana dispensaries, including, but not limited to, increased public consumption of marijuana and the potential for increased marijuana DUIs, illegal resale of marijuana obtained at low cost from dispensaries, loitering, fraud in obtaining or using medical marijuana identification cards, robbery,

assaults, and other crimes; also preventing increased demands for police response resulting from activities at medical marijuana dispensaries and parcels where outdoor marijuana cultivation occurs, thereby avoiding reduction of the ability of the City's public safety officers to respond to other calls for service; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land...". Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App. 4th 975, the Court of Appeal held that "there is no right-and certainly no constitutional right-to cultivate medical marijuana...". The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority; and

WHEREAS, in October of 2015, the State of California enacted AB 243, AB 266, and SB 643 in 2015 (commonly and collectively referred to as the Medical Marijuana Regulation and Safety Act or the "MMRSA"). The MMRSA establishes regulation of medical cannabis cultivation, manufacturing, and transportation, as well as create local and state-level licensing systems in California. The MMRSA allows a city to prohibit, through land use regulations or ordinances, the cultivating, delivering, distributing, or processing medical marijuana; and

WHEREAS, commercial medical marijuana (cannabis) activities, as well as cultivation for personal medical use as allowed by the CUA, MMP and the MMRSA can adversely affect the health, safety, and well-being of City residents. Citywide prohibition of commercial cultivation and regulation of personal cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, under the Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., the use possession and cultivation of marijuana, medical or otherwise, is unlawful and subject to federal prosecution; and

WHEREAS, the limited immunity from specified State marijuana laws provided by the CUA and MMP does not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, the MMRSA contains language that requires a city to prohibit cultivation uses by March 1, 2016, either expressly or otherwise under the principles of permissive zoning or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if a city wishes to prohibit deliveries; and

WHEREAS, the proposed Zoning Ordinance amendment seeks to retain local control by prohibiting commercial marijuana or medical marijuana activity, including dispensaries and commercial cultivation in all zoning districts in the City of Cloverdale. The proposed amendment allows an exemption for delivery of medical marijuana from the prohibition on commercial marijuana or medical marijuana activity, however, requires delivery businesses to comply with certain conditions; and

WHEREAS, the proposed Zoning Ordinance amendment provides regulations for qualified patient or primary caregiver cultivation, allowing cultivation of thirty (30) plants in a detached structure and cultivation outside of detached structures (outdoors or indoors) if the cultivation is limited to three (3) plants and complies with certain conditions; and

WHEREAS, on December 16, 2015, the Planning Commission held a properly noticed public hearing to consider the attached proposed amendments to the Zoning Ordinance, at which time all interested parties had the opportunity to be heard; and

WHEREAS, the proposed Zoning Ordinance amendment is exempt from California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15061(b)(3) of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment because it does not authorize the construction of any new large structures or other physical changes resulting in impacts to the environment. This Ordinance would also limit the number of outdoor plants to a limited amount so there will be no potential for significant water impacts and pesticide application impacts. The larger amounts would need to be in a detached structure therefore would also not result any water impacts or pesticide application impacts. Further, cultivation in detached structures would not be visible and would not result in significant odor issues.

NOW, THEREFORE BE IT RESOLVED that the Planning Commission recommends that the City Council adopt the Ordinance attached as Exhibit 1 and incorporated herein by reference, amending Cloverdale Municipal Code Title 18 (Zoning Ordinance), Chapter 18.09 to add Article III "Marijuana," Section 18.09.300, "Medical Marijuana," prohibiting commercial marijuana (cannabis) activities and regulating the cultivation of medical marijuana by qualified patients and primary caregivers and the delivery of medical marijuana within the City with recommendations for changes to Section 18.09.300 E (d) (allow cultivation in R-3 zones on parcels with detached single-family dwelling) and 18.09.300 F(1) (cultivation of 3 plants per parcel) and 18.09.300 F(3)(allow cultivation in R-3 zones on parcels with detached single-family dwelling).

NOW, THEREFORE BE IT FURTHER RESOLVED that the Planning Commission finds that the attached Ordinance is are consistent with the City General Plan as follows:

1. Land Use Element Policy LU 4.4: Encourage elimination of blighted and visually undesirable conditions citywide to enhance affordable housing, job opportunities and historical preservation. Strictly regulating the location where marijuana can be safely cultivated will assist in reducing potentially blighted and unsafe conditions in the community.
2. Conservation, Design and Open Space Element Goal CDO 7: Conserve natural vegetation and wildlife resources. By allowing cultivation of small quantities of marijuana within residential areas, the potential for growing marijuana in sensitive natural areas in the community will be reduced.

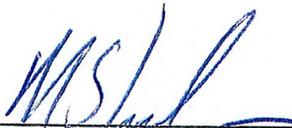
PASSED, APPROVED AND ADOPTED this 16th day of December 2015 by the following vote:

AYES: Chair Shanahan, Vice-Chair Domke, Commissioner Enge, Commissioner Halliday

NOES: Alternate Commissioner Bovee

ABSENT: None

ABSTAIN: None



Mike Shanahan, Commission Chairperson

ATTEST:



Linda Moore, Deputy City Clerk

MEDICAL MARIJUANA REGULATION AND SAFETY ACT¹

What Cities Need to Know About the New Law and Cultivation

OVERVIEW

Here's what you need to know:

- **Local prohibition or regulation:** Cities may prohibit or regulate medical marijuana businesses within their jurisdictions. **Local authority remains intact under the new law.**
- **State license required:** All medical marijuana businesses – dispensary sales, delivery service, cultivation, transport or distribution – must have a State license².
- **State license not enough:** A medical marijuana business in any city may only operate if it has permission from the State and permission from the city (“dual licensing”).
- **Enforcement:** Revocation of local permission to operate means a medical marijuana business must terminate operation because the new law requires dual licensing. Upon approval of the State, a city may enforce State law.
- **State law penalties for unlicensed activity:** There are civil penalties and criminal penalties for operating without a State license.

CULTIVATION

Here's what you need to know:

If your city does **not** have a land use ordinance in place regulating or prohibiting the cultivation of marijuana, *either expressly or otherwise under the principles of permissive zoning*, or chooses not to administer a conditional permit program, then commencing **March 1, 2016**, the State Department of Food and Agriculture will be the sole licensing authority for medical marijuana cultivation applicants.

¹ AB 266 (Bonta, Cooley, Jones-Sawyer, Lack, Wood); AB 243 (Wood); and SB 643 (McGuire). Effective 1/1/2016.

² The Department of Consumer Affairs estimates it will begin issuing State licenses in January 2018. The Department of Food and Agriculture and the Department of Public Health also have licensing authority under the new law. Businesses operating in compliance with local ordinances will get priority in the State licensing application process.

October 27, 2015

CULTIVATION

Here's what you need to do:

Determine if your city fits within City #1 or City #2 as described below:

- **City #1:** Municipal Code that does not expressly prohibit nor expressly regulate cultivation of medical marijuana and is not a “permissive zoning” code. **Need to take action.**

ACTION REQUIRED: Adopt a land use ordinance regulating or prohibiting the cultivation of medical marijuana. The ordinance must be effective by February 28, 2016. The ordinance may be adopted as an “urgency ordinance,” or second reading must occur on or before January 29, 2016.

- **City #2:** Municipal Code that is a “permissive zoning” code and does not enumerate cultivation of medical marijuana as a permitted or conditional use. **Need to take action.**

ACTION REQUIRED: (1) Check and confirm that your city’s zoning code is adopted and implemented under the principles of permissive zoning. If not, take action recommended for City #1. (2) If confirmed, adopt a resolution that includes the following provisions:

- States that Health & Safety Code section 11362.777(b)(3) provides that the Department of Food and Agriculture may not issue a State license to cultivate medical marijuana within a city that prohibits cultivation under principles of permissive zoning;
- Re-affirms and confirms that the Zoning Code is adopted and operates under the principles of permissive zoning;
- States this means that cultivation of marijuana is not allowed within City #2 because it is not expressly permitted; and
- Therefore, the State is not allowed to issue a license for the cultivation of medical marijuana within City #2.

Be sure to consult with your city attorney before taking any of the actions recommended in this document.



Frequently Asked Questions (FAQs)

Medical Marijuana Regulation and Safety Act¹

Topic #1: Cultivation

*The State will be the sole licensing authority for the commercial cultivation of medical marijuana unless a city adopts land use regulations or ordinances regulating or prohibiting the cultivation of marijuana -- either expressly or otherwise under the principles of permissive zoning -- prior to **March 1, 2016.***²

1. **Question:** If a city wants to enact a total ban on cultivation, can the ban include cultivation for personal use?

Answer: Yes. Under *Live Oak*³, a city can ban all marijuana cultivation -- even cultivation of small amounts by qualified patients. The *Live Oak* ban had no exceptions for personal use by a qualified patient. The new legislation does not change the law in this regard.

2. **Question:** Must a city's ordinance prohibiting cultivation make an exception for personal medical marijuana cultivation of up to 6 mature or 12 immature plants?⁴

Answer: No. In the *Live Oak* case, the California Court of Appeal upheld the city's total ban on all marijuana cultivation. That authority is preserved under the new legislation.

3. **Question:** Is a person who cultivates marijuana for his or her personal medical use required to get a cultivation license from the State?

¹ AB 266 (Bonta, Cooley, Jones-Sawyer, Lack, Wood); AB 243 (Wood); and SB 643 (McGuire). Effective 1/1/2016. Please consult your City Attorney before taking action to implement the MMRSA. The answers to these FAQs may be different in your city based upon your municipal code, regulations, and policies. The answers do not constitute legal advice from the League of California Cities®.

² Health & Safety 11362.777(c).

³ *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975.

⁴ Health & Safety Code 11362.77 allows a qualified patient to cultivate 6 mature or 12 immature plants without criminal liability.

Answer: No, if the area used for cultivation does not exceed 100 square feet, or 500 square feet for a primary caregiver with no more than five patients.⁵ If the areas exceed these limits, then a State license is required. The exemption from the State licensing requirements does not prevent a city from regulating or banning cultivation by persons exempt from State licensing requirements.⁶

4. **Question:** Can a city prevent the State from becoming the sole licensing authority for cultivation by adopting an ordinance that permits the cultivation of six plants per residence prior to March 1, 2016?

Answer: Yes. The State becomes the sole licensing authority for cultivation as of March 1, 2016 if a city does not have a land use regulation or ordinance "regulating or prohibiting the cultivation of marijuana." An ordinance permitting cultivation under certain specific conditions (not more than six plants per residence) is an ordinance "regulating" marijuana cultivation and therefore qualifies. However, in order to be completely clear, the City Attorney may wish to determine whether it is advisable to prohibit all other types of cultivation as part of the ordinance.

5. **Question:** Must the cultivation prohibition be adopted as part of a city's zoning code? Could it be adopted instead under the city's business licenses and regulations?

Answer: It's not possible to answer "yes" or "no." AB 243 requires a "land use regulation or ordinance." Whether the phrase "land use" requires a zoning ordinance is a question for the city attorney to answer based on the particular language of the city's municipal code.

6. **Question:** Can a city ban large growers but still allow qualified patients to cultivate a small amount of medical marijuana in their private residences?

Answer: Yes. There's nothing in the legislation that requires a total ban. The most important consideration is to clearly identify cultivation that is prohibited and cultivation that is allowed and to do so before March 1, 2016.

7. **Question:** Is a temporary land use moratorium (under Government Code section 65858) on medical marijuana cultivation that is effective in a city by March 1, 2016 sufficient to prevent the State from having sole licensing authority under the new law for medical marijuana cultivation applicants in that city?

⁵ Business & Professions Code 19319; Health & Safety 11362.777(g).

⁶ Health & Safety Code 11362.777(g).

Answer: Probably not. The new law requires a land use regulation or ordinance that prohibits or regulates cultivation. Because a moratorium adopted under Government Code 65858 would only temporarily prohibit cultivation, it may not qualify as a land use ordinance that “prohibits” cultivation.

8. **Question:** Can a local medical marijuana cultivation ordinance be enacted on an urgency basis in order to comply with the March 1, 2016 deadline in the new legislation?

Answer: Yes, with urgency findings relating to the statutory deadline.

Topic #2: Delivery

Deliveries of medical marijuana can only be made by a State-licensed dispensary in a city that does not explicitly prohibit deliveries by local ordinance. If a city wants to prevent deliveries within its jurisdiction, it must adopt an ordinance expressly prohibiting them.⁷

9. **Question:** Is there a deadline for adopting an ordinance explicitly prohibiting deliveries?

Answer: There is no deadline in the new law. However, best practice would be to adopt the ordinance prior to the date the State begins issuing licenses allowing deliveries so as to reduce the risk of confusion and to avoid the process of requesting the State to terminate the operations of a dispensary making deliveries within the city. The legislation does not specify a deadline for the State to begin issuing any category of license. The State is generally expected to begin issuing licenses on January 1, 2018, but it could begin sooner.

10. **Question:** What are the quantities that delivery services will be authorized to transport?

Answer: The amount that local delivery services will be authorized to carry will be determined by the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs. The determination will be based on security considerations, cash value, and other factors. The amount will be a statewide threshold, authorized for delivery primarily to patients, primary caregivers, and testing labs. Larger amounts will not be considered “delivery” but rather “transport” triggering heightened security requirements while the product is being moved.

⁷ Health & Safety 19340.

Topic 3: Dispensaries and Retail Operations

11. **Question:** Will cities still be able to ban dispensaries?

Answer: Yes. Cities currently have the ability to enact bans on dispensaries and other marijuana retail operations. The new law will not change that, and in fact requires a local permit and a State license before a marijuana business can begin operations within a specific jurisdiction. Cities will retain the discretion to deny permits or licenses to marijuana dispensaries.

12. **Question:** Can a city allow dispensaries and prohibit delivery services?

Answer: Yes. But cities should be aware that if they wish to prohibit delivery services, an ordinance prohibiting delivery services is required.

Topic #4: Other Questions

13. **Question:** Does the new legislation make any distinction between “not-for-profit” and “for profit” medical marijuana businesses?

Answer: No. There is no distinction in the new legislation between medical marijuana businesses that operate “for profit” and those that operate on a “not-for-profit” basis. The new law does not mandate that dispensaries or other businesses operate under either business model.

14. **Question:** Are marijuana edibles covered under the new legislation? Is there a separate designation for them under the new law, with additional State regulatory requirements?

Answer: The new legislation directs the State Department of Public Health (DPH) to develop standards for the production and labeling of all edible medical cannabis products (Business & Professions Code section 19332(c)). A license is required from DPH to “manufacture” edibles. The DPH standards are “minimum standards.” A city may adopt additional stricter standards, requirements and regulations regarding “edibles” (Business & Professions Code section 19316(a)). Cities also retain their ability to license and regulate edible sales or distribution.

15. **Question:** The new law says: "upon approval of the state, cities may enforce state law". If an existing medical marijuana dispensary does not have both licenses (State and city), then must a city wait for the State to approve shutting the dispensary down

before a city can cite the dispensary or otherwise seek to shut it down under the city's ordinances and regulations?

Answer: No. A city may enforce its own ordinances and regulations against the dispensary since a medical marijuana dispensary cannot operate lawfully unless it complies with all local ordinances and regulations.

16. **Question:** Does a P.O. Box qualify as a medical marijuana business location? Is that considered a "use" in a city?

Answer: The answer to this question depends upon a city's municipal code. The State law prohibits a person from engaging in commercial cannabis activity without possessing both a State license and a local permit, license or other authorization. A State licensee may not commence activity under the authority of a State license until the applicant has complied with all requirements of the applicable local ordinance (Business & Professions Code section 19320). A city's municipal code will determine whether a "use" includes a post office box.

17. **Question:** Does the new law address extraction of THC, butane or other substances from marijuana?

Answer: The new law does not specifically address the issue of extraction at all – other than to acknowledge very generally that extraction falls within the definition of manufacturing, and that medical marijuana or a product derived from it may contain extracts.

18. **Question:** Since patients and primary caregivers are exempt from the licensing requirement under specified circumstances, how will that work if they are also owners of a dispensary or cultivation site?

Answer: A primary caregiver or qualified patient who seeks to operate a dispensary or cultivation site is subject to the same State licensing requirements and local permitting requirements as any other person.

19. **Question:** What types of medical marijuana businesses require a State license?

Answer: The new law creates six State licensing categories: Dispensary, Distributor, Transport, Cultivation, Manufacturing, and Special Dispensary Status for licensees who have a maximum of three dispensaries. Any person or entity wishing to operate under a State license must also comply with all local requirements.

20. **Question:** Several initiative measures to legalize recreational marijuana have been filed with the Attorney General in advance of the November 2016 ballot. Should a city be considering prohibiting or regulating recreational marijuana at this time?

Answer: No. The new law does not address recreational use of marijuana. It adds a licensing structure for businesses that wish to serve those qualified patients and primary caregivers who use medical marijuana for their personal use. The League of California Cities is following the various recreational marijuana initiative measures that have been filed with the Attorney General. There is no need for a city to take any action at this time. If a city is interested in following these measures, more information can be found at: <https://www.oag.ca.gov/initiatives/active-measures>.

21. **Question:** Does the new law protect the privacy of patients and primary caregivers?

Answer: Yes. Patient and primary caregiver information is confidential and not subject to disclosure under the California Public Records Act, except as necessary for employees of the State or any city to perform official duties.

22. **Question:** Is there a provision in the new law giving business operators priority for State licensing if they can show that they are in compliance with local ordinances? If so, what is the purpose of this provision?

Answer: Yes. The State licensing authority is required to 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. This provision is intended as an incentive for business operators to be in compliance with local ordinances, to ease any difficulties local governments may have in launching their local regulatory structures, and to help expedite the initial phase of issuing state licenses.

23. **Question:** Does the new law address food trucks that sell marijuana edibles?

Answer: No. The operation of food trucks are within the control and regulation of cities and county health departments.

PLEASE NOTE: This document will be updated periodically, as needed, and will remain available at www.cacities.org. As noted above, each city should consult with its city attorney on all of these issues. The answers to these FAQs do not constitute legal advice from the League of California Cities®.

PROOF OF PUBLICATION

(2015.5 C.C.P.)

STATE OF CALIFORNIA

County of Sonoma

I am a citizen of the United States and a resident of the county aforesaid: I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer of The Press Democrat, a newspaper of general circulation, printed and published DAILY IN THE City of Santa Rosa, County of Sonoma; and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Sonoma, State of California, under the date of November 29, 1951, Case number 34831, that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates to wit:

The Press Democrat - Legal Notices
12/28 1x - 12/28/2015

I certify (or declare) under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Dated at Santa Rosa, California, on

12/28/2015

SIGNATURE

This space for County Clerk's Filing Stamp

Proof of Publication of

CITY OF CLOVERDALE

NOTICE OF PUBLIC HEARING
CITY OF CLOVERDALE CITY COUNCIL

NOTICE IS HEREBY GIVEN THAT the City Council of the City of Cloverdale will hold a public hearing on TUESDAY, JANUARY 12, 2016 at or after 6:30 p.m. at the Cloverdale Performing Arts Center, 209 N. Cloverdale Blvd., Cloverdale, California, for the purpose of considering the adoption of the following Ordinance:

An Ordinance of the City Council of Cloverdale, Amending Cloverdale Municipal Code Title 18 (Zoning Ordinance), Chapter 18.09, to add "Article III, Marijuana," Section 18.09.300, "Medical Marijuana," prohibiting commercial marijuana (cannabis) activities and regulating the cultivation of medical marijuana by qualified patients and primary caregivers and the delivery of medical marijuana within the City.

The City Council will be considering the above Ordinance in response to the California Medical Marijuana Regulation and Safety Act (MMRSA), which was recently signed into law on October 9, 2015. The MMRSA requires a City to have in place a land use regulation or ordinance regulating the cultivation of medical marijuana by March 1, 2016 in order to prevent the State from being the sole licensing authority for cultivation.

On December 16, 2015, the Planning Commission, on a vote of 4-1, recommended that the City Council adopt the above referenced Ordinance with proposed modifications.

All interested persons are encouraged to attend public meetings and comment on the issues being discussed. If you wish to provide testimony and are unable to attend the meeting, written comments that are delivered to the City Clerk's Office prior to the time of the hearing will be made part of the public record. If anyone wishes to challenge this item in court, they may be limited to raising only those issues they or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Clerk at or prior to the public hearing.

Deputy City Clerk

2565852.1

2726982 - Pub. Dec. 28, 2015

11

Agenda Section New Business	Staff Contact Paul Cayler, City Manager
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Agenda Item Title

Resolution No. 002-2016 of the City Council of the City of Cloverdale Authorizing the City Manager to Execute a Professional Services Agreement with C&S Companies for the Preparation of the Airport Taxiway Reconstruction Project

Summary

On December 9, 2015, the City Council continued this matter until the January 12, 2016, City Council meeting in order to give representatives of Laulima Development an opportunity to make a developers deposit to negotiate a memorandum of understanding with the City regarding a potential application to the Federal Aviation Administration for the closure of the Cloverdale Municipal Airport. No developers deposit was received by the City.

On November 10, 2015, the City Council continued this matter until the December 9, 2015, regular City Council meeting in order that Council may conduct a special meeting on December 8, 2015, in order to have a broader discussion of the future of the Cloverdale Municipal Airport.

On October 28, 2015, the City Council continued this matter until the Special Meeting on November 10, 2015.

On August 28, 2015, the City Council authorized a grant agreement with the Federal Aviation Administration to provide a 90 percent of the cost grant for preparation for the Cloverdale Municipal Airport's Taxiway Reconstruction Project. The total project cost provide by the grant is \$246,335, which includes a City administrative expense reimbursable of \$5,500. The City's grant match will be \$27,370. At that meeting, City staff informed the Council that the actual execution of the required professional services agreement with the qualified consultant could be delayed of a short period.

The project consists of study, report and design services in preparation of contract documents for the reconstruction of the parallel taxiway. Services will include a comprehensive storm water drainage report to address existing airfield flooding, specifically in the infield areas between the runway and parallel taxiway, and any existing deficiencies in the airport drainage system; topographic survey; geotechnical investigation and report; contact document preparation for the parallel taxiway reconstruction; and analysis to determine the Pavement Condition Numbers (PCN's) for all runway, taxiway and apron pavements.

In 2014, C&S Companies were selected as the City's airport consultant through a Statement of Qualification process (SOQ). C&S Companies are performing two other project presently for the City, including the Airport Layout Plan and the Airport Obstruction Survey and Mitigation Plan.

Options

The primary options are: 1) Adopt the proposed Resolution 002-2016, that authorizes the professional services agreement for the airport taxiway reconstruction project; 2) Reject the proposed resolution; or 3) Continue the matter to a later City Council meeting.

Budget/Financial Impact

The budget impact is approximately \$27,370 for the City's grant match in order to receive \$246,335 in federal grants. That is a 9 to 1 matching grant ratio.

Subcommittee Recommendation

None.

Recommended Council Action

Based on City Council direction from the December 8, 2015 meeting, the City Manager recommends that the City Council take action on this adopt the proposed resolution.

Attachments:

- 1) Proposed Resolution.
-
-

**City of Cloverdale
City Council
Resolution No. 002-2016**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE
AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH C&S
COMPANIES FOR THE PREPARATION OF THE AIRPORT TAXIWAY RECONSTRUCTION PROJECT**

WHEREAS, the City of Cloverdale and the Federal Aviation Administration are parties to the federal Airport Improvement Program (AIP) grant number 3-06-0045-009-2015 for the preparation of the Airport Taxiway Reconstruction Project; and

WHEREAS, in 2014, the City conducted a consultant selection process and selected C&S Companies to be the City's airport consultant; and

WHEREAS, in 2015, the City negotiated the attached scope of services and fee with C&S Companies and coordinated this effort with the Federal Aviation Administration (FAA) to ensure the project scope and fee are consistent with the FAA's expectations and requirements; and

WHEREAS, the federal grant is to provide \$246,335, and the City match will be \$27,370.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Cloverdale does hereby authorize the City Manager to execute a professional services agreement with C&S Companies for the preparation of the Airport Taxiway Reconstruction Project for an amount not to exceed \$246,335.

It is hereby certified that the foregoing Resolution No. 002-2016 was duly introduced and duly adopted by the City Council of the City of Cloverdale at its regular meeting held on January 12, 2016, by the following vote:

AYES in favor of:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTESTED:

Mary Ann Brigham, Mayor

Linda Moore, Deputy City Clerk



**City Council/Successor Agency
Agenda Item Summary**

Agenda Item: 9
Meeting Date: January 12, 2016

Agenda Section

New Business

Staff Contact

Paul Cayler, City Manager

Agenda Item Title

Resolution Authorizing the City Manager to Execute Profession Services Agreement with Collaborative Design Architects, Inc. for Master Planning Service at the "Thyme Square" Property

Summary

The Thyme Square property is undeveloped City owned land on South Cloverdale Blvd located south of the Citrus Fairgrounds. The property was purchased with funding from the former redevelopment agency low and moderate housing set aside funding. During the Fiscal Year 2015-2016 Goal Setting process, the City Council set Goal No. One: "Begin redevelopment of Thyme Square and Cherry Creek properties through strategic visioning process and outlining path to construction, including use of remaining funds and action plan." On July 22, 2015, the City Council approved a letter of support for Alexander Valley Healthcare to build a Community Wellness Center on a portion of the Thyme Square property. In order to move this project forward for a constructive community discussion, a proposal for master planning of the property was sought from Collaborative Design Architects, Inc (Collaborative Design). The principle of Collaborative Design is Mr. James Burns II. Mr. Burns is a California registered architect. The project is to provide three conceptual designs of how to develop the parcel with the health center and police department facility, in addition to possible low income housing and retail use. It should be noted that the Thyme Square property is presently in a very complex status due to the redevelopment agency dissolution process. The concept to move this project forward is to determine how much of the property and conceptual location of critical components (health center, police station and housing) in a way that includes community dialog. Once a conceptual plan is agreed upon for the parcel, then the City may move forward with action on the best legal means and methods to take the land into development.

Options

- 1) Adopt the attached proposed resolution thus authorizing the City Manager to execute the professional services agreement with Collaborative Design Architects; or 2) Reject the proposed resolution.

Budget/Financial Impact

The proposal for conceptual design services is for \$23,800. The City Manager recommends that the contract be funded through Inclusionary Housing Budget Unit (205-704). The justification is that the proposed conceptual design work will determine how much of the parcel is to be used for low and moderate income housing.

Subcommittee Recommendation

The Planning and Community Development Subcommittee reviewed Collaborative Design Architects' proposal at their meeting of December 15, 2015, and recommend the proposal for City Council approval.

Recommended Council Action

The City Manager recommends that the City Council adopt the attached resolution, thus authorizing the City Manager to execute a professional services agreement with Collaborative Design Architects.

Attachments:

- 1. Resolution
- 2. Proposed Professional Services Agreement with Collaborative Design Architects'.

cc:

**CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 003-2016**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE AUTHORIZING THE CITY MANAGER TO EXECUTE AN PROFESSIONAL SERVICES AGREEMENT WITH COLLABORATIVE DESIGN ARCHITECTS, INC TO PERFORM MASTER PLANNING FOR THE THYME SQUARE PROPERTY

WHEREAS, Cloverdale City Council identified in the Fiscal Year 2015-2016 Goal Setting process that the development of the Thyme Square property is one of its Top Ten 10 goals; and

WHEREAS, the City Council approved a letter of support for the Alexander Valley Healthcare to build a community health center on the Thyme Square property at the City Council meeting of July 22, 2015; and

WHEREAS, Mr. James Burns II, principle of Collaborative Design Architects, Inc., prepared a proposal to do master planning services for the Thyme Square property, and said proposal was reviewed and feedback was given by Planning and Community Development Subcommittee at their regular meeting of December 15, 2015; and

WHEREAS, Mr. Burns is a qualified registered architect in California with much experience working with local governments, and planning and designing projects; and

WHEREAS, the proposed agreement is for a term of approximately six months for a not to exceed compensation of \$23,800, which will be funded through the Inclusionary Housing Budget Unit.

NOW, THEREFORE, BE IT RESOLVED that the Cloverdale City Council authorizes the City Manager to execute a professional services agreement between Collaborative Design Architects, Inc. and the City of Cloverdale for the performance of master planning for the Thyme Square property.

It is hereby certified that the foregoing Resolution No. 003-2016 was duly introduced and adopted as amended by the City Council of the City of Cloverdale at its regular meeting held on the 12th day of January, 2016, by the following roll call vote: (5-ayes, 0-noes)

AYES IN FAVOR:

NOES:

ABSENT:

ABSTAIN:

Approved:

Attested:

Mary Ann Brigham, Mayor

Linda Moore, Deputy City Clerk

November 30, 2015

Mr. Jerry Haag
Acting Community Development Director
City of Cloverdale
124 N. Cloverdale Blvd.
Cloverdale, CA. 95425-3352

RE: Contract for Professional Design Services for the Master Planning of "Thyme Square" located at the South West intersection of Citrus Fair Drive & S. Cloverdale Blvd. APN #'s: 001-071-025, -027, -028, -031 & -032

Dear Mr. Haag,

Collaborative Design Architects Inc. thanks you for the opportunity to present this proposal/scope of work for architectural services for the above referenced project.

PROJECT DESCRIPTION

The intent of this proposal and the product of these services is to provide the City of Cloverdale with three "conceptual designs" for the "Thyme Square" site located at the S.W. intersection of Citrus Fair Drive & S. Cloverdale Blvd.

Conceptual Design #1 will incorporate the relocation of the Alexander Valley Health Care Clinic, currently located at 6 Tarman Dr, as an occupant of the site and a new Police Department Facility.

Conceptual Design #2 will incorporate the relocation of the Alexander Valley Health Care Clinic and a mixed use component of housing and retail.

Conceptual Design #3 will incorporate the relocation of the Alexander Valley Health Care Clinic, a new Police Department Facility and a smaller scaled mixed use component.

Conceptual Designs will be developed with information provided and/or derived from the City Planning Department, the Cloverdale Police Department and the Alexander Valley Health Care Clinic.

Initial "Project Programming" for both the Alexander Valley Health Care Clinic and the Police Department Facility has to be conducted in order to establish square footage requirements. Once this initial programming has quantified these elements of the project, the design process can proceed.

James R. Burns II., Architect

6114 LaSalle Ave., PMB 465
Oakland, California 94611-2802
510-339-8880 510-339-1642 (fax)

Tasks included in this proposal are:

- **TASK 1:** Initial "Project Programming" for both the Alexander Valley Health Care Clinic and the Police Department Facility. This task will include gathering programming data that has already been created for these uses and/or establishing broad criteria that will enable CDA to quantify area and associated space requirements (i.e. parking, garbage collection etc.).
- **TASK 2:** Conceptual Designs for 3 concepts as described. This task will be incorporating the information gathered in Task 1 with the information and/or priorities derived and conceptualized with City Staff into the 3 concepts outlined.
- **TASK 3:** Present concepts to the City Council and/or other City of Cloverdale governing bodies.
- **TASK 4:** Reimbursable Expenses
- **TASK 5:** Contingency: To be used only with written approval of the City.

PROFESSIONAL SERVICES SCOPE OF WORK

Provide "Project Programming" and "Schematic Design" drawings to a level of detail that will enable the City Council and the City Staff to evaluate the 3 concepts. The intended product of this exercise is to assist the City Council and the City Staff to either select one of these concepts and/or to select components of each concept to be incorporated into a "final master plan". If the "final master plan" is a combination of elements of each concept, the final master plan will be developed under a separate contract. After a concept is finalized, future evaluation and project development addressing economics and other necessary and relevant project components will occur under future contracts will the respective qualified consultants.

The "TASKS" are defined as follows:

Task 1 – INITIAL "PROJECT PROGRAMMING"

- Meet with City Staff and document the City's ideas and goals envisioned for the site.
- Meet with City of Cloverdale Police Department representative to broadly outline the needs of the Police Department for a new facility. If previous "programming" has been developed by the Police Department that information will be re-evaluated and updated to meet current goals.
- Meet with representatives of the Alexander Valley Health Care Clinic to broadly outline the needs of the "Clinic". If previous "programming" has been developed by the "Clinic" that information will be re-evaluated and updated to meet current goals.
- This task will include up to 24 hours of associated time.

Task 2 – CONCEPTUAL DESIGN OF 3 CONCEPTS

- Incorporate the "Project Programming" into each of the 3 concepts outlined.
- The product of this task will be 3 separate exhibits showing the major design elements and site layout. Exhibits will be "site plan" only. No architectural elements other than those described in the "site plans" will be addressed (i.e. no 3 dimensional design sketches are included in the task).
- Each concept will be preliminary submitted to staff for review and comment. Comments will be incorporated in each concept prior to preparation of exhibits. One review and comment by staff are anticipated in this task.
- This task will include up to 30 hours for each scheme or 90 hours of associated time.

Task 3 – PRESENTATION TO CITY COUNCIL AND/OR OTHER GOVERNING BODIES OF THE CITY OF CLOVERDALE.

- This task will be the formal presentation to the City Council. If this is to be a joint session with other governing agencies and occurring during the same meeting the presentation will address both entities.
- This task will include up to 8 hours of associated time.

Task 4 – REIMBURSABLE EXPENSES (Per attached Exhibit "A")

- This task will allow up to \$1,500.00 of reimbursable expenses.

Task 5 – CONTINGENCY (To be used only with the written approval of the City)

- This task will allow a 10% contingency upon written approval of the City.

PROFESSIONAL FEE OF SERVICES

The fees for professional services for this project are:

• Task 1- INITIAL "PROJECT PROGRAMMING"	\$ 5,040.00
• Task 2- CONCEPTUAL DESIGN	\$13,500.00
• Task 3- PRESENTATION TO CITY COUNCIL	\$ 1,600.00
• Task 4- REIMBURSABLE EXPENSES*	\$ 1,500.00
• Task 5- Contingency **	\$ 2,160.00
• Total Fees	\$23,800.00

* Reimbursable expenses described on the attached charge rate schedule (EXHIBIT "A") will be billed at actual cost plus additional plus 20%. The above fee represents an estimate of reimbursable expenses.

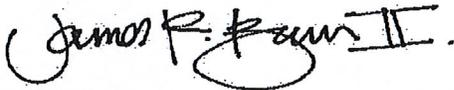
** Contingency to be used only with the written approval of the City.

Mr. Jerry Haag
Fee Proposal/Scope of Work
Page 4

Thank you in advance for your consideration of Collaborative Design Architects Inc. to provide architectural services for this project. Please do not hesitate to call should you have any questions or concerns. Should CDA be selected for this project, we have the staffing necessary to begin work immediately.

Sincerely,

COLLABORATIVE DESIGN ARCHITECTS INC.



James R. Burns, II
President/CEO

ACCEPTED BY CITY OF CLOVERDALE, CALIFORNIA

Mr. Jerry Haag, Acting Community Development Director

Date

Exhibit "A"
City of Cloverdale, CA
"Thyme Square" Master Plan
Collaborative Design Architects Inc.
Standard Charge Rates
Effective June 1, 2014

PERSONNEL CHARGES

Charges for personnel engaged in professional and/or technical work are made for the actual hours directly chargeable to the project. Rates are subject to change.

Rates are as follows:

OFFICE SERVICES	CHARGE RATES
Principal Architect	\$210.00/hr.
Principal Engineer	\$210.00/hr.
Principal Graphic Designer	\$190.00/hr.
Senior Project Manager	\$185.00/hr.
Project Manager	\$185.00/hr.
Senior Architect	\$175.00/hr.
Senior Engineer	\$175.00/hr.
Associate Architect	\$160.00/hr.
Associate Engineer	\$160.00/hr.
Architect	\$150.00/hr.
Engineer	\$150.00/hr.
Project Designer	\$140.00/hr.
Senior Designer	\$145.00/hr.
Designer	\$140.00/hr.
CADD/Draftsperson	\$140.00/hr.
Graphic Designer	\$120.00/hr.
Administrative	\$110.00/hr.
SPECIAL SERVICES	
Expert Witness	\$450.00/hr.

REIMBURSABLE EXPENSES

Reimbursable charges shall consist of all printing, photographic work, plotting, reproductions, deliveries, outside services, subcontractors and rental of special equipment. Outside vendor services including printing, photographic work, courier services, etc. will be charged at their respective costs plus 20%.

DELIVERIES AND MILEAGE

A base charge for deliveries will be charged at \$25.00 per delivery. Mileage will be invoiced at \$0.575/mile.

ACCELERATED SCHEDULE/OVERTIME RATES

Overtime for accelerated schedule will be charged to the Client at a rate of 1.5 times the Standard Rate for the personnel engaged in professional and/or technical work.

INVOICING

Invoicing will be processed on the last week day of each month. Payment is required no later than 14 days upon receipt. Accounts 30 days past due will bear interest at the legal prevailing rate.



**City Council/Successor Agency
Agenda Item Summary**

Agenda Item: 10
Meeting Date: January 12, 2016

Agenda Section New Business	Staff Contact Paul Cayler, City Manager
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Agenda Item Title
Discussion and Possible Direction on City Council 2016 Subcommittee, Joint Committee and Regional Board/Committee Appointments

Summary
City staff distributed a subcommittee preference form at the December 9, 2015, Council Meeting for the City Council reorganization of 2016. The preference forms were compiled by the City Manager. Please find attached the City Manager’s recommendation for subcommittee, joint committee and regional board/committee appointments. Please note that the City Manager’s recommendation is viewed as a starting point for the City Council’s discussion, and that final determination of appointments is at the direction of the Council. The City Manager followed some simple rules in making his committee appointment recommendations: 1) Attempt to give all Council Members their first choice for committee appointments; 2) Provide for continuity in committee membership by having as least one Council Member remain on the committee from 2015; 3) Provide for equal workload among Council Members, however this is only attainable at a limited extent because there are five Council Members covering six committees. Therefore, two Council Members are recommended for three appointments and three Council Members are recommended for two appointments.

The list of regional board/committee appointments is updated for the Council review and comment.

Options
The City Council has numerous options for reconfiguration of the City Manager’s recommendation. The City Manager views this recommendation for appointments as starting point for Council discussion.

Budget/Financial Impact
None.

Subcommittee Recommendation
None.

Recommended Council Action
The City Manager recommends that the City Council discuss the recommended committee appointments and give direction for final appointments.

- Attachments:**
- 1) 2016 SUBCOMMITTEE AND BOARD APPOINTMENTS – PREFERENCE COMPILATION.
 - 2) DRAFT 2016 City Council Regional Board / Committee Appointments.

cc:



DRAFT 2016 City Council Regional Board / Committee Appointments

Regional Board / Committee	2016 Appointee	Meeting Schedule
Association of Bay Area Gov'ts (ABAG) (Oakland)	Wolter	3 rd Thu; @ 7:00 pm, Quarterly
Cloverdale Chamber of Commerce Liaison	Palla, Wolter (alt)	1 st Thurs @ 5:30 pm Monthly
Planning Commission Liaison	Wolter, Cox (alt)	1 st Wed @ 6:30 pm; Monthly
Cloverdale Rancheria Tribal Council Liaison	Brigham, Wolter(alt)	As needed
League of CA Cities Board of Directors**	Palla	Quarterly
League of CA Cities Redwood Empire Division Legislative Committee**	Palla	Quarterly
League of CA Cities Transportation, Communication and Public Works Policy Committee**	Cox	Quarterly
League of CA Cities Mayors & Council Dept Executive Committee**	Palla	Quarterly
League of CA Cities Public Safety Committee**	Palla	Quarterly
Redwood Empire Municipal Insurance Fund (REMIF)	Palla, Moore (alt)	2 nd Thu; noon (bi-monthly)
Russian River Watershed Assn (RRWA)	Cox, Cayler (alt)	4 th Thu; 9:30 am
Sonoma Co. Mayors/Council Members Assn. Legislative Committee	Palla, Russell (alt)	1 st Friday @ 9:30am
Sonoma Co. Health Action Plan	Russell	Quarterly



2016 City Council Regional Board/Committee Appointments (continued)

Sonoma Co. Transportation Authority	Russell, Palla (alt.)	2 nd Monday; 2:30 pm
Sonoma Co. Waste Management Agency	Cox, Cayler (alt)	3 rd Wed, 9:00 am
Sonoma Marin Area Rail Transit (SMART) * #	Russell*	3 rd Wed; 1:30 pm
Sonoma Clean Power	Cox, Cayler (alt)	1 st Thurs; 12pm

* Appointment by and represents Sonoma Co. Mayors/Council Members Association

Requires membership on SCTA / RCPA Board

** Appointment by the League of California Cities

2016 SUBCOMMITTEE AND BOARD APPOINTMENTS – PREFERENCE WORKSHEET

Council and Joint Subcommittees:

Subcommittee	2015 Members	Brigham	Cox	Palla	Russell	Wolter
Airport	Russell; Cox					
Finance & Administration & Police	Cox; Brigham					
Planning/ CDA	Wolter; Brigham					
Public Works	Cox; Russell					
Joint City/Cloverdale Fire District	Palla; Brigham					
Joint City/Cloverdale Unified School District	Palla; Wolter					


DRAFT 2016 Council Subcommittee, Joint Committee, and Regional Board/Committee Appointments

Subcommittee	Members	Typical Meeting Day, Time and Location*
Airport	Russell, Wolter	<u>1st Tuesday, 8:00 a.m. (Every Four Months)</u> February 2nd June 7th October 4th
Finance, Administration & Police	Brigham, Wolter	<u>4th Thursday, 5:00 p.m. (Monthly)</u> January 28th February 25th March 24th April 28th May 26th June 23rd July 28th August 25th September 22nd October 27th November 24th (TBD) December 29th (TBD)
Planning & Community Development	Russell, Wolter	<u>3rd Tuesday, 4:00 p.m. (Bi-Monthly)</u> February 16th April 19th June 21st August 16th October 18th December 20th
Public Works	Cox, Brigham	<u>4th Tuesday, 10:30 a.m. (Bi-Monthly)</u> January 26th March 29th May 24th July 26th September 27th November 22nd
Joint City/Cloverdale Fire District	Palla, Brigham	<u>2nd Monday, 5:30 p.m. (Every Four Months)</u> February 22 nd *** June 13th October 10th
Joint City/Cloverdale Unified School District	Palla, Cox	<u>3rd Monday, 5:00 p.m. (Bi-Monthly, School year)</u> January 25th March 21st May 16th July 18th** (no meeting) September 19th November 21st

*All meetings are held at Cloverdale City Hall except the Joint City/Cloverdale Fire District Subcommittee meeting which is held at Cloverdale Fire District Headquarters. Special meetings may be called by the City Manager or Subcommittee Chair, as needed.

**Meeting falls during summer break; Subcommittee will determine if meeting is necessary

***Meeting rescheduled per committee request.

Agenda Section New Business	Staff Contact Jose M. Sanchez, City Attorney
Agenda Item Title Second Amendment to the At-Will Employment Agreement between the City and Paul Cayler for Employment as City Manager	

Summary

On July 24, 2013, the City Council approved an At-Will Employment Agreement (“Employment Agreement”) with Paul Cayler and appointed him to serve as City Manager. The Employment Agreement will expire on July 23, 2016. Attached for City Council consideration is an amendment to Mr. Cayler’s Employment Agreement, extending the Employment Agreement and making changes to provisions related to salary, vacation leave sell-back and severance.

Prior to consideration of a contract amendment, the City Council performed a City Manager evaluation. On October 28, 2015, the City Council concluded the City Manager evaluation, reporting out a positive result. Evaluations are typical prior to the consideration of employment agreement extensions and any changes to salary and benefits of a city manager.

The following is a summary of the proposed changes to Mr. Cayler’s Employment Agreement:

Term

The term of the current Employment Agreement ends on July 23, 2016. The proposed amendment will extend the Employment Agreement to June 30, 2020.

Salary

Mr. Cayler has not received any salary step increases since the commencement of his employment with the City on July 24, 2013. It is customary for most City employees to receive merit increases or move up in salary schedules on a yearly basis for a certain period of time even without cost of living adjustments. Step increases are normally five percent (5%). Due to Mr. Cayler’s position as City Manager, Mr. Cayler does not participate in such merit system; as City Manager compensation is set by negotiations with the City Council.

Mr. Cayler has only requested to be considered for a two and one-half percent (2.5%) salary increase in order to continue to show leadership as the City makes strides to continue to improve its financial condition.

The City Council also engaged in a review of cost of living adjustments for all represented and unrepresented employees as part of labor negotiations. On December 9, 2015, the City Council adopted Resolution No. 071 2015 approving a cost of living adjustment for the Chief of Police and Finance Manager. The City Council decided to provide a cost of living adjustment of two percent (2%) beginning July 1, 2015 and an additional cost of living adjustment of two percent (2%) effective July 1, 2016. The City Council decided to extend this adjustment to all employees under at-will agreements.

The attached amendment would provide Mr. Cayler the cost of living adjustments and a two and one-percent (2.5%) salary increase. Mr. Cayler’s salary would be adjusted as follows:

“Salary: Effective July 1, 2015, Employee’s base compensation will be One Hundred Thirty-

Seven Thousand Seven Hundred Dollars (\$137,700) per year, which reflects a two percent (2%) cost of living adjustment. Effective January 18, 2016, Employee's base compensation will be One Hundred Forty-One Thousand One Hundred Forty-Two Dollars and Fifty Cents (\$141,142.50), which reflects a two and one-half percent (2.5%) salary increase. Effective July 1, 2016, Employee's base compensation will be One Hundred Forty-Three Thousand Nine Hundred Sixty-Five Dollars and Thirty-Five Cents (\$143,965.35) per year, which reflects a two percent (2%) cost of living adjustment."

Vacation Leave Sell-Back

The attached amendment would allow Mr. Cayler sell back up to sixty (60) hours of vacation time per fiscal year, provided that, after the sell-back, a balance of at least fifty (50) hours remains.

Severance

The attached amendment would increase the amount of severance Mr. Cayler would receive in the event he is terminated without cause under the Employment Agreement. The severance would go up from two (2) months' base salary to a total of four (4) months base salary.

All other terms and conditions of the Employment Agreement would remain in full force and effect.

Options

By motion, approve the attached Resolution approving and authorizing the Mayor to sign the Second Amendment to the At-Will Employment Agreement for City Manager Services with Paul Cayler on behalf of the City, or give other direction.

Budget/Financial Impact

The attached amendment would change the City Manager's current salary of One Hundred Thirty-Five Thousand (\$135,000) as follows:

- Effective July 1, 2015, Employee's base compensation will be One Hundred Thirty-Seven Thousand Seven Hundred Dollars (\$137,700) per year;
- Effective January 18, 2016, Employee's base compensation will be One Hundred Forty-One Thousand One Hundred Forty-Two Dollars and Fifty Cents (\$141,142.50); and
- Effective July 1, 2016, Employee's base compensation will be One Hundred Forty-Three Thousand Nine Hundred Sixty-Five Dollars and Thirty-Five Cents (\$143,965.35) per year, which reflects a two percent (2%) cost of living adjustment.

The attached amendment would also allow the City Manager to sell back up to sixty (60) hours of vacation leave per fiscal year.

Subcommittee Recommendation

N/A

Recommended Council Action

By motion, approve the Resolution approving the Second Amendment to the At-Will Employment Agreement for City Manager services and authorize the Mayor to sign the Agreement on behalf of the City.

Attachments:

1. Resolution
 2. Second Amendment to At-Will Employment Agreement between the City and Paul D. Cayler
-

**CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 004-2016**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE APPROVING
A SECOND AMENDMENT TO THE AT-WILL EMPLOYMENT AGREEMENT
WITH PAUL D. CAYLER AS CITY MANAGER OF THE CITY OF CLOVERDALE**

WHEREAS, on July 24, 2013, the City Council approved an At-Will Employment Agreement (“Employment Agreement”) with Paul Cayler and appointed him as City Manager; and

WHEREAS, on August 28, 2014, the City Council approved an amendment to the Employment Agreement correcting the accrual rate for vacation and sick leave and making other minor clarifications; and

WHEREAS, the term for the Employment Agreement ends on July 23, 2016; and

WHEREAS, on October 28, 2015, the City Council concluding a positive City Manager evaluation; and

WHEREAS, Mr. Cayler has not received any salary step increases since the commencement of his employment with the City on July 24, 2013. It is customary for most City employees to receive merit increases or move up in salary schedules on a yearly basis for a certain period of time even without cost of living adjustments. Step increases are normally five percent (5%). Due to Mr. Cayler’s position as City Manager, Mr. Cayler does not participate in such merit system; as City Manager compensation is set by negotiations with the City Council; and

WHEREAS, Mr. Cayler has only requested to be considered for a two and one-half percent (2.5%) salary increase in order to continue to show leadership as the City makes strides to continue to improve its financial condition; and

WHEREAS, the City Council also engaged in a review of cost of living adjustments for all represented and unrepresented employees as part of labor negotiations. On December 9, 2015, the City Council adopted Resolution No. 071 2015 approving a cost of living adjustment for the Chief of Police and Finance Manager. The City Council decided to provide a cost of living adjustment of two percent (2%) beginning July 1, 2015 and an additional cost of living adjustment of two percent (2%) effective July 1, 2016. The City Council decided to extend this adjustment to all employees under at-will agreements; and

WHEREAS, the attached Second Amendment to the Employment Agreement amends the term of the Employment Agreement and make certain changes to the conditions of employment.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Cloverdale, that the City Council does hereby approve that certain agreement entitled Second Amendment To At-Will Employment Agreement with Paul D. Cayler, a copy of which is attached and incorporated hereto as **Exhibit A**, and authorizes the Mayor to execute the Amendment on behalf of the City.

It is hereby certified that the foregoing Resolution No. 004-2016 was duly introduced and adopted by the City Council of the City of Cloverdale at its regular meeting held on the 12th day of January 2016, by the following voice vote:

AYES IN FAVOR:

NOES:

ABSENT:

ABSTAIN:

Approved:

Attested:

Mary Ann Brigham, Mayor

Linda Moore, Deputy City Clerk

2582205.1



SECOND AMENDMENT TO AT-WILL EMPLOYMENT AGREEMENT

This **SECOND AMENDMENT TO AT-WILL EMPLOYMENT AGREEMENT** (this "**Second Amendment**"), is made and entered into this ____ day of January 2016, by and between the **CITY OF CLOVERDALE**, a general law City (the "**City**"), and **PAUL D. CAYLER** ("Employee"), collectively referred to as "**Parties**".

RECITALS

WHEREAS, on July 24, 2013, the City Council approved an At-Will Employment Agreement ("**Employment Agreement**") with Employee and appointed Employee as City Manager; and

WHEREAS, on August 28, 2014, the City Council approved an amendment to the Employment Agreement correcting the accrual rate for vacation and sick leave and making other minor clarifications; and

WHEREAS, the term for the Employment Agreement ends on July 23, 2016; and

WHEREAS, on October 28, 2015, the City Council concluding a positive evaluation of Employee; and

WHEREAS, Employee has not received any salary increases since the commencement of his employment with the City on July 24, 2013; and

WHEREAS, it is customary for City employees to receive merit increases or move up salary schedules on a yearly basis even without cost of living adjustments. Step increases are normally five percent (5%). Due to Employee's position as City Manager, he does not receive such a benefit; and

WHEREAS, Employee has only requested to be considered for a two and one-half percent (2.5%) salary increase in order to continue to show leadership as the City makes strides to continue to improve its financial condition; and

WHEREAS, the City Council also engaged in a review of cost of living adjustments for all represented and unrepresented employees as part of labor negotiations; and

WHEREAS, on December 9, 2015, the City Council adopted Resolution No. 071-2015 approving a cost of living adjustment for the Chief of Police and Finance Manager. The City Council decided to provide a cost of living adjustment of two percent (2%) beginning July 1, 2015 and an additional cost of living adjustment of two percent (2%) effective July 1, 2016. The City Council decided to extend this adjustment to all employees under at-will agreements; and

WHEREAS, the Parties wish to amend the Employment Agreement to extend the term of the Employment Agreement and make certain changes to the conditions of

employment.

AGREEMENT

1. Section 2 of the Employment Agreement, "Term," is amended to read as follows:

"This Agreement will expire on June 30, 2020, unless extended or terminated as provided herein, or until terminated by the event of the death or permanent disability of Employee. The Parties to this Agreement may terminate this Agreement pursuant to the provisions of Paragraph 3."

2. Section 3(d)(i) of the Employment Agreement, "Salary," is amended as follows:

"Salary: Effective July 1, 2015, Employee's base compensation will be One Hundred Thirty-Seven Thousand Seven Hundred Dollars (\$137,700) per year, which reflects a two percent (2%) cost of living adjustment. Effective January 18, 2016, Employee's base compensation will be One Hundred Forty-One Thousand One Hundred Forty-Two Dollars and Fifty Cents (\$141,142.50), which reflects a two and one-half percent (2.5%) salary increase. Effective July 1, 2016, Employee's base compensation will be One Hundred Forty-Three Thousand Nine Hundred Sixty-Five Dollars and Thirty-Five Cents (\$143,965.35) per year, which reflects a two percent (2%) cost of living adjustment."

3. Section 3(d)(iv), of the Employment Agreement "Vacation Leave," is amended to read as follows:

"iv. Vacation Leave:

1. Vacation time shall be accrued at twenty-one (21) days per year (6.46 hours per pay period).
2. Accumulation: Employee shall be permitted to accumulate up to thirty-six (36) days (360 hours) of vacation time.
3. Sell-back: Employee may sell back up to sixty (60) hours of vacation time per fiscal year, provided that, after the sell-back, a balance of at least fifty (50) hours remains."

4. Section 3(e), of the Employment Agreement, "Severance," is amended to read as follows:

"(e) Severance

- i. Employment is intended to continue until the end of the Agreement's term or until termination occurs as defined in provision 3(e). In the event termination occurs without cause under this Agreement, the City agrees to pay Employee a severance payment of four (4) months' base salary. This

severance is subject to the restrictions set forth in Government Code section 53260, including, without limitation, that the maximum amount of severance pay that Employee may receive shall not exceed an amount equal to the monthly base salary multiplied by the number of months left on the unexpired Agreement. Severance shall be paid in a lump sum. Employee shall also be compensated for all earned vacation and holidays not taken as of the effective date of termination. In exchange for the Employee's general release of all claims against the City (including its present and former officers, officials, employees, agents, volunteers, and insurers) in the form attached as Exhibit A and made a part hereof, severance shall be paid to the Employee if Employee's employment is terminated without cause as defined in provision 3(e)(ii). The City will not be obligated to pay severance unless and until the general release attached as Exhibit A has been signed by Employee. The release of all claims contained in Exhibit A will not become effective until the severance is paid by the City. Pursuant to Government Code section 53243.2, any cash settlement related to the termination of this Agreement received by Employee from the City shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of his office or position as defined in California Government Code section 53243.3.

- ii. The City shall not be obligated to pay severance under the provisions of this Agreement if Employee is terminated for cause. For purposes of this Agreement, "cause" is defined as:
 1. Conviction of any felony or a misdemeanor involving moral turpitude or conduct incompatible with the position of City Manager; or
 2. A finding by a court, jury, State or Federal Attorney General, or the Fair Political Practices Commission, that Employee engaged in intentional or negligent misconduct that is incompatible with the position of City Manager."

5. All Other Terms Remain in Force. Except as amended by this Second Amendment, all terms and conditions of the Employment Agreement shall remain in full force and effect.

[Signatures Continued to Next Page]

IN WITNESS WHEREOF, the City has caused this Amendment to be signed and executed in its behalf by its Mayor and duly attested by the Deputy City Clerk. It has also been executed by the Employee.

Paul D. Cayler
Employee

Mary Ann Brigham, Mayor
City of Cloverdale

Dated: _____

Dated: _____

Attest:

Linda Moore, Deputy City Clerk

Approved As To Form:

Jose M. Sanchez, City Attorney
City of Cloverdale



**City Council/Redev. Agency
Agenda Item Summary**

Agenda Item: 12
Meeting Date: January 12, 2016

Agenda Section Information Item	Staff Contact Vanessa Apodaca, Interim City Engineer
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Agenda Item Title

Background information on a proposed Professional Services Agreement with RMC Water and Environment to provide assistance to the city throughout the reissuance process for the city’s National Pollution Discharge Elimination System (NPDES) permit for discharge of treated wastewater.

Summary

The City’s Wastewater Treatment Plant (WWTP) utilizes a series of infiltration ponds to allow for slow discharge of treated wastewater. These ponds receive treated wastewater and allow for discharge through percolation into the ground. In order to continue to utilize these discharge ponds the City requires a current NPDES permit. In order to renew the NPDES permit, the City must submit a Report of Waste Discharge (ROWD) application to the Regional Water Board.

The City does not have the staff time or experience to renew the NPDES permit in a timely manner. Consequently the City needs to contract to have the permit renewed prior to the November 1, 2016 deadline. Deferring this work could result in missing the application deadline and leave the City at risk of the current permit expiring before a new one is completed, resulting in potential fines from the Regional Water Board. A current NPDES permit must be held to be in compliance with state wastewater regulations.

RMC Water and Environment has local experience with NPDES permit renewals and is familiar with the City of Cloverdale wastewater treatment plant and its operation. At the request of the City, RMC submitted a proposal to the City. The proposal was for assistance with the NPDES permit application and renewal and preparing a ROWD.

The proposal includes preparation of an ROWD – the NPDES permit application, permit reissuance negotiations with the Regional Water Board and project management and coordination. This proposal with a detailed scope of services is included in the professional services agreement attached to this staff report. The proposed not-to-exceed fee for these services is \$104,851, with \$4,228 of that being optional for Special Technical Analyses.

Options

1. Direct staff to return to council with a resolution approving a professional services agreement with RMC Water and Environment to assist with the NPDES permit application and renewal and prepare a report of waste discharge.
2. Direct staff to pursue alternative methods of obtaining the necessary services.

Budget/Financial Impact

The proposed professional services agreement will be funded through the Sewer Enterprise Fund.

Subcommittee Recommendation

N/A

Recommended Council Action

Move to direct staff to return to council with a resolution approving a Professional Services Agreement with RMC Water and Environment to assist with the NPDES permit application and renewal and prepare a report

of waste discharge.

Attachments:

1. Professional Services Agreement – Assistance with NPDES Permit Reissuance – RMC
-

cc:

**CITY OF CLOVERDALE
PROFESSIONAL SERVICES AGREEMENT**

Assistance with NPDES Permit Reissuance

AGREEMENT

This Agreement is made and entered into this _____ day of _____, by and between the City of Cloverdale, a California Municipal Corporation, 124 North Cloverdale Boulevard, Cloverdale, California, 95425, hereinafter referred to as "City," and RMC Water and Environment, a California Corporation, hereinafter referred to as "Consultant."

RECITALS

WHEREAS, the legislative body of the City on _____, _____ by Resolution No. authorized execution of this Agreement on behalf of the City in accordance with Chapter 3.08 of the City Municipal Code and/or other applicable law;

NOW, THEREFORE, City and Consultant, for the consideration hereinafter described, mutually agree as follows:

1. DESCRIPTION OF SERVICES

The services to be performed under this Agreement (the "Services") are as follows: provide assistance throughout the reissuance process of the city's NPDES permit. The Services are further described in Consultant's proposal (the "Proposal"), which is attached to and made a part of this Agreement as Exhibit A.

2. TERM

The Agreement term will commence upon execution and expire on August 31, 2017, unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

3. PAYMENT TERMS AND NOT TO EXCEED AMOUNT

City agrees to pay Consultant for Services that are actually performed in accordance with this Agreement. To be eligible for payment, Consultant invoices must be submitted not more often than monthly to the City and list the Services performed and the amounts to be paid according to the cost categories and prices in the Proposal. In no event will the City's obligation to pay the Consultant under this Agreement exceed \$104,851 (the "Not to Exceed Amount"), unless this Agreement is first modified in accordance with its terms. Where the Proposal provides for compensation on a time and materials basis, Consultant must maintain adequate records to permit inspection and audit of Consultant's time and material charges

under this Agreement. Consultant will make such records available to City during normal business hours upon reasonable notice. In accordance with California Government Code section 8546.7, if the "Not to Exceed Amount" exceeds TEN THOUSAND DOLLARS (\$10,000.00), this Agreement and the Consultant's books and records related to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

4. TIME OF COMPLETION

Consultant must commence performance of the Services upon receipt of written direction to proceed from City. Consultant shall devote such time to the performance of Services pursuant to his Agreement as may be reasonably necessary to meet the standard of performance provided in Section 7 below and to satisfy Consultant's obligations hereunder. Consultant will complete the Services in accordance with this Agreement by August 31, 2017 (the "Time of Completion"). The Time of Completion may only be modified by an amendment of the Agreement in accordance with its terms.

5. INDEPENDENT CONTRACTOR

Consultant and City agree that the Consultant will perform the Services as an independent contractor and not as an employee or agent of the City. Persons employed or utilized by Consultant in the performance of the Services will not be employees or agents of the City. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

6. SUBCONTRACTING

Consultant may subcontract portions of the Services upon the prior written approval of the City. The Consultant will be solely responsible for payment for such subcontract services. No contractual relationship will exist between any such subcontractors of the Consultant and the City.

7. STANDARD OF PERFORMANCE

- A. Consultant will perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession and will prepare all work products required by this Agreement in the usual and customary professional manner. Consultant will comply with federal, state and local laws applicable to performance of the Services, including but not limited to, the California Building Standards Code as in effect in the City, the Americans with Disabilities Act, any environmental laws or regulations, air pollution control laws and regulations

applicable to Consultant and/or the Services, and any laws and regulations related to any copyright, patent, trademark or other intellectual property right involved in performance of the services. Consultant's Failure to comply with any law(s) or regulation(s) applicable to the performance of the services hereunder shall constitute a material breach of this agreement.

- B. Consultant shall assign only competent personnel to perform Services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

8. OTHER GOVERNMENTAL REGULATIONS

To the extent that the Services may be funded by or otherwise subject to the authority of another governmental entity or entities, Consultant and any subcontractors shall comply with all applicable rules and regulations of such other governmental entity or entities.

9. USE OF RECYCLED PRODUCTS

Consultant shall endeavor to prepare and submit all reports, written studies, and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10. INDEMNITY

To the maximum extent permitted by law, Consultant shall, at its own expense, indemnify, defend with counsel acceptable to the City (which acceptance will not be unreasonably withheld), and hold harmless City and its officers, officials, employees, agents and volunteers ("Indemnitees") from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney's fees, and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees.

The Consultant's obligation to indemnify, defend and hold harmless under this provision shall not be excused because of the Consultant's inability to evaluate Liability, or because the Consultant evaluates Liability and determines that the Consultant is not or may not be liable. The Consultant must respond within 30 calendar days to any tender for defense and indemnity by the City, unless the time for responding has been extended by an authorized representative of the City in writing. If the Consultant fails to accept tender of defense and indemnity within 30 calendar days, in addition to any other remedies authorized by law, as much of the money due

or that may become due the Consultant under this Agreement as shall reasonably be considered necessary by the City may be retained by the City until disposition has been made of the matter subject to tender, or until the Consultant accepts the tender, whichever occurs first.

The Consultant waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the Consultant arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code section 2783, as may be amended from time to time, Consultant's duty to indemnify under this provision shall not apply when to do so would be prohibited by California Civil Code section 2782, as may be amended from time to time.

Notwithstanding the foregoing, to the extent that the Services include design professional services subject to California Civil Code section 2782.8, as amended from time to time, Consultant's duty to indemnify shall only be to the maximum extent permitted by Civil Code section 2782.8.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing Services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

11. INSURANCE

- A. Before commencing performance of the Services, Consultant, at its own cost and expense, must: (a) procure "occurrence coverage" insurance of the kinds and in the amounts specified below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by the Consultant or its agents, representatives, employees, or subcontractors; and (b) submit to the City certificates of insurance and endorsements evidencing insurance coverage that meets the requirements of this section. Consultant must maintain the insurance policies required by this section throughout the Agreement term. The cost of such insurance must be included in the Consultant's proposal. Consultant may not allow any subcontractor to commence work on the Services until Consultant and/or the subcontractor have obtained all insurance required by this Agreement for the subcontractor(s) and submitted certificates of insurance and endorsements evidencing such coverage to the City. Consultant

must, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. Workers' Compensation Insurance as required by the State of California, with coverage providing Statutory Limits, and Employer's Liability Insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence must be provided. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance must be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. The insurance must be endorsed to waive all rights of subrogation against the City and its officials, officers, employees, and volunteers for loss arising from or related to the Services.

- B. Consultant, at its own cost and expense, must maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, TWO MILLION DOLLARS (\$2,000,000.00) aggregate, and combined single limit coverage for risks associated with Services. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Services or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include, but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.
- C. Required commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage must be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement may be attached limiting the coverage.
- D. Except for Workers' Compensation insurance and professional liability insurance, all other insurance coverage required pursuant to this Agreement must include or be endorsed to include the following:
 - 1. City and its officials, officers, employees, agents, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage may contain no special limitations on the scope

of protection afforded to City or its officials, officers, employees, agents, or volunteers.

2. Required insurance coverage must be primary insurance with respect to the City and its officials, officers, employees and volunteers. No insurance or self-insurance maintained by the City may be called upon to contribute to a loss under the coverage.
- F. All insurance coverage required pursuant to this Agreement must include or be endorsed to include the following:
1. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
 2. Required insurance coverage may not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- G. Professional liability insurance may be provided on a "claims-made" basis, but the policy must be maintained in effect, and the City must be provided satisfactory evidence of the policy being maintained in effect, for a period of five years following the expiration or termination of this Agreement.
- H. Consultant, at its own cost and expense, must maintain for the period covered by this Agreement professional liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) covering errors and omissions and containing a cross liability or severability of interest clause acceptable to the City. Any deductible or self-insured retention under the required professional liability insurance may not exceed \$150,000.00 per claim.
- I. All insurance required under this Agreement must be placed with insurers with a Best's rating of no less than A:VII unless otherwise approved by the City.
- J. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City interests are otherwise fully protected.

12. NON-DISCRIMINATION

During the performance of this Agreement, Consultant will not discriminate against any employee of the Consultant or applicant for employment because of race,

religion, creed, color, national origin, sex, or age. Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, creed, color, national origin, sex or age.

13. BUSINESS LICENSE

Before the City will issue a notice to proceed with the Services, to the extent the requirements of Chapter 5.04 of the Cloverdale Municipal Code apply, Consultant and any subcontractors subject to the requirements of Chapter 5.04 of the City Municipal Code must acquire at their sole expense a business license from the City in accordance with that chapter. Such licenses must be kept valid throughout the Agreement term.

14. OWNERSHIP OF WORK PRODUCTS AND TREATMENT OF DOCUMENTS

All plans, specifications, reports, designs and other documents prepared by Consultant pursuant to this Agreement shall be and remain the property of the City. Any modification or reuse of such documents by the City without Consultant's prior written consent will be at the City's sole risk. Except as may be otherwise required by law, Consultant will disclose no data, plans, specifications, reports or other documents pertaining to the Services without the prior written consent of the City.

15. TERMINATION AND REMEDIES

- A. City may terminate this Agreement for convenience by giving at least 10 days' written notice to Consultant specifying the termination effective date. Upon receipt of such notice, Consultant may continue performance of the Services through the date of termination. City shall pay Consultant for all Services actually performed in accordance with this Agreement through the termination effective date.
- B. City may cancel this Agreement at any time and without cause upon written notification to Professional. Professional may cancel this Agreement upon 30 days' written notice to City and shall include in such notice the reasons for cancellation. In the event of termination, Professional shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Professional delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Professional or prepared by or for Professional or the City in connection with this Agreement.
- C. If Consultant materially breaches any term of this Agreement, in addition to any other remedies the City may have at law or equity, the City may:

1. Terminate the Agreement by notice to the Consultant specifying the termination effective date;
2. Retain, and/or recover from the Consultant at no additional cost to the City, the plans, specification, drawings, reports and other design documents and work products prepared by Consultant, whether or not completed;
3. Complete the unfinished Services itself or have the unfinished Services completed, and/or;
4. Charge Consultant, or deduct from monies that may be due or become due the Consultant under this Agreement, the difference between the cost of completing the unfinished Services pursuant to this Agreement and the amount that would otherwise be due Consultant had Consultant completed the Services in accordance with this Agreement.

16. BINDING EFFECT AND ASSIGNMENT PROHIBITION

This Agreement is binding upon City, Consultant, and their successors. Except as otherwise provided herein, neither City nor Consultant may assign, sublet or transfer its interest in this Agreement or any part thereof without the prior written consent of the other, and any purported assignment without such consent will be void.

17. REPRESENTATIVES

A. The City representative for purposes of this Agreement will be Vanessa Apodaca, Interim City Engineer. The Consultant representative for purposes of this Agreement will be Mary Cousins, Project Manager. The parties' designated representatives will be the primary contact persons regarding the performance of the Services. The parties intend that their designated representatives will cooperate in all matters regarding this Agreement and in such manner so as to achieve performance of the Services in a timely and expeditious fashion.

B. Notices:

Any written notice to Consultant shall be sent to:

Mary Cousins
RMC Water and Environment
2175 North California Blvd, Suite 315
Walnut Creek, CA 94596

Any written notice to City shall be sent to:

Vanessa Apodaca, Interim City Engineer
City of Cloverdale
124 N. Cloverdale Blvd.
Cloverdale, California 95425

18. INTEGRATION AND AMENDMENT

This Agreement represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations or agreements, whether written or oral. If a discrepancy, disagreement, ambiguity, inconsistency or difference in interpretation of terms arises as between terms or provisions of this Agreement and any exhibit(s) made a part of this Agreement, this Agreement shall control and shall be deemed to reflect the intent of the Parties with respect to the subject matter hereof. This Agreement may only be amended by a writing signed by a representative authorized to bind the Consultant and a representative authorized to bind the City.

19. CONFLICT OF INTEREST PROHIBITION

City and Consultant will comply with the requirements of the City's Conflict of Interest Code adopted pursuant to the provisions of California Government Code section 87300 and following, the Political Reform Act (California Government Code section 81000 and following), the regulations promulgated by the Fair Political Practices Commission (Title 2, section 18110 and following of the California Code of Regulations), California Government Code section 1090 and following, and any other ethics laws applicable to the performance of the Services and/or this Agreement. Consultant may be required to file with the City Clerk a completed Form 700 before commencing performance of the Services pursuant to City's Conflict of Interest Code. Form 700 forms are available from the City Clerk.

Consultant may not perform Services for any other person or entity that, pursuant to any applicable law or regulation, would result in a conflict of interest or would otherwise be prohibited with respect to Consultant's obligations pursuant to this Agreement. Consultant agrees to cooperate fully with City and to provide any necessary and appropriate information requested by City or any authorized representative concerning potential conflicts of interest or prohibitions concerning Consultant's obligations pursuant to this Agreement.

Consultant may not employ any City official, officer or employee in the performance of the Services, nor may any official, officer or employee of City have any financial interest in this Agreement that would violate California Government Code section 1090 et seq. Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of City. If Consultant was an

employee, agent, appointee, or official of City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code section 1090 et seq., the entire Agreement is void and Consultant will not be entitled to any compensation for Consultant's performance of the Services, including reimbursement of expenses, and Consultant will be required to reimburse City for any sums paid to Consultant under this Agreement. Consultant understands that, in addition to the foregoing, penalties for violating Government Code section 1090 may include criminal prosecution and disqualification from holding public office in the State of California.

Any violation by the Consultant of the requirements of this provision will constitute a material breach of this Agreement, and the City reserves all its rights and remedies at law and equity concerning any such violations.

20. APPLICABLE LAW

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and the interpretation of this Agreement. Any action or proceeding that is initiated or undertaken to enforce or interpret any provision, performance, obligation or covenant set forth in this Agreement shall be brought in a state court in Sonoma County.

21. RECOVERY OF ATTORNEY'S FEES

If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret any term of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

22. SEVERABILITY

If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged will remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

IN WITNESS HEREOF, the parties have caused their authorized representative to execute this Agreement on this ___ day of _____.

CITY

CONSULTANT

By: _____
Paul Cayler, City Manager

By: _____
David Richardson, Principal-
in-Charge

ATTEST:

By: _____
Linda Moore, Deputy City Clerk

APPROVED AS TO FORM:

By: _____
Jose Sanchez, City Attorney

Exhibits: Exhibit A — Consultant's Proposal

City of Cloverdale

Professional Services by RMC Water and Environment

Assistance with NPDES Permit Reissuance

SCOPE OF WORK

December 21, 2015

RMC Water and Environment (RMC) will provide assistance to the City of Cloverdale (City) throughout the reissuance process for the City's NPDES permit (Permit) for discharge of treated wastewater to percolation ponds located adjacent to the Russian River. The current permit was approved by the North Coast Regional Water Quality Control Board in June 2012 (R1-2012-0048, NPDES CA0022977). The application for permit reissuance, called the Report of Waste Discharge (ROWD), is due on November 1, 2016, which is 270 days before the Permit expiration date of July 31, 2017. The exact timing of the permit reissuance may vary depending on the schedule and availability of Regional Water Board staff. The permit will be administratively extended, as long as a complete application for permit reissuance is turned in by the legal due date.

This scope of work is associated with the fee estimate in **Exhibit A**. As shown in the attached schedule (see page 7), the scope of work includes activities beginning in Fiscal Year 2015-16 and extending through Fiscal Year 2017-2018. The scope of work is organized into the following tasks:

Task 1. Report of Waste Discharge (ROWD)

RMC will prepare the City's NPDES permit application, also known as the ROWD, which has a legal due date of November 1, 2016. Preparation of the ROWD is organized into the following activities:

Subtask 1.1 – Kickoff Meeting

RMC will meet with City staff and lead a discussion for the detailed approach to preparation of technical analyses and the ROWD and permit reissuance process, including estimated task schedules. RMC will provide information about the current regulatory climate, issues of potential concern, compliance considerations, and planning for submittal of the permit application, as well as strategies for a potential permit reissuance. In addition, RMC will gather information from City staff regarding requests for potential permit changes, and will discuss options for potential permit changes. If appropriate, RMC will also coordinate with Regional Water Board staff by phone.

Subtask 1.2 – Compile Applicable Data and Information

RMC will collect and review pertinent data to evaluate compliance history and determine data sufficiency. City staff will provide data and information as needed for the ROWD. Data and information to be collected and reviewed may include effluent flows, effluent water quality, receiving water quality (Russian River and Groundwater), as well as selected City planning documents. This task also includes placing the data into a format that facilitates subsequent

- *Compliance Attainability Analysis* – If changes or trends have occurred in the effluent character since the last permit reissuance, a compliance attainability analysis can be used to justify alternate approaches to setting effluent limits.

Subtask 1.5 – Preparation of Report of Waste Discharge

RMC will compile information for inclusion in the ROWD, including USEPA forms and State Water Resources Control Board forms. The data required for the permit application includes general information about the treatment facilities and collection systems, priority pollutant data including statistical summaries of the data, and other data and information related to the NPDES permit reissuance and other considerations. Technical analyses conducted as part of Subtasks 1.2 through 1.4 will be included in the ROWD, as appropriate, as will studies completed through separate efforts (for example, the Industrial Waste Survey).

A draft ROWD will be prepared and submitted to City staff for review. Then, RMC will meet with City staff to discuss comments on the draft ROWD and make necessary revisions and coordinate submittal of the application by the due date.

RMC will prepare the final ROWD and provide copies to the City and to Regional Water Board in both electronic and hard copy formats.

Subtask 1.6 – Project Management and Coordination

This task includes the internal and external coordination and communication necessary to assure the Report of Waste Discharge is completed on schedule. This task includes the following:

- 1) Communication with City and team on the status of the project work;
- 2) Preparation of monthly invoices and detailed progress reports; and
- 3) Preparation of meeting agendas and notes.

Subtask 1.7 – Additional Special Technical Analyses (OPTIONAL)

This subtask is optional and shall not be commenced without written direction from the City to RMC.

RMC will prepare additional special technical analyses if needed to support the permit renewal using the additional budget provided for this subtask. The scope and nature of the special technical analyses will be determined during the permit renewal, but will be similar in nature to the analyses described in subtask 1.4.

Task 2. Permit Reissuance Negotiations

RMC will assist the City during negotiations with the Regional Water Board for reissuance of the 2017 NPDES permit. The permit reissuance activities, including negotiations, are organized into the activities listed below.

Subtask 2.1 – Review Draft Permit Terms and Negotiate with Regional Water Board staff

Deliverables:

- Draft Report of Waste Discharge
- Final Report of Waste Discharge, including both electronic and hard copies for City staff and Regional Water Board staff.
- Monthly progress reports and invoices

Task 2– Permit Renewal Negotiations

Deliverables:

- Draft and final comments on administrative draft permit
- Draft and final comments on Tentative Order
- Draft testimony for Regional Water Board hearing (if needed)
- Monthly progress reports and invoices

SCHEDULE

A rough estimated schedule for activities during the permit reissuance is shown on the next page. This schedule could vary depending on the availability of Regional Water Board staff.



City of Cloverdale

NPDES Permit Reissuance for Cloverdale Wastewater Treatment Plant

Tasks	Labor				Total Hours	Total Labor Costs (1)	ODCs (2)	Total
	Principal	Project Manager	Project Engineer	Admin. Team				
Task 1: Report of Waste Discharge								
1.1 Kick-Off Meeting	6	12	12		30	\$6,690	\$220	\$6,910
1.2 Compile Applicable Data and Information	2	16	36		54	\$10,686	\$0	\$10,686
1.3 Conduct Reasonable Potential Analysis and Calculate Effluent Limits	2	16	32		50	\$9,974	\$0	\$9,974
1.4 Special Technical Analyses	2	16	32		50	\$9,974	\$0	\$9,974
1.5 Preparation of Report of Waste Discharge	4	32	48	8	96	\$18,524	\$110	\$18,634
1.6 Project Management and Coordination	2	10	4	4	20	\$4,050	\$0	\$4,050
1.7 Additional Special Technical Analyses (OPTIONAL)	0	6	16		22	\$4,228	\$0	\$4,228
Subtotal Task 1:	18	108	180	12	322	\$64,126	\$330	\$64,456
Task 2: Permit Renewal Negotiations								
2.1 Review Draft Permit Terms and Negotiate with Regional Water Board staff	12	40	40		92	\$19,908	\$220	\$20,128
2.2 Review Tentative Order and Prepare Comments and Negotiations during Public Comment Period	4	20	32		56	\$11,492	\$55	\$11,547
2.3 Prepare for and Attend Regional Water Board Hearing	6	8	2		16	\$3,990	\$220	\$4,210
2.4 Project Management and Coordination	2	12	4	4	22	\$4,510	\$0	\$4,510
Subtotal Task 2:	24	80	78	4	186	\$39,900	\$495	\$40,395
TOTAL - NOT INCLUDING OPTIONAL TASKS	42	182	242	16	486	\$99,798	\$825	\$100,623
TOTAL - INCLUDING OPTIONAL TASKS	42	188	258	16	508	\$104,026	\$825	\$104,851

Notes

- The individual hourly rates include salary, overhead and profit. RMC reserves the right to adjust its hourly rate structure at the beginning of the calendar year for all ongoing contracts.
- Other direct costs (ODCs) such as reproduction, delivery, mileage (rates will be those allowed by current IRS guidelines), and travel expenses, will be billed at actual cost plus 10%.
- This fee estimate is based on the accompanying scope of work and could change based on developments by regulatory agencies or other parties.

Agenda Section	Staff Contact
Information Item	Vanessa Apodaca, Interim City Engineer

Agenda Item Title

Background information on a proposed Professional Services Agreement with Brelje & Race Consulting Civil Engineers to Prepare Bid Documents, Assessment and Provide Construction Management Services for a Biosolids Removal Project.

Summary

The City's Wastewater Treatment Plant (WWTP) utilizes a series of three aerated ponds for wastewater treatment. The ponds are operated in series with the third pond being designed and operated to promote the settling of stabilized wastewater treatment solids (biosolids). Biosolids accumulate in this pond slowly over a number of years and disposal is not a necessary part of regular operations. However, the volume of accumulated biosolids has now reached the point where it takes up a significant portion of the third pond and is affecting treatment performance. The last time that biosolids were removed from this pond was approximately four years ago.

The WWTP does not have facilities to process or dispose of the accumulated biosolids. Consequently, the City needs to contract to have the accumulated biosolids removed from the pond, dewatered, and hauled away to a reuse or disposal site. Deferring this work will eventually lead to violations of the WWTP NPDES permit and fines from the State. All wastewater biosolids handling and disposal must be conducted in accordance with federal, State and local laws and regulations.

Brelje & Race Consulting Civil Engineers has local experience with similar biosolids removal projects and is familiar with the technical aspects necessary to encourage competitive bidding and to control disposal costs. At the request of the City, Brelje & Race submitted a proposal to the City. The proposal was for biosolids assessment services to determine the quantity of the accumulated solids and to test for various contaminants that could influence reuse and disposal options.

The proposal also included preparation of bid documents and providing construction management services necessary to have the accumulated biosolids removed from the pond, dewatered, and hauled away to an appropriate reuse or disposal site. This proposal with a detailed scope of services is included in the professional services agreement attached to this staff report. The proposed not-to-exceed fee for these services is \$71,800. This compares to the fee the previous time this was performed in 2012 of \$84,000.

Options

1. Direct staff to return to council with a resolution approving a professional services agreement with Brelje & Race Consulting Civil Engineers to prepare bid documents and provide construction management services and assessment for a biosolids removal project.
 2. Direct staff to pursue alternative methods of obtaining the necessary services.
-

Budget/Financial Impact

The proposed professional services agreement, as well the anticipated subsequent biosolids removal contract, will be funded through the Sewer Enterprise Fund.

Subcommittee Recommendation

N/A

Recommended Council Action

Move to direct staff to return to Council with a resolution approving a Professional Services Agreement with Brelje & Race Consulting Civil Engineers to prepare bid documents and provide construction management services and assessment for a biosolids removal project.

Attachments:

1. Proposal from Brelje & Race Consulting Civil Engineers

cc:

**CITY OF CLOVERDALE
PROFESSIONAL SERVICES AGREEMENT**

**Engineering Services for
Assessment, Bid Documents and Construction Management
for Biosolids Removal Project**

AGREEMENT

This Agreement is made and entered into this _____ day of December, 2015 by and between the City of Cloverdale, a California Municipal Corporation, 124 North Cloverdale Boulevard, Cloverdale, California, 95425, hereinafter referred to as "City," and Brelje & Race Consulting Civil Engineers, a California Corporation, hereinafter referred to as "Consultant."

RECITALS

WHEREAS, the legislative body of the City on _____, 2015 by Resolution No. _____ authorized execution of this Agreement on behalf of the City in accordance with Chapter 3.08 of the City Municipal Code and/or other applicable law;

NOW, THEREFORE, City and Consultant, for the consideration hereinafter described, mutually agree as follows:

1. DESCRIPTION OF SERVICES

The services to be performed under this Agreement (the "Services") are as follows: prepare bid documents and assessment and provide construction management services for a biosolids removal project. The Services are further described in Consultant's proposal (the "Proposal"), which is attached to and made a part of this Agreement as Exhibit A.

2. TERM

The Agreement term will commence upon execution and expire on January 31, 2016, unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

3. PAYMENT TERMS AND NOT TO EXCEED AMOUNT

City agrees to pay Consultant for Services that are actually performed in accordance with this Agreement. To be eligible for payment, Consultant invoices must be submitted not more often than monthly to the City and list the Services performed and the amounts to be paid according to the cost categories and prices in the Proposal. In no event will the City's obligation to pay the Consultant under

this Agreement exceed \$71,800 (the "Not to Exceed Amount"), unless this Agreement is first modified in accordance with its terms. Where the Proposal provides for compensation on a time and materials basis, Consultant must maintain adequate records to permit inspection and audit of Consultant's time and material charges under this Agreement. Consultant will make such records available to City during normal business hours upon reasonable notice. In accordance with California Government Code section 8546.7, if the "Not to Exceed Amount" exceeds TEN THOUSAND DOLLARS (\$10,000.00), this Agreement and the Consultant's books and records related to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

4. TIME OF COMPLETION

Consultant must commence performance of the Services upon receipt of written direction to proceed from City. Consultant shall devote such time to the performance of Services pursuant to his Agreement as may be reasonably necessary to meet the standard of performance provided in Section 7 below and to satisfy Consultant's obligations hereunder. Consultant will complete the Services in accordance with this Agreement within 360 days of the date of execution (the "Time of Completion"). The Time of Completion may only be modified by an amendment of the Agreement in accordance with its terms.

5. INDEPENDENT CONTRACTOR

Consultant and City agree that the Consultant will perform the Services as an independent contractor and not as an employee or agent of the City. Persons employed or utilized by Consultant in the performance of the Services will not be employees or agents of the City. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

6. SUBCONTRACTING

Consultant may subcontract portions of the Services upon the prior written approval of the City. The Consultant will be solely responsible for payment for such subcontract services. No contractual relationship will exist between any such subcontractors of the Consultant and the City.

7. STANDARD OF PERFORMANCE

- A. Consultant will perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession and will prepare all work products required by this

Agreement in the usual and customary professional manner. Consultant will comply with federal, state and local laws applicable to performance of the Services, including but not limited to, the California Building Standards Code as in effect in the City, the Americans with Disabilities Act, any environmental laws or regulations, air pollution control laws and regulations applicable to Consultant and/or the Services, and any laws and regulations related to any copyright, patent, trademark or other intellectual property right involved in performance of the services. Consultant's Failure to comply with any law(s) or regulation(s) applicable to the performance of the services hereunder shall constitute a material breach of this agreement.

- B. Consultant shall assign only competent personnel to perform Services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

8. OTHER GOVERNMENTAL REGULATIONS

To the extent that the Services may be funded by or otherwise subject to the authority of another governmental entity or entities, Consultant and any subcontractors shall comply with all applicable rules and regulations of such other governmental entity or entities.

9. USE OF RECYCLED PRODUCTS

Consultant shall endeavor to prepare and submit all reports, written studies, and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10. INDEMNITY

To the maximum extent permitted by law, Consultant shall, at its own expense, indemnify, defend with counsel acceptable to the City (which acceptance will not be unreasonably withheld), and hold harmless City and its officers, officials, employees, agents and volunteers ("Indemnitees") from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney's fees, and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees.

The Consultant's obligation to indemnify, defend and hold harmless under this provision shall not be excused because of the Consultant's inability to evaluate Liability, or because the Consultant evaluates Liability and determines that the Consultant is not or may not be liable. The Consultant must respond within 30 calendar days to any tender for defense and indemnity by the City, unless the time for responding has been extended by an authorized representative of the City in writing. If the Consultant fails to accept tender of defense and indemnity within 30 calendar days, in addition to any other remedies authorized by law, as much of the money due or that may become due the Consultant under this Agreement as shall reasonably be considered necessary by the City may be retained by the City until disposition has been made of the matter subject to tender, or until the Consultant accepts the tender, whichever occurs first.

The Consultant waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the Consultant arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code section 2783, as may be amended from time to time, Consultant's duty to indemnify under this provision shall not apply when to do so would be prohibited by California Civil Code section 2782, as may be amended from time to time.

Notwithstanding the foregoing, to the extent that the Services include design professional services subject to California Civil Code section 2782.8, as amended from time to time, Consultant's duty to indemnify shall only be to the maximum extent permitted by Civil Code section 2782.8.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing Services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

11. INSURANCE

- A. Before commencing performance of the Services, Consultant, at its own cost and expense, must: (a) procure "occurrence coverage" insurance of the kinds and in the amounts specified below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by the Consultant or its agents, representatives, employees, or subcontractors; and (b) submit to the City

certificates of insurance and endorsements evidencing insurance coverage that meets the requirements of this section. Consultant must maintain the insurance policies required by this section throughout the Agreement term. The cost of such insurance must be included in the Consultant's proposal. Consultant may not allow any subcontractor to commence work on the Services until Consultant and/or the subcontractor have obtained all insurance required by this Agreement for the subcontractor(s) and submitted certificates of insurance and endorsements evidencing such coverage to the City. Consultant must, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. Workers' Compensation Insurance as required by the State of California, with coverage providing Statutory Limits, and Employer's Liability Insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence must be provided. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance must be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. The insurance must be endorsed to waive all rights of subrogation against the City and its officials, officers, employees, and volunteers for loss arising from or related to the Services.

- B. Consultant, at its own cost and expense, must maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, TWO MILLION DOLLARS (\$2,000,000.00) aggregate, and combined single limit coverage for risks associated with Services. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Services or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include, but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.
- C. Required commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage must be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement may be attached limiting the coverage.
- D. Except for Workers' Compensation insurance and professional liability insurance, all other insurance coverage required pursuant to this Agreement must include or be endorsed to include the following:

1. City and its officials, officers, employees, agents, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage may contain no special limitations on the scope of protection afforded to City or its officials, officers, employees, agents, or volunteers.
 2. Required insurance coverage must be primary insurance with respect to the City and its officials, officers, employees and volunteers. No insurance or self-insurance maintained by the City may be called upon to contribute to a loss under the coverage.
- F. All insurance coverage required pursuant to this Agreement must include or be endorsed to include the following:
1. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
 2. Required insurance coverage may not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- G. Professional liability insurance may be provided on a "claims-made" basis, but the policy must be maintained in effect, and the City must be provided satisfactory evidence of the policy being maintained in effect, for a period of five years following the expiration or termination of this Agreement.
- H. Consultant, at its own cost and expense, must maintain for the period covered by this Agreement professional liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) covering errors and omissions and containing a cross liability or severability of interest clause acceptable to the City. Any deductible or self-insured retention under the required professional liability insurance may not exceed \$150,000.00 per claim.
- I. All insurance required under this Agreement must be placed with insurers with a Best's rating of no less than A:VII unless otherwise approved by the City.
- J. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such

insurance are either not commercially available, or that the City interests are otherwise fully protected.

12. NON-DISCRIMINATION

During the performance of this Agreement, Consultant will not discriminate against any employee of the Consultant or applicant for employment because of race, religion, creed, color, national origin, sex, or age. Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, creed, color, national origin, sex or age.

13. BUSINESS LICENSE

Before the City will issue a notice to proceed with the Services, to the extent the requirements of Chapter 5.04 of the Cloverdale Municipal Code apply, Consultant and any subcontractors subject to the requirements of Chapter 5.04 of the City Municipal Code must acquire at their sole expense a business license from the City in accordance with that chapter. Such licenses must be kept valid throughout the Agreement term.

14. OWNERSHIP OF WORK PRODUCTS AND TREATMENT OF DOCUMENTS

All plans, specifications, reports, designs and other documents prepared by Consultant pursuant to this Agreement shall be and remain the property of the City. Any modification or reuse of such documents by the City without Consultant's prior written consent will be at the City's sole risk. Except as may be otherwise required by law, Consultant will disclose no data, plans, specifications, reports or other documents pertaining to the Services without the prior written consent of the City.

15. TERMINATION AND REMEDIES

- A. City may terminate this Agreement for convenience by giving at least 10 days' written notice to Consultant specifying the termination effective date. Upon receipt of such notice, Consultant may continue performance of the Services through the date of termination. City shall pay Consultant for all Services actually performed in accordance with this Agreement through the termination effective date.
- B. If Consultant materially breaches any term of this Agreement, in addition to any other remedies the City may have at law or equity, the City may:
 - 1. Terminate the Agreement by notice to the Consultant specifying the termination effective date;

2. Retain, and/or recover from the Consultant at no additional cost to the City, the plans, specification, drawings, reports and other design documents and work products prepared by Consultant, whether or not completed;
3. Complete the unfinished Services itself or have the unfinished Services completed, and/or;
4. Charge Consultant, or deduct from monies that may be due or become due the Consultant under this Agreement, the difference between the cost of completing the unfinished Services pursuant to this Agreement and the amount that would otherwise be due Consultant had Consultant completed the Services in accordance with this Agreement.

16. BINDING EFFECT AND ASSIGNMENT PROHIBITION

This Agreement is binding upon City, Consultant, and their successors. Except as otherwise provided herein, neither City nor Consultant may assign, sublet or transfer its interest in this Agreement or any part thereof without the prior written consent of the other, and any purported assignment without such consent will be void.

17. REPRESENTATIVES

A. The City representative for purposes of this Agreement will be Vanessa Apodaca, Interim City Engineer. The Consultant representative for purposes of this Agreement will be Richard Ingram, Vice President. The parties' designated representatives will be the primary contact persons regarding the performance of the Services. The parties intend that their designated representatives will cooperate in all matters regarding this Agreement and in such manner so as to achieve performance of the Services in a timely and expeditious fashion.

B. Notices:

Any written notice to Consultant shall be sent to:

Richard Ingram
Brelje & race Consulting Engineers
475 Aviation Boulevard, Suite 120
Santa Rosa, CA 95403

Any written notice to City shall be sent to:

Vanessa Apodaca, Interim City Engineer
City of Cloverdale
124 N. Cloverdale Blvd.

18. INTEGRATION AND AMENDMENT

This Agreement represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations or agreements, whether written or oral. If a discrepancy, disagreement, ambiguity, inconsistency or difference in interpretation of terms arises as between terms or provisions of this Agreement and any exhibit(s) made a part of this Agreement, this Agreement shall control and shall be deemed to reflect the intent of the Parties with respect to the subject matter hereof. This Agreement may only be amended by a writing signed by a representative authorized to bind the Consultant and a representative authorized to bind the City.

19. CONFLICT OF INTEREST PROHIBITION

City and Consultant will comply with the requirements of the City's Conflict of Interest Code adopted pursuant to the provisions of California Government Code section 87300 and following, the Political Reform Act (California Government Code section 81000 and following), the regulations promulgated by the Fair Political Practices Commission (Title 2, section 18110 and following of the California Code of Regulations), California Government Code section 1090 and following, and any other ethics laws applicable to the performance of the Services and/or this Agreement. Consultant may be required to file with the City Clerk a completed Form 700 before commencing performance of the Services pursuant to City's Conflict of Interest Code. Form 700 forms are available from the City Clerk.

Consultant may not perform Services for any other person or entity that, pursuant to any applicable law or regulation, would result in a conflict of interest or would otherwise be prohibited with respect to Consultant's obligations pursuant to this Agreement. Consultant agrees to cooperate fully with City and to provide any necessary and appropriate information requested by City or any authorized representative concerning potential conflicts of interest or prohibitions concerning Consultant's obligations pursuant to this Agreement.

Consultant may not employ any City official, officer or employee in the performance of the Services, nor may any official, officer or employee of City have any financial interest in this Agreement that would violate California Government Code section 1090 et seq. Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of City. If Consultant was an employee, agent, appointee, or official of City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code section 1090 et seq., the entire Agreement is void and

Consultant will not be entitled to any compensation for Consultant's performance of the Services, including reimbursement of expenses, and Consultant will be required to reimburse City for any sums paid to Consultant under this Agreement. Consultant understands that, in addition to the foregoing, penalties for violating Government Code section 1090 may include criminal prosecution and disqualification from holding public office in the State of California.

Any violation by the Consultant of the requirements of this provision will constitute a material breach of this Agreement, and the City reserves all its rights and remedies at law and equity concerning any such violations.

20. APPLICABLE LAW

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and the interpretation of this Agreement. Any action or proceeding that is initiated or undertaken to enforce or interpret any provision, performance, obligation or covenant set forth in this Agreement shall be brought in a state court in Sonoma County.

21. RECOVERY OF ATTORNEY'S FEES

If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret any term of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

22. SEVERABILITY

If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged will remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

IN WITNESS HEREOF, the parties have caused their authorized representative to execute this Agreement on this ___ day of December, 2015.

CITY

CONSULTANT

By: _____
Paul Cayler, City Manager

By: _____
Richard Ingram, Vice
President

ATTEST:

[Attach Notary Page]

By: _____
Linda Moore, Deputy City Clerk

APPROVED AS TO FORM:

By: _____
Jose Sanchez, City Attorney

Exhibits: Exhibit A — Consultant's Proposal

EXHIBIT A

Section A-1

Scope of Services

**Design Professional Services for the City of Cloverdale
for
Pond 3 Biosolids Removal Project
Assessment, Bid Document Preparation and Construction Management
by
Brelje & Race Consulting Civil Engineers – October 2015**

GENERAL

The City of Cloverdale (City) owns and operates a Wastewater Treatment Plant (WWTP) located at 700 Asti Road in Cloverdale, California. The WWTP utilizes a series of three aerated ponds for wastewater treatment, solids stabilization and solids settling. The capacity of each pond is approximately 3 million gallons (3MG). The ponds are operated in series. The third aeration pond in the series, Pond 3, is divided in half with a vinyl baffle wall to create a quiescent zone to promote solids settling. Waste water treatment solids (biosolids) have accumulated in Pond 3 and may reduce the pond's treatment capability by shortening the detention time. The City plans to have the accumulated biosolids removed from Pond 3 to maintain pond capacity and performance.

The WWTP does not have biosolids removal or dewatering facilities. The City plans to contract for the removal and disposal of accumulated biosolids from Pond 3. An assessment of Pond 3 to estimate the quantity of the accumulated solids and evaluate the quality the biosolids and confirm disposal alternatives is required. The biosolids removal project includes the development of contract bid documents and contracting with a biosolids removal contractor to dredge and dewater the accumulated pond biosolids, and haul the dewatered solids from the site to an appropriate landfill for reuse or disposal. All wastewater biosolids handling and disposal must be conducted according to federal, state and local laws and regulations.

Brelje & Race Consulting Engineers (Consultant) proposes to provide engineering services to conduct three tasks for the City. The first task is to conduct a biosolids assessment that will estimate the dry tonnage of biosolids in Pond 3 and characterize the biosolids to enable disposal via land application or landfill.

The second task is to prepare bid documents for a contract agreement between the City and a biosolids removal contractor to perform the removal and reuse/disposal of accumulated wastewater biosolids from Pond 3 at the WWTP. It is anticipated that for the biosolids removal, hauling and disposal bid documents, the Consultant shall utilize the City's standard construction contract format and standard documents, as required, and shall provide recommendations for document modifications for project specific requirements. The bid documents developed for the 2012 removal event will be used as a guide for the preparation of the 2016 bid documents.

The third task is to provide construction management to the City for the contract work during the biosolids removal project. The Consultant shall evaluate contractor progress, monitor biosolids removal quantities, and review payment requests. The Consultant shall provide project completion services and monitor contractor demobilization, coordinate site restoration, review final quantities

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removed, and compile project completion documentation in a format suitable to meet regulatory reporting requirements.

SCOPE OF SERVICES

This Scope of Services describes the engineering services for all phases of the Biosolids Removal Project. These services include the assessment of biosolids in Pond 3, the development and preparation of the bid documents, bidding assistance, construction management, periodic observation of the work, and regulatory reporting. Consultant shall evaluate the quantity of the wastewater solids in Pond 3, and the quality of the biosolids in comparison to reuse/disposal criteria. The consultant shall also prepare bid document sections including the Table of Contents, Bid Forms, Special Provisions and Exhibits for bid documents to contract for the removal, handling, and disposal of the wastewater biosolids. Consultant shall assist the City to complete related work as requested by the City, and shall perform services during the bid period, in evaluation of the bid(s), and during the construction. In addition, Consultant shall prepare the Biosolids Removal Report for the Regional Water Quality Control Board and EPA.

Services will include the following tasks:

Task 1 –Pond 3 Biosolids Assessment

A. Biosolids Assessment in Pond 3

- 1. Conduct Pond 3 Biosolids Survey** – Mobilize a crew and a sampling raft to use grid sampling methods with a sludge probe and collect data to enable mapping of the depth of accumulated solids in the pond.

- 2. Collect and Analyze Pond 3 Biosolids** – Collect representative grab samples of biosolids from Pond 3 and submit them to a laboratory for percent solids and density analysis by Standard Test Methods. (Note: Laboratory analyses cost are included as part of the proposed fee.) It is anticipated that samples will be analyzed for the following parameters:

BIOSOLIDS CONSTITUENT ANALYSIS	
Volatile Organic Compounds (SW 8260B)	PCBs (SW 8082)
Semi-Volatile Organic Compounds (SW 8270C)	Reactive Cyanide and Sulfide
Pesticides (SW 8081A)	Total Petroleum Hydrocarbons (TPH)**
Herbicides (SW 8151A)	Total Percent Solids (% solids (2540G)
CAM 17 Metals, Plus Al, Mg (EPA 200.8)	pH

*Standard Test Methods are noted in parentheses

**Diesel and Motor Oil Range with a Silica Gel Clean-up

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B. Evaluate Pond 3 Biosolids Quantity and Quality

- 1. Estimate Quantity of Biosolids in Pond 3** – Map wastewater solids depth, review percent solids and density data, and calculate an estimated range for the total biosolids in Pond 3 based on volume and dry weight.
- 2. Evaluate Quality of Biosolids in Pond 3** – Review biosolids samples laboratory results for priority pollutants and constituents of concern for beneficial reuse and landfill disposal.
- 3. Prepare Letter Report Summarizing Results** – Provide a brief letter report with estimated pond biosolids quantities, estimated treatment capacity reduction due to accumulated solids, laboratory results and any constituents of concern, and solids removal strategies.

Task 2 – Provide Bid Documents and Construction Management for Biosolids Removal Project

A. Preparation of Bid Documents for Biosolids Removal Contract

- 1. Meetings and/or teleconferences with City** – Participate in meeting and/or teleconference with City staff to identify schedule and requirements for the biosolids removal contract and bid documents.
- 2. Review and Revise Project Information** – Assemble existing project information and requirements to develop project parameters including the schedule for the work, target removal quantities, and develop engineer's estimate of contract costs.
- 3. Review and Revise Bid Documents for Biosolids Removal Project** – Review and revise existing 2012 project special provisions (technical specifications) for biosolids removal, dewatering, hauling, and reuse or disposal. Review and revise biosolids contract bid documents and incorporate the City's current standard bid documents, such as Articles of Agreement, General Conditions, and other required contract information. Provide project-specific qualifications and experience bid forms and incorporate into bid documents with City's standard bid forms, bonding, and insurance requirements.
- 4. Review and Revise Project Exhibits and Supplemental Information** – Review and revise exhibits for the bid documents to illustrate the location and layout of the treatment plant site and the access roads to treatment ponds and the contractor designated work area. Provide supplemental information for bidders, as required, including recent biosolids assessment and laboratory testing information.
- 5. Submit Bid Document for Review** – Submit draft contract bid documents and participate with City staff during review process. Evaluate City review comments and revise bid documents as required.
- 6. Submit Final Contract Bid Documents** – Provide up to 12 bound copies and a digital file of the final contract bid documents, or as required, to the City for issuing to bidders.

(Advertising the project for public bid and issuing the bid documents to bidders for the City is not included in this Scope of Services.)

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B. Bidding Assistance for Biosolids Removal Contract

1. **Assist with Bidders List and Encourage Bidders to Respond** – Assist City to prepare list of potential contractors to be sent the Invitation to Bidders. Contact potential bidders to encourage timely bid response.
2. **Coordinate Pre-Bid Meeting** – Prepare agenda for, attend, and chair the pre-bid meeting.
3. **Record Bidders' Questions and Prepare Addendum** – Record questions from Bidders, Analyze Bidders questions and discuss with City staff, and assist City staff to issue an addendum, if required. Note that during the bid period, Consultant shall provide clarification of the Bid Documents but shall not answer questions from the potential Bidders that require new information. Questions shall be recorded and evaluated with the City and addenda shall be generated, if required, to respond to Bidders questions.
4. **Evaluate Bid Responses** - Evaluate bidder qualifications, review and verify project experience and biosolids disposal capabilities, etc. for conformance with contract requirements and irregularities.
5. **Prepare Bid Review Memorandum** – Prepare memorandum summarizing review of bids and recommending contractor for bid award.

Task 3 - Biosolids Removal Project Administration

A. Biosolids Removal Construction Management

1. **Project Administration** – Assist the City in administering the biosolids removal project. Develop project contact information, coordinate preconstruction and progress meetings, facilitate Contractor recognition of the City's work site and treatment plant operational and emergency procedures, and coordinate project monitoring and reporting requirements.
2. **Review Project Submittals, Permitting, and Regulatory Compliance** – Coordinate and review the contractor's project construction submittals including the Project Plan, spill response and emergency response plans, mobilization and completion schedules, and worker qualifications. Review the contractor's biosolids disposal program, permitting, and reporting information. Assist the City to meet biosolids permitting requirements and to complete biosolids generator forms and landfill profile forms.
3. **Construction Observation and Monitoring Services** – Observe and monitor the contractor's biosolids removal operations, including part-time construction observation at the treatment plant site during the contractor's mobilization, staging area setup, dredging and dewatering, biosolids loading and removal, demobilization and site clean-up. Monitor contractor progress, daily percent solids testing, and biosolids removal quantities. Keep up-to-date estimates of the total biosolids removal costs and provide updates to the City regarding the estimated costs compared to the project budget.

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4. **Project Completion and Construction Summary** – Assist the City to evaluate reported biosolids removal quantities, progress payment requests, review change order requests and prepare change orders, and provide a project closeout summary.
5. **Laboratory Testing and Miscellaneous Project Costs** – Project costs for certified analytical laboratory testing dewatered biosolids for percent solids, field engineering vehicle mileage and miscellaneous supplies, including biosolids sampling equipment.

B. Annual Biosolids Summary Report

A biosolids summary report will be produced at the end of the biosolids removal event for the North Coast Regional Water Quality Control Board/EPA Region 9 that details all sludge handling and removal that occurred during the Pond 3 biosolids removal event.

1. **Review annual biosolids monitoring program laboratory analyses** – Review quarterly biosolids sampling results against regulatory standards and laboratory quality assurance documentation.
2. **Biosolids removal program recordkeeping** – Compile and provide all required documentation, including mass of biosolids removed, constituent concentrations, and final disposal locations that will be needed to develop the Annual Biosolids Summary Report.
3. **Biosolids removal summary report** – Prepare the Biosolids Removal Report for the Regional Water Quality Control Board and EPA.

ASSUMPTIONS AND LIMITATIONS

1. Brelje & Race will provide conclusions regarding biosolids quantities and reduction in pond capacity based on standard assumptions for wastewater pond biosolids characteristics and upon the scope of services and time and budgetary limitations described in this proposal. Studies have shown that many wastewater treatment ponds have sludge distribution that is highly uneven both spatially and in density profile. Solids distribution variability may have an effect on the accuracy of the biosolids assessment and quantity estimates.
2. Brelje & Race preliminary assessment of biosolids quality is limited in scope and is intended to provide general information regarding the quality of the pond biosolids and possible alternatives for disposal. Any conclusions or recommendations regarding pond biosolids environmental quality will be based on standard analytical methods and typical landfill acceptance criteria. It is possible the pond solids may contain contamination that impairs the environmental status and disposal alternatives of the biosolids and that could not be identified by the limited biosolids assessment defined in this scope of services.
3. Consultant assumes that the Consultant shall not be required to provide field observation and monitoring services on Saturdays, Sundays, or federal holidays unless required to because of special or emergency circumstances. The Consultant shall visit the site at intervals appropriate to the stage of work, or as otherwise agreed to in writing by the City and the Consultant. Such visits and observation are not intended to be an exhaustive or detailed inspection of the contractor's work but rather are intended to allow the Consultant, as an experienced professional, to become generally familiar with the work in progress and

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to determine, in general, if the work is proceeding in accordance with the Contract Documents and the schedule. Based on this general observation, the Consultant shall keep the City informed about the progress of the work and shall endeavor to guard the City against deficiencies in the work.

4. The Consultant's field work will be limited in that the Consultant will not supervise, direct or have control over the contractor's work; or have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the contractor; or for any contractor safety precautions or programs in connection with the work. The Consultant shall not be responsible for any acts or omissions of the contractor, subcontractor, any entity performing any portion of the work, or any agents or employees of any of them. The Consultant does not guarantee the performance of the contractor and shall not be responsible for the contractor's or any subcontractor's failure to perform its work in accordance with the Contract Documents or to comply with any applicable laws or regulations.

SERVICES TO BE PROVIDED BY THE CITY

1. Act as the applicant for any permits or regulatory approvals required for the project work and pay all associated fees.
2. Provide timely review and comment on all documents and requests for information submitted by Brelje & Race Engineers and others.
3. The City of Cloverdale shall act as the applicant for any permits or agreements required as the waste generator and pay all fees associated therewith.
4. Prompt response to Consultant requests for information and timely review and comment on all project documents submitted by Consultant and others. In general, the Project Schedule allows for a one-week review and comment period following a major submittal.
5. Provision of City standard front-end ("boilerplate") sections of bid documents and agreements, except that Consultant shall recommend revisions as required for the specific project requirements as defined in this Scope of Services.
6. Provision and administration of City's standard Notice of Award and Notice to Proceed.
7. Provision of City's current bonding and insurance certificate requirements.
8. Prompt legal and administrative review of all business and construction contract-related provisions of all bid documents, including but not limited to insurance and bonding requirements, liability provisions, and contract agreements.
9. Reproduction and distribution of bid documents to prospective bidders and responsibility for advertising the project in order to solicit responses, except as described herein.

WORK HOURS AND BUDGET

The estimated work hours and budget associated with the engineering design tasks described in this Scope of Services are included with this Exhibit as Section A-2, Task and Work Hour Tabulation. The work described to provide an assessment of the biosolids in Treatment Pond 3, bid documents and construction management for the City of Cloverdale's WWTP Biosolids Removal Project will be accomplished on a time and materials basis with a budget amount of \$71,800. A current engineering design Professional's Services Rate Schedule is included as Section A-3.

TASK	WORK HOURS					
	Principal	Engineer	Eng/CAD Tech	Clerical	Other Services	
Task 1 - Treatment Pond 3 Biosolids Assessment						
A. Biosolids Assessment in Treatment Pond 3						
1 Conduct Pond 3 Biosolids Survey ⁽¹⁾	8	40	20			\$200
2 Analyze Pond 3 Biosolids ⁽²⁾	2	4	4			\$2,500
Bidding Assistance Subtotal	10	44	24	0		\$2,700
B. Evaluate Pond 3 Biosolids Quantity and Quality						
1 Estimate Biosolids Quantity and Pond 3 Capacity Reduction	1	16	2			
2 Evaluate Quality of Biosolids in Pond 3	1	8	2			
3 Prepare Letter Report Summarizing Results	2	12		4		
Evaluation of Bids Subtotal	4	36	4	4		\$0
Task 2 - Provide Bid Documents for Biosolids Removal Project						
A. Preparation of Bid Documents for Biosolids Removal Contract						
1 Participate in meetings/teleconfer. with City staff and service providers	6	8				
2 Review and revise project information	2	16				
3 Review and revise bid documents for biosolids removal project	4	48	24	6		
4 Review and revise project exhibits - location map, site plan, pond area, photos	1	8	8			
5 Submit draft documents; Assist City review and incorporate comments	2	16	2	4		
6 Provide final contract bid documents to City ⁽³⁾	2	8				\$200
Preparation of Bid Documents Subtotal	17	104	34	10		\$200
B. Bidding Assistance for Biosolids Removal Project						
1 Assist with Bidders List; Contact potential bidders		4				
2 Prepare agenda for, attend, and chair pre-bid meeting	2	8				
3 Analyze questions from Bidders with City, assist with Addenda ⁽⁴⁾	2	8				
4 Evaluate bidder qualifications, project experience, permits ⁽⁵⁾	2	8	2			
5 Prepare memorandum summarizing review of bids	1	6		2		
Bidding Assistance Subtotal	7	14	2	2		\$0
Task 3 - Biosolids Removal Project Administration						
A. Biosolids Removal Construction Management						
1 Project administration; coordinate meetings; facilitate project with w w r operations	4	16				
2 Review Preconstruction Submittals	2	16				
3 Construction Observation and Monitoring Services Biosolids Removal ⁽⁶⁾	4	40	40			\$800
4 Project completion and construction summary, progress payment request	2	16				
5 Laboratory testing and miscellaneous project costs ⁽⁷⁾		4				\$850
Evaluation of Bids Subtotal	12	92	40	0		\$1,650
B. Biosolids Removal Summary Report						
1 Review annual biosolids monitoring program laboratory analyses ⁽⁸⁾	1	8				\$150
2 Biosolids removal program recordkeeping	1	6		2		
3 Draft annual biosolids removal summary report	2	16		2		
Biosolids Removal Summary Report Subtotal	4	30	0	4		\$150
Biosolids Removal Contract Total Hours	54	320	104	20		\$4,700
Hourly Rate	\$ 195	\$ 135	\$ 115	\$ 70		
Subtotal Cost	\$ 10,530	\$ 43,200	\$ 11,960	\$ 1,400		\$ 4,700
BUDGET						\$ 71,800
<p>(1) Estimated equipment costs to mobilize survey/sampling raft and miscellaneous personal protective equipment</p> <p>(2) Estimated laboratory costs based on two composite samples and 10 solids samples.</p> <p>(3) Estimated Other Costs based on submitting 12 copies of Bid Documents.</p> <p>(4) Estimated hours based on issuing one addendum to Bid Documents.</p> <p>(5) Estimated hours based on no more than three bidders, and assumes there are no bid irregularities.</p> <p>(6) Estimated hours based on 4 hrs/Day for 20 Days of processing and hauling (Processing duration not known.)</p> <p>(7) Estimated costs based on 20 lab tests for percent solids at \$30/test and \$100 for miscellaneous field/sampling equipment.</p> <p>(8) Estimated costs based on lab tests for metals concentration in dewatered biosolids as required by regulations.</p>						

SECTION A-3
SERVICES RATE SCHEDULE
EFFECTIVE MARCH 1, 2015

PROFESSIONAL SERVICES

Senior Principal.....	\$195.00/hour
Associate Principal.....	160.00/hour
Associate.....	145.00/hour
Managing Engineer.....	150.00/hour
Senior Engineer.....	145.00/hour
Engineer.....	135.00/hour
Engineering Technician.....	115.00/hour
Senior Planner.....	130.00/hour
Planner.....	100.00/hour
Senior Surveyor.....	135.00/hour
Surveyor.....	120.00/hour
Survey Technician.....	110.00/hour
CAD Technician.....	110.00/hour
Construction Engineer.....	130.00/hour
Construction Technician 2.....	115.00/hour
Construction Technician 1.....	100.00/hour
Technical Writer.....	90.00/hour

EXPERT WITNESS & MEDIATION SERVICES \$350.00/hour

FIELD SURVEYING

One-man Party (Including Survey Equipment & Vehicle)	\$170.00/hour
Two-man Party (Including Survey Equipment & Vehicle)	\$225.00/hour
Three-man Party (Including Survey Equipment & Vehicle)	\$275.00/hour

CLERICAL SERVICES \$70.00/hour

OUTSIDE CONSULTANTS Cost + 10% Handling Charge

OUTSIDE PLOTTING AND REPRODUCTION Cost + 10% Handling Charge

IN-HOUSE PLOTTING

Vellum or Bond	\$8.00/sheet
Mylar	20.00/sheet

Note

Brelje & Race does not charge separately for many of the expenses that are traditionally recouped from the Client as "reimbursable". The hourly rates listed above are inclusive of all expenses for vehicle mileage, surveying materials, incidental copying services and computer hardware, software and other information technology costs.