CITY OF
CLOVERDALE

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

TUESDAY, NOVEMBER 8, 2016

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).

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

OPENING:

- Call to Order
- Pledge of Allegiance
- Roll Call
- 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. **Proclamation proclaiming Friday, November 11, 2016 as Veteran's Day** *(Page1)*

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 October 25, 2016** – Moore *(Page 3-6)*
3. **Action on Resolution No. 086-2016, authorizing execution of a joint powers agreement between the City of Cloverdale and Sonoma County Regional Parks for maintenance of River Park**- Cayler *(Pages 7- 26)*
4. **Waive the second reading and readopt Ordinance No. 700-2015 amending the Cloverdale Municipal Code, Title 15 to add Chapter 15.38, "Solar Energy Systems, Expedited Permitting Process For Small Residential Rooftop Solar Systems" in order to comply with the specific requirements of AB 2188 to streamline the permitting and inspection process for residential rooftop solar energy systems**- Kelley *(Pages 27- 40)*
5. **Waive the second reading and readopt Ordinance No. 701-2016 amending the Cloverdale Municipal Code, Title 18 (Zoning Ordinance), Chapter 18.09, to add "Article III Marijuana, Section 18.09.300, Medical Marijuana" and Ordinance No. 702-2016 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** - Cramer *(Pages 41- 74)*
6. **Waive the second reading and readopt Ordinance No. 703-2016, amending the Cloverdale Municipal Code, Title 18 (Zoning Ordinance), Chapter 18.08.040, changing development standards for the SP-1 (Specific Plan 1) Zoning District and rezoning a 12.3-acre parcel of land located at the southeast corner of Asti Road and Santana Drive (APN 117-050-026) from the "MP-Business Park" District to the "SP-1-Specific Plan 1 District." And, waive the second reading and readopt Ordinance No. 704-2016 approving a Development Agreement between the City of Cloverdale and Spight Properties II LCC pertaining to the development of the Alexander Valley Resort project** – Kelley *(Pages 75- 166)*
7. **Waive the second reading and readopt Ordinance No. 705-2016 repealing and replacing Cloverdale Municipal Code Chapter 5.24 relating to massage therapy and massage establishments** - Cramer *(Pages 167- 228)*

AB343 Requirements: Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection in the City Hall offices located at 124 N. Cloverdale Blvd., Cloverdale CA 95425 during normal business hours.

8. **Waive the second reading and readopt Ordinance No. 706-2016, Amending Cloverdale Municipal Code Chapter 8.08 Related to Smoking in Public Places** - Cramer *(Pages 229- 252)*
9. **Waive the second reading and readopt Ordinance No. 707-2016 amending Cloverdale Municipal Code, Title 3, Chapter 3.04, "Officers Authorized to Sign - Procedure," Section 3.04.020, adding the Assistant City Manager as an officer authorized to sign on behalf of the City** - Cavallari *(Pages 253-258)*
10. **Waive the second reading of Ordinance No. 710-2016, of the City of Cloverdale amending Title 18 "Zoning" of the Cloverdale Municipal Code, prezoning certain properties containing approximately 42.5-acres of land lying east of Asti Road to a combination of General Industrial, Rural Residential, and Public Institutional. and making certain changes to the standards of the General Industrial Zoning District to add live work units as a conditionally permitted use in the General Industrial Zoning District** - Kelley *(Pages 259- 368)*

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:

11. **Adoption of the 2016 California Building Standards Codes and the 2016 Fire Code by Reference and amending Title 15, "Buildings and Construction" of the Cloverdale Municipal Code** - Kelley *(Pages 369-428)*

Recommendation: Staff recommends that Council introduce and waive first reading of Ordinance No. 712-2016, adopting the 2016 California Building Standards Codes and the 2016 Fire Code by Reference and amending Title 15, "Buildings and Construction" of the Cloverdale Municipal Code and set public hearing for second reading.

NEW BUSINESS:

12. **Discussion and Possible Action to Contract with Taylor Code Consulting, Inc. for Part Time Code Enforcement and Compliance Services**- Cayler *(Pages 429- 436)*

Recommendation: The City Manager recommends that the City Council discuss the proposed code enforcement project to contract with Taylor Code Consulting, Inc. and authorize the City Manager to execute a professional services agreement.

13. **Direction Regarding the Recruitment of an Additional Full-Time Police Dispatcher**- Cayler, Cramer *(Page 437)*

Recommendation: Staff recommends Council move to authorize the City Manager to begin the recruitment process for an additional police dispatcher, provided that the City Manager may not extend an offer of employment to fill any additional dispatcher position unless authorized to do so by the City Council.

14. **Consideration of Resolution No. 087-2016, Designating the City of Cloverdale's Priority Project and authorizing submittal of an application to the Sonoma County Community Development Commission for fiscal year 2017-2018 Community Development Block Grant ("CDBG") funding for the City Park ADA Improvement Project**- Kelley *(Pages 439- 442)*

AB343 Requirements: Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection in the City Hall offices located at 124 N. Cloverdale Blvd., Cloverdale CA 95425 during normal business hours.

Recommendation: Staff recommends adoption of the resolution designating the City Park ADA Improvement project as the City Council priority project and recommend authorizing submittal of a CDBG grant application to the Sonoma County Community Development Commission for fiscal year 2017-18.

15. **Consideration of Resolution No. 088-2016, opposing the approval of cannabis dispensaries by the County of Sonoma outside of Cloverdale's City Limits within the City of Cloverdale's LAFCO approved Sphere of Influence**- Kelley *(Pages 443- 446)*

Recommendation: Staff recommends Council adopt the resolution opposing the approval of cannabis dispensaries by the County of Sonoma outside of Cloverdale's City Limits within the City of Cloverdale's LAFCO approved Sphere of Influence.

SUBCOMMITTEE ITEMS:

SUBCOMMITTEE REPORTS: (VERBAL REPORTS: 15 minutes)

- Airport (Chair, Councilmember Cox and Vice Mayor Wolter) - Next Meeting, TBA
- Finance, Administration & Police (Chair, Mayor Brigham and Vice Mayor Wolter) The Committee met and discussed the solid waste rate adjustment, the UUT Administrative Rulings, the General Fund revenues and expenses, and updated policies - Next Meeting: December 8, 2016, 2:00 p.m.
- Planning & Community Development (Chair, Vice Mayor Wolter and Mayor Brigham) – The Committee met and discussed the inclusionary zoning ordinance, in lieu fees, and zoning for new cannabis industry- Next Meeting: December 20, 2016, 4:00 p.m.
- Public Works (Chair, Councilmember Russell and Councilmember Cox) - Next Meeting: November 29, 2016, 10:30 a.m.
- Joint City/Fire District (Chair, Councilmember Palla and Mayor Brigham) - Next Meeting: TBA.
- Joint City/School District (Chair, Councilmember Palla and Councilmember Cox) – Next Meeting: November 28, 2016, 5:00 p.m.

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

LEGISLATIVE REPORT:

CITY MANAGER/CITY ATTORNEY REPORT:

COUNCIL DIRECTION ON FUTURE AGENDA ITEMS:

ADJOURNMENT: Adjourn to a special meeting of the City Council and Cloverdale Community Development Successor Agency, Monday, November 28, 2016, for Public Business Session at 6:30 p.m. (at the Cloverdale Veterans' Memorial Building at 205 W. 1st Street, 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, David Kelley, 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 3rd day of November, 2016, at or before 5:00 p.m.

David A. Kelley

David Kelley, Assistant City Manager

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CITY OF
CLOVERDALE

PROCLAMATION
OF THE CITY OF CLOVERDALE
COUNTY OF SONOMA, STATE OF CALIFORNIA
PROCLAIMING FRIDAY NOVEMBER 11, 2016, AS VETERANS DAY

Whereas, Veterans Day began as Armistice Day, a holiday to commemorating the end of World War I on November 11, 1918; and

Whereas, Veterans Day was established as an national holiday by the United States Congress and the President of the United States in 1954; and

Whereas, from the fields and forests of war-torn Europe to the jungles of Southeast Asia, from the deserts of Iraq to the mountains of Afghanistan, the brave men and women of the United States Armed Forces have served to protect and defend our Country; and

Whereas, the men and women of our Army, Navy, Air Force, Marine Corp and Coast Guard demonstrate a resolute spirit and unmatched selflessness; and

Whereas, there are 19.4 million veterans in the United States of America with over 2 million veterans living in the State of California; and

Whereas, as we remember our veterans on November 11th, we should consider not only their valor and suffering in the service to our Country, but the many challenges they face upon returning home, wherein many veterans suffer from high rates of disability, poverty, unemployment and homelessness; and

Whereas, on Veterans Day, let us recommit ourselves to the obligation to our veterans and their families, and show them the extraordinary gratitude that they deserve.

Now therefore be it resolved, that the City of Cloverdale hereby proclaims Friday November 11, 2016, as Veterans Day and encourage all Cloverdale residents to recognize our veterans though appropriate public ceremonies and commemorative expressions of support.

November 8, 2016

_____
Mayor Mary Ann Brigham

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

TUESDAY, OCTOBER 25, 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

CONVENE PUBLIC BUSINESS SESSION – 6:30 p.m.
OPENING:
- Call to Order: Mayor Brigham called the meeting to order at 6:30 p.m.
- Pledge of Allegiance
- Roll Call: Present-Councilmember Palla, Councilmember Cox, Councilmember Russell, and Mayor Brigham; Absent- Vice Mayor Wolter
- Report out of Closed Session –Actions Taken: No reportable action
- Conflict of Interest Declaration: None
- Agenda Review – Regular Session (Changes and/or Deletions): Agenda items 7-13 were pulled and continued to the November 8, 2016, City Council meeting.

PUBLIC COMMENTS:
Jeanne Cox, Cloverdale, voiced approval for Measure Y and urged those present to vote for Measure Y. She emphasized the importance of supporting the library.

Shawn Bovee, Cloverdale, expressed his thanks for the advancement of the skate park and asked for a progress update. City Manager Cayler responded that staff has been working to identify a land surveyor and engineer to begin establishing parcel locations and descriptions, which includes the skate park in the northwest corner of the Thyme Square project.

PROCLAMATIONS / PRESENTATIONS: None

CONSENT CALENDAR:
1. **Minutes of Previous Meeting October 11, 2016**
2. **Action on Resolution No. 081-2016, awarding a contract for the purchase of one police vehicle to the Ford Store of San Leandro**
3. **Action on Resolution No. 082-2016, approving the rate adjustments for solid waste, composting and recycling, which will decrease by an average of 4.3%**
4. **Review of recent UUT Administrative & Interpretation Rulings**
5. **Action on Resolution No. 083-2016, authorizing the City Manager to submit a letter to the Department of Alcoholic Beverage Control stating that the Public Convenience or Necessity will be served by the Department's issuance of a type 20 off-sale license for the Grocery Outlet retail store located at 111**

Treadway Drive

6. **Action on Resolution No 085-2016, authorizing the execution of a Professional Services Agreement with C&S Companies for the Environmental Assessment to Remove Obstructions at the Cloverdale Municipal Airport as Funded by Federal Aviation Administration (FAA) Airport Improvement Grant**
7. **Waive the second reading and readopt Ordinance No. 700-2015 amending the Cloverdale Municipal Code, Title 15 to add Chapter 15.38, "Solar Energy Systems, Expedited Permitting Process For Small Residential Rooftop Solar Systems" in order to comply with the specific requirements of AB 2188 to streamline the permitting and inspection process for residential rooftop solar energy systems**
8. **Waive the second reading and readopt Ordinance No. 701-2016 amending the Cloverdale Municipal Code, Title 18 (Zoning Ordinance), Chapter 18.09, to add "Article III Marijuana, Section 18.09.300, Medical Marijuana" and Ordinance No. 702-2016 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**
9. **Waive the second reading and readopt Ordinance No. 703-2016, amending the Cloverdale Municipal Code, Title 18 (Zoning Ordinance), Chapter 18.08.040, changing development standards for the SP-1 (Specific Plan 1) Zoning District and rezoning a 12.3-acre parcel of land located at the southeast corner of Asti Road and Santana Drive (APN 117-050-026) from the "MP-Business Park" District to the "SP-1-Specific Plan 1 District." And, waive the second reading and readopt Ordinance No. 704-2016 approving a Development Agreement between the City of Cloverdale and Spight Properties II LCC pertaining to the development of the Alexander Valley Resort project**
10. **Waive the second reading and readopt Ordinance No. 705-2016 repealing and replacing Cloverdale Municipal Code Chapter 5.24 relating to massage therapy and massage establishments**
11. **Waive the second reading and readopt Ordinance No. 706-2016, Amending Cloverdale Municipal Code Chapter 8.08 Related to Smoking in Public Places**
12. **Waive the second reading and readopt Ordinance No. 707-2016 amending Cloverdale Municipal Code, Title 3, Chapter 3.04, "Officers Authorized to Sign - Procedure," Section 3.04.020, adding the Assistant City Manager as an officer authorized to sign on behalf of the City**
13. **Waive the second reading of Ordinance No. 710-2016, of the City of Cloverdale amending Title 18 "Zoning" of the Cloverdale Municipal Code, prezoning certain properties containing approximately 42.5-acres of land lying east of Asti Road to a combination of General Industrial, Rural Residential, and Public Institutional. and making certain changes to the standards of the general industrial zoning district to add live work units as a conditionally permitted use in the General Industrial Zoning District**

Action: Motion was made by Councilmember Russell to approve the consent calendar minus items 7-13; seconded by Councilmember Palla. The motion passed by roll call vote: (4-ayes –Councilmember Palla, Councilmember Cox, Councilmember Russell, and Mayor Brigham; 0-noes; 1 absent- Vice Mayor Wolter).

COMMUNICATIONS: None

PUBLIC HEARINGS: None

NEW BUSINESS: None

SUBCOMMITTEE ITEMS:

14. **Action on Resolution No. 084-2016, approving a revised Reserve Policy and General Fund Surplus Policy**

Finance Manager, Joanne Cavallari, commented that during the Budget Workshop held in May, Council gave direction that 30% of any surplus, up to $100,000, be deposited into a new strategic reserve to be used only with the approval of the City Council. She stated that to avoid any conflict with existing policy, and provide clear direction to staff a Reserve Policy and General Fund Surplus Policy was developed. She discussed the details of the policies and recommended adoption of Resolution No. 084-2016, approving a revised Reserve Policy and

General Fund Surplus Policy for the City of Cloverdale. Discussion ensued with Council recommending the following edits to the Reserve Policy: add language regarding the emergency reserve fund to denote what would constitute an emergency; include "facility maintenance" along with facility replacement; and add clarification regarding funds to be used for police vehicle replacement.

PUBLIC COMMENTS: None

Action: Motion was made by Councilmember Palla to approve Resolution No. 084-2016, approving a revised Reserve Policy and General Fund Surplus Policy as amended; seconded by Councilmember Cox. The motion passed by roll call vote: (4-ayes – Councilmember Palla, Councilmember Cox, Councilmember Russell, and Mayor Brigham; 0-noes; 1-absent- Vice Mayor Wolter).

15. **Review of General Fund Preliminary Fiscal Year 15/16 Revenues, Expenditures, and Fund Balance, and approve allocation of surplus revenues to reserves**

Finance Manager, Joanne Cavallari, presented a report on the preliminary General Fund revenues and expenses. She reported that the fund numbers for fiscal year 15/16 show a surplus of revenues over expenditures of about $770,500, noting that these are unaudited numbers. She further stated that this brings the ending fund balance to $1,650,229, which is 29% of annual expenditures. Ms. Cavallari commented that the utility user tax and property taxes came in higher than expected. She discussed the distribution of funds to various categories. In closing, she recommended the Council receive the report of Preliminary FY 15-16 General Fund Revenues and Expenses and by Minute Order, approve the allocation of surplus revenues to reserves.

PUBLIC COMMENTS:
Jeanne Cox, Cloverdale, commented that it is a shame that more Council candidates were not present at the Council meeting and that the press left before this item was discussed, adding that people need to hear this information.

Action: Motion was made by Councilmember Palla to approve, by Minute Order, the allocation of surplus revenues to reserves as proposed by staff, with modifications in the Reserve Policy as discussed ; seconded by Councilmember Russell. The motion passed by roll call vote (4-ayes – Councilmember Palla, Councilmember Cox, Councilmember Russell, and Mayor Brigham; 0-noes; 1-absent- Vice Mayor Wolter).

SUBCOMMITTEE REPORTS:

- Airport (Chair, Councilmember Cox and Vice Mayor Wolter) - Next Meeting, TBA
- Finance, Administration & Police (Chair, Mayor Brigham and Vice Mayor Wolter) The Committee met and discussed the solid waste rate adjustment, the UUT Administrative Rulings, the General Fund revenues and expenses, and updated policies - Next Meeting: December 8, 2016, 2:00 p.m.
- Planning & Community Development (Chair, Vice Mayor Wolter and Mayor Brigham) – The Committee met and discussed the inclusionary zoning ordinance, in lieu fees, and zoning for new cannabis industry- Next Meeting: December 20, 2016, 4:00 p.m.
- Public Works (Chair, Councilmember Russell and Councilmember Cox) - Next Meeting: November 29, 2016, 10:30 a.m.
- Joint City/Fire District (Chair, Councilmember Palla and Mayor Brigham) - Next Meeting: TBA.
- Joint City/School District (Chair, Councilmember Palla and Councilmember Cox) – Next Meeting: November 28, 2016, 5:00 p.m.

COUNCIL REPORTS (INCLUDING STUDENT LIAISON):
The new student liaison, Rose French, introduced herself and provided her report on the activities at the high school, which included senior soccer night, dates of upcoming games, and process for UC applications.

Councilmember Russell provided a Memo from RCPA Board of Directors discussing the case status update on California River Watch vs. County of Sonoma (attached). She also provided the SMART General Manager's Report for October 2016.

Councilmember Cox reported that, at their last meeting, Sonoma Clean Power announced that they have been able to beat PG&E prices since their inception. He provided an update on Sonoma Clean Power activities, including the promotion of electrical cars. Councilmember Cox also discussed waste management and composting issues. He reported that he volunteered at the Harvest Marathon/Vineyard Races.

Councilmember Palla announced the League of Californian Cities' Board of Directors appointed Carolyn Coleman as the Executive Director for the League. He stated that the Redwood Empire Division of the League will have a recognition dinner for outgoing officers and the installation of new officers, wherein he will be installed as the Division Director and reinstalled as the Chair for the Legislative Committee.

LEGISLATIVE REPORT:
City Attorney Sanchez commented on the upcoming Special City Council Meeting for a cannabis workshop, noting that it is scheduled for November 28, 2016. He stated that the City Attorneys plan to meet as a group to discuss the Sonoma County Waste Management JPA. City Attorney Sanchez also announced that he was selected by the Sacramento Business Journal to be part of their yearly 40 Under 40 2016 list, which honors individuals under 40 for their outstanding professional accomplishment and community involvement.

CITY MANAGER/CITY ATTORNEY REPORT:
City Manager Cayler reminded those present that the next scheduled Council meeting is November 8th, which is also election night. He reported that City Hall will be open Monday, November 7th through Thursday, November 10th and closed on Veteran's Day, Friday, November 11th, which will result in employees taking different days off to accommodate City Hall remaining open on Thursday to serve the public.

COUNCIL DIRECTION ON FUTURE AGENDA ITEMS:
Councilmember Russell requested an agenda item for either City Council or subcommittee to request a joint report from the developer of the Cloverdale Family Apartments, City Planning, and the Planning Commission regarding the provision to designate all of the available housing for agricultural workers. Assistant City Manager Kelley suggested a joint workshop with the Planning Commission to discuss this item along with some other important planning and development matters.

Shawn Bovee, Alternate Planning Commissioner, stated that the lack of clear definition of an "agricultural worker" and the housing ratio issue at the Cloverdale Family Apartments is a concern and supported the idea of a joint workshop to discuss the situation.

Councilmember Russell also expressed concern about the phone service at City Hall and recommended this be discussed at an upcoming Council or subcommittee meeting. City Manager Cayler discussed the phone tree at City Hall and reported that staff is working to improve phone service.

ADJOURNMENT: Mayor Brigham adjourned the meeting at 7:51 p.m., to a regular meeting of the City Council and Cloverdale Community Development Successor Agency, Tuesday, November 8, 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).

Sonoma County Transportation Authority
Regional Climate Protection Authority

Memorandum

To: City Managers and County Administrator

CC: RCPA Board of Directors

From: Suzanne Smith, Executive Director

Re: CASE STATUS UPDATE: *California River Watch v. County of Sonoma*, SCV -259242

Date: October 12, 2016

As you know, on August 9, 2016, California River Watch filed a CEQA complaint challenging the RCPA Board's adoption of the EIR for *Climate Action 2020*. The RCPA Board has discussed the case and would like to communicate the following:

- The RCPA has great faith in the Plan and associated EIR, and intends to vigorously defend them in court.
- The RCPA is seeking to resolve the legal matter as expeditiously as possible, while continuing to support cities and the County in moving forward with climate action priorities through existing and emerging policy and program opportunities.
- In settlement discussions, River Watch has stated that they support the objectives of the plan and that there is no reason RCPA members should not move forward with implementation. The attached letter was provided in response to our request for them to confirm this in writing.
- The Case Management Conference yielded the following schedule:
    - Nov. 10 – Administrative Record filed
    - Dec. 12 – California River Watch opening brief is due
    - Jan. 12 – RCPA opposition brief is due
    - Jan. 26 – CRW reply is due
    - Feb. 27 – hearing on the merits

Obviously we are disappointed in the delays that the suit has caused regarding *Climate Action 2020* plan adoption and implementation. We will keep you and your staff apprised as we can. Please contact me with any questions; legal inquiries from your City Attorney can be directed to Verne Ball, RCPA legal counsel, at verne.ball@sonoma-county.org.

CITY OF CLOVERDALE

City Council/Successor Agency Agenda Item Summary

Agenda Item:	3
Meeting Date:	November 8, 2016

Agenda Section	**Staff Contact**
Consent	Paul Cayler, City Manager

Agenda Item Title

Action on Resolution No. 086-2016, of the Cloverdale City Council, authorizing execution of a joint powers agreement between the City of Cloverdale and Sonoma County Regional Parks for maintenance of River Park

Summary

Since the opening of the River Park in 2007, the City of Cloverdale and Sonoma County Regional Parks have coordinated and collaborated on the maintenance of the park. The 48-acre park is shared by two contiguous parcels; one of which is owned by Regional Parks and the other is owned by the City. The City provides the majority of inspection and maintenance at the park. The first agreements for park maintenance were professional services agreements. In 2010, the agreement was converted to a joint powers agreement. The term of the most recent joint powers agreement expired on June 30, 2016. The purpose of this agenda item is to authorize a new joint powers agreement with limited amendments. The term of the new agreement will expire in June 30, 2019. The most significant amendment to the new proposed agreement is the total amount of compensation to the City for "Scheduled Maintenance Services," which has increased from $70,000 to $105,000 for the three-year term of the agreement. The City will invoice the County a flat $8,750 per quarter. This rate was based on the estimated hours required to maintain the park, billed at the current Staff Billing Rates as adopted in the Master Fee Schedule. The compensation for "Emergency/Open Scope Services" remains $10,000. Please find attached the proposed agreement for your review.

Options

1) Reject the proposed agreement; and 2) Modify the proposed agreement.

Budget/Financial Impact

The proposed agreement does permit an $11,667 per year increase in the total amount the City may bill Sonoma County Regional Parks for Scheduled Maintenance Services.

Subcommittee Recommendation

None.

Recommended Council Action

The City Manager recommends that the City Council adopt the attached resolution which authorizes the Mayor to execute the joint powers agreement between the City of Cloverdale and Sonoma County Regional Parks for the maintenance of River Park.

Attachments:

1. Draft Resolution No. 086-2016
2. Proposed joint powers agreement

cc:

P.O. Box 217 • 124 North Cloverdale Blvd. • Cloverdale, CA 95425-0217 • Telephone (707) 894-2521 • FAX (707) 894-3451

CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 086-2016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE APPROVING A JOINT POWERS AGREEMENT BETWEEN THE CITY OF CLOVERDALE AND THE COUNTY OF SONOMA REGARDING MAINTENANCE AND INSPECTION OF THE CLOVERDALE RIVER PARK TO PROVIDE FOR THE HEALTH, SAFETY AND WELFARE AND MEET RECREATIONAL NEEDS OF THE CITIZENS OF CLOVERDALE AND SONOMA COUNTY

WHEREAS, the City of Cloverdale and Sonoma County Regional Parks (hereinafter "the Parties") have been in formal agreement since 2007, wherein the City performs park maintenance and related services at the Cloverdale River Park (hereinafter "the Park"); and

WHEREAS, the Parties individually own two contiguous parcels which comprise the Park Assessor's Parcel No. 116-190-039, owned by the City (hereinafter "City Park Parcel") and Assessor's Parcel No. 115-180-068 and Assessor's Parcel No. 115-180-069, owned by the County (hereinafter "County Park Parcel"), together comprising a total area of approximately 48 acres located at 31820 McCray Road in the City of Cloverdale; and

WHEREAS, the Parties coordinate their efforts as they relate to their individual responsibilities for the maintenance and inspection of the County Park Parcel through a Joint Powers Agreement which provides that the City performs maintenance and inspections at the Park on behalf of the County for reimbursement; and

WHEREAS, each of the Parties to this Agreement is a government agency duly authorized and existing under the laws of the State of California, and situated within the boundaries of the County of Sonoma; and

WHEREAS, California Government Code Section 6502 provides that if authorized by their legislative or other governing bodies, two or more public agencies may by agreement exercise any power common to the parties; and

WHEREAS, the City has been so authorized in accordance with the California Constitution, Article XI, Section 7, and the City may make and execute contracts and other instruments as necessary or convenient to the exercise of its powers, and enter joint powers agreements; and

WHEREAS, the County has been so authorized in accordance with California Government Code Section 23004, wherein the County may: exercise all powers necessary for its statutorily prescribed purposes, including the power to make contracts necessary to the exercise of its powers; and

WHEREAS, the existing Joint Powers Agreement between the Parties for the Park expired on June 30, 2016; and

WHEREAS, the Parties desire to reauthorize the previous Joint Powers Agreement with amendments for a new term through June 30, 2019.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cloverdale does hereby approve a Joint Powers Agreement between the City of Cloverdale and the County of Sonoma for the Cloverdale River Park for a term through June 30, 2019, and further the City Council directs that the Mayor is authorized to execute said agreement on behalf of the City.

It is hereby certified that the foregoing Resolution No. 086-2016 was duly introduced and adopted as amended by the City Council of the City of Cloverdale at its regular meeting held on the 8th day of November, 2016, by the following voice vote: (-ayes, -noes)

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved:	Attested:
_____	_____
Mary Ann Brigham, Mayor	Linda Moore, Deputy City Clerk

DRAFT

JOINT POWERS AGREEMENT BY AND BETWEEN THE CITY OF CLOVERDALE AND THE COUNTY OF SONOMA REGARDING MAINTENANCE AND INSPECTION OF CLOVERDALE RIVER PARK TO PROVIDE FOR THE HEALTH, SAFETY, AND WELFARE AND MEET THE RECREATION NEEDS OF THE CITIZENS OF CLOVERDALE AND THE SONOMA COUNTY REGIONAL PARK COMMUNITY

1. Parties

This Joint Powers Agreement ("Agreement"), with the effective date of July 1, 2016, ("the Effective Date") upon which authorized signatories of the public agencies specified in this provision ("Parties") have executed this agreement, is entered into pursuant to California Government Code section 6502 and following by and between the following public agencies:

A. The City of Cloverdale, ("City"), a California municipal corporation of the State of California.

B. The County of Sonoma, a political subdivision of the State of California organized under the laws of the State of California ("County").

2. Recitals

WHEREAS, each of the Parties to this Agreement is a government agency duly authorized and existing under the laws of the State of California, and situated within the boundaries of the County of Sonoma; and

WHEREAS, California Government Code section 6502 provides that if authorized by their legislative or other governing bodies, two or more public agencies may by agreement exercise any power common to the parties; and

WHEREAS, the City has been so authorized in accordance with the California Constitution, article XI, section 7, and the City may make and execute contracts and other instruments as necessary or convenient to the exercise of its powers, and enter joint powers agreements; and

WHEREAS, the County has been so authorized in accordance with California Government Code section 23004, wherein the County may: exercise all powers necessary for its statutorily prescribed purposes, including the power to make contracts necessary to the exercise of its powers; and

WHEREAS, the Parties individually own two contiguous parcels which comprise the Cloverdale River Park (hereinafter "the Park"); Assessor's Parcel No. 116-190-039 owned by the City (hereinafter "City Park Parcel") and Assessor's Parcel No. 115-180-068 and Assessor's Parcel No. 115-180-069 owned by the County (hereinafter "County Park Parcel"), together comprising a total area of approximately 48 acres, and located at 31820

McCray Road in the City of Cloverdale and further described in **Exhibit A**, which is attached hereto and made a part of this Agreement by reference; and

WHEREAS, the jurisdictional areas and individual responsibilities of the Parties with respect to the maintenance and inspection of the Park are in close proximity to each other and are susceptible to being provided pursuant to this Agreement; and

WHEREAS, the Parties have previously coordinated their efforts as they relate to their individual responsibilities for the maintenance and inspection of the County Park Parcel through Professional Service Agreements which provided that the City would perform all maintenance and inspections at the Park on behalf of the County for a fee; and

WHEREAS, the use of separate equipment, resources and personnel by each of the respective Parties would result in duplication of effort, inefficiencies in administration and excessive costs, all of which, in the judgment of the Parties, can be eliminated to the substantial advantage and benefit of the citizens and taxpayers of the Parties, if many of the maintenance and inspection tasks for the Park were to be consolidated and performed by the City.;

WHEREAS, the City Council of the City of Cloverdale, at a regularly scheduled meeting on _____, 2016, adopted Resolution No._____-2016, which authorized the City Manager to execute this Agreement on behalf of the City. A copy of Resolution No. _____-2016 is attached hereto as **Exhibit B**.

3. Purpose

The primary purpose of this Agreement is to provide for the continued maintenance and inspection of the Park with the same equipment, resources and personnel for the benefit of the citizens, taxpayers of the Parties and the Park. Furthermore, this Agreement will eliminate the inefficiencies, duplication of efforts and excessive costs the Parties would experience by using their own separate equipment, resources and personnel for the maintenance and inspection of the Park.

4. No Separate Entity Created

The Parties do not intend to create a separate public agency through this Agreement and no provision of this Agreement may be so construed.

5. Term

This Agreement will become effective and the Agreement term will commence upon the Effective Date. The Agreement will continue until June 30, 2019 or until terminated in accordance with Section 7.

6. Obligations of the Parties

A. OBLIGATIONS OF THE CITY

In addition to maintaining and inspecting the City Park Parcel, the City will provide for the maintenance and inspection of the County Park Parcel as specified in this Agreement for the consideration specified in this Agreement in accordance with its terms and applicable law, as hereinafter described:

1) Maintenance and Inspection. City shall maintain and inspect the County Park Parcel, as so identified in **Exhibit A,** by performing the tasks listed hereunder. City shall notify County as soon as possible, but in no event later than 24 hours after observation of any mechanical malfunction of fixed equipment in the County Park Parcel of which City becomes aware in the course of performing the tasks listed hereunder.

2) Hour to Open; Fee Collection. City will open the County Park Parcel by 8 a.m. Monday through Friday, except holidays unless otherwise instructed by the County. When requested by the County, the City will exchange the fee vault on the County Park Parcel from the iron ranger and secure for County pickup. All fee collections shall be conducted according to County Policy 99-06 "Self-Pay and Courtesy Envelope Fees," and turned over to the Regional Parks Department at least weekly.

3) Facilities Maintenance.

a. Clear paved parking lot(s) every third week, and clear paved bike paths and sidewalks as needed.

b. Daily restroom checks, replace disposables as needed, and clean up litter. Make minor repairs as required. Report major repair needs to the County.

c. Inspect signage, picnic tables, other park structures and fences on a weekly basis, make minor repairs, remove minor graffiti, and report major repair needs to the County.

4) Landscape Maintenance.

a. Weeds shall be removed seasonally along the paved trail corridor and shoulder. Weeds may be removed with herbicides. The cost of herbicides, spraying equipment and pesticide reporting is the obligation of the City.

b. Landscaping shall be edged or clipped as needed to maintain a neat and clean appearance.

c. Paved surfaces shall be cleaned of landscaping maintenance debris at least biweekly.

5) Irrigation Maintenance.

a. The irrigation system shall be programmed to provide water according to plant and turf requirements based on weather and soil conditions. Controllers shall be set for early morning operation (before 6:00 a.m.).

b. All irrigation hardware shall be kept free of vegetation, debris, and other foreign material obstructing proper operation.

c. Vandalism and other major damage or breakdowns of the irrigation hardware, ordinary wear and tear, shall be reported regularly to County.

d. Inefficiencies in the operation of the irrigation system shall be reported to County.

6) Non-responsibility for Disposables; Major Equipment; Law Enforcement City shall not be responsible for well testing, and shall not provide disposables (i.e. janitorial supplies, day use envelopes) or major maintenance equipment for the County Park Parcel. It is agreed that the Sheriff's Department and County Regional Parks shall provide the primary law enforcement for the County Park Parcel.

7) Labor. City shall provide all labor necessary for the responsibilities described in the paragraphs in this Section 6.A. City hereby acknowledges that it has examined the County Park Parcel in its present order and condition and hereby accepts and undertakes the maintenance of the County Park Parcel.

8) County Park Parcel Rules. The City hereby agrees to comply with County rules and regulations provided to City for the safety, care and cleanliness of the County Park Parcel and the preservation of good order as specified in Chapter 20 of the Sonoma County Code.

9) Record Keeping. City shall keep and maintain full and complete records showing all staff time and incidental expenditures by City in such maintenance of, or services provided at, the County Park Parcel. City, upon request of County, shall provide to County an accounting of all such expenses. Said accounting shall be delivered within thirty (30) days following the request of County. City shall maintain such records for a period of four (4) years following completion of work hereunder.

10) Hours Commitment. City shall provide a minimum of 4.5 to a maximum of 9.3 hours of service per week for its maintenance and inspection responsibilities of the County Park Parcel under this Agreement.

11) Hazards, Vandalism, & Emergency Work; Evaluation Meetings. City agrees to work cooperatively with the County to maintain the grounds and facilities of the County Park Parcel. City shall notify County as soon as possible of any identifiable

hazards, substantial vandalism or extraordinary maintenance needs of which City becomes aware in the course of performing the tasks listed in the aforementioned paragraphs of this Section 6.A. In the event City determines an imminent hazard condition exists and necessitates emergency work in order to protect the public health and safety, City shall take any initial steps necessary to secure the area and to prevent injury and damage. County shall be immediately contacted for further authorization and direction in resolving the site conditions. County-authorized emergency work shall be billable by the City as Extra or Changed Work in accordance with Section 6.C.2.

City-paid employees shall meet on an as needed basis with County operating and maintenance employees to evaluate the condition of the Park grounds and facilities, and review the scope and responsibility of required maintenance.

12) Performance Standard. City shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person engaged in the maintenance of public parks. If County determines that any of City's work is not in accordance with such level of competency and standard of care, County shall have the right to do any or all of the following: (a) require City to meet with County to review the quality of the work and resolve matters of concern; (b) require City to correct the non-conforming work at no additional charge until it is to the reasonable satisfaction of the County; (c) terminate this Agreement pursuant to the provisions of Section 7 of this Agreement; or (d) pursue any and all other remedies at law or in equity.

B. OBLIGATIONS OF COUNTY

1) Payment. For all services and incidental costs required under this Agreement, City shall be paid in accordance with the following terms:

a. Budget for Services and Costs. For all services and incidental costs required under this Agreement, City shall be paid at a rate of $8,750 per quarter for services described in the Section A; total payments to City shall not exceed **$115,000** for the term of this Agreement, and shall be allocated with the following limits:

Scheduled Maintenance Services	$105,000
Emergency/Open Scope Services	$10,000
Total Not-to-Exceed Cost	**$115,000**

Emergency/Open Scope Services shall be billed at rates included in **Exhibit C**. County must approve any change to billing rates or budget in writing as an amendment to this Agreement. The Director of Regional Parks and City Manager shall have authority to review service levels annually and to make adjustments as necessary to remain within budget limits.

C. ADDITIONAL OBLIGATIONS

1) Billing and Payment. City shall provide billings to County within thirty (30) days after the end of each calendar quarter during the Term at a rate of $8,750 per quarter and, subject to approval by County, shall be paid within thirty (30) days of receipt of an invoice.

2) Emergency/Open Scope Services. Emergency and Open Scope Services must be approved in writing in advance. Invoices must include hours, rates (per **Exhibit C**), and, materials.

3) Extra or Changed Work. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both Parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Director of Regional Parks in a form approved by County Counsel, and the City Attorney. The Board of Supervisors must authorize all other extra or changed work for the County, and the City Council will authorize all other extra or changed work for the City as appropriate. The Parties expressly recognize that, pursuant to Sonoma County Code section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements, except in an emergency as set forth under section 6.A.12.

7. Termination of Agreement

This Agreement may be terminated in accordance with the following:

A. Notwithstanding any other provision of this Agreement, at any time and without cause, the Parties to this Agreement shall have the right, in their sole discretion, to terminate this Agreement by giving thirty (30) days written notice to the other Party.

B. Termination for Cause. Notwithstanding any other provision of this Agreement, should either Party fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, the other Party may immediately terminate this Agreement by giving written notice of such termination, stating the reason for termination.

C. Payment Upon Termination. Upon termination of this Agreement City shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination. City shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder the cost of services performed and incidental costs required in accordance with this Agreement prior to the date of termination; provided, however, that if the Agreement is terminated for cause pursuant to Section 7.B, the non-breaching Party may deduct from such amount the amount of damage, if any, sustained by virtue of the breach.

D. Authority to Terminate. The Board of Supervisors for the County of Sonoma has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Director of Regional Parks, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County. The City Council has the authority to terminate this Agreement on behalf of the City.

8. Insurance

A. With respect to performance of work under this Agreement, each Party shall maintain a program of self-insurance or excess insurance or any combination thereof, and shall name the other Party as an additional insured thereon to protect against any liability for bodily injury or property damage arising out of or in connection with the performance of the insuring Party, its officers, agents, and employees, under this Agreement. The liability coverage under such program of self-insurance or excess insurance shall not be less than One Million Dollars ($1,000,000) combined single limit for each occurrence. Each Party shall supply a certificate of self-insurance to the other Party on or before the time of execution of this Agreement by the parties. Each Party shall notify the other Party in writing prior to any termination of such self-insurance program.

B. With respect to performance of work under this Agreement performed by a subcontractor of City, City shall require all subcontractors performing work to maintain insurance as described below.

1) Workers' Compensation Insurance. Workers' compensation insurance with statutory limits as required by the Labor Code of the State of California. Subcontractor shall provide immediate written notice to the City of Cloverdale if the insurance is terminated or the limits are reduced.

2) General Liability Insurance. Commercial general liability insurance covering bodily injury and property damage using an occurrence policy form, in an amount no less than One Million Dollars ($1,000,000) limit for each occurrence and Two Million Dollars ($2,000,000) each for the general aggregate and the products/completed operations aggregate**.** Said commercial general liability insurance policy shall either be endorsed to provide that:

a. The County of Sonoma and the City of Cloverdale, their respective officers and employees, are named as additional insureds for all liability arising out of the on-going and completed operations by or on behalf of the named insured in the performance of the Cloverdale River Park Maintenance Agreement between the County of Sonoma and City of Cloverdale.

b. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

c. The insurance provided is primary and non-contributory coverage to the County of Sonoma and the City of Cloverdale with respect to any insurance or self-insurance programs maintained by the County or City.

Subcontractor shall provide immediate written notice to the City of Cloverdale if the insurance is terminated or the limits are reduced.

3) Automobile Insurance. Automobile liability insurance covering bodily injury and property damage in an amount no less than One Million Dollars ($1,000,000) combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Subcontractor shall provide immediate written notice to the City of Cloverdale if the insurance is terminated or the limits are reduced.

4) Documentation. The following documentation shall be submitted by the subcontractor to the County of Sonoma, Department of Regional Parks, and to the City of Cloverdale:

a. Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the performance or any task by the subcontractor under this Agreement.

b. Copies of properly executed endorsements required above. Said endorsement copies shall be submitted prior to the performance of any work by the subcontractor under this Agreement.

c. Upon either Party's written request for certified copies of the required insurance policies, said policy copies shall be submitted within thirty (30) days of the request.

d. After the Agreement has been signed, signed Certificates of Insurance for subcontractor insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

C. Policy Obligations. The Parties' indemnity and other obligations shall not be limited by the foregoing insurance requirements.

D. Material Breach. If either Party, for any reason, fails to maintain self insurance coverage, which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. The non-breaching Party, in its sole option, may terminate this Agreement. If a subcontractor of City fails to maintain insurance in accordance with this Agreement, such subcontractor shall be prohibited from conducting any work under this Agreement. County may terminate this Agreement if a subcontractor performs work without the required insurance. . These remedies shall be in addition to any other remedies available to the Parties.

9. Indemnification

Each Party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, employees, and volunteers, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any omission, or negligence of such indemnifying Party, its officers, agents, employees, and volunteers. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying Party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The parties acknowledge that they are a general law county and a general law city in the state of California and that certain immunity protections against liability from third parties under California law inure to the benefit of both parties. This indemnity provision is not meant to reduce any such immunity protection available to either party.

Indemnification By Subcontractor

City shall require in any contract with a subcontractor to perform work under this Agreement the following Indemnification clause:

Indemnification. Contractor agrees to accept all responsibility for loss or damage to any person or entity, including the County of Sonoma and the City of Cloverdale, and to indemnify, hold harmless, and release County of Sonoma and the City of Cloverdale, their respective officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Contractor, that arise out of, pertain to, or relate to Contractor's performance or obligations under this Agreement. Contractor agrees to provide a complete defense for any claim or action brought against the County of Sonoma and/or the City of Cloverdale based upon a claim relating to Contractor's performance or obligations under this Agreement. Contractor's obligations under this paragraph apply whether or not there is concurrent negligence on County of Sonoma's and/or the City of Cloverdale's parts, but to the extent required by law, excluding liability due to County of Sonoma's and/or the City of Cloverdale's conduct. The County of Sonoma and the City of Cloverdale shall each have the right to select its own legal counsel at Contractor's expense, subject to Contractor's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

County may terminate this Agreement if a subcontractor performs work without the required indemnification clause. These remedies shall be in addition to any other remedies available to the Parties.

10. Agreement not for Benefit of Third Parties

This Agreement shall not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action hereunder for any cause whatsoever.

11. Amendment

This Agreement may be amended at any time upon the written mutual approval of the Parties.

12. Invoices, Notices, Bills

Any notices, payments or invoices concerning this Agreement to be sent to the City shall be directed to:

City Manager
124 N. Cloverdale Blvd.
Cloverdale, California, 95425.
Phone: 707-894-2521
Email: PCayler@ci.cloverdale.ca.us
Facsimile: 707-894-3451

Any notices or invoices concerning this Agreement to be sent to the County shall be directed to:

Bert Whitaker, Park Manager, Sonoma County Regional Parks Dept., 2300 County Center Dr. #120-A, Santa Rosa, CA 95403.
Phone: 707-565-2041;
Email: bwhitake@sonoma-county.org
Facsimile: 707-579-8247

When a notice, invoice or payment is given by a generally recognized overnight courier service, the notice, invoice or payment shall be deemed received on the next business day. When a copy of a notice, invoice or payment is sent by facsimile or email, the notice, invoice or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, invoice or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, invoices and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Severability

If any provision of this Agreement shall be held to be invalid, void or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

14. Waiver

A waiver by either Party of the performance of any covenant or condition herein shall not invalidate this Agreement nor shall it be considered a waiver of any other covenant or condition, nor shall the delay or forbearance by either Party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

15. Remedies Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties hereunder are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either Party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default. Upon the occurrence of an event of default, the Parties may pursue all remedies at law or in equity which are not otherwise provided for in this Agreement, expressly including the remedy of specific performance of this Agreement.

16. Entire Agreement

This Agreement, together with **Exhibits A-C** attached hereto and incorporated herein contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, documents and discussions pertaining thereto.

17. Binding Effect; Due Authorization

This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms of this Agreement, or under law.

18. Nondiscrimination

City shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-

Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

19. AIDS Discrimination

City agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term

20. Assignment and Delegation

Neither Party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other Party shall have so consented.

21. Parties Not Co-Venturers; No Brokers

Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another. Neither Party is to be considered an employee of the other and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits provided to employees. In the event a Party exercises its right to terminate this Agreement, the other Party expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

Each Party represents and warrants to the other that no brokers have been retained or consulted in connection with this transaction other than as disclosed in writing to the other Party. Each Party agrees to defend, indemnify, and hold the other Party harmless from any claim, loss or liability made or imposed by any other Party claiming a fee or commission in connection with this Agreement hereto and arising out of the indemnifying Party's conduct.

22. Captions; Interpretation

The captions used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

23. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

24. Further Assurances

The Parties agree to execute, acknowledge and deliver to the other such other documents and instruments, and to undertake such actions, as either shall reasonably request or as may be necessary to carry out the intent of this Agreement.

25. Applicable Law and Forum

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

26. Merger

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both Parties.

27. Time is of the Essence

Time is of the essence and is a material term for all conditions and provisions contained in this Agreement.

Executed on the date first written above at Sonoma County, California by:

City of Cloverdale	Sonoma County
_____	_____
Mary Ann Brigham Mayor	Chair Board of Supervisors
_____	_____
Date	Date
Attest:	Attest:
_____	_____
Linda Moore, Deptuy City Clerk	
APPROVED AS TO FORM	APPROVED AS TO FORM
_____Date:_____	_____Date: _____
City Attorney	County Counsel

Exhibit A

Property Description showing City and County APNs
(attached as separate PDF)

EXHIBIT B
Resolution of Cloverdale City Council
(hard copy attachment)

Exhibit C

Emergency and Open Scope Services Labor Rates

CITY OF CLOVERDALE

City Council
Agenda Item Summary

Agenda Item:	4
Meeting Date:	November 8, 2016

Agenda Section	**Staff Contact**
Consent	David Kelley, Assistant City Manager/Community Development Director

Agenda Item Title

Waive second reading and readopt Ordinance No. 700-2015 amending the Cloverdale Municipal Code, Title 15 to add Chapter 15.38, "Solar Energy Systems, Expedited Permitting Process For Small Residential Rooftop Solar Systems" in order to comply with the specific requirements of AB 2188 to streamline the permitting and inspection process for residential rooftop solar energy systems.

Summary

California Government Code section 36933 requires that within 15 days after the adoption of an ordinance, a city publish a copy of the ordinance and the Council vote in a newspaper of general circulation. The Section also allows a city to only publish a summary of the ordinance instead of the entire document, if the City publishes such summary 5 days prior the adoption, and again within 15 days after the adoption, including the names of those city council members voting for and against the ordinance.

Ordinance No. 700-2015 was adopted by the City Council on October 14, 2015. Due to transitions of staff members, the City inadvertently did not publish a summary of the ordinance in the newspaper at least 5 days prior to the adoption and again within 15 days of the action.

In order to comply with the publishing requirements of Government Code section 36933, and to avoid publishing the entire ordinance, Ordinance No. 700-2015 is being placed before the City Council again for re-adoption. This is simply a re-adoption of the Ordinance. No changes to the substance of the Ordinance has been made.

Options

Waive second reading and readopt Ordinance 700-2015.

Recommended Council Action

Waive the second reading and readopt Ordinance No. 700-2015 amending the Cloverdale Municipal Code, Title 15 to add Chapter 15.38, "Solar Energy Systems, Expedited Permitting Process For Small Residential Rooftop Solar Systems."

Attachments:

1. Ordinance
2. Adopted Ordinance No. 700-2015

cc:

2720984.2

P.O. Box 217 • 124 North Cloverdale Blvd. • Cloverdale, CA 95425-0217 • Telephone (707) 894-2521 • FAX (707) 894-3451

(Rev. 02/12)

CITY OF CLOVERDALE
ORDINANCE NO. 700-2015

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE ADDING CHAPTER 15.38 TO TITLE 15 OF THE CLOVERDALE MUNICIPAL CODE TO PROVIDE AN EXPEDITED, STREAMLINED PERMITTING PROCESS FOR SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS

WHEREAS, the City Council of the City of Cloverdale seeks to implement AB 2188 (Chapter 521, Statutes 2014) through the creation of an expedited, streamlined permitting process for small residential rooftop solar energy systems; and

WHEREAS, the Council wishes to encourage and advance the use of solar energy by all of its citizens, businesses and industries; and

WHEREAS, the Council seeks to meet the climate action goals set by the City of Cloverdale and the State; and

WHEREAS, solar energy creates local jobs and economic opportunity; and

WHEREAS, the Council recognizes that rooftop solar energy provides reliable energy and pricing for its residents and businesses; and

WHEREAS, it is in the interest of the health, welfare and safety of the people of Cloverdale to provide an expedited permitting process to assure the effective deployment of solar technology.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLOVERDALE DOES ORDAIN AS FOLLOWS:

Section 1. **Recitals Made Findings.** The above recitals are hereby declared to be true and correct and findings of the City Council of the City of Cloverdale.

Section 2. **Amendment.** Cloverdale Municipal Code, Title 15, is hereby amended to add Chapter 15.38, to read as follows:

CHAPTER 15.38
SOLAR ENERGY SYSTEMS, EXPEDITED PERMITTING PROCESS FOR SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS

15.38.10 Purpose.
The purpose of this Chapter is to promote timely and cost-effective installations of small residential rooftop solar energy systems by establishing an expedited, streamlined solar permitting process, in accordance with the provisions of Section 65850.5 of the Government Code and applicable requirements of the "Solar Rights Act of 1978" (as amended). By enacting

this Chapter, the City intends to encourage use of solar energy systems by removing unreasonable barriers, minimizing costs to property owners and the City, and expanding the ability of property owners to install solar energy systems, while protecting the public health and safety.

15.38.20 Applicability.
Except as otherwise provided in this section, this Chapter shall apply to the permitting of all small residential rooftop solar energy systems in the City.

Small residential rooftop solar energy systems legally established or permitted prior to the effective date of this Chapter are not subject to the requirements herein, unless physical modifications or alterations are undertaken that materially change the size, type, or components of a small rooftop energy system in such a way as to require new permitting. Routine operation and maintenance shall not require a permit.

15.38.30 Definitions.
For purposes of this Chapter, the following definitions shall apply:

"*Association*" means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

"*Common interest development*" means any of the following:
a. A community apartment project
b. A condominium project
c. A planned development
d. A stock cooperative

"*Electronic submittal*" means the utilization of one or more of the following:
a. Email
b. Internet; or
c. Facsimile

"*Feasible method to satisfactorily mitigate or avoid adverse impact*" means any cost-effective method, condition, or mitigation imposed by the City on another similarly situated application in a prior successful application for a permit; or such other reasonable method or condition as may be determined cost-effective for mitigating or avoiding specific adverse impact(s).

"*Reasonable restrictions*" on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

For solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, "*significantly*" means an amount exceeding 10 percent of the cost of

the system, but in no case more than one thousand dollars ($1,000), or decreasing the efficiency of the solar energy system by an amount exceeding 10 percent, as originally specified and proposed.

For photovoltaic systems that comply with state and federal law, "*significantly*" means an amount not to exceed one thousand dollars ($1,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 10 percent as originally specified and proposed.

"*Small residential rooftop solar energy system*" means all of the following:
a. A solar energy system that is no larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal.
b. A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the City of Cloverdale and all state and City of Cloverdale health and safety standards.
c. A solar energy system that is installed on a single or duplex family dwelling.
d. A solar panel or module array that does not exceed the maximum legal building height as defined by the City of Cloverdale.

"*Solar energy system*" means either of the following:
a. Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.
b. Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

"*Specific, adverse impact*" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

15.38.40 Solar Energy System Requirements.
All solar energy systems shall meet applicable health and safety standards and requirements imposed by the state and the City, and local fire district.

Solar energy systems for heating water in single-family residences and for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined by the California Plumbing and Mechanical Code.

Solar energy systems for producing electricity shall meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

15.38.50 Duties of the City Building Department and Building Official.
The City Building Department ("Department") shall ensure that all documents required for the submission of an expedited solar energy system permit application are made available on the publicly accessible City website.

Electronic submittal of the required permit application and documents shall be made available to all small residential rooftop solar energy system permit applicants. An applicant's electronic signature shall be accepted on all forms, applications, and other documents in lieu of a wet signature.

The Department shall adopt and update as necessary a standard plan and checklist of all requirements with which small residential rooftop solar energy systems shall comply to be eligible for expedited review. The small residential rooftop solar system permit process, standard plan(s), and checklist(s) shall substantially conform to recommendations for expedited permitting, including the checklist and standard plans contained in the most current version of the *California Solar Permitting Guidebook* adopted by the Governor's Office of Planning and Research.

All fees prescribed for the permitting of small residential rooftop solar energy systems must comply with Government Code Section 65850.55, Government Code Section 66015, Government Code Section 66016, and State Health and Safety Code Section 17951.

15.38.60 Permit Review and Inspection Requirements.
The Department shall adopt an administrative, nondiscretionary review process to expedite approval of small residential rooftop solar energy systems within 30 days of the adoption of this Chapter. The Department shall issue a building permit or other nondiscretionary permit the same day for over-the-counter applications, or for electronic applications, within 1-3 business days of receipt of a complete application that meets the requirements of the approved checklist and standard plan. Review of the application shall be limited to the Building Official's verification that the application meets local, state, and federal health and safety requirements.

The Building Official (Official) may require an applicant to apply for a conditional use permit if the Official finds, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety. Applicants may appeal such decisions in accordance with Section 2.36.030 of this Code.

If a conditional use permit is required, the Department may deny an application for the conditional use permit if the Official makes written findings based upon substantive evidence in the record that the proposed installation would have a specific, adverse impact upon public health or safety and there is no feasible method to satisfactorily mitigate or avoid the adverse impact. Such findings shall include the basis for the rejection of the potential feasible alternative for preventing the adverse impact. Such decisions may be appealed in accordance with Section 2.36.030 of this Code.

Any condition imposed on an application shall be designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost.

The Department shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code defining restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance.

The Department shall not condition approval of an application on the approval of an association, as defined in Section 4080 of the Civil Code.

If an application is deemed incomplete, a written correction notice detailing all deficiencies in the application and any additional information or documentation required to be eligible for expedited permit issuance shall be sent to the applicant for resubmission.

Only one inspection shall be required and performed by the Department for small residential rooftop solar energy systems eligible for expedited review. If the Department and the Cloverdale Fire Protection District (Fire District) have entered into an agreement allowing the Department to perform fire safety inspections of eligible rooftop solar energy systems on behalf of the Fire District, a separate fire inspection of the system is not required.

The inspection shall be done in a timely manner and should include consolidated inspections. An inspection will be scheduled within one (1) business days of a request and provide a two (2)-hour inspection window.

If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized but need not conform to the requirements of this section."

Section 3. **CEQA.** The City Council finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 21080.35 (a) of the Public Resources Code (rooftop solar energy systems are statutorily exempted from CEQA requirements), and Sections 15307 (the activity is a regulatory action taken by the City of Cloverdale pursuant to its police power for the maintenance and protection of a natural resource) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations).

Section 4. **Severability.** If any provision of this Ordinance or the application thereof to any person or circumstances is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Cloverdale declares that it would have passed this ordinance and each and every section, subsection, sentence, clause or phrase hereof not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

Section 5. **Effective Date and Publication.** This Ordinance of the City of Cloverdale shall be effective thirty (30) days after the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance or a summary thereof as provided in Government Code Section 36933, shall be published at least once in a newspaper of general circulation published and circulated in the City of Cloverdale, along with the names of the City Council members voting for and against its passage.

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 November 8, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 8th day of November 2016, by the following roll call vote: (Ayes-X; Noes-X; Absent-X)

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved: Attested:

_____ _____

Mary Ann Brigham, Mayor Linda Moore, Deputy City Clerk

CITY OF CLOVERDALE
ORDINANCE NO. 700-2015

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE ADDING CHAPTER 15.38 TO TITLE 15 OF THE CLOVERDALE MUNICIPAL CODE TO PROVIDE AN EXPEDITED, STREAMLINED PERMITTING PROCESS FOR SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS

WHEREAS, the City Council of the City of Cloverdale seeks to implement AB 2188 (Chapter 521, Statutes 2014) through the creation of an expedited, streamlined permitting process for small residential rooftop solar energy systems; and

WHEREAS, the Council wishes to encourage and advance the use of solar energy by all of its citizens, businesses and industries; and

WHEREAS, the Council seeks to meet the climate action goals set by the City of Cloverdale and the State; and

WHEREAS, solar energy creates local jobs and economic opportunity; and

WHEREAS, the Council recognizes that rooftop solar energy provides reliable energy and pricing for its residents and businesses; and

WHEREAS, it is in the interest of the health, welfare and safety of the people of Cloverdale to provide an expedited permitting process to assure the effective deployment of solar technology.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLOVERDALE DOES ORDAIN AS FOLLOWS:

Section 1. **Recitals Made Findings.** The above recitals are hereby declared to be true and correct and findings of the City Council of the City of Cloverdale.

Section 2. **Amendment.** Cloverdale Municipal Code, Title 15, is hereby amended to add Chapter 15.38, to read as follows:

CHAPTER 15.38
SOLAR ENERGY SYSTEMS, EXPEDITED PERMITTING PROCESS FOR SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS

15.38.10 Purpose.
The purpose of this Chapter is to promote timely and cost-effective installations of small residential rooftop solar energy systems by establishing an expedited, streamlined solar permitting process, in accordance with the provisions of Section 65850.5 of the Government Code and applicable requirements of the "Solar Rights Act of 1978" (as amended). By enacting

this Chapter, the City intends to encourage use of solar energy systems by removing unreasonable barriers, minimizing costs to property owners and the City, and expanding the ability of property owners to install solar energy systems, while protecting the public health and safety.

15.38.20 Applicability.
Except as otherwise provided in this section, this Chapter shall apply to the permitting of all small residential rooftop solar energy systems in the City.

Small residential rooftop solar energy systems legally established or permitted prior to the effective date of this Chapter are not subject to the requirements herein, unless physical modifications or alterations are undertaken that materially change the size, type, or components of a small rooftop energy system in such a way as to require new permitting. Routine operation and maintenance shall not require a permit.

15.38.30 Definitions.
For purposes of this Chapter, the following definitions shall apply:

"*Association*" means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

"*Common interest development*" means any of the following:
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b. A condominium project
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"*Feasible method to satisfactorily mitigate or avoid adverse impact*" means any cost-effective method, condition, or mitigation imposed by the City on another similarly situated application in a prior successful application for a permit; or such other reasonable method or condition as may be determined cost-effective for mitigating or avoiding specific adverse impact(s).

"*Reasonable restrictions*" on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

For solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, "*significantly*" means an amount exceeding 10 percent of the cost of

the system, but in no case more than one thousand dollars ($1,000), or decreasing the efficiency of the solar energy system by an amount exceeding 10 percent, as originally specified and proposed.

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The Department shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code defining restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance.

The Department shall not condition approval of an application on the approval of an association, as defined in Section 4080 of the Civil Code.

If an application is deemed incomplete, a written correction notice detailing all deficiencies in the application and any additional information or documentation required to be eligible for expedited permit issuance shall be sent to the applicant for resubmission.

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Section 4. **Severability.** If any provision of this Ordinance or the application thereof to any person or circumstances is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Cloverdale declares that it would have passed this ordinance and each and every section, subsection, sentence, clause or phrase hereof not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

Section 5. **Effective Date and Publication.** This Ordinance of the City of Cloverdale shall be effective thirty (30) days after the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance or a summary thereof as provided in Government Code Section 36933, shall be published at least once in a newspaper of general circulation published and circulated in the City of Cloverdale, along with the names of the City Council members voting for and against its passage.

It is hereby certified that the foregoing Ordinance No. 700-2015 was introduced before the City Council of the City of Cloverdale at a regular meeting thereof on the 23rd day of September 2015 and passed and adopted upon its second reading on the 14th day of October 2015 by the following voice vote: (Ayes - 3; Noes - 0; Absent - 2).

AYES: Councilmember Palla, Councilmember Wolter, and Mayor Cox
NOES: None
ABSENT: Vice Mayor Brigham, Councilmember Russell
ABSTAIN: None

Approved: Attested:

Robert M. Cox, Mayor Linda Moore, Deputy City Clerk

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CITY OF CLOVERDALE

City Council
Agenda Item Summary

Agenda Item:	5
Meeting Date:	November 8, 2016

Agenda Section	**Staff Contact**
Consent	Stephen Cramer, Police Chief

Agenda Item Title

Waive second reading and readopt Ordinance No. 701-2016 amending the Cloverdale Municipal Code, Title 18 (Zoning Ordinance), Chapter 18.09, to add "Article III Marijuana, Section 18.09.300, Medical Marijuana" and Ordinance No. 702-2016 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

Summary

California Government Code section 36933 requires that within 15 days after the adoption of an ordinance, a city publish a copy of the ordinance and the Council vote in a newspaper of general circulation. The Section also allows a city to only publish a summary of the ordinance instead of the entire document, if the City publishes such summary 5 days prior the adoption, and again within 15 days after the adoption, including the names of those city council members voting for and against the ordinance.

Ordinance No. 701-2016 and Ordinance No. 702-2016 were adopted by the City Council on January 26, 2016. Due to transitions of staff members, the City inadvertently did not publish a summary of the ordinances in the newspaper at least 5 days prior to the adoption and again within 15 days of the action.

In order to comply with the publishing requirements of Government Code section 36933, and to avoid publishing the entire ordinances, Ordinance No. 701-2016 and Ordinance No. 702-2016 are being placed before the City Council again for re-adoption. This is simply a re-adoption of the Ordinances. No changes to the substance of the Ordinance has been made.

Options

Readopt Ordinance No. 701-2016 and Ordinance No. 702-2016.

Recommended Council Action

1. Waive second reading and readopt Ordinance No. 701-2016 amending the Cloverdale Municipal Code, Title 18 (Zoning Ordinance), Chapter 18.09, to add "Article III Marijuana, Section 18.09.300, Medical Marijuana"; and

2. Waive second reading and readopt Ordinance No. 702-2016 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.

Attachments:

1. Ordinance 701-2016
2. Ordinance 702-2016
3. Adopted Ordinance 701-2016
4. Adopted Ordinance 702-2016

cc:

2721036.1

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 held a duly noticed public hearing to consider this Ordinance on January 12, 2016, at which time the City Council considered 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 qualified patient or primary caregiver 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 November 8, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 8th day of November, 2016 by the following roll call vote: (Ayes-X; Noes-X; Absent-X)

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved: Attested:

_____ _____

Mary Ann Brigham, Mayor Linda Moore, Deputy City Clerk

2571511.2

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 November 8, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 8th day of November, 2016 by the following roll call vote: (Ayes-X; Noes-X; Absent-X)

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved: Attested:

_____ _____

Mary Ann Brigham, Mayor Linda Moore, Deputy City Clerk

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 held a duly noticed public hearing to consider this Ordinance on January 12, 2016, at which time the City Council considered 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 qualified patient or primary caregiver 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 January 26, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 26th day of January, 2016 by the following roll call vote: : (Ayes-4; Noes-0; Absent-1)

AYES:	Councilmember Palla, Councilmember Cox, Councilmember Russell, and Mayor Brigham
NOES:	
ABSENT:	Vice Mayor Wolter
ABSTAIN:	

APPROVED:

MaryAnn Brigham, Mayor

ATTEST:

Paul Cayler, City Clerk

2571511.2

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 January 26 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 26th day of January 2016 by the following roll call vote: (Ayes-4; Noes-0; Absent-1)

AYES: Councilmember Palla, Councilmember Cox, Councilmember Russell, and Mayor Brigham
NOES:
ABSENT: Vice Mayor Wolter
ABSTAIN:

APPROVED:

MaryAnn Brigham, Mayor

ATTEST:

Paul Cayler, City Clerk

CITY OF CLOVERDALE

City Council/Successor Agency Agenda Item Summary

Agenda Item:	6
Meeting Date:	November 8, 2016

Agenda Section	**Staff Contact**
Consent	David Kelley, Assistant City Manager/ Community Development Director

Agenda Item Title

Waive the second reading and readopt Ordinance No. 703-2016, amending the Cloverdale Municipal Code, Title 18 (Zoning Ordinance), Chapter 18.08.040, changing development standards for the SP-1 (Specific Plan 1) Zoning District and rezoning a 12.3-acre parcel of land located at the southeast corner of Asti Road and Santana Drive (APN 117-050-026) from the "MP-Business Park" District to the "SP-1-Specific Plan 1 District." And, waive the second reading and readopt Ordinance No. 704-2016 approving a Development Agreement between the City of Cloverdale and Spight Properties II LCC pertaining to the development of the Alexander Valley Resort project.

Summary

California Government Code section 36933 requires that within 15 days after the adoption of an ordinance, a city publish a copy of the ordinance and the Council vote in a newspaper of general circulation. The Section also allows a city to only publish a summary of the ordinance instead of the entire document, if the City publishes such summary 5 days prior the adoption, and again within 15 days after the adoption, including the names of those city council members voting for and against the ordinance.

Ordinance No. 703-2016 and Ordinance No. 704-2016 were adopted by the City Council on February 23, 2016. Due to transitions of staff members, the City inadvertently did not publish a summary of the ordinances in the newspaper at least 5 days prior to the adoption and again within 15 days of the action.

In order to comply with the publishing requirements of Government Code section 36933, and to avoid publishing the entire ordinances, Ordinance No. 703-2016 and Ordinance No. 704-2016 are being placed before the City Council again for re-adoption. This is simply a re-adoption of the Ordinances. No changes to the substance of the Ordinance has been made.

Options

Waive second readings and readopt Ordinances 703-2016 and 704-2016.

Recommended Council Action

1) Waive the second reading and adopt Ordinance No. 703-2016 amending Title 18, "Zoning" of the Municipal Code, making certain changes to the standards of the SP-1 District and rezoning one parcel of land (APN 117-050-026) to the SP-1 District.
2) Waive the second reading and adopt Ordinance No. 704-2016 approving a Development Agreement between the City of Cloverdale and Spight Properties II LLC pertaining to the Alexander Valley Resort project generally located on approximately 267 acres of land located east of Asti Road, west of the Russian River, south of Santana Drive and north of Cloverdale Municipal Airport.

Attachments: Ordinance No. 703-2016
Ordinance No. 704-2016
Adopted Ordinance No. 703-2016
Adopted Ordinance No. 704-2016

2606635.1

P.O. Box 217 • 124 North Cloverdale Blvd. • Cloverdale, CA 95425-0217 • Telephone (707) 894-2521 • FAX (707) 894-3451

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO.703-2016

AN ORDINANCE OF THE CITY OF CLOVERDALE AMENDING TITLE 18, "ZONING," OF THE CITY MUNICIPAL CODE, MAKING CERTAIN CHANGES TO THE STANDARDS OF THE SP-1 (SPECIFIC PLAN) ZONING DISTRICT AND REZONING ONE PARCEL OF LAND TO THE SPECIFIC PLAN-1 (SP-1) ZONING DISTRICT WITHIN THE ALEXANDER VALLEY RESORT PROJECT, (APNs 116-260-012, 116-310-013 & -014, 117-050-010, -011, 012, -017, -024, -026, -027, -028 & -029)

THE CITY COUNCIL OF THE CITY OF CLOVERDALE HEREBY ORDAINS AS FOLLOWS:

SECTION 1. RECITALS

A. The Alexander Valley Resort Project ("Project"), is generally located south of Santana Drive, east of Asti Road, west of the Russian River and north of Cloverdale Municipal Airport.

B. The Project was originally approved by the City Council in 2009. The Project consisted of a resort, golf course, resort mixed-use site and housing. Tyris Corporation/Spight Properties II LLC (the "Applicant"), has requested certain changes to the Project.

C. The Applicant is requesting a General Plan Amendment to change the land use designation of 12.3 acre site on the southeast corner of Asti Road and Santana Drive owned by the applicant from "BP-Business Park" to "DSC-Destination Commercial" and other minor amendments to the Cloverdale General Plan, including but not limited to allowing a golf course within the Project as an optional recreational use, not a mandatory feature, and other minor amendments to ensure internal consistency within the General Plan.

D. The application also includes a request for an amendment to the Alexander Valley Resort Specific Plan, a Zoning Ordinance amendment rezoning the 12.3 acre site, which would now be included within the Specific Plan, from "MP-Industrial Park" to "Specific Plan-SP-1," and a Development Agreement. The Zoning Ordinance amendment designating the 12.3 acre site as Specific Plan-SP-1 would allow resort-oriented uses to be developed on the 12.3 acre site.

E. The California Environmental Quality Act ("CEQA"), together with the State Guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared. To comply with CEQA, the City prepared an Addendum to the environmental impact report that

was certified by the City in 2009, Alexander Valley Resort Project Environmental Impact Report, State Clearinghouse No. 2003072142 (the "2009 EIR").

F. The City Council has makes the following findings related to (1) the rezoning the parcel of land described as County Assessor's Parcel Number (APN) 117-050-026 to the SP-1 district; (2) the amendment to Section 18.08.040 of the Zoning Ordinance to add a "Resort Mixed-Use" category to the SP-1 district; (3) adding a list of permitted and conditional uses for the Resort Mixed-Use category; and (4) establishing development standards for future buildings within the Resort Mixed-Use land use category:

1. The proposed change of zone is consistent with the goals, objectives, policies and programs of the Cloverdale General Plan and is necessary and desirable to implement the provisions of the General Plan.

    a. *The proposed rezoning to the SP-1 zoning district for the 12.3 acre parcel located on the southeast corner of Asti Road and Santana Drive is consistent with the Alexander Valley Resort Specific Plan, which implements portions of the General Plan.*

    b. *Proposed development standards will provide guidance to the City, project owners and future developers as to the intent of the City to allow the orderly development of the affected property.*

2. The proposed change of zone will not adversely affect the public health, safety and welfare, or result in an illogical land use pattern.

    a. *The 2004 draft Alexander Valley Resort Environmental Impact Report has evaluated the public health, safety and welfare issues, and mitigation measures and the Addendum's Mitigation Monitoring and Reporting Program have provisions for eliminating or mitigating all such issues.*

    b. *The land use pattern proposed for the Project is consistent with the General Plan. The proposed option of an 18-hole golf course, Resort Hotel and other land uses are envisioned within the Area II Destination Commercial land use designations contained in the General Plan.*

3. The proposed change of zone is consistent with the purpose and intent of Chapter 18.03 of the Cloverdale Zoning Ordinance.

    a. *The proposed rezoning and revisions to the SP-1 District meets the Zoning Ordinance purpose of implementing the General Plan. The General Plan requires Specific Plan zoning for the Project site, and the Specific Plan and zoning provide for such land uses.*

4. The potential environmental impacts of the proposed rezoning are less-than-significant.

    a. *The rezoning will not adversely affect public health, safety or welfare as demonstrated by the analysis of public health and safety conditions contained in the draft 2004 Alexander Valley Resort EIR and Recirculated* DEIR (the "EIR"). *The EIR analyzed potential public health impacts, airport land use compatibility impacts, traffic safety impacts, geotechnical safety impacts, air quality and greenhouse gas emissions, potential flooding and safety impacts, impacts to public safety providers, and impacts related to soil and groundwater contamination. The EIR concludes that, with adherence to mitigation measures as set forth in the two DEIR documents including the Addendum, all safety impacts and conditions will be less than significant. The Mitigation Monitoring and Reporting Program will assure that all EIR mitigation measures are implemented.*

G. On February 9, 2016, the City Council held a properly noticed public hearing regarding this Zoning Ordinance Amendment and considered all comments received in writing and all testimony received at the public hearing.

SECTION 1. PURPOSE AND INTENT

The purpose and intent of these changes is to amend the Zoning Ordnance Text to rezone the 12.3 acre parcel at the southeast corner of Asti Road and Santana Drive to the SP-1 District and to amend the SP-1 District to add a "Resort Mixed-Use" land use category with a listing of permitted and conditional uses and development standards as shown on Exhibit 1.

SECTION 2. FINDINGS

The above recitals are hereby declared to be true and correct and hereby incorporated herein as the required Findings of the City Council of the City of Cloverdale.

SECTION 3. AMENDMENTS TO TITLE 18 OF THE CLOVERDALE MUNICIPAL CODE

Section 18.08.040, SP-1 Alexander Valley Resort, is amended to read as set forth in Exhibit A.

SECTION 4. RECLASSIFIED PROPERTIES

Title 18, "Zoning," of the City of Cloverdale Municipal Code is hereby amended by amending the "Zoning Map of the City of Cloverdale" so as to reclassify the 12.3 acre site on the southeast corner of Asti Road and Santana Drive to the Specific Plan 1 (SP-1) zoning district, as shown in Exhibit 1.

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 November 8, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 8th day of November, 2016 by the following vote: (Ayes-X; Noes-X; Absent-X)

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved:	Attested:
_____	_____
Mary Ann Brigham, Mayor	Linda Moore, Deputy City Clerk

Attached: Exhibit 1- Amended Zoning

Section 18.08.040 Alexander Valley Resort Specific Plan Zoning District Development Standards

A. SP-1 Alexander Valley Resort Specific Plan

This Section provides regulations and standards for the development of the Alexander Valley Resort Project site and the SP-1 Zoning District. All capitalized terms used in this Section 18.08.040 that are not specifically defined herein shall have the meanings set forth in the Alexander Valley Resort Specific Plan, as amended.

B. Precise Development Plan Required

1. A Precise Development Plan ("PDP") shall be required prior to any development in each of the six (6) land use areas in this Plan: Resort/Resort Residential, Recreation/Open Space, Single-Family Residential, Estate Residential, Entry Commercial, and Resort Mixed-Use. Each PDP shall be consistent with the General Plan, the Alexander Valley Resort Specific Plan, and this Section 18.08.040. For purposes of Section 18.03.100A of this Title, the Alexander Valley Resort Specific Plan is deemed to be, and shall be considered as, the approved Preliminary Development Plan that would otherwise be required, and no other Preliminary Development Plan shall be required for development in the Alexander Valley Resort Specific Plan area.

2. A visual "gateway" or entrance theme shall be submitted by the Developer and approved by the City prior to or with the first PDP approval. A visual analysis of the rough grading plan for the site, including the grading for the proposed western hill with the serpentine outcropping shall be prepared prior to or with the first PDP, together with the proposed "gateway" theme.

3. A PDP amendment, in accordance with this Section, shall be required for any change to the approved PDP, except for minor changes in golf course design and alignment, if applicable.

4. PDPs for all phases of the development may be submitted and approved simultaneously, provided that no temporary or permanent occupancy permits for the Resort Residential, Single-Family Residential and Estate Residential Units shall be issued until (i) the Resort is substantially complete, as determined by the Director of Community Development, and (ii) a PDP has been submitted to the City for the Recreation/Open Space Area that describes the Developer's proposal for use of the Recreation/Open Space.

5. Construction of any golf course (either a Regulation Course or a Nine-Hole Course) is dependent on the availability of Recycled Water and transportation of that water to the west side of the NWP tracks.

   If the Developer is unable to obtain sufficient Recycled Water to develop any golf course, or if Developer elects not to develop any golf course, Developer shall propose an alternate use for the remaining acreage as provided herein. Such use may require an amendment to the Alexander Valley Resort Specific Plan.

C. Relationship to the Zoning Ordinance

All otherwise applicable provisions of this Title shall apply in the SP-1 Zoning District, except as specifically modified by this Section. In the event of a conflict between other provisions of this Title and the provisions of this Section, the provisions of this Section shall prevail.

D. Pedestrian/Bicycle Trails

Each PDP shall provide for a linked pedestrian/bicycle trail to connect the various development areas of the Specific Plan, and to connect the Specific Plan area to the remainder of the City.

E. Resort/Resort Residential Area

1. The 100-150 room hotel and a full-service spa facility will function together as a wine country destination resort ("Resort") and as the anchor of the Alexander Valley Resort Project. Amenities will include those normally found in a resort complex, including, but not limited to, a restaurant, conference center and gift shop. The Resort shall be consistent with all aspects of the Cloverdale General Plan Destination Commercial land use designation and applicable goals of the Land Use Element.
2. The Resort will be sited on a knoll overlooking Resort/Resort Residential and Recreation/Open Space Areas, capitalizing on Alexander Valley/Russian River vistas. The Resort is assigned a visually prominent location on the Project site and shall be designed to quality resort style standards.
3. The mass of the building(s) shall be broken up by favoring terraced roofs and offsets in wall planes. The maximum height of buildings for the Resort complex shall be 62 feet above ground level, including towers and similarly distinct architectural elements.
4. The spa shall be confined within the Resort complex. Outdoor facilities, to include a swimming pool and other recreational activity areas, shall be sited and buffered to reduce noise intrusion on the Resort.
5. Parking areas shall be off-street, landscaped and screened from view. The Resort complex, the Resort Residential Units and the Recreation/Open Space Area facilities may share parking areas, based on and subject to a shared parking analysis, using Urban Land Institute or similar methodologies, that has been approved by the City's Community Development Department Director.
6. Resort Residential Units shall meet the requirements of the R-2 or R-3 Multi-Family Residential Zoning Districts as they exist or may be modified.
7. The PDP for the Resort/Resort Residential Area shall conform to Specific Plan policies to mitigate impacts from the adjoining industrial area.
8. An Acoustic Study shall be submitted with the PDP for the Resort Residential Units, and building assemblies shall be designed so that interior noise levels shall not exceed 45dBA inside all living units.

F. Recreation/Open Space Area

1. The Recreation/Open Space Area may be developed with a golf course (either a Regulation Course or a 9-Hole Course as described in Section II.B.13 of the

Alexander Valley Resort Specific Plan), or with an alternate recreation use approved by the City Council, or preserved as open space.

2. If the Recreation/Open Space Area is developed with a Regulation Course, it should include multiple tee areas providing varying lengths up to 6,500 yards, a clubhouse, practice facilities, and maintenance areas. Any golf course should be open to golf club members, guests of the Resort and the general public on a daily fee basis.

3. Recreation/Open Space Area uses and building structures

   a. Maximum height of the any Recreation/Open Space Area building shall be 35 feet.

   b. Allowable uses are golf course facilities, including golf course management offices, pro shop, men and women's locker rooms, restaurant and banquet facilities, and golf cart storage; picnic areas; other resort-compatible uses that the City Council may approve subject to a conditional use permit; and preserved open space. Any expansion or change after PDP approval shall require a PDP amendment.

   c. The PDP shall provide adequate parking to serve peak demand for banquet or similar activities, if applicable. The Recreation/Open Space Area may share parking areas with the Resort complex and the Resort Residential Area based on and subject to a shared parking analysis, using Urban Land Institute or similar methodologies, that has been approved by the City's Community Development Department Director.

4. Maintenance facilities:

   a. Maximum height of any maintenance building structures shall be 24 feet.

   b. All maintenance and activity equipment storage shall be within enclosed buildings, except for sand, gravel and similar bulk construction materials, which shall be screened from public view with fences, landscaping, buildings or similar features.

5. The Natural Resource Preserve Area shall meet all applicable requirements of the Alexander Valley Resort Specific Plan.

6. Accessory structures, including snack shop, restrooms and a maintenance building shall be allowed.

7. All improvements shall conform to the "gateway" design concept.

8. A minimum 20-foot front setback with City-approved landscaping is required for all development along Asti Road.

G. Single-Family Residential

1. Single-Family Residential Units shall meet the requirements of the R-2 Zoning District, as it exists or may be amended, except that lot sizes may be reduced to 4,000 square feet and the lot width, depth and setback requirements reduced based on the Zoning Ordinance PUD Permit provisions in Section 18.03.130. No more than one dwelling unit may be built on each lot.

2. A visual analysis shall be submitted with the PDP application for the Single-Family Residential Area. Steps to minimize views of houses from the City shall be detailed.

3. Site and building design shall conform to the gateway design concept.

4. A PDP amendment shall be required for any addition to or expansion of housing units after initial construction, including accessory structures.

H. Estate Residential

1. Estate Residential Units shall meet the requirements of the R-1 Zoning District, except that setbacks and lot sizes may be modified to save significant trees and oak forest groupings.

2. A visual analysis shall be submitted with the PDP application for the Estate Residential Area. Steps to minimize views of houses from the City and Alexander Valley shall be detailed.

3. An arborist report shall be provided with PDP submittal. The report shall identify significant individual trees and significant groupings of trees (oak forest). Houses and lots shall be sited to preserve trees and forest groupings to the extent possible.

4. A PDP amendment shall be required for any addition to, or expansion of, housing units after initial construction, including accessory structures and removal of significant trees identified in the arborist report.

I. Entry Commercial

1. An entry design theme and visual analysis shall be submitted with the PDP application for the Entry Commercial Area. Design shall include a visual buffer, such as landscape and berms, between Asti Road and the development on the site.

2. Design shall conform to the "gateway" design concept.

3. Entry Commercial development shall meet the requirements of the G-C Zoning District, except that minimum 20-foot front, side, and rear setbacks with City-approved landscaping are required for all development along Asti Road. Additionally, the following uses shall be permitted by right:

   a. Administrative and Executive Offices

   b. Clerical and Professional Offices

   c. Restaurants (with alcoholic beverage service; with indoor and outdoor seating; with catering operations; no on-site entertainment without City approval)

   d. Wine Tasting Facility

   Service stations, drive-through uses and internally illuminated signs shall not be allowed.

4. A PDP amendment shall be required for any expansion of buildings after initial construction. A use permit shall be required for any uses that require a use permit in the G-C Zoning District (or any successor zoning district), with the exception of the permitted uses listed in the preceding subsection I.3 of this Section.

J. Resort Mixed-Use

1. A design compatibility analysis shall be submitted with the PDP application for development in the Resort Mixed-Use Area, to ensure that development in the Resort Mixed-Use Area is compatible with the Resort/Resort Residential and Entry Commercial Areas.

2. Uses.

   A. The following uses shall be permitted by right in the Resort Mixed-Use Area, subject to the PDP requirement set forth in subsection B.1 above:

      i. Automobile rental agencies (excluding outdoor storage of vehicles not for on-site rental)

      ii. Educational Institutions involving culinary, viticulture and brewing arts, schools and instructional programs

      iii. Gymnasiums, Athletic and Health Clubs, Spas and similar commercial recreation uses

      iv. Hotels (13 rooms or more)

      v. Restaurants with Bar/Cocktail Lounges (but not including fast-food restaurants or drive-thru restaurants)

      vi. Specialty grocery markets and food stores up to 5,000 square feet

   B. In addition, and except as otherwise set forth above, those uses set forth in Table 18.06.030-A of Chapter 18.06 of the City of Cloverdale Zoning Code for the Industrial Park (M-P) Zoning District shall be permitted in the Resort Mixed-Use Area, subject to applicable conditional use permit requirements as set forth therein. Where a Plot Plan is required for any use allowed under the M-P zoning requirements, the PDP required under this SP-1 zoning designation shall serve as the required Plot Plan, and no other Plot Plan shall be required.

   C. In addition, and except as otherwise set forth above, the following uses shall also be permitted subject to the limitations set forth in Table 18.05.030-A of the City of Cloverdale Zoning Code for the General Commercial (G-C) Zoning District, and subject to applicable conditional use permit requirements as set forth therein:

      i. Antique collections and shops

      ii. Arts and crafts stores

      iii. Artist and photographic studios and galleries (including the accessory sale of artwork)

      iv. Bakeries

      v. Barber and beauty shops

      vi. Bicycle shops

      vii. Book shops and stationary stores

      viii. Candy stores

ix. Clothing stores

x. Commercial recreation facilities (outdoor)

xi. Flower shops

xii. Furniture and home goods

xiii. Gift shops

xiv. Jewelry stores

xv. Liquor stores

xvi. Medical Services

xvii. Off-Street Parking Facilities (subject to conditional use permit)

xviii. Outside Sales or Display Areas (for uses allowed in the underlying Zoning District)

xix. Toy stores

xx. Transportation terminals and providers, including livery and shuttle services (subject to conditional use permit)

xxi. Wine/Beer Tasting/Sampling and Sales

xxii. Accessory uses (located on the same site as a permitted use)

xxiii. Other uses similar to, and no more objectionable than the uses identified above, as determined by the Planning Commission

Where a Plot Plan is required for any of the above uses under the G-C zoning requirements, the PDP required under this SP-1 zoning designation shall serve as the required Plot Plan, and no other Plot Plan shall be required.

D. The following uses are NOT permitted in the Resort Mixed-Use Area:

i. Automobile Service Stations/Gasoline Service Stations

ii. Sales and repair of automobiles, light trucks, boats, campers, and motorcycles; car washes; tire sales & service

iii. Bar/Cocktail Lounges without food service

iv. Bowling alleys

v. Drive-In Restaurants

vi. Drive Through Facilities

vii. Hardware stores

viii. Internally-illuminated signs

ix. Motion picture theaters

x. Multi-line traditional shopping centers with major anchor tenants

xi. Multi-tenant, freeway-oriented strip mall type facilities

xii. Drug Store/Pharmacies not related to medical, dental or related health

services permitted above

xiii. Residential (temporary lodging permitted as provided herein)

xiv. Variety superstores and big box stores

3. The development standards for the Resort Mixed-Use Area shall be those set forth below in Table 18.08.040-A of the City of Cloverdale Zoning Code. Where the applicable development standard is set forth below as a range, the applicable standard shall be a specific standard within the range, as determined by the City Council at the time of approval of the required PDP.

Table 18.08.040-A
Site Development Standards for Resort Mixed-Use District

Lot Area (minimum)	6,000 – 20,000
Lot Width (minimum)	60' – 100'
Lot Depth (minimum)	100'
Front Setback (minimum) • Asti Road (must include City-approved landscaping)	15' 20'
Side Setback (minimum) • Interior • Street Side • Asti Road (must include City-approved landscaping)	 0' 10' – 15' 20'
Rear Setback (minimum) • Asti Road (must include City-approved landscaping)	10' 20'
Lot Coverage (maximum)	60%
Building Height (maximum)	35' – 50'

4. A PDP amendment shall be required for any expansion of buildings after initial construction.

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 704-2016

AN ORDINANCE OF THE CITY OF CLOVERDALE APPROVING A DEVELOPMENT AGREEMENT WITH SPIGHT PROPERTIES II LLC PERTAINING TO THE DEVELOPMENT OF THE ALEXANDER VALLEY RESORT PROJECT LOCATED ON APPROXIMATELY 267 ACRES OF LAND LYING EAST OF ASTI ROAD, WEST OF THE RUSSIAN RIVER, SOUTH OF SANTANA DRIVE AND NORTH OF CLOVERDALE MUNICIPAL AIRPORT (APNs 116-260-012; 116-310-013 AND -014; 117-050-010, -011, -012, -017, -024, -026, -027, -028, AND -029)

THE CITY COUNCIL OF THE CITY OF CLOVERDALE HEREBY ORDAINS AS FOLLOWS:

SECTION 1. RECITALS

A. In order to strengthen the public land use planning process, to encourage private participation in comprehensive planning, to reduce the economic risk of development and to reduce the waste of resources, the Legislature of the State of California adopted the "Development Agreement Statute" (Government Code Section 65864 et seq.). The Development Agreement Statute authorizes the City and an applicant for a development project, having legal or equitable interest in the real property, to enter into a development agreement establishing certain development rights in, and obligations with respect to, the property which is the subject of a development project application. Pursuant to the Development Agreement Statute, the City adopted rules and regulations establishing procedures and requirements for consideration of development agreements on January 5, 1987 ("Development Agreement Resolution"). City staff and representative of Tyris Corporation/Spight Properties II LLC (the "Landowner") have processed, considered and executed a Development Agreement in accordance with those City rules and regulations.

B. The Development Agreement Statute permits cities and counties to contract with private interests for their mutual benefit in a manner not otherwise available to the contracting parties. Such agreements, as authorized by the Development Agreement Statute, can assure property owners and developers that development approvals granted by public agencies will not change during the period of development of their projects. Cities and counties are equally assured that costly infrastructure such as roads, sewers, schools, fire protection facilities, etc., will be available at the time development projects come on line.

C. Landowner is the owner of approximately 267 acres in the City of Cloverdale more particularly described in Exhibit A of the attached Development Agreement.

D. On June 10, 2009, the City Council of the City took the following actions with respect to the Property (collectively, the "2009 Approvals"):

1. By Resolution 027-2009, approved a Water Supply Assessment for the Alexander Valley Resort Project;

2. By Resolution 028-2009, certified the Final Environmental Impact Report consisting of a 2004 Draft Environmental Impact Report, a 2008 Recirculated Draft Environmental Impact Report and a 2009 Final Environmental Impact Report (collectively the "FEIR") and adopted a Mitigation Monitoring and Reporting Program for the Alexander Valley Resort Project;
3. By Resolution No. 029-2009, adopted the Alexander Valley Resort Specific Plan (the "2009 Specific Plan") and directed staff to file an annexation application for the Alexander Valley Resort Project; and
4. By Ordinance No. 671-2009, amended Chapter 18 of the City of Cloverdale Zoning Ordinance and prezoned the Property to the SP-1 Zoning District for the Alexander Valley Resort Project.

E. On February 10, 2010, the City Council of the City, by Resolution No. 014-2010, approved a revised Mitigation Monitoring and Reporting Program (the "MMRP") for the Alexander Valley Resort Project.

F. On April 7, 2010, the Sonoma County Local Agency Formation Commission, by Resolution No. 2579, approved a Sphere of Influence Amendment and a Reorganization of Territory designated as Cloverdale Reorganization No. 2009-001 (Alexander Valley Resort) approving the annexation of the Property to the City of Cloverdale. Such approval resulted in confirmation of the SP-1 zoning.
Since then, Landowner has completed the clean closure of the 22-acre wood waste landfill area which contained approximately 600,000 cubic yards of non-hazardous wood chips, bark, sawdust, soil and rock. Owner's clean closure has accomplished the following: (1) removal of potential future environmental liability associated with groundwater and surface water quality issues; (2) elimination of future monitoring and maintenance activities associated with the disposal site cap and drainage controls; (3) removal of the wood waste landfill from regulatory oversight; (4) reuse of the materials for beneficial purposes; and (5) preparation of the site for future uses, including the Project. The North Coast Regional Water Quality Control Board ("RWQCB") issued the final Waste Discharge Requirements ("WDRs"), Order No. R1-2005-0032, in June 2005, and Owner received clean closure certification in June 2012.

H. Landowner also completed extensive soil and groundwater remediation activities for the petroleum hydrocarbon-affected soil and groundwater east of the former head rig and for the affected soil south of the former mechanic shop in order to remove the source of petroleum hydrocarbons and to minimize future impacts to groundwater. PES Environmental, Inc. ("PES"), performed these remediation activities and has requested that the RWQCB consider "no further action" with regard to the hydrocarbons in soil and groundwater in these areas.

I. In addition, International Paper, Inc., as the successor in interest to Masonite Corporation, a former site operator, has been working with the RWQCB to investigate and remediate groundwater contamination at the site, including contamination of a deep aquifer under a portion of the Site. In August 2013, the RWQCB concurred with International Paper's proposed final cleanup remedy of Monitored Natural Attenuation ("MNA") for shallow and bedrock groundwater in certain areas of the Property. The Remedial Action Work Plan

approved by the RWQCB includes: (1) verification groundwater monitoring until the site groundwater achieves the cleanup goals; (2) deed restriction on a portion of the site where residual levels of wood treatment chemicals are present in soil; (3) a restricted area where groundwater use is prohibited; (4) destruction of certain groundwater monitoring wells and an old water supply well; and (5) a soil management plan to identify and address any contamination found during redevelopment. In accordance with Monitoring and Reporting Program No. R1-2013-0057, different MNA processes are occurring in different areas on the Property and reports are to be submitted to the RWQCB semi-annually. The five (5) remaining monitoring wells on the Property are not expected to impact Project development.

J. In 2015, Landowner applied to the City for certain revisions to the City's General Plan, the 2009 Specific Plan, and the Zoning Ordinance, and, as contemplated by the 2009 Specific Plan, Landowner also applied to the City for a Development Agreement to govern future development of the Property (collectively, the "Proposal"). The Proposal requests revision of the Specific Plan to make the golf course component an allowed rather than required use, and to provide for the possibility of an alternate recreation use if approved by the City Council. The Proposal also seeks to re-introduce a 12.3 acre parcel into the planning area that had been part of the original project assessed by the Draft Environmental Impact Report, and provides land use development standards for those 12.3 acres consistent with the existing zoning (M-P, Industrial Park) and the originally-proposed zoning (G-C, General Commercial).

K. In response to the 2015 application, the City undertook review of the FEIR prepared for the 2009 Approvals and determined that an addendum to the FEIR was appropriate for consideration and action on the 2015 application ("2015 Addendum").

L. On December 2, 2015 and January 5, 2016, at a duly-noticed public hearing, the City's Planning Commission considered the FEIR and the 2016 Addendum, Landowner's application for certain General Plan, 2009 Specific Plan, and Zoning Ordinance amendments; and this Agreement. Following due consideration, by Resolutions No. 00-2016, No. 003-2016, and No. 004-2016, the Planning Commission recommended to the City Council that the City Council not approve Landowner's application, although the Commission did support the preparation of the CEQA Addendum. The Landowner appealed the Planning Commission's action to the City Council.

M. On February 9, 2016, at a duly-noticed public hearing, the City Council of the City took the following actions relating to the Landowner's application:

1. By Resolution No. 013-2016, approved and adopted the 2015 Addendum to the FEIR;
2. By Resolution No. 014-2016, amended the City of Cloverdale General Plan;
3. By Resolution No. 015-2016, amended the 2009 Specific Plan (as amended, the "Specific Plan"); and
4. By Ordinance No703-2016, amended Chapter 18 of the City of Cloverdale Zoning Ordinance. Approvals 2, 3, and 4 above are collectively referred to herein as the "Project Approvals."

N. Landowner desires to sell the Property to a developer with the qualifications, expertise, and experience to develop the Property in accordance with the Project Approvals and as

contemplated in the draft Development Agreement. The development of the Property in accordance with the draft Development Agreement and the Project Approvals will provide for orderly growth within the City, consistent with the goals, policies, and other provisions of the City's General Plan and the Specific Plan.

O. The City recognizes that the economic success of the Project depends greatly upon the certainty and timing of the City's regulations and fees.

P. As contemplated by the Specific Plan, the City and Landowner desire to enter into the attached Development Agreement to identify and assign key implementing responsibilities, including but not limited to, vesting of entitlements, the construction of infrastructure, and continuing maintenance responsibilities and agreements.

Q. For the reasons recited herein, Landowner and the City have determined that the Project is the type of development for which the attached Agreement is appropriate. The Development Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property and otherwise achieve the goals and purposes for which the Development Agreement Statute and the Development Agreement Resolution were enacted.

R. In exchange for these benefits to the City, together with the public benefits that will result from the development of the Property pursuant to the Project Approvals, Landowner desires to receive the assurance that it may proceed with development of the Property, including receipt of building permits and all other permits and approvals required to complete construction of the Project in accordance with the terms and conditions of the draft Development Agreement.

S. On February 9, 2016, the City Council, as the legislative body for purposes of Development Agreement approval, held a properly noticed public hearing pursuant to Government Code section 65867 regarding the Development Agreement, and considered all comments received in writing and all testimony received at the public hearing.

SECTION 2. FINDINGS.

Therefore, on the basis of: (a) the foregoing recitals, which are hereby incorporated herein; (b) the City of Cloverdale's General Plan; and (c) the Alexander Valley Resort Project FEIR and Addendum to said FEIR, the City Council finds and determines that:

A. Pursuant to Government Code section 65867.5, the Development Agreement is consistent with the objectives, policies, general land uses and programs specified and contained in the City's General Plan and the approved Alexander Valley Resort Special Plan in that the property is designated for a destination resort hotel project that includes a spa, restaurant and conference center along with a major open space use, residential use and related commercial uses.

B. The Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use area in which the real property is located and

entitlements associated with such land use area, is consistent with the overall zoning for the site, Alexander Valley Resort Specific Plan and General Plan.

C. The Development Agreement is in conformity with public convenience, general welfare and good land use policies in that the Development Agreement will continue to implement land use guidelines set forth in the General Plan and help ensure a successful development that meets community and market needs. The Development Agreement is consistent with the policies of the Housing Element within the applicable General Plan, in that it allows for future construction of dwelling units as part of the resort development.

D. The Development Agreement will not be detrimental to the health, safety and general welfare in that the Project will proceed in accordance with the programs and policies of the General Plan and other Project Approvals.

E. The Development Agreement will not adversely affect the orderly development of the property, or the preservation of property values, in that the amendment is consistent with the applicable General Plan and the Alexander Valley Resort Specific Plan, and there is no evidence to suggest that this Project will lower property values.

F. The Development Agreement is consistent with and includes the substantive elements of Government Code sections 65864 through 65869.5, and has been processed consistent with all the procedural requirements thereof.

SECTION 3. APPROVAL OF DEVELOPMENT AGREEMENT

The City Council hereby approves the Development Agreement between the City of Cloverdale and Spight Properties attached to this ordinance as Exhibit 1, and authorizes the City Manager to execute the Development Agreement. Within ten (10) days after the Development Agreement is executed by the City Manager and Spight Properties, the City Clerk shall submit the Development Agreement to the County Recorder for recordation.

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 November 8, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 8th day of November, 2016 by the following vote: (Ayes-X; Noes-X; Absent-X)

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved:

_____
Mary Ann Brigham, Mayor

Attested:

_____
Linda Moore, Deputy City Clerk

Attachment: Exhibit 1-Development Agreement between City of Cloverdale and Spight Properties II, LLC

CITY OF CLOVERDALE

RECORDING REQUESTED BY:
City Clerk
City of Cloverdale
124 N. Cloverdale Blvd.
Cloverdale, CA 95425

RECEIVED
APR 18 2016

AND WHEN RECORDED MAIL TO:
City of Cloverdale
124 Cloverdale Blvd.
Cloverdale, CA 95425
Attn: City Manager

2016025948
ficial Records Of Sonoma County
lliam F. Rousseau
03/23/2016 09:49 AM
CLOVERDALE CITY
AGM 64 Pgs
Fee: $0.00

APN: 116-260-012

APN: 116-310-013
APN: 116-310-014

APN: 117-050-010
APN: 117-050-011
APN: 117-050-012
APN: 117-050-017
APN: 117-050-024
APN: 117-050-026
APN: 117-050-027
APN: 117-050-028
APN: 117-050-029

Space Above for Recorder's Use

This Agreement is recorded at the request and for the benefit of the City of Cloverdale and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383

DEVELOPMENT AGREEMENT

between

CITY OF CLOVERDALE

and

SPIGHT PROPERTIES II LLC

ALEXANDER VALLEY RESORT

[Ordinance No.704-2016, Adopted on February 23, 2016]

DEVELOPMENT AGREEMENT
between
CITY OF CLOVERDALE
and
SPIGHT PROPERTIES II LLC

This DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into on this 22 day of March, 2016, by and between the CITY OF CLOVERDALE, a political subdivision of the State of California ("**City**") and SPIGHT PROPERTIES II LLC, a California limited liability corporation ("**Landowner**"). Landowner and City each may be referred to herein individually as a "Party" and collectively as the "Parties." This Agreement is entered into with reference to the following facts:

RECITALS

A. In order to strengthen the public land use planning process, to encourage private participation in comprehensive planning, to reduce the economic risk of development and to reduce the waste of resources, the Legislature of the State of California adopted the "**Development Agreement Statute**" (Government Code Section 65864 et seq.). The Development Agreement Statute authorizes the City and an applicant for a development project, having legal or equitable interest in the real property, to enter into a development agreement establishing certain development rights in, and obligations with respect to, the property which is the subject of a development project application. Pursuant to the Development Agreement Statute, the City adopted rules and regulations establishing procedures and requirements for consideration of development agreements on January 5, 1987 ("**Development Agreement Resolution**"). This Agreement has been processed, considered, and executed in accordance with those City rules and regulations.

B. The Development Agreement Statute permits cities and counties to contract with private interests for their mutual benefit in a manner not otherwise available to the contracting Parties. Such agreements, as authorized by the Development Agreement Statute, can assure property owners and developers that development approvals granted by public agencies will not change during the period of development of their projects. Cities and counties are equally assured that costly infrastructure such as roads, sewers, schools, fire protection facilities, etc. will be available at the time development projects come on line.

C. Pursuant to Government Code Section 65865(a), Landowner is the owner of approximately 267 acres in the City of Cloverdale more particularly described in **Exhibit A** hereto.

D. On June 10, 2009, the City Council of the City took the following actions with respect to the Property (collectively, the "**2009 Approvals**"):

1. By Resolution 027-2009, approved a Water Supply Assessment for the Alexander Valley Resort Project;

2. By Resolution 028-2009, certified the Final Environmental Impact Report consisting of a 2004 Draft Environmental Impact Report, a 2008 Recirculated Draft Environmental Impact Report and a 2009 Final Environmental Impact Report (collectively the "**FEIR**") and adopted a Mitigation Monitoring and Reporting Program for the Alexander Valley Resort Project;

3. By Resolution No. 029-2009, adopted the Alexander Valley Resort Specific Plan (the "**2009 Specific Plan**") and directed staff to file an annexation application for the Alexander Valley Resort Project; and

4. By Ordinance No. 671-2009, amended Chapter 18 of the City of Cloverdale Zoning Ordinance and prezoned the Property to the SP-1 Zoning District for the Alexander Valley Resort Project.

E. On February 10, 2010, the City Council of the City, by Resolution No. 014-2010, approved a revised Mitigation Monitoring and Reporting Program (the "**MMRP**") for the Alexander Valley Resort Project.

F. On April 7, 2010, the Sonoma County Local Agency Formation Commission, by Resolution No. 2579, approved a Sphere of Influence Amendment and a Reorganization of Territory designated as Cloverdale Reorganization No. 2009-001 (Alexander Valley Resort) approving the annexation of the Property to the City of Cloverdale. Such approval resulted in confirmation of the SP-1 zoning.

G. Since then, Landowner has completed the clean closure of the 22-acre wood waste landfill area which contained approximately 600,000 cubic yards of non-hazardous wood chips, bark, sawdust, soil, and rock. Owner's clean closure has accomplished the following: (i) removal of potential future environmental liability associated with groundwater and surface water quality issues; (ii) elimination of future monitoring and maintenance activities associated with the disposal site cap and drainage controls; (iii) removal of the wood waste landfill from regulatory oversight; (iv) reuse of the materials for beneficial purposes; and (v) preparation of the site for future uses, including the Project. The North Coast Regional Water Quality Control Board ("**RWQCB**") issued the final Waste Discharge Requirements ("**WDRs**"), Order No. R1-2005-0032, in June 2005, and Owner received clean closure certification in June 2012.

H. Landowner also completed extensive soil and groundwater remediation activities for the petroleum hydrocarbon-affected soil and groundwater east of the former head rig and for the affected soil south of the former mechanic shop in order to remove the source of petroleum hydrocarbons and to minimize future impacts to groundwater. PES Environmental, Inc. ("**PES**") performed these remediation activities and has requested that the Regional Water Quality Control Board consider "no further action" with regard to the hydrocarbons in soil and groundwater in these areas.

I. In addition, International Paper, Inc., as the successor in interest to Masonite Corporation, a former site operator, has been working with the RWQCB to investigate and remediate groundwater contamination at the site, including contamination of a deep aquifer under a portion of the Site. In August 2013, the RWQCB concurred with International Paper's proposed

final cleanup remedy of Monitored Natural Attenuation ("**MNA**") for shallow and bedrock groundwater in certain areas of the Property. The Remedial Action Work Plan approved by the RWQCB includes: (1) verification groundwater monitoring until the site groundwater achieves the cleanup goals; (2) deed restriction on a portion of the site where residual levels of wood treatment chemicals are present in soil; (3) a restricted area where groundwater use is prohibited; (4) destruction of certain groundwater monitoring wells and an old water supply well; and (5) a soil management plan to identify and address any contamination found during redevelopment. In accordance with Monitoring and Reporting Program No. R1-2013-0057, different MNA processes are occurring in different areas on the Property and reports are to be submitted to the RWQCB semi-annually. The five (5) remaining monitoring wells on the Property are not expected to impact Project development.

J. In 2015, Landowner applied to the City for certain revisions to the City's General Plan, the 2009 Specific Plan, and the Zoning Ordinance; and, as contemplated by the 2009 Specific Plan, Landowner also applied to the City for a development agreement to govern future development of the Property (collectively, the "**Proposal**"). The Proposal requests revision of the Specific Plan to make the golf course component an allowed rather than required use, and to provide for the possibility of an alternate recreation use if approved by the City Council. The Proposal also seeks to re-introduce a 12.3-acre parcel into the planning area that had been part of the original project assessed by the Draft Environmental Impact Report, and provides land use development standards for those 12.3 acres consistent with the existing zoning (M-P, Industrial Park) and the originally-proposed zoning (G-C, General Commercial).

K. In response to the 2015 application, the City undertook review of the FEIR prepared for the 2009 Approvals and determined that an addendum to the FEIR was appropriate for consideration and action on the 2015 application ("**2015 Addendum**").

L. On January 5, 2016, at a duly-noticed public hearing, the City's Planning Commission considered the FEIR and the 2015 Addendum; Landowner's application for certain General Plan, 2009 Specific Plan, and Zoning Ordinance amendments; and this Agreement. Following due consideration, by Resolution Nos. 001-2016, 002-2016, 003-2016, 004-2016, the Planning Commission made recommendations to the City Council regarding each component of Landowner's application.

M. On February 9, 2016, at a duly-noticed public hearing, the City Council of the City took the following actions relating to the Landowner's application:

1. By Resolution No. 013-2016, approved and adopted the 2015 Addendum to the FEIR;

2. By Resolution No. 014-2016, amended the City of Cloverdale General Plan;

3. By Resolution No. 015-2016, amended the 2009 Specific Plan (as amended, the "**Specific Plan**"); and

4. By Ordinance No. 703-2016, amended Chapter 18 of the City of Cloverdale Zoning Ordinance.

5. By Ordinance No. 704-2016, approved this Agreement.

Approvals 2, 3, 4, and 5 above are collectively referred to herein as the "**Project Approvals**."

N. Landowner desires to sell the Property to a developer with the qualifications, expertise, and experience to develop the Property in accordance with the Project Approvals and as contemplated in this Agreement. The development of the Property in accordance with this Agreement and the Project Approvals will provide for orderly growth within the City, consistent with the goals, policies, and other provisions of the City's General Plan and the Specific Plan.

O. City recognizes that the economic success of the Project depends greatly upon the certainty and timing of the City's regulations and fees.

P. As contemplated by the Specific Plan, the City and Landowner desire to enter into a Development Agreement to identify and assign key implementing responsibilities, including but not limited to, vesting of entitlements, the construction of infrastructure, and continuing maintenance responsibilities and agreements.

Q. For the reasons recited herein, Landowner and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property and otherwise achieve the goals and purposes for which the Development Agreement Statute and the Development Agreement Resolution were enacted.

R. In exchange for these benefits to the City, together with the public benefits that will result from the development of the Property pursuant to the Project Approvals, Landowner desires to receive the assurance that it may proceed with development of the Property, including receipt of building permits and all other permits and approvals required to complete construction of the Project in accordance with the terms and conditions of this Agreement.

S. The Parties shall cooperatively collect this Agreement, all documents mentioned in Recital M and elsewhere in this Agreement, and place them in a three ring binder to be maintained at all times by the City Clerk. Two (2) true and correct conformed copies of such binder shall be prepared and given to Landowner and to the Director of Community Development of the City. The Parties shall rely on the documents in such binder to determine the approvals granted by the City and the ordinances, policies and regulations in effect on the Effective Date of this Agreement, as defined below.

NOW, THEREFORE, it is agreed by and between the Parties as follows:

ARTICLE 1
GENERAL PROVISIONS

1.1. The Property. Landowner represents and warrants that it owns the fee interest in that certain real property consisting of approximately 267 acres, located in the City of Cloverdale and Sonoma County, and more particularly described in Exhibit A attached hereto (the "**Property**").

1.2. The Project. The Landowner proposes to develop, and the Parties desire to provide for the development, subject to the provisions of this Agreement and the Specific Plan, of a project (the "**Project**") on the Property that includes:

- A multi-story, 100-150 room resort hotel with a restaurant, other retail facilities complimentary to the destination resort theme, conference and meeting facilities, and a full-service spa (the "**Resort**");

- Approximately 218 acres of recreational and/or open space uses compatible with the Resort, which may include a golf course, an alternate recreation use, or preserved open space. Development of an alternate recreation use is not a vested right under this Agreement and is subject to such review and approval as described in Section II.B of the Specific Plan;

- Up to 40 attached residential units adjacent to the Resort area (the "**Resort Residential Units**");

- Up to 105 single-family detached residential units (the "**Single Family Residential Units**");

- Up to 25 Estate Residential units (the **"Estate Residential Units**");

- An entry commercial parcel at the main entry to the Project which may include a wine tasting facility, related food service uses, and retail uses complimentary to the destination resort theme and associated uses pursuant to the process outlined in the Specific Plan (the "**Entry Commercial Area**"); and

- A mixed-use parcel at the main entry to the Project immediately to the north of the Entry Commercial Area, which may include resort-compatible commercial and/or light industrial uses pursuant to the process outlined in the Specific Plan (the "**Resort Mixed-Use Area**").

1.3. Definitions

Unless the context requires otherwise, any word or phrase defined by the introductory paragraph and Recitals of this Agreement, the following words and phrases hereinafter defined shall apply throughout the Agreement:

"Administrative Amendment" means: (1) any change to an exhibit to this Agreement; and (2) any amendment to this Agreement which does not relate to (a) the term of the Agreement, (b) the permitted uses of the Property, (c) the reservation or dedication of land, (d) the location and maintenance of off-site improvements, (e) the density or intensity of uses of the Property, (f) the maximum height or size of proposed buildings, (g) the fees payable by Landowner as provided in Section 2.10 of this Agreement, (h) monetary contributions by Landowner required by this Agreement; or (i) the phasing or timing of development and construction of the improvements.

"**Certificate of Occupancy**" means a certificate issued after inspections by City authorizing a person or persons in possession of residential property to dwell or otherwise use a specified building or dwelling unit.

"**CEQA**" means the California Environmental Quality Act, Sections 21000, et seq., of the Public Resources Codes of the State of California, and its implementing regulations, Title 14, Chapter 3, Sections 15000, et seq., of the California Code of Regulations (also referred to as the "**CEQA Guidelines**").

"**City Council**" shall mean the duly elected legislative body governing the City of Cloverdale, CA.

"**Development Impact Fees**" means those fees that are set forth in City's "2015 Development Impact Fee Schedule- Effective July 1, 2015," attached hereto as **Exhibit B**, with any adjustments required pursuant to this Agreement.

"**Development Notice**" has the meaning described in Section 2.5 of this Agreement.

"**Director of Community Development**" shall mean the acting Director of the Community Development Department for the City of Cloverdale.

"**Effective Date**" shall mean the 30th day following (a) the date of adoption by the City Council of the ordinance approving this Agreement, (b) publication of the ordinance pursuant to Government Code Section 25214, or (c) date upon which this Agreement is executed by Landowner and by the City, whichever is later.

"**Existing Standards**" means the ordinances, resolutions and regulations adopted by the City Council of the City of Cloverdale in effect and applicable to the Property on the Effective Date, including the adopted ordinances that govern the permitted uses of land, the density and intensity of use, the timing of development, and the design, improvement, construction standards, the General Plan, the zoning ordinance and all other ordinances, codes, rules, and regulations of the City establishing subdivision standards, park regulations, impact or development fees and building standards, but subject to the limitations set forth in Section 2.3.1 and only to the extent that such ordinances, resolutions and regulations are not inconsistent with this Agreement and the Specific Plan. Existing Standards do not include design and/or construction requirements for public improvements or improvements to be acquired by a public entity, except where such requirements are explicitly addressed by the Specific Plan. Existing Standards do not include non-land use regulations, which include taxes. Existing Standards do not include prior CEQA review.

"**General Plan**" means the General Plan of the City of Cloverdale including the text and maps, as amended in connection with the Project.

"**Infrastructure Improvements**" are the water, recycled water, sewer, drainage and street improvements, necessary to serve the Project area as set forth in the Specific Plan and Section 2.8 of this Agreement.

"**Landowner**" means Spight Properties II LLC and any "Transferees" as defined in Section 8.5.1 of this Agreement.

"**Mortgagee**" means the holder of any mortgage or the beneficiary of any deed of trust covering all or part of the Property or any successor or assignee of any such mortgage holder or beneficiary, identified by name and mailing address in a written notice received by City by personal delivery or overnight mail, mailing costs prepaid. Such notice shall state whether such mortgagee desires to receive a notice of default as provided by this Agreement.

"**Planning Commission**" means the Planning Commission of the City of Cloverdale, California.

"Project" means the development of the Property as described in Section 1.2 of this Agreement.

"Project Approvals" has the meaning described in Recital M of this Agreement.

"Regulatory Processing Fees" means any and all fees, costs and charges adopted or otherwise imposed by City as a condition of regulatory approval of the Project for the purpose of defraying City's actual costs incurred or to be incurred in the processing and administration of any form of permit, approval, license, entitlement, or formation of a financing district or mechanism, or any and all costs adopted or otherwise imposed by City for the purpose of defraying City's actual costs of periodically updating its plans, policies, and procedures, including, without limitation, the fees and charges referred to in Government Code Section 66014.

"**Resort**" has the meaning set forth in Section 1.2 of this Agreement.

"**Specific Plan**" means the amended Alexander Valley Resort Specific Plan adopted by the Cloverdale City Council by Resolution No. 015-2016 on February 9, 2016.

"**Term**" has the meaning set forth in Section 1.6 of this Agreement, and includes any extension of the initial Term agreed to by the Parties in accordance with the requirements of this Agreement.

"Transferee" has the meaning described in Section 8.5.1 of this Agreement.

"Vested Components" has the meaning described in Section 1.15 of this Agreement.

1.4. Incorporation of Recitals and Exhibits. The Parties agree that the Recitals and Exhibits to this Agreement are true and correct and are incorporated into the Agreement as if they were set forth in the Agreement. In the event of inconsistency between the Recitals and the provisions of Articles 1 through 9, the provisions of Articles 1 through 9 shall prevail.

1.5. Public Benefits. The completion of the Project will provide long-term benefits for the residents of the City and its visitors in furtherance of the planning objectives contained in the City's General Plan, and will, in conjunction with other approved developments within the City: (a) maintain an economic and social balance between housing supply and employment opportunities; (b) provide to the City additional revenues to pay expenditures necessary to provide an adequate level of municipal services; (c) promote tourism to the area; and (d) establish a balance of land uses on the Property that will enable the City to provide municipal services not only to the Property, but to all residents of the City.

1.6. Term. The term of this Agreement shall commence on the Effective Date and shall extend for a term of fifteen (15) years thereafter ("**Term**") unless otherwise terminated, modified, or extended as provided by this Agreement.

1.7. Project is a Private Undertaking. It is agreed among the Parties that the Project is a private development and that City has no interest therein except as authorized in the exercise of governmental functions. Nothing in this Agreement shall preclude the Landowner from forming any form of investment entity for the purpose of completing any portion of the Project.

1.8. Consistency with General Plan. City hereby finds and declares that this Agreement furthers the public health, safety, and general welfare of the community and that the provisions of this Agreement and all Project Approvals are consistent with the General Plan and the Specific Plan.

1.9. Orderly Growth and Development. Development of the Project pursuant to the terms and conditions of this Agreement and the Project Approvals will provide for orderly growth and development consistent with the General Plan and the City's other developmental policies and programs.

1.10. Need for Services and Facilities. Development of the Project pursuant to this Agreement will create a need for municipal services and facilities, some of which services and facilities will be provided by the City, subject to the performance of Landowner's obligations hereunder.

1.11. Exercise of City Contracting Authority. The City, by electing to enter into this Agreement, acknowledges that the obligations of the City shall survive beyond the term or terms of the present City Council and that such action will serve to bind the City and future city councils to the obligations thereby undertaken. By approving this Agreement, the City Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by both the City and the City Council and have been found to be fair, just and reasonable, and the City has concluded that the pursuit of the Project will serve the best interests of its citizens, and the public health, safety and welfare will be best served by entering into this obligation.

1.12. Development Agreement Regulations. City and Landowner have taken all actions mandated by, and fulfilled all requirements set forth in, the Development Agreement Statute and the Development Agreement Resolution.

1.13. Substantial Costs to the Parties. The Parties, at their sole cost and expense, have incurred and will incur substantial costs in order to process the Project Approvals, to comply with conditions of approval and environmental mitigation measures of the Project Approvals, and to assure development of the Property in accordance with the Project Approvals and the terms of this Agreement.

1.14. Priority of Enactment. In the event of conflict between the Agreement and the Existing Standards, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (1) the General Plan, as existed on the Effective Date; (2) this Agreement, the other Project Approvals, and all other exhibits attached hereto, and (3) the Existing Standards.

1.15. Vested Rights of Landowner. During the Term of this Agreement, and any extension or modification thereto, the Project Approvals and the Existing Standards are declared fully vested in the Landowner and Transferees and are referred to herein as the "**Vested Components**." No part of the Vested Components, including without limitation, the applicable Fees as set forth in Section 2.10, may be modified or changed by the City during the duration of this Agreement without the express consent of the Landowner of the Property to which the modification or change is applicable thereto, except as provided in Sections 2.3, 2.8 and 2.10 herein. The Vested Components shall be effective against, and shall not be amended by, any subsequent ordinance or regulation, whether adopted or imposed by the City Council or through initiative or referendum. Nothing herein shall be construed to limit the City's power of eminent domain.

1.16. Assignment and Transfer of Development Rights. Subject to the provisions of Section 8.5, this Agreement shall not prevent the Landowner from assigning or delegating, in any way, its rights and duties under this Agreement in connection with the sale, assignment, or other transfer of the Property, in whole or in part, with all its right, title and interest therein to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement. Landowner shall provide City with notice of the assignment and delegation within thirty (30) days of such sale or delegation as provided for in the Notice provisions of this Agreement. Landowner shall be deemed relieved of the rights assigned, and released from the duties delegated, under an assignment and assumption agreement, provided that the City Clerk receives a copy of the express written assignment and assumption agreement by such purchaser, assignee or transferee of the benefits and obligations of this Agreement.

1.17. Successors in Interest/Covenants Run With Land. The conditions and covenants set forth in this Agreement and incorporated herein shall run with the land and the benefits and burdens shall bind and inure to the benefit of the Parties. Each and every purchaser, assignee, or transferee of an interest in the Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a Party thereto, but only with respect to the Property, or such portion thereof, sold, assigned, or transferred to it. Any such purchaser, assignee, or transferee shall observe and fully perform all duties and obligations of a Landowner contained in this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned, or transferred to it. Provided, however, notwithstanding anything to the contrary above, if any such sale, assignment or transfer is related to a completed residential unit that is not owned and operated by the Resort operator and that has been approved

by the City for occupancy, the automatic termination provisions of Section 8.3.2 herein shall apply thereto and the rights and obligations of Landowner hereunder shall not run with respect to such portion of the Property sold, assigned, or transferred in connection with such completed residential unit and shall not be binding upon such purchaser, assignee or transferee.

1.18. Amendment.

a) This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the Parties or their successors in interest, after notice and public hearing in conformance with, and pursuant to, the provisions of Government Code Section 65868. Any duly adopted amendment or change shall be in written form, executed with the same formalities as this Agreement, and attached to the original Agreement to maintain continuity.

b) Notwithstanding the provisions of subsection a) above, the Director of Community Development shall have authority, in its sole and exclusive discretion, to approve and agree to Administrative Amendments to this Agreement, which shall not require a noticed public hearing and shall not require approval of the Planning Commission, the City Council, or any further City approval; all other changes to the Agreement shall require approval of the City Council.

1.19. Recordation. Pursuant to Government Code Section 65868.5, the Clerk of the City Council shall record a copy of this Agreement with the Office of the County Recorder no later than ten (10) days after the ordinance approving this Agreement takes effect.

ARTICLE 2
PROJECT DEVELOPMENT

2.1. General Permitted Uses. Consistent with the requirements of Government Code Section 65865.2, the Project's permitted uses, density and intensity of use, the maximum height and size of the proposed buildings, provisions for reservations and dedications of land, payment of fees, payment of fees in lieu of dedications for public purposes, the location, construction, installation and extension of public improvements and utilities, and other terms and conditions of development applicable to the Project shall be those set forth in this Agreement and the Project Approvals, as they pertain to the Project, and any amendments thereto, as permitted herein.

2.2. Subsequent Approvals. The Parties acknowledge that in order to develop the Project on the Property, Landowner will need to obtain various ministerial and discretionary approvals from City in the future (**"Subsequent Approvals"**), which may include, without limitation, subdivision improvement plan review, tentative and final subdivision maps, parcels maps, lot line adjustments, use permits and conditional use permits, precise development plans, development review, site plan review, building permits, grading permits, encroachment permits, specific plan amendments and certificates of occupancy. For any Subsequent Approval proposed by Landowner, Landowner shall file an application with City for the Subsequent Approval at issue in accordance with the Existing Standards, and shall pay such Regulatory Processing Fees as are in effect at the time of the application except as expressly provided herein. Provided that such application(s) are in a proper form and include all required information and payment of any applicable Regulatory Processing Fees in the amount in effect at time of payment, City shall diligently and expeditiously process each such application in accordance with the Existing

Standards, the Project Approvals, and this Agreement, and shall exercise any discretion City has in relation thereto in accordance with the terms and conditions of this Agreement. In reviewing and approving such applications, the City reserves the right to exercise its discretion as set forth in the City's General Plan and Municipal Code in effect on the Effective Date.

2.3. Subsequently Enacted Standards.

2.3.1. Application of Subsequently Enacted Standards. City may apply to the Property and the Project such new or modified rules, regulations and policies adopted after the Effective Date (**"Subsequently Enacted Standards"**), only to the extent that such Subsequently Enacted Standards are generally applicable to other similar residential and non-residential (as applicable) developments in the City of Cloverdale and only to the extent that such Subsequently Enacted Standards:

(a) Are not in conflict with Existing Standards and would not prevent or delay development of the Project or increase the cost of development or building; or

(b) Are consistent with the most recent version of the California Building Standards Codes, Title 24, California Code of Regulations as adopted by the California Building Standards Commission and as adopted in an unmodified form by the City; or

(c) Are subsequent city-wide changes to construction or technical design standards or specifications for public improvements which are reasonably and directly related to durability or longevity of the public improvements; or

(d) Are changes in City laws, regulations, plans, or policies, the terms of which are specifically mandated and required by changes in state or federal law or regional application thereof;

(e) Are properly-adopted updates to city-wide utility infrastructure master plans, in which case each Precise Development Plan submitted to the City for development of the Project shall be consistent with the most recent version of the applicable city-wide utility infrastructure master plan, as reasonably determined by the City Engineer; or

(f) Are otherwise unambiguously and expressly authorized in this Agreement.

Upon discovery of a subsequently enacted federal or state law which may require changes pursuant to subsection (d), City shall provide Landowner with written notice of the state or federal law or regulation, provide a copy of the law or regulation, and a written statement of conflicts with the provisions of this Agreement. Promptly thereafter, City and Landowner shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such federal or state law or regulation. In such conferences, City and Landowner agree to preserve the terms of this Agreement and the rights of Landowner as

derived from this Agreement to the maximum feasible extent while resolving the conflict. City and Landowner agree to cooperate in resolving the conflict. Consistent with the provisions of section 2.8.1, the provisions of this Section 2.3.1 will not prevent, restrict or affect the City from applying the requirements of any properly-adopted City-wide Master Plan upon the Property or the Project.

2.3.2. Future Growth Control Ordinances, Policies, Etc. Except as otherwise expressly provided in Section 2.3.1 herein or other provision of this Agreement which unambiguously and expressly authorize the City to make such pertinent changes, no ordinance, policy, rule, regulation, decision, or any other City action, or any initiative or referendum voted on by the City's electorate, which would otherwise be applicable to the Project and would affect in any way the rate of development and construction of the Project, alter construction standards relating to the Project, limit the number of building permits issued by the City for the Project, including, but not limited to, development no-growth or slow-growth moratoria, and/or limit the Project's ability to connect to the City's sewer system, water system, storm drainage system or recycled water system, or to receive any other City service, shall be applicable to any portion of the Project during the term of this Agreement, whether such action is by ordinance, enactment, resolution, approval, policy, rule, regulation, decision or other action of City or by public initiative or referendum by the City's electorate. To the extent allowed by the laws pertaining to development agreements, however, Landowner will be subject to any growth limitation ordinance, resolution, rule, regulation, or policy which is adopted on a uniformly applied, city-wide basis, and directly concerns an imminent public health or safety issue, in which case City shall treat in a uniform, equitable and proportionate manner all properties, public and private, which are impacted by that public health or safety issue. If Landowner becomes subject to any such growth limitation, the Term of this Agreement shall be tolled for the duration of the effect of such growth limitation, such that the length of time such growth limitation remains in effect shall be added to and become part of the Term of this Agreement.

2.3.3. Subsequent Zoning Ordinance Amendment. If the City's zoning ordinance is amended after the Effective Date to authorize greater densities and intensity of use or greater maximum height and size of buildings, the amended provisions may be applied to the development of the Property at the option of the Landowner.

2.4. Police Power and Taxing Power. The City, through the exercise of either its police power or its taxing power, whether by direct City Council action or initiative or referendum by the City's electorate, shall not establish, enact or impose any additional conditions, dedications, fees, and other exactions, policies, standards, laws or regulations which relate or apply, directly or indirectly, to the Project except as provided in Section 2.3.1 herein or other provision of this Agreement which unambiguously and expressly allows the City to make such changes. Further, the City shall not approve a financing district designed to impose bonded indebtedness on any portion of the Project without Landowner's prior written approval, which approval may be given or withheld in Landowner's sole and absolute discretion. Nothing herein prohibits the Project from being subjected to a (i) city-wide bond issue, (ii) city-wide special or general tax, or (iii) special assessment for the construction or maintenance of a city-wide facility as may be voted on by the electorate or otherwise enacted, provided that such tax, assessment or measure is city-wide in

nature, does not discriminate against the Property, and does not distinguish between developed and undeveloped parcels.

2.5. Phasing of Development. The Parties hereby agree that the Landowner shall have the right to develop the Project at such times and at such rates as the Landowner deems appropriate in its sole and subjective business judgment, subject to the terms, conditions and provisions of the Project Approvals and this Agreement. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties, and that without such a right, the development of the Project would be subject to the very uncertainties sought to be avoided by the Development Agreement Statute, the City's Development Agreement Resolution, and this Agreement. Because the Project Approvals provide that no occupancy permits may be issued for the Project's residential units until the Resort is substantially complete, as further described herein and in the Specific Plan, the City agrees that the timing, sequencing and phasing of the Project's residential units is appropriately left to the discretion of, and shall be the sole responsibility of, the Landowner, and shall not be subject to the provisions of the City's Residential Growth Management Program - Cloverdale Municipal Code Section 18.02.100 (the "**GMP**"). The Landowner shall give the City at least sixty (60) days written notice prior to commencing the first phase of the development hereunder, with such notice being the "**Development Notice**."

2.6. Growth Management Allocations. As stated in Section 2.5 above, the City and the Landowner agree that the construction of the Single-Family Residential Units, the Estate Residential Units and the Resort Residential Units, including model units, will not be subject to the requirements of the City's GMP. Except as otherwise provided herein, each building permit for a Single-Family Residential Unit, an Estate Residential Unit and/or a Resort Residential Unit shall be issued pursuant to the City's policies and procedures governing building permits, as such policies and procedures may, from time-to-time, be amended by the City, provided that any such amendment shall not be applied to any developer of the Single-Family Residential Units, the Estate Residential Units or the Resort Residential Units in a manner that deprives such developer of any material right or other benefit under this Agreement.

2.7. Affordable Housing Requirement. In light of the unique nature of the Project as a destination resort and its potential to promote tourism in the City and the region, and its location outside of the City's downtown core and distant from the City's existing affordable housing projects and neighborhoods, and in consideration of the potential employment opportunities and other benefits provided by this Agreement, the City has determined that Landowner's compliance with the requirements of Chapter 18.13 of the Cloverdale Municipal Code may take any of the following forms, including but not limited to a combination thereof:

- Provision of on-site affordable units;
- Provision of off-site affordable units; and
- Payment of in-lieu fees.

Not later than the City's issuance of the fifth (5th) building permit for a residential unit in the Estate Residential Area and/or the Single-Family Residential Area, Landowner shall submit to the City's Planning Director, for the Planning Director's reasonable approval, an Inclusionary Housing

Compliance Plan setting forth Landowner's proposed compliance with Chapter 18.13, consistent with this Section 2.7. Landowner's compliance with an approved Inclusionary Housing Compliance Plan consistent with this Section 2.7 shall constitute Landowner's and the Project's full and complete satisfaction of all of the requirements of Chapter 18.13 as they relate to the provision of affordable housing. Accordingly, the City shall not condition any Subsequent Approval on further compliance with Chapter 18.13 of the Cloverdale Municipal Code or impose on the Project any other requirement for the provision of affordable housing.

2.8. Provisions for Infrastructure Improvements.

2.8.1. Conformance with Applicable City-Wide Infrastructure Master Plans. Subject to the credit and reimbursement provisions of Section 2.10 below, all development of the Project on the Property shall conform to the applicable city-wide utility infrastructure master plan(s) in effect at the time the Precise Development Plan describing such development is submitted to the City.

2.8.2. Dedication of Public Infrastructure Improvements. Title to, and ownership of, all public infrastructure improvements (and easements in favor of the City therefore) shall be offered for dedication to the City. Each final map shall delineate the areas for the related public infrastructure improvements and shall include an offer to dedicate such areas to the City for public use. The City agrees to accept any such offer of dedication that is made in compliance with applicable law and the provisions of this Agreement at such time as (i) the City approves such final map (if such public infrastructure improvements are then completed); or (ii) such public infrastructure improvements are completed in accordance with the subdivision improvement agreement for such final map, as reasonably determined by the City(if such public infrastructure improvements are not completed when such final map is approved).

From and after the Landowner's completion of each component of the public infrastructure improvements in accordance with the requirements of the related subdivision improvement agreement and this Agreement, and the City's acceptance thereof, such component of the public infrastructure improvements shall become public facilities and thereafter be operated, maintained and repaired by the City except during any warranty period during which the Landowner is required to undertake any required repairs or maintenance.

2.8.3. Zone 1 Water Reservoir/Tank. The Landowner shall, at Landowner's sole cost and expense, but subject to the credit and reimbursement provisions of Sections 2.10 below, design and construct on the Property a water reservoir/tank system ("**Water Tank System**") as described in the Specific Plan and as provided below.

After Landowner gives the Development Notice, Landowner shall promptly cause: (i) its architect and/or civil engineer to design the Water Tank System; and (ii) its engineers to complete the design of the related equipment and systems. The design of, and construction plans for, the Water Tank System shall be in accordance with the City's Water System Master Plan in effect at the time Developer gives the Development Notice, as reasonably determined by the City Engineer.

The Landowner shall, following the City's approval of the construction plans and design documents therefore, cause the Water Tank System to be constructed in connection with, and as part of, the construction of the Domestic Water System. The Parties hereto acknowledge and agree that the subdivision improvement agreement to be entered into with respect to the Landowner's construction of the Domestic Water System (including without limitation the warranty provisions thereof) shall apply to and include the Landowner's construction of the Water Tank System.

The Landowner shall, within 30 days after the first date on which the Landowner has completed, and the City has accepted, the Water Tank System, offer to the City dedication of an easement for the land on which the Water Tank System is located, including access thereto subject to the reasonable approval of the City Engineer. From and after the Landowner's completion, and the City's acceptance, of the Water Tank in accordance with the requirements of any subdivision improvement agreement and this Agreement, the Water Tank shall thereafter be operated, maintained and repaired by the City (subject to any warranty obligations of the Landowner and/or the constructor).

2.8.4. Recycled Water System. The Landowner may, at the Landowner's sole cost and expense, design and construct a recycled water system to serve the Project as described below.

(a) Recycled Water System Required to Serve Golf Course. If Landowner elects to construct a golf course as part of the Project, then Landowner shall construct and install, at Landowner's sole cost and expense, a force main, supply pipeline, and such other infrastructure as necessary to transfer sufficient treated effluent from the City's wastewater treatment plant to the Property to meet the demands of the golf course (the "**Recycled Water System**"). Design of the Recycled Water System, including the locations of connection points and delivery infrastructure, shall first be approved by the City, and permits and all costs related to the Recycled Water System shall be Landowner's sole responsibility (subject to the City's obligation to cooperate as set forth in Section 4.5). If Landowner constructs a golf course and Recycled Water System, the City shall provide, at no cost to Landowner, (a) sufficient treated effluent produced by the City's wastewater treatment plant in compliance with the City's waste discharge requirements, as needed from time-to-time by the Landowner to meet the demands of the golf course; or (b) if the City's wastewater treatment plant does not produce sufficient treated effluent to meet the demands of the golf course, all such effluent produced by the wastewater treatment plant.

(b) Termination of City's Obligation to Provide Recycled Water. If the City has not approved a Precise Development Plan ("PDP") within five (5) years of the Effective Date of this Agreement that provides for the construction of a golf course in the Recreation/Open Space Area (as defined in the Specific Plan) and the associated Recycled Water System on a schedule approved by the City, then the City's obligation to provide treated effluent to serve the Project on the Property, as set forth in Section 2.8.4(a) above, shall be terminated. At any time during the first 5-year period following the Effective Date, or at any time thereafter if the City's

obligation to provide treated effluent to serve the Project terminates according to this Section 2.8.4(b), City shall consider any proposal from Landowner to construct a recycled water system to meet the demands of any alternate proposed use in the Recreation/Open Space Area and, if such alternate use is approved by the City, in its sole and exclusive discretion, City shall provide the lesser of (a) sufficient, and (b) so much as is available, treated effluent to meet the demands of the approved alternate use at no cost to Landowner.

2.8.5. (c) Secondary Project Access. If Landowner constructs a Recycled Water System, the City shall grant Landowner an easement from Asti Road through and across a portion of the City-owned property surrounding the City's wastewater treatment plant (Assessor's Parcel Number 116-260-044) for the purpose of: (i) construction and maintenance of elements of the Recycled Water System; and (ii) access to the eastern portion of the Property by maintenance equipment too large to pass through the Project's below-grade crossing of the Northwestern Pacific rail line.

2.8.6. Traffic Infrastructure. Landowner shall, at Landowner's sole cost and expense, but subject to the credit and reimbursement provisions of Sections 2.10 and 2.11 below, design and construct traffic infrastructure to serve the Project as described below.

(a) Private Roads. Landowner shall design and construct the private roads ("**Private Roads**") shown on the Private and Public Trail/Road Map attached hereto as **Exhibit C**, which Private Roads may be subject to mutually agreeable modifications during the processing and approval of the final map(s). The exact locations of the Private Roads shall be: (i) generally consistent with the approximate locations shown on Exhibit C, subject to mutually agreeable modifications; (ii) determined based on consideration of topography, drainage, existing vegetation and other physical constraints; and (iii) shown on the final plans and specifications as approved by the City. Landowner shall cause the Private Road labeled as "Hotel Entry Road" on Exhibit C to be completed and open for use not later than the issuance of the first Certificate of Occupancy for the Resort.

Title to and ownership of the Private Roads shall remain with the owner(s) of the Resort and owner of the Recreation/Open Space Area and the City shall not have any easement, license or other interest therein (other than the right to enforce the requirement that there be public access to the Resort and the Recreation/Open Space Area during normal and customary business hours). If not one and the same, the owner of the Resort shall share responsibility for the maintenance, repair and replacement of the Private Road with the owner of the Recreation/Open Space Area, provided, however, that such owner shall have the right, to be exercised in such owner's sole discretion, to delegate such maintenance, repair and replacement to any owner or association that agrees in writing by recorded agreement or covenant (with a copy of such fully signed writing being provided by such owner to the City) to assume such maintenance, repair and replacement responsibility.

(b) Public Roads. Landowner shall design and construct the public roads (**"Public Roads"**) as shown on the Private and Public Trail/Road Map

attached hereto as Exhibit C, which Public Roads may be subject to mutually agreeable modifications during the processing and approval of the improvement plans prepared for the final map(s). The exact locations of the Public Roads shall be: (i) generally consistent with the approximate locations shown on Exhibit C, subject to mutually agreeable modifications; (ii) determined based on consideration of topography, drainage, existing vegetation and other physical constraints; and (iii) shown on the final plans and specifications as approved by the City. The Public Roads shall be designed and constructed in accordance with City Standards as provided in any City approved subdivision improvement agreements between Landowner and the City, and the then applicable City Public Works Department standards, including but not limited to applicable city-wide master plans as described in Section 2.8.1 above.

Title to the Public Roads shall be dedicated to the City by final subdivision map(s). Each such final map shall delineate the areas for the related Public Roads for such final map, and shall include an offer to dedicate such areas to the City for public use. The City agrees to accept any such offer of dedication that is made in compliance with applicable law and the provisions of this Agreement at such time as such roads are completed in accordance with the subdivision improvement agreement for each such final map and this Agreement.

The City and Landowner acknowledge that: (i) the Hotel Entry Road shall be subject to one or more easements for the benefit of the Project components; (ii) such easements will allow the use of such public roadway area for access to and from such lands; (iii) Landowner will be required, in order to dedicate title to such public roadway areas to the City as contemplated herein, to cause such easements to remain; and (iv) the owners of such lands may require that the owners and occupants of such land have the right to use such roadway areas (in common with the public) for access to and from such lands (including without limitation, by vehicles transporting supplies and products). Accordingly, Landowner shall cause the roadway to be constructed on such public roadway area to be designed and constructed in a manner that complies with all applicable City standards and is also sufficient to accommodate such use, and the final map by which such public roadway area is dedicated to the City shall include notations and provisions, reasonably acceptable to both the City and Landowner, acknowledging and providing for such use of such roadway.

(c) Off-Site Circulation Improvements (South Cloverdale Boulevard/Highway 101). A number of Mitigation Measures in the FEIR require certain circulation improvements at the South Cloverdale Boulevard/Highway 101 interchange including the installation of traffic signals and certain widening improvements, which shall be implemented as provided in the MMRP as reasonably determined by the City Engineer.

2.8.7. Park and Recreation Facilities. Landowner shall, at Landowner's sole cost and expense but subject to the credit provisions of Section 2.10.4 herein, design and construct the following recreational facilities on the Property:

(a) Private Trail. Landowner shall, as part of the construction of the Project, and at Landowner's sole cost and expense, design and construct a private pedestrian trail from the Resort to the Public Trail described in Section 2.8.7(b) below (the "**Private Trail**"). The exact location of the Private Trail shall be determined based on consideration of topography, drainage, existing vegetation and other physical constraints, and shown in the final plans and specifications therefor as approved by the City. Landowner shall cause the Private Trail to be completed and open for use not later than the opening of the Resort for business, but Landowner shall have the right to keep the Private Trail closed for purposes of public safety during construction activity on the Property and after sunset.

Title to, and ownership of, the Private Trail shall remain with the owner(s) of the underlying land, and the City shall not have any other easement, license or other interest therein (other than the right to enforce the requirement that there be public access to the Public Trail described in Section 2.8.7(b) below, during normal and customary business hours). The owner of the land underlying any portion of the Private Trail shall be responsible for the maintenance, repair and replacement of such portion of the Private Trail provided, however, that such owner shall have the right to delegate such maintenance, repair and replacement to any other owner of land underlying any portion of the Private Trail, or to any owner or similar association created for such purpose.

(b) Public Trail. Landowner shall, at Landowner's sole cost and expense, design, construct and dedicate to the City a public pedestrian/bicycle trail on its Property located along the levee adjacent to the Russian River (the "**Public Trail**"), in the approximate location shown on the Public Trail/Road Map attached hereto as Exhibit C, subject to mutually agreeable modifications. The exact location of the Public Trail shall be: (i) generally consistent with the approximate location shown on Exhibit C attached hereto, subject to mutually agreeable modifications; (ii) determined based on consideration of topography, drainage, existing vegetation and other physical constraints; and (iii) shown in the final plans and specifications as approved by the City.

Landowner shall cause the Public Trail to be directly connected to the Private Trail described above and shall have the right subject to prior City approval, which shall not be unreasonably withheld, to keep the Public Trail closed for purposes of public safety during construction activity on the Property, if and for so long as safety concerns warrant closure. Upon completion and dedication to the City of the Public Trail, the Public Trail shall be open to the public 24 hours per day, 7 days per week or in accordance with the City's policies, rules and regulations.

From and after the date on which the Public Trail is completed, dedicated to the City, and opened for public use, the City shall maintain and repair the Public Trail or cause the Public Trail to be maintained and repaired by a third party selected by the City. The City shall cause any such maintenance and repair to be performed in accordance with the City's normal maintenance and repair policies

and procedures and only during such hours and in such manner as complies with the City's then-applicable noise ordinances.

2.8.8. Statewide Community Infrastructure Program. The Parties acknowledge that portions of the infrastructure for the Project may qualify for the Statewide Community Infrastructure Program, and the City shall, at the Landowner's request and at no out-of-pocket cost to, and with no obligation being undertaken by, the City, cooperate with the Landowner in obtaining such financing.

2.9 Dedications. Landowner shall offer, and the City shall accept, such dedications for all required public lands upon completion of the improvements to be installed therein to the City's reasonable satisfaction, or when otherwise provided herein, as follows:

2.9.1. Public Trail. Subject to the provisions of Section 4.5 below, upon completion, Landowner shall dedicate to the City, at no cost to the City but subject to the credit and reimbursement provisions of Section 2.10 herein, the Public Trail described in Section 2.8.7(b) above.

2.9.2. Recreation/Open Space Area Improvements. Any dedications of land designated as "Recreation/Open Space" under the Specific Plan, and any dedication of improvements on such land, shall be credited by the City, to the maximum extent allowed under the applicable ordinance, against Landowner's obligations under Chapter 17A.16, 17A.20 and Chapter 17.20, and to the extent that such Landowner dedications exceed Landowner's minimum obligations under Chapter 17A.16, 17A.20 and 17.20, then Landowner shall be entitled to credits against any and all other applicable fees based on the value of the excess dedications as reasonably determined by the City and Landowner.

2.9.3. Rights-of Way. Landowner shall dedicate its interest in any and all public road rights-of-way, at no cost to the City or any other public agency, and the City shall accept such dedication upon the recordation of the final map for the corresponding subdivision but only after satisfaction of any subdivision improvement agreement or deferred improvement requirements.

2.9.4. Public Utility Easements and Improvements. Landowner shall dedicate to City (i) all improvements shown on plans approved by the City to be constructed by Landowner for public utility purposes, including, but not limited to, water lines, water tanks, sewer lines, public storm drains, , and other public utilities for public utility purposes, and (ii) sufficient easements for operation and maintenance of such public utility improvements, as such improvements and easements may be required by the City or the applicable public utility service provider. All such dedications shall be in a form approved by City's Engineer or the applicable public utility service provider, and shall be made at no cost to the City or any other public agency. All utility easements shall be effective upon recordation of said form.

2.9.5. All Dedications. All easements, rights-of-way, other property interests, and improvements and facilities to be dedicated to the City pursuant to the Project

Approvals and this Agreement shall be delivered by Landowner free of any liens, encumbrances, special taxes, or assessments, not approved by City, and shall be excluded from any covenants, conditions and restrictions on the Property. City shall accept each and all such dedications within ninety (90) days of Landowner's offer of dedication or completion by Landowner to the City's reasonable satisfaction, whichever occurs last.

2.10 Fees, Credits and Reimbursements

2.10.1. Fees. Except as otherwise expressly provided herein, Landowner shall pay the following fees:

- School district fees;
- Regulatory Processing Fees; and
- Development Impact Fees (as defined herein), subject to the limitations of this Section 2.10, and subject to such exemptions as are expressly set forth in this Agreement.

Where Landowner is required to pay Development Impact Fees under this Section 2.10, Landowner shall pay such fees in the following amounts:

- For the first five (5) years following the Effective Date of this Agreement, Landowner shall pay such fees in the amounts in effect on the Effective Date of this Agreement;
- For the second five (5) years following the Effective Date of this Agreement, Landowner shall pay such fees in the amounts in effect on the fifth (5th) anniversary of the Effective Date of this Agreement;
- For the third five (5) years following the Effective Date of this Agreement, Landowner shall pay such fees in the amounts in effect on the tenth (10th) anniversary of the Effective Date of this Agreement.

2.10.2. City and Landowner further acknowledge and agree that Landowner's payment of school fees, Regulatory Processing Fees, and Development Impact Fees, subject to and consistent with the provisions of this Section 2.10, shall constitute Landowner's full and complete compliance with the fee payment requirements of Title 17A of the Cloverdale Municipal Code, and no further fee obligations shall be imposed on Landowner's development of the Project on the Property during the Term of this Agreement.

2.10.3. Limited Waiver of Storm Drain Fees. Based on the preliminary storm drain infrastructure designs which were the basis of the City's 2009 Project approvals, Landowner has demonstrated that the Project may be developed and operated in a manner that would not generate any increase in pre-project storm

water runoff to neighboring properties and would not impact the City's existing and planned storm drain system. To the extent the Project may be developed in a manner that would not impact the City's existing and planned storm drain system, development of the Project on the Property should not be subject to payment of the City of Cloverdale Storm Drain Fee (Municipal Code Chapter 17A.28). Therefore, with each PDP submitted for development of the Property, City shall determine, in its reasonable discretion, whether operation of the development described in such PDP will result in the generation of storm water runoff that will flow to the City's storm water system, as it exists at the time of such PDP submittal. To the extent that the operation of such development will not result in storm water runoff flowing to the City's existing storm water system, such development will not be subject to payment of the City's Storm Drain Fee. The scope of any waiver of the Storm Drain Fee granted under this Section 2.10.3 shall be determined on "per acre" or "per unit" basis, as applicable, consistent with the categories of development described in the City's Development Impact Fees Fee Schedule in effect at the time and consistent with the limitations on fees described in this Section 2.10.

2.10.4. Fee Credits for Park Fees. In addition to Landowner's eligibility for fee credits and reimbursements under other provisions of this Agreement, Landowner shall be eligible for credit against the following City fees, as set forth below:

- Cloverdale Park Land Acquisition Fee (Non-Quimby Act) (Municipal Code Chapter 17A.16), except as provided in Section 2.9 above;

- Parks and Recreation Facilities Construction Fee (Municipal Code Chapter 17A.20), except as provided in Section 2.9 above;

- Quimby Act Parkland Acquisition Fee (Municipal Code Chapter 17.20), except as provide in Section 2.9 above; and

Landowner's credit(s) against the above-listed fees (collectively, the "Park Fees") shall be equal to the mutually-agreed upon value of the following dedications and improvements provided by Landowner:

- The value of the dedications and improvements provided by Landowner for the Private Trail, as provided in Section 2.8.7(a) above (the "**Private Trail Credits**");

- The value of the improvements provided by Landowner for the Public Trail, as provided in Section 2.8.7(b) above (the "**Public Trail Credits**"); and

- The value of any additional improvements provided by Landowner on lands designated as Recreation/Open Space in the Specific Plan (in addition to the Private Trail) plus the value of all dedications provided by Landowner of lands designated as Recreation/Open

Space in the Specific Plan, as provided in Section 2.9.2 above (together, the "**R/OS Area Credits**").

Landowner shall become eligible for the Private Trail Credits immediately upon Landowner's substantial completion, as reasonably determined by the City's Planning Director, of the Private Trail as provided in Section 2.8.7(a).

Landowner shall become eligible for the Public Trail Credits immediately upon Landowner's submittal to City of an offer to dedicate the Public Trail, as provided in Section 2.8.7(b).

Landowner shall become eligible for R/OS Area Credits immediately upon (a) the City's approval of a Precise Development Plan ("PDP") describing Landowner's use of the balance of the Recreation/Open Space Area (beyond the completion of the Private Trail), including the proposed improvements and land dedications thereon, if any, in sufficient detail to allow the Parties to calculate the value of Landowner's R/OS Area Credits, and (b) Landowner's provision to the City of security to ensure the completion of such improvements (such security may take the form of bonds as described in Government Code Sections 66499 through 66499.2, or any other form of security reasonably acceptable to the City). The City shall take action on Landowner's proposed PDP for the Recreation/Open Space Area not later than ninety (90) days following submittal by Landowner. Such City action shall either approve the PDP, or notify Landowner of modifications sought by the City that will result in City's approval of the PDP. If the City has not approved a PDP for the Recreation/Open Space Area at the time Landowner has applied to the City for the first building permit for a residential unit in the Estate Residential Area and/or the Single-Family Residential Area, then Landowner shall pay the Park Fees applicable for each such residential unit prior to the issuance of, and the City shall issue, building permits for such residential units, consistent with the terms of this Agreement.

Landowner's eligibility for fee credits for the Private Trail and for any additional improvements provided by Landowner on lands designated as Recreation/Open Space in the Specific Plan under this Section 2.10.4 shall be subject to the Private Trail and such additional improvements in the Recreation/Open Space lands being open and accessible to the public during normal and customary business hours in compliance with Objective R/OS1 and Policy R/OS1.1 of the Specific Plan.

2.10.5. Credits and Reimbursements. For each "public facility" (as that term is used in Title 17A of the Cloverdale Municipal Code) designed and/or constructed by Landowner pursuant to this Agreement, Landowner shall, pursuant to and so long as consistent with the provisions of Chapter 17.25 of the Cloverdale Municipal Code, be entitled to a credit against the applicable Development Impact Fee in an amount equal to the estimated cost of the public facility used by the City to adopt the applicable Development Impact Fee, less the Project's fair share of the costs of the public facility, as reasonably determined by the City based on the City-wide benefits provided by such public facility. If the total costs incurred by Landowner

to design and construct (as applicable) the public facility exceed the total amount of applicable Development Impact Fees due from Landowner for development of the Project on the Property, then Landowner shall be entitled to reimbursement of the difference (after application of all fee credits) as provided in Title 17A of the Cloverdale Municipal Code and Section 2.11 of this Agreement.

2.10.6. Changes in Fees and Construction Costs. If any subsequent change in local ordinance, state law or by court decision causes any city-wide fee (including, but not limited to school fees) applicable to the Project to be reduced or eliminated, or a subsequent change in local city-wide ordinance, state law or by court decision change building and/or construction requirements so that those requirements make building and/or construction less expensive to Landowner as determined by Landowner, then the subsequent change shall apply to this Agreement. Provided, however, that no such change shall apply to this Agreement with respect to facilities already financed, under construction, or constructed, unless such change contains a specific provision calling for the retroactive implementation of the change.

2.11 TOT Revenue Sharing. Landowner shall be entitled to share in transient occupancy tax ("**TOT**") revenues generated by the Project on the Property, at the Landowner's election, as follows. If Landowner elects to share in TOT revenues as provided herein, Landowner and the City shall enter into a separate TOT sharing agreement consistent with this Section 2.11.

During the first calendar quarter during which TOT revenues are payable to the City, Landowner (or the Resort operator acting on behalf of Landowner under the TOT Agreement) shall collect and remit to the City or retain for itself TOT revenues generated from the Project as follows:

- Fifty percent (50%) of such TOT revenues shall be paid to the City; and
- Fifty percent (50%) of such TOT revenues shall be retained by the Landowner.

During the second, third, fourth and fifth calendar quarters during which TOT revenues are payable to the City, Landowner or the Resort operator shall collect and remit to the City or retain for itself TOT revenues generated from the Project as follows and in the following order of priorities:

- The first thirty-one thousand two hundred fifty dollars ($31,250.00) of such quarterly TOT revenues shall be paid to the City;
- To the extent that Landowner is entitled to reimbursement of expenditures made to fund the design and construction of public facilities under Section 2.10.5 above, Landowner shall retain all additional TOT revenues generated from the Project necessary to fully reimburse Landowner for such expenditures; and
- To the extent that such quarterly TOT revenues exceed the amounts necessary to meet the above two priorities, then Landowner shall remit fifty percent (50%) of such excess quarterly TOT revenues to the City, and shall retain the balance of such excess quarterly TOT revenues.

During the sixth, seventh, eighth and ninth calendar quarters during which TOT revenues are payable to the City, Landowner or the Resort operator shall collect and remit to the City or retain for itself TOT revenues generated from the Project as follows:

- The first sixty-two thousand five hundred dollars ($62,500.00) of such quarterly TOT revenues shall be paid to the City;

- To the extent that Landowner is entitled to reimbursement of expenditures made to fund the design and construction of public facilities under Section 2.10.5 above, Landowner shall retain all additional TOT revenues generated from the Project necessary to fully reimburse Landowner for such expenditures; and

- To the extent that such quarterly TOT revenues exceed the amounts necessary to meet the above two priorities, then Landowner shall remit fifty percent (50%) of such excess quarterly TOT revenues to the City, and shall retain the balance of such excess quarterly TOT revenues.

During the tenth, eleventh, twelfth, and thirteenth calendar quarters during which TOT revenues are payable to the City, Landowner or the Resort operator shall collect and remit to the City or retain for itself TOT revenues generated from the Project as follows:

- The first ninety-three thousand seven hundred fifty dollars ($93,750.00) of such quarterly TOT revenues shall be paid to the City;

- To the extent that Landowner is entitled to reimbursement of expenditures made to fund the design and construction of public facilities under Section 2.10.5 above, Landowner shall retain all additional TOT revenues generated from the Project necessary to fully reimburse Landowner for such expenditures; and

- To the extent that such quarterly TOT revenues exceed the amounts necessary to meet the above two priorities, then Landowner shall remit fifty percent (50%) of such excess quarterly TOT revenues to the City, and shall retain the balance of such excess quarterly TOT revenues.

During the fourteenth, fifteenth, sixteenth and seventeenth calendar quarters during which TOT revenues are payable to the City, Landowner or the Resort operator shall collect and remit to the City or retain for itself TOT revenues generated from the Project as follows:

- The first one hundred twenty-five thousand dollars ($125,000.00) of such quarterly TOT revenues shall be paid to the City;

- To the extent that Landowner is entitled to reimbursement of expenditures made to fund the design and construction of public facilities under Section 2.10.5 above, Landowner shall retain all additional TOT revenues generated from the Project necessary to fully reimburse Landowner for such expenditures; and

- To the extent that such quarterly TOT revenues exceed the amounts necessary to meet the above two priorities, then Landowner shall remit fifty percent (50%) of such excess quarterly TOT revenues to the City, and shall retain the balance of such excess quarterly TOT revenues.

During the eighteenth, nineteenth, twentieth and twenty-first calendar quarters during which TOT revenues are payable to the City, Landowner or the Resort operator shall collect and remit to the City or retain for itself TOT revenues generated from the Project as follows:

- The first one hundred fifty-six thousand two hundred fifty dollars ($156,250.00) of such quarterly TOT revenues shall be paid to the City;

- To the extent that Landowner is entitled to reimbursement of expenditures made to fund the design and construction of public facilities under Section 2.10.5 above, Landowner shall retain all additional TOT revenues generated from the Project necessary to fully reimburse Landowner for such expenditures; and

- To the extent that such quarterly TOT revenues exceed the amounts necessary to meet the above two priorities, then Landowner shall remit fifty percent (50%) of such excess quarterly TOT revenues to the City, and shall retain the balance of such excess quarterly TOT revenues.

During each subsequent calendar quarter during which TOT revenues are payable to the City and Landowner is entitled to reimbursement of expenditures made to fund the design and construction of public facilities under Section 2.10.5 above, Landowner or the Resort operator shall collect and remit to the City or retain for itself TOT revenues generated from the Project as follows:

- The first one hundred fifty-six thousand two hundred fifty dollars ($156,250.00) of such quarterly TOT revenues shall be paid to the City; and

- The remaining TOT revenues shall be retained by Landowner to the extent necessary to fully reimburse Landowner for such expenditures.

Landowner's right to reimbursement of oversizing costs from TOT revenues under this Section 2.11 shall survive the expiration of the DA, to the extent that Landowner remains entitled to reimbursements under Section 2.10.5 above. City and Landowner shall cooperate to determine Landowner's eligibility for reimbursements under Section 2.10.5 above on a sufficiently timely basis to enable Landowner to realize its share of TOT revenues on a quarterly basis as provided in this Section 2.11, and Landowner shall provide City with documentation sufficient, to the reasonable satisfaction of City, to support Landowner's retention of excess quarterly TOT revenues as described above. Any report to the City required to be made by the Landowner or the Resort operator pursuant to Chapter 3.44 of the Cloverdale Municipal Code or the TOT agreement provided for herein shall include detailed information to support the amount of TOT so retained during that reporting period.

2.12 Public Services Requirements.

2.12.1. Fire Protection Requirements. Landowner shall contribute its fair share to a dedicated fund to purchase fire-fighting apparatus necessary to protect buildings more than 27 feet in height, if and when, such a fund is created by the City or the Cloverdale Fire Protection District.

2.12.2. Police Protection Requirements. Landowner shall pay its fair share of the capital costs of adding two sworn officers and one half-time community service officer to the Cloverdale Police Department prior to the recordation of the first final subdivision map. To facilitate Landowner's payment under this Section 2.12.2, the City shall determine, based on a reasonably detailed analysis supported by substantial evidence, (i) the capital costs of adding two sworn officers and one half-time community service officer to the Cloverdale Police Department, and (ii) Landowner's fair share of such capital costs. The City shall complete such study not later than one (1) year from the date the Development Notice is given. Upon completion of such study, the City shall notify Landowner of Landowner's payment obligation under this Section 2.12.2, and Landowner shall have ninety (90) days to pay its fair share of the above-described capital costs, based on the City's analysis; provided, however, that during such 90-day period, Landowner may request that City reduce Landowner's payment obligation under this Section 2.12.2 if Landowner reasonably determines, based on substantial evidence, that Landowner's fair share of such capital costs is less than the amount of the payment obligation set forth in the City's notice to Landowner. If, at the end of such 90-day period, the Parties are unable to agree on the amount of Landowner's payment obligation under this Section 2.12.2, then the Parties shall submit their disagreement to a mutually-agreeable third-party arbitrator for a binding determination of Landowner's payment obligation.

2.13 Notice of Completion. Landowner shall execute, acknowledge and record in the manner provided by law, a notice of completion of the Infrastructure Improvements and/or other public improvements required as a condition to this Agreement and/or the Project Approvals within ten (10) days after the Department of Public Works for the City provides written notice to the Landowner that the Infrastructure Improvements and/or other public improvements required as a condition to this Agreement and/or the Project Approvals have passed the final inspection. Upon completion of the Infrastructure Improvements or other public improvements, the Landowner's engineer shall supply the City with one set of "as built" drawings. These drawings shall be certified on each page by a Registered Civil Engineer as being "as built" drawings, pursuant to Business and Professions Code Section 6735.6 as may be amended from time-to- time.

2.14 Certificate of Occupancy. After satisfactory completion of each Single-Family Residential Unit, Estate Residential Unit and Resort Residential Unit in the Project, as reasonably determined by the City's Building Official, the City shall provide Landowner with a Certificate of Occupancy for that Unit. The Certificate of Occupancy is conclusive determination that the obligations of the Landowner under this Agreement have been met as to that Unit. The certification

shall be in such form as will enable it to be recorded in the official records of the Sonoma County Recorder by the Landowner.

ARTICLE 3
GENERAL OBLIGATIONS OF LANDOWNER

In consideration of the City entering into this Agreement, Landowner agrees and acknowledges as follows:

3.1 Compliance with Agreement and Project Approvals. Landowner agrees that it will comply with this Agreement and all of the Project Approvals.

3.2 Infrastructure Improvements. Landowner acknowledges and agrees that an express condition to the City's issuance of any permits to or for the benefit of the Project shall be the financing and construction by Landowner of the Infrastructure Improvements set forth in the Specific Plan and Section 2.8 of this Agreement.

3.3 Public Services and Facilities Contributions. Landowner agrees that it will contribute to the costs of certain public services and facilities in the manner described and as required herein to mitigate impacts on the community of the development of the Project, and to provide additional benefits to the City. The City agrees to provide such public services and facilities in the manner described and as required herein to assure that the Landowner may proceed with and complete the development of the Project as contemplated by, and in accordance with, the terms of this Agreement, except as may otherwise be precluded by operation of law or applicable regulations.

ARTICLE 4
GENERAL OBLIGATIONS OF CITY

4.1. City Processing and Review. The City is bound to permit the uses on the Property that are permitted by this Agreement and the Vested Components. Subject to the applicable regulations and the Project Approvals, City agrees it will accept for processing and expeditious review and action, applications for the Subsequent Approvals or other entitlements necessary to accomplish the goals and purposes set forth in the Project Approvals, without restriction as to number as set forth in this Article. City agrees that, at Landowner's request and at Landowner's sole cost and expense, City shall hire a dedicated planner or administrator for the sole purpose of reviewing and processing applications for Subsequent Approvals and otherwise facilitate the expeditious planning and permitting of the Project. City and Landowner shall work together in good faith to mutually agree upon said planner or administrator, and neither Party shall unreasonably delay or withhold its consent to the planner's or administrator's hiring. With respect to such Subsequent Approvals, City shall not seek to impose or require any conditions or exactions that are not expressly set forth in the Project Approvals, the Existing Standards, and this Agreement (or otherwise provided for herein), except to the extent necessary to mitigate environmental impacts that have not been identified and addressed in the FEIR and 2015 Addendum or as may be required to comply with State or Federal laws or as otherwise allowed pursuant to Section 2.3. Notwithstanding any other provisions contained herein to the contrary, failure to meet any of the time lines set forth in this Article shall not be deemed to be a breach of this Agreement by City

and shall not relieve Landowner of any obligations under this Agreement, provided that City is operating in good faith hereunder.

4.2. Tentative Subdivision Maps. City shall process in a timely fashion and schedule for approval by the City, all tentative map applications filed by Landowner relating to the Property.

4.3. Final Maps/Improvement Plans. City shall process in a timely fashion and approve any and all improvement plans for any portion of the Property. City shall schedule final maps for City Council approval after satisfactory submission of all materials necessary to City processing as reasonably determined by the City Engineer.

4.4. Building Permits/Other Entitlements. City shall process in a timely fashion and approve all building permit applications in compliance with applicable laws and this Agreement. City shall inform Landowner, upon request of Landowner, of the necessary submission requirements for each application for a building permit or other entitlement for use, in advance and review said application and schedule the application for review by the appropriate authority not later than 30 days following submission of all materials necessary to issuance of the requested building permit or other entitlement.

4.5. Cooperation Between City and Landowner. The City agrees to cooperate with Landowner in securing all approvals, authorizations, permits, and/or agency action which may be required by the City and/or any other impacted agencies, including but not limited to Sonoma County, the State Water Resources Control Board and its related agencies, the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the U.S. Fish & Wildlife Service, the California Department of Fish & Wildlife, the North Coast Railroad Authority, and the Sonoma-Marin Area Rail Transit agency for development of the Project consistent with this Agreement and the Specific Plan. The City further agrees that it shall, in cooperation with the Landowner, and at Landowner's sole expense, complete all necessary studies and reports, make all necessary determinations, and establish all necessary mechanisms to implement the credit and reimbursement provisions of Section 2.10, above consistent with the requirements of Chapter 17A of the Cloverdale Municipal Code and subject to Landowner's compliance with the terms and conditions of this Agreement. Consistent with the foregoing, the Parties hereby agree that, to the extent that any of Landowner's obligations under this Agreement require any approvals, authorizations, permits and/or other action by any public agency other than the City (collectively, "**Other Agency Approvals**"), including but not limited to Landowner's obligations under Section 2.8.7(b) and Landowner's obligations relating to development of the Recreation/Open Space Area, such Landowner obligations shall be subject to Landowner's obtaining the necessary Other Agency Approvals. In all such cases, Landowner shall make diligent and good faith efforts to obtain all such Other Agency Approvals in a timely manner, and City shall cooperate with Landowner in securing all such Other Agency Approvals. If Landowner is unable to obtain the necessary Other Agency Approvals in a timely manner, despite having made a diligent and good faith effort, then City shall not withhold any approvals or permits (including but not limited to Certificates of Occupancy for residential units) required for construction and completion of the Project based on Landowner's inability to satisfy such Landowner obligations in accordance with this Agreement and the Specific Plan.

4.6. Annual Review. The City shall review the extent of good faith compliance by Landowner, or its successor(s)-in-interest, with the terms of this Agreement at least every twelve (12) months from and after the Effective Date, at which time the Landowner, or successor(s)-in-interest thereto, shall be required to demonstrate good faith compliance with the terms of this Agreement. The City Council, after a public hearing, shall determine on the basis of substantial evidence whether or not the Landowner has, for the period under review, complied in good faith with the terms and conditions of this Agreement. The failure of any review or annual review of the Agreement to occur shall not terminate, void, make voidable, or otherwise adversely affect this Agreement.

The City shall provide, via electronic mail, to the Landowner a copy of all staff reports and related exhibits concerning Landowner's compliance with this Agreement at least ten (10) days prior to such periodic review. Landowner shall be permitted an opportunity to be heard orally and in writing regarding its performance under this Agreement before the City Council and, if the matter is referred to the Planning Commission, before said Planning Commission.

If the City determines after the hearing that Landowner has not complied in good faith with the terms and conditions of this Agreement, the City shall provide written notice thereof to Landowner. Said notice shall specify the nature of the alleged failure and, where appropriate, the manner and period of time in which the failure might be satisfactorily cured. If the nature of the alleged failure is such that it cannot reasonably be cured within three (3) months, the commencement of the cure within such time period and diligent prosecution to completion of the cure shall be deemed a cure.

During any period of curing, the Landowner shall not be considered in default for the purposes of termination or institution of legal proceedings.

ARTICLE 5
MORTGAGE PROTECTION

5.1. Encumbrances on the Property. The Parties hereto agree that this Agreement shall not prevent or limit the Landowner, in any manner, at the Landowner's sole and absolute discretion, from encumbering the Property or any portion thereof or any improvements thereon with any mortgage or deed of trust securing financing with respect to the construction, development, use or operation of the Project. The City acknowledges that Mortgagee may request certain modifications to this Agreement, and the City agrees, upon request, from time to time, to meet with Landowner and/or any representatives of such Mortgagee to negotiate in good faith any such request for modification. The City further agrees that it will not unreasonably withhold its consent to any such requested modification to this Agreement provided the proposed modification is consistent with the overall intent of the Specific Plan and the Project Approvals and with any agreements between the City and the Landowner. Any Mortgagee and its successor and assigns shall be entitled to the rights and privileges set forth in this section.

5.2. Mortgage Protection. This Agreement shall be superior and senior to the lien of any mortgage or deed of trust. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust made in good

faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by a Mortgagee (whether pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination or otherwise) shall be subject to all of the terms and conditions of this Agreement. However, notwithstanding these provisions, no Mortgagee shall have any obligation or duty under this Agreement to perform the obligations of the Landowner or other affirmative covenants of Landowner hereunder, or to guarantee such performance, except that, to the extent that any covenant to be performed by the Landowner is a condition to the performance of a covenant by the City, the performance thereof shall continue to be a condition precedent to the City's performance hereunder.

5.3. Mortgagee Not Obligated. Notwithstanding Section 5.2 above, no Mortgagee shall have any obligation or duty under this Agreement, before obtaining title to the Property by foreclosure or deed in lieu of foreclosure, to construct or complete the construction of any improvements, public or private, described or required herein, or to guarantee such construction or completion, or to pay, perform or provide any fee, cost, charge, dedication, or other exaction or imposition with respect to the Project; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Project Approvals or by this Agreement.

5.4. Mortgagee Notice and Right to Cure Default. If the City receives written notice from a Mortgagee requesting a copy of any notice of any claimed event of default, or any suspension, cancellation or termination of this Agreement, given to the Landowner hereunder and specifying the Mortgagee's address, then City shall deliver to such Mortgagee, concurrently with service of any such notice to the Landowner, a copy of such notice. Each Mortgagee shall have the right, during the same period available to Landowner, to cure, correct or remedy, or to commence to cure, correct or remedy, the claimed event of default set forth in the City's notice. Upon the request of the Landowner or a Mortgagee, the City, through its City Manager, may extend the cure period for a given claimed event of default for not more than an additional 60 days.

ARTICLE 6
ESTOPPEL CERTIFICATE

Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting Party is not known to be in default of the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. If either Party fails to execute and deliver such statement to the requesting Party within such time, the requesting Party shall submit a second request in which the other Party to this Agreement shall have ten (10) days to execute and deliver to the requesting Party a statement certifying the above listed information.

The City acknowledges that a certificate hereunder may be relied upon by assignees and other persons having an interest in the Property, including Mortgagees. The failure to deliver such

a certificate within the time limits set forth in this Article shall constitute a conclusive presumption against the Party which fails to deliver such certificate that this Agreement is in full force and effect without modifications and a binding obligation of the Parties and that there are no uncured defaults in the performance of the requesting Party, except as may have been represented by the requesting Party in this written request for the certificate.

Landowner shall be entitled to one estoppel certificate per year without any fee being assessed by the City. For any additional estoppel certificates requested in a single year the City may charge Landowner a reasonable fee directly related to the actual cost to prepare the certificate.

ARTICLE 7
INSURANCE

At all times that Landowner is constructing any improvements that will become public improvements, Landowner shall take out and maintain, or shall have maintained, insurance policies with coverage at least as broad as follows:

a) **General Liability.** Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than Two Million Dollars ($2,000,000) per incident or occurrence and a deductible of not more than Twenty Thousand Dollars ($20,000.00) per claim. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Landowner under this Agreement or the general aggregate limit shall be twice the required occurrence limit. Such policy shall name the City as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

b) **Workers' Compensation Insurance.** Workers' Compensation insurance as required by the California Labor Code. In signing this Agreement, Landowner certifies under section 1861 of the Labor Code that the Landowner is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self- insurance in accordance with the provisions of that code, and that the Landowner will comply with such provisions before commencing the performance of the work of this Agreement.

c) **Evidence of Insurance.** Prior to commencement of construction of any improvements which will become public improvements, the Landowner shall furnish the City satisfactory evidence of the insurance coverage (including for additional insured's required hereunder) and evidence that the insurer is required to give the City at least fifteen (15) days prior written notice of the cancellation or reduction in coverage of a policy [ten (10) days in the event of nonpayment of any premium].

ARTICLE 8
EXTENSIONS, CANCELLATION, TERMINATION, DEFAULT, ENFORCEMENT AND REMEDIES

8.1. Automatic Extensions

8.1.1. Automatic Extension of Term Upon Legal Challenge. If any litigation affecting the Property or Project is filed challenging this Agreement, any Project Approval, or any Subsequent Approval granted pursuant to this Agreement (including but not limited to any environmental determinations relating to any of the foregoing), or otherwise raising issues of the validity and binding nature of this Agreement, the Term of this Agreement, or any extension of the Term then in effect, shall be extended for the period of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or final entry of judgment, and the Landowner and City shall execute an amendment to this Agreement setting forth the period of any such extension and may record a notice to such effect.

Additionally, the Term, as may be modified or extended, shall be extended by the amount of time development of the Project is delayed by the required compliance with federal or state laws or regulations in accordance with Government Code Section 65869.5.

The filing of any third party lawsuit(s) against City or Landowner relating to this Agreement, the Project Approvals, or any Subsequent Approvals shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent Approvals, unless enjoined by a court of competent jurisdiction. City shall not stipulate to the issuance of any such order.

8.1.2. Automatic Extension-Force Majeure. Neither Party shall be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the City, enactment of conflicting state or federal laws or regulations, or new or supplementary environmental regulation enacted by the state or federal government or litigation. An extension of time for such cause shall be granted in writing by City for the period of the enforced delay or longer, as may be mutually agreed upon.

8.1.3. Term of Subdivision Maps, Vested Components and Permits.

(a) The term of any parcel map, tentative subdivision map, vesting parcel map or vesting tentative subdivision map, any subdivision improvement agreement related to the development of the Property or any portion thereof, and all Vested Components shall automatically be extended, consistent with Government Code Section 66452.6(a)(1), for the longer of:

(i) The Term and any extension of the Term established under Section 8.1.1; or

(ii) The term of the particular map otherwise allowed under the Subdivision Map Act (Government Code Section 66410 et seq.) and the City's subdivision ordinance.

(b) The term of any use permits or other entitlements for development for all or any part of the Property shall be extended, consistent with Government Code Section 65863.9, for the longer of:

(i) The Term and any extension of the Term established under Section 8.1.1;

(ii) The term of that permit or entitlement; or

(iii) The term of a subdivision map or parcel map relating to that portion of the Property that is the subject of the permit or other entitlement.

8.2. Cancellation. This Agreement may be canceled in whole or in part, by mutual consent of the Parties to the Agreement or their successors in interest in conformance with Government Code section 65868.

8.3. Termination

8.3.1. Termination Date. This Agreement shall be deemed terminated ("**Termination Date**") and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the Term or any extended Term; or

(b) Entry, after all appeals have been exhausted, of a final court judgment or issuance of a final court order directed to the City to set aside, withdraw, or abrogate the City's approval of this Agreement or any material part thereof; or

(c) The effective date of a Party's election to terminate the Agreement as provided in this Agreement; or

(d) When the Property has been fully developed and all of the Landowner's obligations in connection therewith are satisfied as determined by the City.

8.3.2. Recordation Upon Termination. Upon termination of this Agreement pursuant to Section 8.3.1, the City shall record a notice of such termination in a form satisfactory to the City Attorney. This Agreement shall automatically terminate and be of no further force or effect as to any lot or parcel containing a structure for which the City has issued a Certificate of Occupancy, provided that all public infrastructure and facilities necessary to serve such structure have been completed and offered for dedication to the City, as reasonably determined by the City.

8.3.3. Effect Upon Termination on Landowner Obligations. Termination of this Agreement as to the Landowner of the Property or any portion thereof shall not affect any of the Landowner's obligations to comply with the General Plan and the terms and conditions of any applicable zoning, or subdivision map or other land use entitlements approved with respect to the Property, nor shall it affect any other covenants or any other development requirements specified in this Agreement to continue after the termination of this Agreement, or obligations to pay assessments, liens, fees or taxes.

8.3.4. Effect of Termination on Vested Rights. Upon any termination of this Agreement as to any portion of the Property, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the portion of the Property affected by such termination. However, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall remain vested and in effect for those portions of the Property not affected by such termination. Notwithstanding the foregoing, vesting of such entitlements, conditions or fee limitations may nonetheless be established for such portion of the Property affected by the termination pursuant to then-existing planning and zoning law and common law, as applicable.

8.4. Default

8.4.1. Default by Landowner. Failure or unreasonable delay by Landowner to perform any term, provision, or condition of this Agreement, or creation by Landowner of a condition or circumstance which will render such performance impossible, for a period of three (3) months after written notice thereof from the City shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Said notice shall specify the nature of the alleged default and, where appropriate, the manner and period of time in which said default might be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such three (3) month period, the commencement of the cure within such time period and the good faith diligent pursuit to completion of the cure shall be deemed a cure within such period. During any cure period, the Landowner shall not be considered in default for the purposes of termination or institution of legal proceedings, and City shall continue to process in good faith development applications relating to the Property during any cure period, but need not approve any such application if it relates to a proposal on the Property with respect to which there is an alleged default hereunder. If the default is cured, then no default shall exist and the noticing Party shall take no further action.

Subject to the foregoing, after notice and expiration of the three (3) month period without cure or commencing to cure, the City, at its option, may institute legal proceedings pursuant to this Agreement and/or give notice of intent to terminate the Agreement pursuant to Government Code Section 65868. Following such notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council in the manner set forth in Government Code Sections 65865, 65867, and 65868.

Following consideration of the evidence presented in said review before the City Council, and a determination by the City Council based thereon, the City, at its option, may

give written notice of termination of this Agreement to the Landowner by personal delivery, or overnight mail, mailing costs prepaid.

8.4.2. Default by City. In the event City does not accept, review, approve, or issue development permits, entitlements, or other land use or building approvals for use in a timely fashion as provided in this Agreement or as otherwise agreed to by the Parties, or the City otherwise defaults under the terms of this Agreement, Landowner shall have all rights and remedies provided herein or under applicable law or equity (except as limited herein). Landowner shall provide City with written notice of the default and the City shall have ten (10) days to notify Landowner of City's initial action to cure the default and thirty (30) days from receipt of the Landowner's notice to cure the default.

8.4.3. Waiver of Default. Waiver of any default or breach of any provision of this Agreement by a Party shall not be deemed to be waiver of any subsequent default or breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided herein. Either Party's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of that Party's consent to, or approval of, any subsequent act by either Party.

8.4.4. Remedies; No Money Damages. In the event either Party is in default under the terms of this Agreement, the non-defaulting Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies, and/or (iii) pursue judicial remedies consistent with this Agreement.

(a) Except as otherwise specifically stated in this Agreement, either Party may institute legal action to cure, correct, or remedy a default by the other Party to this Agreement, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation hereunder or to seek specific performance. For purposes of instituting a legal action under this Agreement, any City Council determination under this Agreement as it relates to an alleged default hereunder shall be deemed a final agency action.

(b) The Parties hereby acknowledge and agree that they would not have entered into this Agreement if doing so would subject either Party to the risk of incurring liability in money damages, either for breach of this Agreement, anticipatory breach, repudiation of the Agreement, or for any actions with respect to its negotiation, preparation, implementation or application. The Parties further acknowledge that money damages and remedies at law generally are inadequate, and specific performance is the most appropriate remedy for the enforcement of this Agreement and should be available to all Parties for the following reasons:

(1) Money damages are excluded;

(2) Due to the size, nature, and scope of the Project, it may not be practical or possible to restore the Property to its original condition once implementation of this Agreement has begun, and after such

implementation, Landowner may be foreclosed from other choices it may have had to utilize the Property or portions thereof. Landowner has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate Landowner for such efforts.

(c) Therefore, the Parties hereby acknowledge and agree that it is a material part of each Party's consideration to the other Party that neither Party shall be at any risk whatsoever to liability for money damages relating to or arising from this Agreement, and except for non-damages remedies, including the remedy of specific performance, City, on the one hand, and Landowner, on the other hand, for themselves, their successors and assignees, hereby release one another's officers, trustees, directors, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth and Fourteenth Amendments of the United States Constitution, or any other law or ordinance which seeks to impose any money damages, whatsoever, upon the Parties because the Parties entered into this Agreement, because of the terms of this Agreement, or because of the manner of implementation or performance of this Agreement.

8.5. Transfers and Assignments.

8.5.1. Transfers Generally. No sale, transfer or assignment of this Agreement, or of any right or interest under this Agreement ("**Transfer**"), shall release Landowner from its obligations under this Agreement without the prior written consent of the City Manager, which consent may not be unreasonably withheld, conditioned or delayed. Within ten (10) days prior to any such sale, transfer or assignment of this Agreement, Landowner shall notify City of such pending sale, transfer or assignment and the name of the purchaser, transferee or assignee ("**Transferee**"), and shall provide to City an executed Assignment and Assumption Agreement in substantially the form of **Exhibit D** to this Agreement, specifying the obligations and requirements to be assumed by Transferee and the effective date of the proposed Transfer. City may request Landowner provide additional information relating to the Transfer or to the proposed Transferee. The City Manager shall review and approve or disapprove, in writing, Landowner's request for City's consent to release Landowner from its obligations under this Agreement within thirty (30) days following Landowner's satisfactory provision of any such additional information requested by City. Factors that the City Manager may consider with respect to any proposed Transfer may include, without limitation, the financial ability of the proposed Transferee to satisfy the Landowner's obligations under this Agreement, and the experience of the proposed Transferee in developing, constructing, operating and maintaining development projects similar to the Project. If the City Manager does not approve Landowner's request and refuses to grant the consent to the proposed Transfer, the

written refusal shall state the reasons therefor and the corrections to be made to obtain such consent.

8.5.2. Effect of Transfer. If Landowner has provided City with the executed Assignment and Assumption Agreement described in Section 8.5.1 above, then immediately upon the City Manager's issuance of the written approval and consent to the proposed Transfer, Landowner shall be released from any further liability or obligation under this Agreement related to any transferred Property as specified in the Assignment and Assumption Agreement, and the Transferee shall be deemed to be the Landowner under this Agreement with all rights and obligations related thereto, with respect to such Transferred Property.

8.5.3. Rights of Landowner. The provisions in this Section 8.5 shall not be deemed to prohibit or otherwise restrict Landowner from (i) granting easements or licenses to facilitate development of the Property, (ii) encumbering the Property or any portion thereof or of the improvements thereon by any mortgage, deed of trust, or other devise securing financing with respect to the Property or Project, (iii) granting a leasehold interest in portions of the Property, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Property pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a mortgage.

8.5.4. Binding on Successors. Subject to the limitations on sales, transfers and assignments set forth in Section 8.5.1 above, the burdens of this Agreement shall be binding on, and the benefits of this Agreement shall inure to, all successors-in-interest to the City and Landowner pursuant to Government Code section 65868.5.

8.6. No Agency, Joint Venture or Partnership

8.6.1. No Relationship Created. It is specifically understood and agreed to by and between the Parties hereto that:

(a) the subject development is a private development;

(b) except for City projects, the City has no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that the City formally accepts the dedication of such improvements;

(c) the Landowner shall have full power over, and exclusive control of, the Project and the Project site, subject only to the limitations and obligations of Landowner under Project Approvals and this Agreement; and

(d) the City and Landowner hereby renounce the existence of any form of agency relationship, partnership, joint venture, or a joint powers agreement under Government Code Section 6000 et seq., or otherwise, between the City and Landowner and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the City and Landowner.

8.6.2. Representations by Landowner. Landowner shall not represent and conduct itself as an employee, agent, representative, or independent contractor of the City at any time during the term of this Agreement.

8.6.3. Authority of Parties. Landowner shall not have the authority, express or implied, to act on behalf of, bind or obligate the City or any City department, City agent or City employee in any way without the written consent of the City. City shall not have the authority, express or implied, to act on behalf of, bind or obligate Landowner, or any Landowner agent or Landowner employee in any way without the written consent of Landowner.

8.7. Indemnification

8.7.1. Indemnity. To the fullest extent permitted by law, including the provisions of Government Code section 66474.9(a), Landowner shall indemnify, hold harmless and defend the City and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with, the performance of this Agreement by the Landowner or Landowner's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Notwithstanding the foregoing, Landowner's obligation to indemnify the City and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Landowner in contributing to such claim, damage, loss and expense, and shall not extend to claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees (i) arising out of or resulting from the sole negligence or willful misconduct of the City or its officers, employees, agents, or (ii) relating to the maintenance, repair or condition of any improvement after dedication and acceptance of such improvement by the City or any other public agency (except as provided in an improvement agreement or warranty bond).

8.7.2. Attack of Proceedings. To the fullest extent permitted by law, Landowner shall defend, indemnify, and hold harmless the City and its agents, officers, and employees from any claim, action, or proceeding against the local agency or its agents, officers, or employees to attack, set aside, void, or annul, an approval of the local agency, advisory agency, appeal board, or legislative body concerning a subdivision, which action is brought within the time period provided for in Section 65009.

8.7.3. Effect of Insurance. Landowner's obligation to defend, indemnify and hold the City and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Landowner to procure and maintain a policy of insurance.

8.7.4. Defense of Claim. If any such claim, action, or proceeding is brought against City or City's officers, officials, employees, independent contractors, or agents,

Landowner, upon notice from City, shall defend the City at Landowner's expense by counsel satisfactory to City.

8.7.5. Notice of Claim. City shall promptly notify Landowner of any claim, action, or proceeding against City or City's officers, officials, employees, independent contractors, volunteers, or agents relating to the performance, or failure to perform, any term or condition of this Agreement. City shall cooperate fully in the defense of such claim, action, or proceeding.

8.8. Governing Law and Venue. This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Sonoma, State of California.

8.9. Cumulative Remedies. In addition to any other rights or remedies, City and Landowner may institute legal or equitable proceedings to cure, correct or remedy any default, to specifically enforce any covenant or agreement herein (including, without limitation, the timely processing and approval of any Subsequent Approval), to enjoin any threatened or attempted violation of the provisions of this Agreement.

8.10. California Tort Claims Act. Notwithstanding any term or condition of this Agreement, the provisions of the California Tort Claims Act [Division 3.6 (commencing at Section 810) of Title 1 of the Government Code] are not waived by the City and shall apply to any claim against City arising out of any acts or conduct by any Party under the terms and conditions of this Agreement

8.11. Third Party Legal Actions. If there are any third party administrative, legal or equitable actions challenging any of the Project Approvals, including, without limitation, this Agreement and all CEQA processes and actions by City relating to the Project, Landowner shall defend and indemnify City against any and all fees and costs arising out of the defense of such actions, including the reasonable fees and costs of City's own in-house or special counsel retained to protect City's interests. Each Party is entitled to legal counsel of its choice, at Landowner's expense. The Parties and their respective counsel shall cooperate with each other in the defense of any such actions, including in any settlement negotiations. If a court in any such action awards any form of money damages to such third party, or any attorneys' fees and costs to such third party, Landowner shall bear full and complete responsibility to comply with the requirements of such award, and hereby agrees to timely pay all fees and costs on behalf of City.

8.12. Cooperation in the Event of Legal Challenge. If any part of this Agreement, any Project Approval, or any Subsequent Approval is held by a court of competent jurisdiction to be invalid, the Parties shall cooperate and use their best efforts, to the extent permitted by law, to cure any inadequacies or deficiencies identified by the court in a manner consistent with the purposes of this Agreement.

ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1. Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(ies), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

9.2. Advice of Attorney. Each Party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

9.3. Construction

9.3.1. Captions. Headings or captions to the provisions of this Agreement are solely for the convenience of the Parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both Parties had in fact drafted this Agreement.

9.3.2. Numbers and Gender. In this Agreement, the neuter gender includes the feminine and masculine, and the singular includes the plural, the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

9.3.3. Mandatory and Permissive. "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

9.4. Time Is Of the Essence. Time is of the essence regarding each provision of this Agreement as to which time is an element.

9.5. Conflict of Interest. Neither a City employee whose position in the City enables such employee to influence the award or administration of this Agreement or any competing Agreement, nor a spouse or economic dependent of such an employee, shall be employed, hired or retained in any capacity, either directly or indirectly, by the Landowner, or have any other direct or indirect financial interest in this Agreement, during the term of this Agreement and for a period of two (2) years after the termination of this Agreement.

9.6. No Third Party Beneficiary. Nothing herein shall be construed to create any right of a third party to enforce this Agreement or to seek any benefit therefrom.

9.7. Notice. Any notice, demand, correspondence, communication, amendment, addition or deletion to this Agreement, including change of address of either Party during the term of this Agreement, which Landowner or City shall be required or may desire to make shall be in

writing and may be personally served or, alternatively, sent via overnight mail, mailing costs prepaid, to the respective Parties as follows:

To City:	CITY OF CLOVERDALE 124 N. Cloverdale Blvd. Cloverdale, CA 95425 Attn: City Manager
With a copy to:	Cloverdale City Attorney c/o Meyers Nave 401 Mendocino Avenue, Suite 100 Santa Rosa, CA 95401
To Landowner:	SPIGHT PROPERTIES II LLC c/o Tyris Corporation 1220 Diamond Way, Suite 100 Concord, CA 94520 Attn: Andrew Zamberlin
With a copy to:	Jarvis, Fay, Doporto & Gibson, LLP 492 Ninth Street, Suite 310 Oakland, CA 94607 Attn: Daniel P. Doporto

Each such notice, demand, approval, consent, or other communication shall be deemed given and received upon delivery. A Party may change or supplement the addresses given above, or designate additional addressees, for purposes of this Agreement by giving the other Party written notice of the new address in the manner set forth above.

9.8. Severability. Except as otherwise provided herein, if any provision of this Agreement is subsequently held or determined to be invalid, the remainder of this Agreement shall not be affected, except as necessarily required by the invalid provision, and such remainder of this Agreement shall remain in full force and effect, unless amended or modified in writing by the mutual consent of the Parties. However, if any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive either Party of an essential benefit of its bargain hereunder, then either Party shall have the option to terminate this entire Agreement, effective from and after such determination, by written notice of termination given by the terminating Party to the other Party.

9.9. Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between any of the Parties herein with respect to the subject matter hereof and contains all the agreements between the Parties with respect to such matter. Each Party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any Party, or anyone acting on behalf of any Party, which is not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

9.10. Form of Agreement; Exhibits. This Agreement shall be executed in two (2) duplicate originals, each of which is deemed to be an original. The following documents are referred to in this Agreement and are attached hereto and incorporated herein as though set forth in full:

Exhibit A	**Property Legal Description**
Exhibit B	**Development Impact Fee Schedule - Effective July 1, 2015**
Exhibit C	**Private and Public Trail/Road Map**
Exhibit D	**Assignment and Assumption Agreement**

In Witness Whereof, the Parties have executed this Agreement on the day and year first hereinabove written.

CITY OF CLOVERDALE

By: _____
Paul Cayler
Its: City Manager

SPIGHT PROPERTIES II LLC

By: _____
Elena R. Spight
Its: Manager

Attest:
CLOVERDALE CITY CLERK

By: _____
Linda Moore
Its: Deputy City Clerk

Approved as to Form:
CITY ATTORNEY

By: _____
Jose M. Sanchez
Its: City Attorney

NOTARY ACKNOWLEDGEMENTS TO DEVELOPMENT AGREEMENT
ALEXANDER VALLEY RESORT

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

State of CA

County of CONTRA COSTA

On 3.16.16 before me, LINDA M. GRANIERO, NOTARY personally appeared ELENA R. SPIGHT, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacities, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Linda M. Graniero

Signature of Notary Public

2513301.1

LINDA M. GRANIERO
Commission # 2028991
Notary Public - California
Contra Costa County
My Comm. Expires Jun 14, 2017

EXHIBIT A

EXHIBIT A (Page 1 of 10)
to Development Agreement (Alexander Valley Resort)
between City of Cloverdale and Spight Properties II LLC

THE LAND HEREIN REFERRED TO IS SITUATED IN THE CITY OF CLOVERDALE, COUNTY OF SONOMA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

Being a portion of the Musalacon Rancho, described as follows:

Commencing at an iron pin at the southeast corner of the 52.42 acre tract formerly owned by John W. Caldwell, et ux, by Deed recorded April 26, 1921 in Book 399 of Deeds, Page 35, Sonoma County Records, said point being on the northerly line of the 12.13 acre tract of F. Chiocciora; thence along the easterly line of said Caldwell tract North 0°10' East 36.30 feet to the southwest corner of the lands formerly of George Brush; thence along the southerly line of the lands formerly of Brush, North 81°15' East 100 feet, more or less, to a point which bears North 3°30' East from the northeasterly corner of the 39.40 acre tract described in the Deed of Joseph Lile recorded in Book 226 of Official Records, Page 464; thence South 3°30' West 280 feet, more or less, to the northeasterly corner of said Lile, thence along the northwesterly line of Lile South 57°30' West 120 feet, more or less, to a point which bears South 0°10' West from the point of commencement; thence North 0°10' East 300 feet more or less, to the point of commencement.

A.P. NO. 116-260-012

PARCEL TWO:

Commencing at a 6"x6" concrete monument on the easterly right of way of the Healdsburg-Cloverdale Highway opposite Engineers Station "L" 349+21.36; thence northerly along said right of way line, curving to the right with a radius of 970 feet 128.23 feet to an iron pipe monument; thence North 47°54' East 2740 feet to an iron pipe monument, the point of beginning; thence North 47°54' East 1318.41 feet to an iron pipe monument on the bank of the Russian River; thence along said bank downstream South 38°39'30" East, 1142.02 feet to an iron pipe monument; thence South 59°20'10" West and along the northerly line of the lands conveyed to Edward C. Emmons, and Wife, by Deed dated October 8, 1934 and recorded January 15, 1935 in Book 377 of Official Records, Page 271, Serial No. A-55713, 986.74 feet to an iron pipe monument on the westerly right of way line of the Northwestern Pacific Railroad; thence South 48°03'45" West 288.45 feet to an iron pipe monument; thence North 42°06' West 948.67 feet to the point of beginning. Being all that certain property described in that certain Deed from Dorothy C. Roundy and others to Vernon Arthur Lile and Francis Charles Lile by Deed dated March 31, 1949 recorded in Book 879 of Official Records, Page 180, in the office of the County Recorder, County of Sonoma, State of California.

Excepting therefrom that portion lying northeasterly of a line described as follows:

Beginning on the Northwesterly line of the lands conveyed to Edward C. Emmons and wife, by Deed dated October 8, 1934 and recorded January 15, 1935 in Book 377 of Official Records, Page 271, Sonoma County Records, at a post marked "Point #1, Proposed Property Line", which post is North 59°20' East 655 feet, more or less, measured along the said property line from the centerline of the Northwestern Pacific Railroad Track; thence North 22 1/2° West 417 feet, more or less, to a 10" Willow Tree marked "Point #2, Proposed Property Line", thence North 49 1/4° West 396 feet, more or less, to a 10" Cottonwood Tree marked "Point #3, Proposed Property Line", thence South 87 3/4° West 390 feet, more of less; thence North 36°36' West 40 feet to a point on the southeasterly line of the lands of Clifford I. Lile, which point is located South 47°54' West 100.5 feet from the former most easterly corner of the Clifford I. Lile property, and North 47°54' East 485 feet, more or less, measured along the said southeasterly line of Clifford I. Lile's property from the centerline of the Northwestern Pacific Railroad Track.

Also excepting therefrom that portion lying southwesterly of the northeasterly boundary of the Northwestern Pacific Railroad.

A.P. NO. 116-310-013

PARCEL THREE:

PARCEL A:

A strip of land 100 feet in width lying along and adjacent to the entire easterly boundary of that certain parcel of real property which is described as follows:

Being a portion of the Musalacon Rancho and a portion of the lands conveyed to Joseph A. Lile by Deed recorded May 11, 1929 in Book 226 of Official Records, Page 464, under Recorder's Serial No. 92289, Sonoma County Records, and by Deed recorded September 17, 1919 in Book 375 of Deeds, Page 20, Sonoma County Records, and more particularly described as follows:

Commencing at a point on the west side of a concrete bridge on a railroad over Porterfield Creek between said lands of the above mentioned Joseph A. Lile and the lands of Frank Chiocciora as conveyed to him by deed dated March 1, 1948 and recorded April 30, 1948 under Recorders Serial No. C-66364, Sonoma County Records; thence crossing said railroad North 66°45' East 1.55 chains to the east side of said bridge and railroad and the true point of beginning of the lands to be herein described; thence from said true point of beginning along the line as established in that Boundary Line Agreement between Kate E. Leist George E. Lile, recorded July 9, 1917 in Book 35 of Maps, at Page 6, Sonoma County Records, North 61°45' East 5.75 chains to a point; thence continuing along said line North 57°30' East 22.62 chains to a point, said point being the most northerly corner of the Lile Ranch as shown in Book 35 of Maps, Page 6; thence from said point and along the above mentioned Boundary Line Agreement between George E. Lile and Melville and Ingram South 3°30' west a distance of 6.75 chains to the most northerly corner of the lands conveyed to Joseph A. Lile by Deed dated August 13, 1919 and recorded September 17, 1919 in Book 375 of Deeds, Page 20, Sonoma County Records; thence continuing along said Boundary Line Agreement South 3°30' West a distance of 6.10 chains to a point; thence South 36°30' East a distance of 2.40 chains to the northerly corner of the former Markell Ranch and later owned by Clifford Lile and wife by Deed recorded December 7, 1943, Book 596 Page 299 under Recorder's Serial No. B-70017, Sonoma County Records; thence along the line between Joseph A. Lile and Clifford Lile, South 47°28' West a distance of 13.12 chains, more or less to the easterly line of the railroad; thence northerly along the easterly line of said railroad to the point of beginning.

Said 100 foot strip of land shall commence at the north on the southerly boundary of the lands of Frank Chiocciora and terminate at the south on the Northerly boundary of the lands of Clifford I. Lile.

PARCEL B:

A strip of land 100 feet in width lying along and adjacent to the entire northeasterly boundary of that certain parcel of real property which is described as follows:

Lying within Rancho Rincon De Musalacon and being a portion of the lands conveyed to Clifford Lile and wife by Deed recorded December 7, 1943, in Book 600 of Official Records, Page 8, Recorder's Serial No. B-70019, Sonoma County Records, said portion being described as follows:

Beginning at a 2" iron pipe monument marking the point of intersection of the northeasterly line of the right of way of the Northwestern Pacific Railway Company with division line between said lands conveyed to Clifford Lile and wife and the lands of Joseph A. Lile and wife and from which point a White Oak Tree 10" in diameter and marked "D.L.J.S.O. BT" bears South 58°30' East a distance of 85 Links; thence from said point of beginning North 47°28' East and along said division line 13.12 chains; more or less, to the common easterly corner of said lands of Clifford Lile and wife and Joseph A. Lile and wife; thence south 36°30' East and along the easterly line of said lands conveyed to Clifford Lile and wife 15.40 chains, more or less, to the Southeasterly corner thereof; thence

South 47°40' West and along the southerly line of said lands 5.31 chains, more or less, to the most easterly corner of the 27.50 acre tract conveyed to the United states of America by Deed recorded March 28, 1921 in Book 398 of Deeds, Page 280, Sonoma County Records; thence North 59°15' West and along the northeasterly line of said 27.50 acre tract 6.07 1/2 chains, more or less, to the southeasterly line of said lands conveyed to Clifford Lile and wife; thence South 47°28' West and along the southeasterly line of said lands of Lile 3 chains, more or less, to the northeasterly line of the right of way of the Northwestern Pacific Railway Company; thence North 58°06'15" West and along the northeasterly line of said right of way a distance of 10 chains, more or less, to the point of beginning.

Said 100 foot strip of land shall commence at the northwest on the Southeasterly boundary of the lands of Joseph A. Lile and terminate at the southeast on the northwesterly boundary of the lands of Francis Charles Lile, Vernon Arthur Lile and Dorothy C. Roundy.

PARCEL C:

All that portion of the tract of land of Dorothy C. Roundy, et al, described below, lying northeasterly of a line described as follows:

Beginning on the Northwesterly line of the lands conveyed to Edward C. Emmons, et ux, by Deed dated October 8, 1934 and recorded January 15, 1935 in Book 377 of Official Records, Page 271, Sonoma County Records, at a post marked "Point #1, Proposed Property Line", which post is North 59°20' East 655 feet, more or less, measured along the said property line from the centerline of the Northwestern Pacific Railroad Track; thence North 22 1/2° West 417 feet, more or less, to a 10" Willow Tree marked "Point #2, Proposed Property Line", thence North 49 1/4° West 396 feet, more or less, to a 10" Cottonwood Tree marked "Point #3, Proposed Property Line", thence South 87 3/4° 390 feet, more of less; thence North 36°36' West 40 feet to a point on the southeasterly line of the lands of Clifford I. Lile, which point is located South 47°54' West 100.5 feet from the former most easterly corner of the Clifford I. Lile property, and North 47°54' East 485 feet, more or less, measured along the said southeasterly line of Clifford I. Lile's property from the centerline of the Northwestern Pacific Railroad Track.

The tract of land of Dorothy C. Roundy, et al, hereinabove referred to is that certain parcel of land described as follows:

Commencing at a 6" x 6" concrete monument on the easterly right of way line of the Healdsburg-Cloverdale Highway opposite Engineer's Station "L" 349+21.36; thence northerly along said right of way line, curving to the right with a radius of 970 feet, 128.23 feet to an iron pipe monument; thence North 47°54' East 2740 feet to an iron pipe monument, the point of beginning; thence North 47°54' East 1318.41 feet to an iron pipe monument on the bank of the Russian River; thence along said bank downstream South 38°39'30" East, 1142.02 feet to an iron pipe monument; thence South 59°20'10" West and along the northerly line of the lands conveyed to Edward C. Emmons, et ux, by Deed dated October 8, 1934 and recorded January 15, 1935 in Book 377 of Official Records, Page 271, Recorders Serial No. A-55713, Sonoma County Records, 986.74 feet to an iron pipe monument on the westerly right of way line of the Northwestern Pacific Railroad; thence South 48°03'45" West 288.45 feet to an iron pipe monument; thence North 42°06' West 948.67 feet to the point of beginning and as described in that certain Deed from Dorothy C. Roundy, et al, to Vernon Arthur Lile and Francis Charles Lile by Deed dated March 21, 1949, recorded in Volume 879 of Official Records, Page 180, in the office of the County Recorder, County of Sonoma, State of California.

A.P. NO. 116-310-014

PARCEL FOUR:

Commencing at the northeasterly corner of the underpass on the Northwestern Pacific Railroad Company right of way at or near Engineers Station 4323/12; thence North 61°56' East 100 feet; thence South 28°04' East 200 feet; thence South 61°56' West 100 feet to the easterly line of said right of way; thence northerly along the easterly line of said right of way to the point of commencement.

A.P. NO. 117-050-010

PARCEL FIVE:

Those two 10 foot strips of land designated (c) in the Deed from Edward C. Emmons, et ux, to Molalla Forest Products, Inc., a California corporation, dated October 31, 1964 and recorded May 21, 1965 under Sonoma County Recorder's Serial No. J-44872.

A.P. NO. 117-050-011 & 012

PARCEL SIX:

Commencing at the point of intersection of the northerly line of the 240.17 acre tract conveyed by Marie L. Dehay to Edward C. Emmons, et ux, by Deed recorded January 15, 1935 in Book 377 of Official Records, Page 271; with the easterly line of the 80 foot strip conveyed to the Northwestern Pacific Railroad Company, recorded in Book 41 of Deeds, Page 97; thence along the northerly line of said 240.17 acre tract North 58°59' East 1113.28 feet; thence South 50°31' East 691.68 feet; thence South 21°46' East 896.28 feet; thence North 81°08' East 326.70 feet; thence South 6°12' East 1799.82 feet to Station 8 of the Dehay Estate; thence South 77°38' West 928 feet, more or less, to the easterly right of way line of said Northwestern Pacific Railroad Company at or near Engineer's Station 4307/37.40; thence along the easterly line of said right of way northerly and northwesterly to the point of commencement.

Excepting therefrom the following:

(a) Commencing at the northeasterly corner of the underpass on the Northwestern Pacific Railroad Company right of way at or near Engineer's Station 4323/12; thence North 61°56' East 100 feet; thence South 28°04' East 200 feet; thence South 61°56' West 100 feet to the easterly line of said right of way; thence northerly along the easterly line of said right of way to the point of commencement, together with a right to use the above described underpass for access to one-half acre tract and to maintain the delivery main and appurtenant facilities;

(b) A 10 foot strip along the entire northerly line of the above described premises and another 10 foot strip along the entire southerly line of said premises.

A.P. NO. 117-050-017

PARCEL SEVEN: (ADJUSTED PARCEL 3 - 2011 LLA)

Lying within the County of Sonoma, State of California and being portions of Tract D, Tract F, and Tract E of the Lands of Spight Properties II LLC, as described by Deed recorded December 31, 2001 under Document No. 2001-181126 and as shown on that Record of Survey filed for record in Book 634 of Maps, Page 41 through 46, both Sonoma County Records, said portions being combined to form one parcel of land more particularly described as follows:

COMMENCING at the most southerly corner of Parcel Two of said Tract F, of said lands of Spight Properties II, said corner being marked by a 1/2 iron pipe and tagged LS 5759 as shown on said Record of Survey; thence along the common line of said lands and the lands conveyed to the State of California by Deed recorded January 15, 1974 in Book 2830 of Official Records, Page 566, Sonoma County Records, North 43°50'54" West, 373.32 feet to a ½ iron pipe tagged LS 5759; thence continuing along said common line, North 38°59'32" West, 243.56 feet; thence continuing along said common line, on a curve to the right having a radius 2960.00 feet, through a central angle of 0°29'49", a length of 17.92 feet to the POINT OF BEGINNING; thence continuing along said curve to the right with a radius of 2960.00 feet, through a central angle of 1°05'19", a length of 56.25 feet; thence leaving said westerly line North 46°32'39" East, 6.72 feet; thence on a curve to the left with a radius of 21.00 feet, through a central angle of 65°45'31", a length of 24.10 feet; thence North 19°12'52" East, 63.16 feet; thence on a curve to the right with a radius of 329.00 feet, through a central angle of 27°28'30", a length of 157.76 feet; thence North 08°15'38" East 790.62 feet; thence North 38°38'14" East, 240.97 feet; thence on a non tangent curve to the left, from a tangent that bears South 45°32'28" East, with a radius of 209.24 feet, through a central angle of 10°59'40", a length of 40.15 feet; thence South 57°36'55" East, 661.42 feet; thence on a curve to the left with a radius of 175.00 feet, through a central angle of 9°48'07", a length of 29.94 feet; thence South 67°32'05" East, 61.00 feet; thence North 47°29'21" East, 121.75 feet; thence South 71°29'47" East, 168.85 feet; thence South 33°37'06" East, 133.99 feet; thence South 52°26'43" East, 91.95 feet; thence South 64°51'35" East, 93.31 feet; thence South 70°34'14" East, 66.20 feet; thence North 90°00'00" East, 24.24 feet; thence South 22°51'50" East, 119.62 feet; thence, on a non tangent curve to the left from a tangent that bears North 67°39'59" East, with a radius of 180.16 feet, through a central angle of 11°57'20", a length of 37.59 feet; thence North 55°33'36" East, 35.13 feet; thence North 27°12'15" West, 107.17 feet; thence North 54°20'22" East, 70.51 feet; thence North 22°28'40" West, 218.68 feet; thence North 26°53'15" West, 121.81 feet; thence North 60°41'21" East, 78.42 feet; thence on a non tangent curve to the right, from a tangent that bears North 7°01'02" West with a radius of 58.33 feet, through a central angle of 100°45'25", a length of 102.58 feet; thence North 03°34'42" East, 117.68 feet; thence South 74°39'04" East, 108.16 feet; thence South 51°25'51" East, 88.31 feet; thence South 27°43'56" East, 48.93 feet; thence South 9°57'04" East, 123.89 feet; thence South 22°56'00" East, 139.49 feet; thence South 30°53'38" East, 170.23 feet; thence South 70°28'31" East, 288.55 feet; thence South 29°22'25" East, 135.15 feet; thence South 9°21'16" West, 122.01 feet; thence North 73°21'05" West, 97.36 feet; thence on a curve to the right from a tangent that bears South 49°50'53" West, with a radius of 95.92 feet through a central angle of 117°14'58", a length of 196.28 feet; thence North 69°55'51" West, 170.96 feet; thence North 87°47'33" West, 45.06 feet; thence South 62°24'32" West, 64.80 feet; thence South 58°44'36" West 165.93 feet; thence South 68°19'45" West, 65.60 feet; thence South 87°18'03" West, 77.94 feet; thence North 86°07'25" West, 86.87 feet; thence North 71°27'59" West, 122.40 feet; thence North 65°57'19" West, 90.08 feet; thence North 82°26'55" West, 67.13 feet; thence South 83°17'39" West, 100.58 feet; thence South 72°07'52" West, 95.69 feet; thence South 64°11'32" West, 101.17 feet; thence South 59°29'35" West, 114.24 feet; thence North 85°44'05" West, 148.04 feet; thence North 12°52'25" West, 105.40 feet; thence North 70°34'22" West, 255.92 feet; thence on a curve to the left with a radius 80.00, through a central angle of 18°55'02", a length of 26.41 feet; thence North 89°29'24" East, 117.51 feet; thence on a curve to the left having a radius of 80.00 feet, through a central angle of 40°09'42", a length of 56.08 feet; thence South 50°20'54" West, 45.00 feet; thence on a curve to the left with a radius of 180.00 feet, through a central angle of 42°05'16", a length of 132.22 feet; thence South 08°15'38" West, 88.00 feet; thence on a curve to the left having a radius of 273.00 feet, through a central angle of 27°28'30", a length of 130.91 feet; thence South 19°12'52" East, 63.16 feet; thence on a curve to the right having a radius of 77.00 feet, through a central angle of 65°45'31", a length of 88.37 feet; thence South 46°32'39" West, 11.65 feet to the Point of Beginning.

A.P. No. 117-050-024

Basis of Bearings being North 43°50'31" West, 674.97 feet between found centerline well monuments per Record of Survey filed in Book 634 of Maps, Pages 41-46, Sonoma County Records.

Pursuant to that certain Lot Line Adjustment (LLA 36-09) Lot Line Adjustment Grant Deed recorded July 26, 2011, Instrument No. 2011062704, Official Records.

PARCEL EIGHT: (ADJUSTED PARCEL A - 2012 LLA)

Lying within the City of Cloverdale, State of California, within the Rancho Musalacon, being a portion of Tract I, Parcel Two of the lands of Spight Properties II, LLC as said lands are described in that certain deed recorded in the Office of the Sonoma County Recorder under Document Number 2001-181126, and a portion of the lands of Spight Properties II, LLC, as said lands are described in that deed recorded in the Office of the Sonoma County Recorder under Document Number 2011-062705, both Official Records of Sonoma County, said portions being combined to form one parcel of land more particularly described as follows:

Commencing at the common southerly corner of said lands of Spight Properties II and the lands of the State of California as described in that deed recorded in the Office of the Sonoma County Recorder in Book 2787, Page 130, Official Records of Sonoma County; thence, along the common line of said lands, North 22°54'09" East 17.06 feet to the beginning of a 940.00 foot radius non- tangent curve, concave westerly; thence, northwesterly along said curve, from a tangent bearing of North 9°22'43" West, through a central angle of 5°00'42" a length of 82.22 feet to the Point of Beginning; thence, continuing along said common line, continuing along said 940 foot radius curve, through a central angle of 22°47'30" for a length of 373.92 feet; thence North 37°10'55" West 373.83 feet to the beginning of a curve having a radius of 1560.00 feet, concave easterly; thence, northwesterly along said curve through a central angle of 3°16'22" a length of 89.11 feet to the most southerly corner of that parcel described in the deed to the City of Cloverdale recorded in the Office of the Sonoma County Recorder under Document Number 2003-210020, Official Records of Sonoma County; thence, along the southeasterly line of last said parcel the following three courses: (1) North 48°18'39" East 461.96 feet lying South 48°18'39" West 79.00 feet from the northeasterly line (produced) of said lands of Spight Properties II to the beginning of a curve having a radius of 20.00 feet; (2) on a 20.00 foot radius curve, concave southerly, through a central angle of 90°00'00" for an arc length of 31.42 feet; (3) North 48°18'39" East 59.03 feet to the most easterly corner of said lands of the City of Cloverdale and the northeasterly line of said lands of Spight Properties II; thence, along said easterly line, South 41°41'56" East 890.39 feet to a ½ inch iron pipe, tagged LS5759 as shown on the Record of Survey filed for record in the Office of the Sonoma County Recorder in Book 649 of Maps at Page 31, Official Records of Sonoma County and the north line of the aforesaid lands of Spight Properties II (Document Number 2011-062705); thence, along the common line of said lands of Spight Properties II, South 49°02'48" West 307.47 feet to a point distant thereon 425.78 feet northeasterly of the most southerly corner of said Tract I, Parcel 2; thence, leaving said common line, South 11°11'52" West 99.07 feet to the northerly line of the lands of Spight Properties II as described in that deed recorded under Document Number 2011-062703; thence, along last said line the following two courses: (1) North 78°48'08" West 73.00 feet to the beginning of a curve having a radius of 168.00 feet, concave southerly; (2) thence northwesterly along said curve, through a central angle of 1°22'14", for an arc length of 4.02 feet to the southeasterly line of Parcel 2 of Tract I, distant thereon 300.26 feet northeasterly of the southerly terminus thereof; thence, continuing northwesterly along said 168 foot radius curve, through a central angle of 50°21'55", for an arc length of 147.68 feet; thence South 49°27'43" West 59.54 feet to the beginning of a curve concave northeasterly having a radius of 72.00 feet; thence, northwesterly along said curve, through a central angle of 27°15'46", an arc length of 34.26 feet; thence South 76°43'29" West 37.93 feet to the Point of Beginning.

A.P. No. 117-050-026 formerly portions of A.P. No. 116-310-068 and A.P. No. 117-050-025.

Basis of bearings being South 43°50'31" East between found state well monuments 184 and 186, as calculated from the coordinate values listed on the State of California monument map S-66.11 "Cloverdale Bypass" (12/1994).

Pursuant to that certain Lot Line Adjustment (LLA 027-2011) Lot Line Adjustment Grant Deed recorded November 2, 2012, Instrument No. 2012109610, Official Records and Lot Line Adjustment Grant Deed (Corrected) recorded April 1, 2013, Instrument No. 2013033143, Official Records.

PARCEL NINE: (ADJUSTED PARCEL B - 2012 LLA)

Lying within the City of Cloverdale, County of Sonoma, State of California and being a portion of the lands of Spight Properties II, LLC, as described in that certain deed recorded in the Office of the Sonoma County Recorder under Document Number 2011-062705, Official Records of Sonoma County, said portion being more particularly described as follows:

Commencing at a point on the common line of said Tract D and Parcel Two of Tract I of said lands of Spight Properties II, LLC, distant thereon North 49°02'48" East 300.26 feet from the southerly terminus of said common line; thence, leaving said common line along a curve to the right from a tangent that bears North 80°10'22" East, with a radius of 168.00 feet, through a central angle of 01°22'14", a length of 4.02 feet; thence South 78°48'08" East, 73.00 feet to the Point of Beginning; thence, continuing along said common line, North 83°02'34" East 27.00 feet to the beginning of a curve to the left with a radius of 72.00 feet; thence easterly along said curve, through a central angle of 32°15'29", a length of 40.54 feet; thence North 68°56'23" East, 111.62 feet; thence on a curve to the right having a radius of 248.00 feet, through a central angle of 28°01'03", a length of 121.27 feet; thence South 83°02'34" East, 82.62 feet; thence North 52°25'22" East, 650.96 feet; thence South 38°32'38" East, 51.79 feet; thence South 29°40'05" East, 45.13 feet; thence South 03°20'04" East, 74.94 feet; thence South 04°24'06" West, 132.20 feet; thence South 09°56'16" West, 144.08 feet; thence South 02°28'39" West, 151.92 feet; thence South 00°28'32" East, 290.25 feet; thence South 15°24'52" West, 42.84 feet; thence South 54°52'57" West, 46.46 feet; thence South 88°12'09" West, 39.35 feet; thence North 63°42'22" West, 56.69 feet; thence North 54°43'16" West, 96.30 feet; thence North 48°46'54" West, 298.64 feet; thence North 41°00'36" West, 148.55 feet; thence North 14°27'31" West, 101.63 feet; thence North 83°02'34" West, 57.70 feet; thence on a curve to the left having a radius of 192.00 feet, through a central angle of 28°01'03", a length of 93.89 feet; thence South 68°56'23" West, 111.62 feet; thence on a curve to the right having a radius of 128.00 feet, through a central angle of 32°15'29", a length of 72.07 feet; thence North 78°48'08" West, 78.00 feet; thence South 11°11'52" West 68.96 feet; thence, southerly and southeasterly along a curve to the left with a radius of 148.00 feet, through a central angle of 55°00'00", a length of 142.07 feet; thence South 43°48'08" East 102.95 feet; thence South 51°23'55" West 414.50 feet to the westerly line of said Tract D and the easterly line of the lands conveyed to the State of California by deed recorded January 15, 1974 in Book 2830 of Official Records, Page 566, Sonoma County Records; thence along the common line of said lands South 09°43'53" East 97.64 feet; thence South 01°30'08" West 193.41 feet; thence southerly and southeasterly along a curve to the left with a radius of 1160 feet, through a central angle of 33°44'14" a length of 683.04 feet to a point of compound curvature; thence southeasterly from a radial bearing of South 57°45'46" West along a curve to the left with a radius of 2960 feet through a central angle of 05°19'11"; a length of 274.83 feet; thence leaving said westerly line North 46°32'39" East, 6.72 feet; thence on a curve to the left with a radius of 21.00 feet, through a central angle of 65°45'31", a length of 24.10 feet; thence North 19°12'52" East, 63.16 feet; thence on a curve to the right with a radius of 329.00 feet, through a central angle of 27°28'30", a length of 157.76 feet; thence North 08°15'38" East 790.62 feet; thence North 38°38'14" East, 240.97 feet; thence on a non tangent curve to the left, from a tangent that bears South 45°32'28" East, with a radius of 209.24 feet, through a central angle of 10°59'40", a length of 40.15 feet; thence South 57°36'55" East, 661.42 feet; thence on a curve to the left with a radius of 175.00 feet, through a central angle of 9°48'07", a length of 29.94 feet; thence South 67°32'05" East, 61.00 feet; thence North 47°29'21" East, 121.75 feet; thence South 71°29'47" East, 168.85 feet; thence South 33°37'06" East, 133.99 feet; thence South 52°26'43" East, 91.95 feet; thence South 64°51'35" East, 93.31 feet; thence South 70°34'14" East, 66.20 feet; thence North 90°00'00" East, 24.24 feet; thence South 22°51'50" East, 119.62 feet; thence, on a non tangent curve to the left from a tangent that bears North 67°39'59" East, with a radius of 180.16 feet, through a central angle of 11°57'20", a length of 37.59 feet; thence North 55°33'36" East, 35.13 feet; thence North 27°12'15" West, 107.17 feet; thence North 54°20'22" East, 70.51 feet; thence North 22°28'40" West, 218.68 feet; thence North 26°53'15" West, 121.81 feet; thence North 60°41'21" East, 78.42 feet; thence on a non tangent curve to the right, from a tangent that bears North 07°01'02" West with a radius of 58.33 feet, through a central angle of 100°45'25", a length of 102.58 feet; thence North 03°34"42" East, 117.68 feet;

thence South 74°39'04" East, 108.16 feet; thence South 51°25'51" East, 88.31 feet; thence South 27°43'56" East, 48.93 feet; thence South 9°57'04" East, 123.89 feet; thence South 22°56'00" East, 139.49 feet; thence South 30°53'38" East, 170.23 feet; thence South 70°28'31" East, 288.55 feet; thence South 29°22'25" East, 135.15 feet; thence South 9°21'16" West, 122.01 feet; thence North 73°21'05" West, 97.36 feet; thence on a curve to the right from a tangent that bears South 49°50'53" West, with a radius of 95.92 feet through a central angle of 117°14'58", a length of 196.28 feet; thence North 69°55'51" West, 170.96 feet; thence North 87°47'33" West, 45.06 feet; thence South 62°24'32" West, 64.80 feet; thence South 58°44'36" West 165.93 feet; thence South 68°19'45" West, 65.60 feet; thence South 87°18'03" West, 77.94 feet; thence North 86°07'25" West, 86.87 feet; thence North 71°27'59" West, 122.40 feet; thence North 65°57'19" West, 90.08 feet; thence North 82°26'55" West, 67.13 feet; thence South 83°17'39" West, 100.58 feet; thence South 72°07'52" West, 95.69 feet; thence South 64°11'32" West, 101.17 feet; thence South 59°29'35" West, 114.24 feet; thence North 85°44'05" West, 148.04 feet; thence North 12°52'25" West, 105.40 feet; thence North 70°34'22" West, 255.92 feet; thence on a curve to the left with a radius 80.00, through a central angle of 18°55'02", a length of 26.41 feet; thence North 89°29'24" East, 117.51 feet; thence on a curve to the left having a radius of 80.00 feet, through a central angle of 40°09'42", a length of 56.08 feet; thence South 50°20'54" West, 45.00 feet; thence on a curve to the left with a radius of 180.00 feet, through a central angle of 42°05'16", a length of 132.22 feet; thence South 08°15'38" West, 88.00 feet; thence on a curve to the left having a radius of 273.00 feet, through a central angle of 27°28'30", a length of 130.91 feet; thence South 19°12'52" East, 63.16 feet; thence on a curve to the right having a radius of 77.00 feet, through a central angle of 65°45'31", a length of 88.37 feet; thence South 46°32'39" West, 11.65 feet to the aforesaid common line of the lands of Spight Properties II, LLC and the State of California; thence along said common line, southeasterly along a curve to the left with a radius of 2960 feet, from a radial bearing of North 36°42'51" West, through a central angle of 00°29'49", a length of 17.92 feet; thence South 38°59'32" East 243.56 feet; thence South 43°50'54" East 373.32 feet to the most westerly corner of said lands of Spight Properties II, LLC; thence leaving said common line, along the southerly line of said lands of Spight Properties II, LLC, North 50°08'14" East 718.82 feet and North 78°08'32" East 1606.74 feet to the most easterly corner said Tract E of said lands of Spight Properties II, LLC and the westerly line of the Northwest Pacific Railroad right-of-way (80 feet wide); thence along the common line of said Tract E and Tracts A and C and said railroad right-of-way the following four courses: From a tangent bearing of North 22°28'24" West, northerly along a curve to the left with a radius of 3730.77 feet, through a central angle of 02°47'23" a length of 181.65 feet to a point of compound curvature; thence northerly along a curve to the left with a radius of 6406.99 feet, through a central angle of 01°45'56" a length of 197.44 feet; thence North 27°34'54" West 2130.30 feet to railroad survey station 4332+27.7B.C.; thence northerly along a curve to the left with a radius of 3862.89 feet, through a central angle of 06°37'25" a length of 454.35 feet to the most easterly common corner of Tract D of said lands of Spight Properties II and the lands of Rege as described by deed recorded April 23, 2004 under Document Number 2004059349, Official Records of Sonoma County; thence along the northwesterly line of said Tract D, South 48°42'10" West 277.84 feet; thence continuing along said northwesterly line, South 48°42'54" West 1017.94 feet to the most easterly corner of aforesaid Tract Two of Tract I of said lands of Spight Properties II, LLC; thence, continuing along said northwesterly line, South 49°02'48" West 307.47 feet to a point distant thereon 125.52 feet northeasterly of the Point of Commencement; thence, South 11°11'52" West 99.07 feet to the Point of Beginning.

A.P. No. 117-050-027 formerly portion of A.P. No. 117-050-025.

Basis of bearings being South 43°50'31" East between found state well monuments 184 and 186, as calculated from the coordinate values listed on the State of California monument map S-66.11 "Cloverdale Bypass" (12/1994).

Pursuant to that certain Lot Line Adjustment (LLA 027-2011) Lot Line Adjustment Grant Deed recorded November 2, 2012, Instrument No. 2012109611, Official Records and Lot Line Adjustment Grant Deed (Corrected) recorded April 1, 2013, Instrument No. 2013033144, Official Records.

PARCEL TEN: (ADJUSTED PARCEL C - 2012 LLA)

Lying within the City of Cloverdale, County of Sonoma, State of California and being a portion of the lands of Spight Properties II, LLC, as described in that deed recorded December 31, 2001 in the Office of the Sonoma County Recorder under Document Number 2001-181126 and the lands of Spight Properties II, LLC, as described in that deed recorded July 26, 2011 under Document Number 2011-062703, both Official Records of Sonoma County, said portions being combined to form one parcel of land more particularly described as follows:

Commencing at a ½" Iron Pipe tagged PLS 5759, marking an angle point in the northerly line of the lands of Spight Properties II as shown on said Record of Survey at the intersection of those courses shown as South 41°07'45" East and North 48°42'54" East; thence along the common line of said Tract D and Parcel 2 of Tract I of said lands of Spight Properties II South 49°02'48" West 432.99 feet to the Point of Beginning; said Point of Beginning bears North 49°02'48" East 300.26 feet along said common line from the southwesterly terminus thereof; thence, leaving said common line along a curve to the right from a tangent that bears North 80°10'22" East, with a radius of 168.00 feet, through a central angle of 01°22'14", a length of 4.02 feet; thence South 78°48'08" East, 100.00 feet; thence on a curve to the left having a radius of 72.00 feet, through a central angle of 32°15'29", a length of 40.54 feet; thence North 68°56'23" East, 111.62 feet; thence on a curve to the right having a radius of 248.00 feet, through a central angle of 28°01'03", a length of 121.27 feet; thence South 83°02'34" East, 82.62 feet; thence North 52°25'22" East, 650.96 feet; thence South 38°32'38" East, 51.79 feet; thence South 29°40'05" East, 45.13 feet; thence South 03°20'04" East, 74.94 feet; thence South 04°24'06" West, 132.20 feet; thence South 09°56'16" West, 144.08 feet; thence South 02°28'39" West, 151.92 feet; thence South 00°28'32" East, 290.25 feet; thence South 15°24'52" West, 42.84 feet; thence South 54°52'57" West, 46.46 feet; thence South 88°12'09" West, 39.35 feet; thence North 63°42'22" West, 56.69 feet; thence North 54°43'16" West, 96.30 feet; thence North 48°46'54" West, 298.64 feet; thence North 41°00'36" West, 148.55 feet; thence North 14°27'31" West, 101.63 feet; thence North 83°02'34" West, 57.70 feet; thence on a curve to the left having a radius of 192.00 feet, through a central angle of 28°01'03", a length of 93.89 feet; thence South 68°56'23" West, 111.62 feet; thence on a curve to the right having a radius of 128.00 feet, through a central angle of 32°15'29", a length of 72.07 feet; thence North 78°48'08" West, 100.00 feet; thence on a curve to the left having a radius of 112.00 feet, through a central angle of 33°40'18", a length of 65.82 feet to the said common line of Tract D and Parcel 2 of Tract I, distant thereon North 49°02'48" East 205.61 feet from the southwesterly terminus thereof; thence continuing northwesterly along said 112 foot radius curve through a central angle of 18°03'51" an arc length of 17.80 feet; thence, South 49°27'43" West 59.59 feet to the beginning of a curve to the right with a radius of 128.00 feet; thence, westerly along said curve through a central angle of 27°15'46" an arc length of 60.91 feet; thence, South 76°43'29" West 38.51 feet to the common line of said Parcel 2 of Tract I and the lands of the State of California as described in that deed recorded in the Office of the Sonoma County Recorder in Book 2787, Page 130, Official Records of Sonoma County; thence along last said line on a 940 foot radius curve to the left from a tangent bearing of North 9°22'43" West, through a central angle of 3°24'51" an arc length of 56.01 feet; thence leaving said common line, North 76°43'29" East 37.93 feet to the beginning of a curve to the left with a radius of 72.00 feet; thence northeasterly along said curve through a central angle of 27°15'46" an arc length of 34.26 feet; thence North 49°27'43" East 59.59 feet to the beginning of a curve to the right with a radius of 168.00 feet; thence northeasterly and easterly along said curve, through a central angle of 50°21'55" an arc length of 147.68 feet to the Point of Beginning.

A.P. No. 117-050-028 formerly portion of A.P. No. 116-310-068 and A.P. No. 117-050-023

Basis of bearings being South 43°50'31" East between found state well monuments 184 and 186, as calculated from the coordinate values listed on the State of California monument map S-66.11 "Cloverdale Bypass" (12/1994).

Pursuant to that certain Lot Line Adjustment (LLA 027-2011) Lot Line Adjustment Grant Deed recorded November 2, 2012, Instrument No. 2012109612, Official Records.

PARCEL ELEVEN: (ADJUSTED PARCEL D - 2012 LLA)

Lying within the City of Cloverdale, County of Sonoma, State of California and being a portion of Parcel 2 of Tract I of the lands of Spight Properties II, LLC, as described by deed recorded December 31, 2001 under Document Number 2001-181126 and the lands of Spight Properties II, LLC, as described in that deed recorded July 26, 2011 in the Office of the Sonoma County Recorder under Document Number 2011-062702, both Sonoma County Records, said portions being combined to form one parcel of land more particularly described as follows:

Beginning at the southwesterly terminus of the common line of said lands of Spight Properties, II (Document Number 2011-062702) and Parcel Two of Tract I of said lands of Spight Properties II, LLC, said Point of Beginning being the most northerly corner of the parcel of land conveyed to the State of California by deed recorded January 15, 1974 in Book 2830 of Official Records, Page 563, Sonoma County Records; thence, along the westerly line of said Tract D and the easterly line of last said parcel, South 22°54'18" East 148.85 feet; thence, continuing along last said line, South 09°43'53" West 261.53 feet; thence leaving said line, North 51°23'55" East 414.50 feet; thence North 43°48'08" West 102.95 feet to the beginning of a 148.00 foot radius curve to the right; thence northwesterly and northeasterly along said curve, through a central angle of 55°00'00", a distance of 142.07 feet; thence North 11°11'52" East 68.96 feet; thence North 78°48'08" West 22.00 feet to the beginning of a 112.00 foot radius curve to the left; thence westerly along said curve, through a central angle of 33°40'18", for a distance of 65.82 feet to the aforesaid common line of Tract D and Tract I, Parcel 2, distant thereon North 49°02'48" East 205.61 feet (Deed: North 48°07' East) from the southerly terminus thereof; thence, continuing westerly and southwesterly along said 112.00 foot radius curve to the left through a central angle of 18°03'51" an arc length of 35.31 feet; thence South 49°27'43" West 59.59 feet to the beginning of a 128.00 foot radius curve to the right; thence westerly along said curve, through a central angle of 27°15'46" an arc length of 60.91 feet; thence South 76°43'29" West 38.51 feet to the common line of Spight Properties II, LLC, as described in that deed recorded in the Office of the Sonoma County Recorder under Document Number 2001-181126 and the lands of the State of California as described in that deed recorded in the Office of the Sonoma County Recorder in Book 2787, Page 130, both Official Records of Sonoma County; thence South 22°54'09" East 17.06 feet to the Point of Beginning.

A.P. No. 117-050-029 formerly A.P. No. 117-050-022 and portion of A.P. No.116-310-068

Basis of bearings being South 43°50'31" East between found state well monuments 184 and 186, as calculated from the coordinate values listed on the State of California monument map S-66.11 "Cloverdale Bypass" (12/1994).

Pursuant to that certain Lot Line Adjustment (LLA 027-2011) Lot Line Adjustment Grant Deed recorded November 2, 2012, Instrument No. 2012109613, Official Records.

EXHIBIT B

2015 DEVELOPMENT IMPACT FEES

Effective July 1, 2015

DEVELOPMENT IMPACT FEE PROGRAM	2015 FEE
Public Facilities Development Impact Fee	
Single Family Residential	$4,895
Multi-family Residential	$3,613
Mobile Home	$3,946
Commercial (per 1,000 square feet)	$799
Industrial (per 1,000 square feet)	$559
Parks and Recreation Facilities	
Single Family Residential	$3,674
Multi-family Residential	$2,712
Mobile Home	$2,962
Quimby Act Parkland Acquisition	
Single Family Residential	$6,172
Multi-family Residential	$4,556
Non-Quimby Act Parkland Acquisition	
Single Family Residential	$6,172
Multi-family Residential	$4,556
Mobile Home	$4,976
Administration	
Single Family Residential	$587
Multi-family Residential	$434
Mobile Home	$474
Commercial (per 1,000 square feet)	$95
Industrial (per 1,000 square feet)	$67
Water Capacity	
Single Family Residential	$6,147
Multi-family Residential	$4,536
Mobile Home	$4,955
Commercial (per gallon)[1]	$18.90
Industrial (per gallon)[1]	$18.90
Wastewater Capacity	
Single Family Residential	$9,538
Multi-family Residential	$7,039
Mobile Home	$7,690
Commercial (per gallon)[1]	$58.66
Industrial (per gallon)[1]	$58.66
Street and Thoroughfare	
Single Family Residential 4 Bedroom	$2,689
Single Family Residential 3 Bedroom	$2,188
Single Family Residential 2 Bedroom	$1,743
Multi-family Residential 4 Bedroom	$2,177
Multi-family Residential 3 Bedroom	$1,686
Multi-family Residential 2 Bedroom	$1,213
Downtown Commercial (Per 1,000 sf)	$3,245
Service Commercial (per 1,000 sf)	$3,454
Destination Commercial (per 1,000 sf)	$3,245
General Industrial (per 1,000 sf)	$2,586
Public (per acre)	$5,935
Business Park (per 1,000 sf)	$4,089
Mixed Use Commercial (per 1,000 sf)	$3,245
Airport (per 1,000sf)	$1,714
Storm Drainage	
Single Family Residential	$218
Multi-family Residential	$58
Commercial (per Acre)	$1,051
Industrial (per Acre)	$1,051
Fire Facilities	
Single Family Residential	$1,284
Multi-family Residential	$1,255
Mobile Home	$1,118
Commercial (per 1,000 square feet)	$944
Industrial (per 1,000 square feet)	$661
Health Care	
Single Family Residential	$97
Multi-family Residential	$95
Mobile Home	$85
Commercial (per 1,000 square feet)	$72
Industrial (per 1,000 square feet)	$50

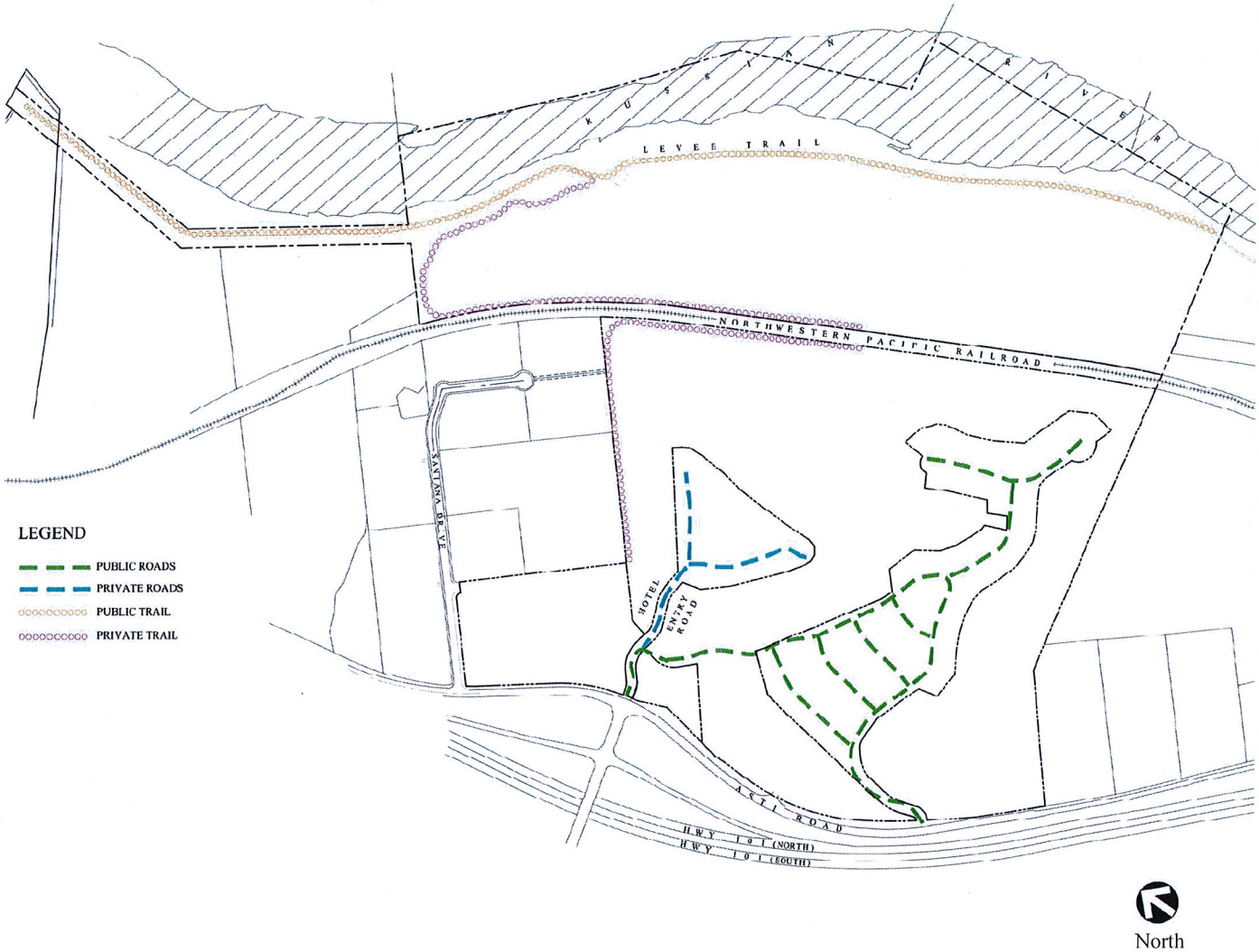
1. The actual amounts of the Water and Wastewater Capacity Fees for non-residential projects shall be calculated on a case-by case basis from the average daily water use and wastewater production for the project based on a water and wastewater use study prepared by a Registered Civil Engineer and subject to approval by the City Engineer.

Approved:

Paul Cayler, City Manager

EXHIBIT C

Exhibit C



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15 THIRD STREET, SANTA ROSA, CA 95401
TEL (707) 542-6493 FAX (707) 542-5232

ILLUSTRATIVE PRIVATE AND PUBLIC TRAIL/ROAD MAP

ALEXANDER VALLEY RESORT SPECIFIC PLAN

NOVEMBER, 2015

EXHIBIT D

EXHIBIT D

FORM OF ASSIGNMENT

OFFICIAL BUSINESS Document entitled to free recording Government Code Section 6103 RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO: City of Cloverdale	

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

ASSIGNMENT AND ASSUMPTION AGREEMENT
RELATIVE TO ALEXANDER VALLEY RESORT PROJECT
(Parcel(s) ___ of the _____ Property)

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "Agreement") is entered into this _____ day of _____, 201_, by and between _____, a _____(hereinafter "Assignor"), and _____, a _____ (hereinafter "Assignee").

RECITALS

On_____, 2015, the City of Cloverdale and entered into that certain agreement entitled "Development Agreement By and Between the City of Cloverdale and Spight Properties II LLC for the Alexander Valley Resort Project (hereinafter the "Development Agreement")." Pursuant to the Development Agreement, Assignor agreed to develop certain property more particularly described in the Development Agreement (hereinafter, the "Subject Property"), subject to certain conditions and obligations as set forth in the Development Agreement. The Development Agreement was recorded against the Subject Property in the Official Records of Sonoma County on _____, 201__, as Instrument No. 201__-_____.

Assignor intends to convey [all/a portion] of the Subject Property to Assignee, commonly referred to as Parcel(s) _____, and more particularly identified and described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter the "Assigned Parcel(s)").

Assignor desires to assign and Assignee desires to assume all right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Assigned Parcel(s).

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, Assignor and Assignee hereby agree as follows:

Assignor hereby assigns, effective as of Assignor's conveyance of the Assigned Parcel(s) to Assignee, all of the rights, title, interest, burdens and obligations under the Development Agreement with respect to the Assigned Parcel(s). Assignor retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other property within the Subject Property owned by Assignor, if any.

Assignee hereby assumes all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Assigned Parcel(s), and agrees to observe and fully perform all of the duties and obligations of Assignor under the Development Agreement with respect to the Assigned Parcel(s). The parties intend hereby that, upon the execution of this Agreement and conveyance of the Assigned Parcel(s) to Assignee, and so long as Assignor has paid City any and all fees or amounts due to City arising out of the Development Agreement, the processing of the Entitlements, and the development of the Assigned Parcel(s), Assignee shall become substituted for and as the "Developer" under the Development Agreement with respect to the Assigned Parcel(s), and Assignor shall be released of and from any obligations or liabilities under the Development Agreement with respect to the Assigned Parcel(s).

All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

The Notice Address described in Section 9.7 of the Development Agreement with respect to the Assigned Parcel(s) shall be:

_____

_____

_____

Attn: _____

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written. This Agreement may be signed in identical counterparts.

ASSIGNOR:	ASSIGNEE:
_____	_____
_, a	_, a
_____	_____
By:	By:
_____	_____
_	__
Print Name:_____	Print Name:_____
Title:	Title:
_____	_____

CONFIRMATION OF PAYMENT OF OUTSTANDING FEES
RELATED TO DEVELOPMENT OF ASSIGNED PARCEL

Upon request of _____, the Assignor of the Assigned Parcel(s) described herein, and based on the review of the City's files related to the development of the Assigned Parcel(s) and the obligations allocable thereto, the undersigned, as the City Community Development Director or designated representative thereof, hereby confirms that the Assignor appears to have paid to the City any and all fees or amounts allocable to the Assigned Parcel(s) and presently due to the City under or arising out of the Development Agreement, the processing of the Entitlements, and/or the development of the Assigned Parcel(s). This confirmation may be relied upon by Assignor to relieve Assignor of any continuing obligation as Assignor with respect to the Assigned Parcel(s) upon this Assignment becoming effective; provided, however, in the event of any mistake or error by the City in making this determination, the City shall not be prohibited or limited hereby from enforcing the obligation to pay any such fees or amounts allocable to the Assigned Parcel(s) subsequently determined to be due with respect thereto.

_____
By:_____
Title:_____

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO.703-2016

AN ORDINANCE OF THE CITY OF CLOVERDALE AMENDING TITLE 18, "ZONING," OF THE CITY MUNICIPAL CODE, MAKING CERTAIN CHANGES TO THE STANDARDS OF THE SP-1 (SPECIFIC PLAN) ZONING DISTRICT AND REZONING ONE PARCEL OF LAND TO THE SPECIFIC PLAN-1 (SP-1) ZONING DISTRICT WITHIN THE ALEXANDER VALLEY RESORT PROJECT, (APNs 116-260-012, 116-310-013 & -014, 117-050-010, -011, 012, -017, -024, -026, -027, -028 & -029)

THE CITY COUNCIL OF THE CITY OF CLOVERDALE HEREBY ORDAINS AS FOLLOWS:

SECTION 1. RECITALS

A. The Alexander Valley Resort Project ("Project"), is generally located south of Santana Drive, east of Asti Road, west of the Russian River and north of Cloverdale Municipal Airport.

B. The Project was originally approved by the City Council in 2009. The Project consisted of a resort, golf course, resort mixed-use site and housing. Tyris Corporation/Spight Properties II LLC (the "Applicant"), has requested certain changes to the Project.

C. The Applicant is requesting a General Plan Amendment to change the land use designation of 12.3 acre site on the southeast corner of Asti Road and Santana Drive owned by the applicant from "BP-Business Park" to "DSC-Destination Commercial" and other minor amendments to the Cloverdale General Plan, including but not limited to allowing a golf course within the Project as an optional recreational use, not a mandatory feature, and other minor amendments to ensure internal consistency within the General Plan.

D. The application also includes a request for an amendment to the Alexander Valley Resort Specific Plan, a Zoning Ordinance amendment rezoning the 12.3 acre site, which would now be included within the Specific Plan, from "MP-Industrial Park" to "Specific Plan-SP-1," and a Development Agreement. The Zoning Ordinance amendment designating the 12.3 acre site as Specific Plan-SP-1 would allow resort-oriented uses to be developed on the 12.3 acre site.

E. The California Environmental Quality Act ("CEQA"), together with the State Guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared. To comply with CEQA, the City prepared an Addendum to the environmental impact report that

was certified by the City in 2009, Alexander Valley Resort Project Environmental Impact Report, State Clearinghouse No. 2003072142 (the "2009 EIR").

F. The City Council has makes the following findings related to (1) the rezoning the parcel of land described as County Assessor's Parcel Number (APN) 117-050-026 to the SP-1 district; (2) the amendment to Section 18.08.040 of the Zoning Ordinance to add a "Resort Mixed-Use" category to the SP-1 district; (3) adding a list of permitted and conditional uses for the Resort Mixed-Use category; and (4) establishing development standards for future buildings within the Resort Mixed-Use land use category:

1. The proposed change of zone is consistent with the goals, objectives, policies and programs of the Cloverdale General Plan and is necessary and desirable to implement the provisions of the General Plan.

    a. *The proposed rezoning to the SP-1 zoning district for the 12.3 acre parcel located on the southeast corner of Asti Road and Santana Drive is consistent with the Alexander Valley Resort Specific Plan, which implements portions of the General Plan.*

    b. *Proposed development standards will provide guidance to the City, project owners and future developers as to the intent of the City to allow the orderly development of the affected property.*

2. The proposed change of zone will not adversely affect the public health, safety and welfare, or result in an illogical land use pattern.

    a. *The 2004 draft Alexander Valley Resort Environmental Impact Report has evaluated the public health, safety and welfare issues, and mitigation measures and the Addendum's Mitigation Monitoring and Reporting Program have provisions for eliminating or mitigating all such issues.*

    b. *The land use pattern proposed for the Project is consistent with the General Plan. The proposed option of an 18-hole golf course, Resort Hotel and other land uses are envisioned within the Area II Destination Commercial land use designations contained in the General Plan.*

3. The proposed change of zone is consistent with the purpose and intent of Chapter 18.03 of the Cloverdale Zoning Ordinance.

    a. *The proposed rezoning and revisions to the SP-1 District meets the Zoning Ordinance purpose of implementing the General Plan. The General Plan requires Specific Plan zoning for the Project site, and the Specific Plan and zoning provide for such land uses.*

4. The potential environmental impacts of the proposed rezoning are less-than-significant.

   a. *The rezoning will not adversely affect public health, safety or welfare as demonstrated by the analysis of public health and safety conditions contained in the draft 2004 Alexander Valley Resort EIR and Recirculated* DEIR (the "EIR"). *The EIR analyzed potential public health impacts, airport land use compatibility impacts, traffic safety impacts, geotechnical safety impacts, air quality and greenhouse gas emissions, potential flooding and safety impacts, impacts to public safety providers, and impacts related to soil and groundwater contamination. The EIR concludes that, with adherence to mitigation measures as set forth in the two DEIR documents including the Addendum, all safety impacts and conditions will be less than significant. The Mitigation Monitoring and Reporting Program will assure that all EIR mitigation measures are implemented.*

G. On February 9, 2016, the City Council held a properly noticed public hearing regarding this Zoning Ordinance Amendment and considered all comments received in writing and all testimony received at the public hearing.

SECTION 1. PURPOSE AND INTENT

The purpose and intent of these changes is to amend the Zoning Ordnance Text to rezone the 12.3 acre parcel at the southeast corner of Asti Road and Santana Drive to the SP-1 District and to amend the SP-1 District to add a "Resort Mixed-Use" land use category with a listing of permitted and conditional uses and development standards as shown on Exhibit 1.

SECTION 2. FINDINGS

The above recitals are hereby declared to be true and correct and hereby incorporated herein as the required Findings of the City Council of the City of Cloverdale.

SECTION 3. AMENDMENTS TO TITLE 18 OF THE CLOVERDALE MUNICIPAL CODE

Section 18.08.040, SP-1 Alexander Valley Resort, is amended to read as set forth in Exhibit A.

SECTION 4. RECLASSIFIED PROPERTIES

Title 18, "Zoning," of the City of Cloverdale Municipal Code is hereby amended by amending the "Zoning Map of the City of Cloverdale" so as to reclassify the 12.3 acre site on the southeast corner of Asti Road and Santana Drive to the Specific Plan 1 (SP-1) zoning district, as shown in Exhibit 1.

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 February 9, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 23rd day of February, 2016 by the following vote: (Ayes-4; Noes-1; Absent-0)

AYES: Councilmember Palla, Vice Mayor Wolter, Councilmember Russell, and Councilmember Cox

NOES: Mayor Brigham

ABSENT: None

ABSTAIN: None

Mary Ann Brigham, Mayor

ATTEST:

Linda Moore, Deputy City Clerk

Attached: Exhibit 1- Amended Zoning

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 704-2016

AN ORDINANCE OF THE CITY OF CLOVERDALE APPROVING A DEVELOPMENT AGREEMENT WITH SPIGHT PROPERTIES II LLC PERTAINING TO THE DEVELOPMENT OF THE ALEXANDER VALLEY RESORT PROJECT LOCATED ON APPROXIMATELY 267 ACRES OF LAND LYING EAST OF ASTI ROAD, WEST OF THE RUSSIAN RIVER, SOUTH OF SANTANA DRIVE AND NORTH OF CLOVERDALE MUNICIPAL AIRPORT (APNs 116-260-012; 116-310-013 AND -014; 117-050-010, -011, -012, -017, -024, -026, -027, -028, AND -029)

THE CITY COUNCIL OF THE CITY OF CLOVERDALE HEREBY ORDAINS AS FOLLOWS:

SECTION 1. RECITALS

A. In order to strengthen the public land use planning process, to encourage private participation in comprehensive planning, to reduce the economic risk of development and to reduce the waste of resources, the Legislature of the State of California adopted the "Development Agreement Statute" (Government Code Section 65864 et seq.). The Development Agreement Statute authorizes the City and an applicant for a development project, having legal or equitable interest in the real property, to enter into a development agreement establishing certain development rights in, and obligations with respect to, the property which is the subject of a development project application. Pursuant to the Development Agreement Statute, the City adopted rules and regulations establishing procedures and requirements for consideration of development agreements on January 5, 1987 ("Development Agreement Resolution"). City staff and representative of Tyris Corporation/Spight Properties II LLC (the "Landowner") have processed, considered and executed a Development Agreement in accordance with those City rules and regulations.

B. The Development Agreement Statute permits cities and counties to contract with private interests for their mutual benefit in a manner not otherwise available to the contracting parties. Such agreements, as authorized by the Development Agreement Statute, can assure property owners and developers that development approvals granted by public agencies will not change during the period of development of their projects. Cities and counties are equally assured that costly infrastructure such as roads, sewers, schools, fire protection facilities, etc., will be available at the time development projects come on line.

C. Landowner is the owner of approximately 267 acres in the City of Cloverdale more particularly described in Exhibit A of the attached Development Agreement.

D. On June 10, 2009, the City Council of the City took the following actions with respect to the Property (collectively, the "2009 Approvals"):

1. By Resolution 027-2009, approved a Water Supply Assessment for the Alexander Valley Resort Project;

2. By Resolution 028-2009, certified the Final Environmental Impact Report consisting of a 2004 Draft Environmental Impact Report, a 2008 Recirculated Draft Environmental Impact Report and a 2009 Final Environmental Impact Report (collectively the "FEIR") and adopted a Mitigation Monitoring and Reporting Program for the Alexander Valley Resort Project;
3. By Resolution No. 029-2009, adopted the Alexander Valley Resort Specific Plan (the "2009 Specific Plan") and directed staff to file an annexation application for the Alexander Valley Resort Project; and
4. By Ordinance No. 671-2009, amended Chapter 18 of the City of Cloverdale Zoning Ordinance and prezoned the Property to the SP-1 Zoning District for the Alexander Valley Resort Project.

E. On February 10, 2010, the City Council of the City, by Resolution No. 014-2010, approved a revised Mitigation Monitoring and Reporting Program (the "MMRP") for the Alexander Valley Resort Project.

F. On April 7, 2010, the Sonoma County Local Agency Formation Commission, by Resolution No. 2579, approved a Sphere of Influence Amendment and a Reorganization of Territory designated as Cloverdale Reorganization No. 2009-001 (Alexander Valley Resort) approving the annexation of the Property to the City of Cloverdale. Such approval resulted in confirmation of the SP-1 zoning.
Since then, Landowner has completed the clean closure of the 22-acre wood waste landfill area which contained approximately 600,000 cubic yards of non-hazardous wood chips, bark, sawdust, soil and rock. Owner's clean closure has accomplished the following: (1) removal of potential future environmental liability associated with groundwater and surface water quality issues; (2) elimination of future monitoring and maintenance activities associated with the disposal site cap and drainage controls; (3) removal of the wood waste landfill from regulatory oversight; (4) reuse of the materials for beneficial purposes; and (5) preparation of the site for future uses, including the Project. The North Coast Regional Water Quality Control Board ("RWQCB") issued the final Waste Discharge Requirements ("WDRs"), Order No. R1-2005-0032, in June 2005, and Owner received clean closure certification in June 2012.

H. Landowner also completed extensive soil and groundwater remediation activities for the petroleum hydrocarbon-affected soil and groundwater east of the former head rig and for the affected soil south of the former mechanic shop in order to remove the source of petroleum hydrocarbons and to minimize future impacts to groundwater. PES Environmental, Inc. ("PES"), performed these remediation activities and has requested that the RWQCB consider "no further action" with regard to the hydrocarbons in soil and groundwater in these areas.

I. In addition, International Paper, Inc., as the successor in interest to Masonite Corporation, a former site operator, has been working with the RWQCB to investigate and remediate groundwater contamination at the site, including contamination of a deep aquifer under a portion of the Site. In August 2013, the RWQCB concurred with International Paper's proposed final cleanup remedy of Monitored Natural Attenuation ("MNA") for shallow and bedrock groundwater in certain areas of the Property. The Remedial Action Work Plan

approved by the RWQCB includes: (1) verification groundwater monitoring until the site groundwater achieves the cleanup goals; (2) deed restriction on a portion of the site where residual levels of wood treatment chemicals are present in soil; (3) a restricted area where groundwater use is prohibited; (4) destruction of certain groundwater monitoring wells and an old water supply well; and (5) a soil management plan to identify and address any contamination found during redevelopment. In accordance with Monitoring and Reporting Program No. R1-2013-0057, different MNA processes are occurring in different areas on the Property and reports are to be submitted to the RWQCB semi-annually. The five (5) remaining monitoring wells on the Property are not expected to impact Project development.

J. In 2015, Landowner applied to the City for certain revisions to the City's General Plan, the 2009 Specific Plan, and the Zoning Ordinance, and, as contemplated by the 2009 Specific Plan, Landowner also applied to the City for a Development Agreement to govern future development of the Property (collectively, the "Proposal"). The Proposal requests revision of the Specific Plan to make the golf course component an allowed rather than required use, and to provide for the possibility of an alternate recreation use if approved by the City Council. The Proposal also seeks to re-introduce a 12.3 acre parcel into the planning area that had been part of the original project assessed by the Draft Environmental Impact Report, and provides land use development standards for those 12.3 acres consistent with the existing zoning (M-P, Industrial Park) and the originally-proposed zoning (G-C, General Commercial).

K. In response to the 2015 application, the City undertook review of the FEIR prepared for the 2009 Approvals and determined that an addendum to the FEIR was appropriate for consideration and action on the 2015 application ("2015 Addendum").

L. On December 2, 2015 and January 5, 2016, at a duly-noticed public hearing, the City's Planning Commission considered the FEIR and the 2016 Addendum, Landowner's application for certain General Plan, 2009 Specific Plan, and Zoning Ordinance amendments; and this Agreement. Following due consideration, by Resolutions No. 00-2016, No. 003-2016, and No. 004-2016, the Planning Commission recommended to the City Council that the City Council not approve Landowner's application, although the Commission did support the preparation of the CEQA Addendum. The Landowner appealed the Planning Commission's action to the City Council.

M. On February 9, 2016, at a duly-noticed public hearing, the City Council of the City took the following actions relating to the Landowner's application:

1. By Resolution No. 013-2016, approved and adopted the 2015 Addendum to the FEIR;
2. By Resolution No. 014-2016, amended the City of Cloverdale General Plan;
3. By Resolution No. 015-2016, amended the 2009 Specific Plan (as amended, the "Specific Plan"); and
4. By Ordinance No703-2016, amended Chapter 18 of the City of Cloverdale Zoning Ordinance. Approvals 2, 3, and 4 above are collectively referred to herein as the "Project Approvals."

N. Landowner desires to sell the Property to a developer with the qualifications, expertise, and experience to develop the Property in accordance with the Project Approvals and as

contemplated in the draft Development Agreement. The development of the Property in accordance with the draft Development Agreement and the Project Approvals will provide for orderly growth within the City, consistent with the goals, policies, and other provisions of the City's General Plan and the Specific Plan.

O. The City recognizes that the economic success of the Project depends greatly upon the certainty and timing of the City's regulations and fees.

P. As contemplated by the Specific Plan, the City and Landowner desire to enter into the attached Development Agreement to identify and assign key implementing responsibilities, including but not limited to, vesting of entitlements, the construction of infrastructure, and continuing maintenance responsibilities and agreements.

Q. For the reasons recited herein, Landowner and the City have determined that the Project is the type of development for which the attached Agreement is appropriate. The Development Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property and otherwise achieve the goals and purposes for which the Development Agreement Statute and the Development Agreement Resolution were enacted.

R. In exchange for these benefits to the City, together with the public benefits that will result from the development of the Property pursuant to the Project Approvals, Landowner desires to receive the assurance that it may proceed with development of the Property, including receipt of building permits and all other permits and approvals required to complete construction of the Project in accordance with the terms and conditions of the draft Development Agreement.

S. On February 9, 2016, the City Council, as the legislative body for purposes of Development Agreement approval, held a properly noticed public hearing pursuant to Government Code section 65867 regarding the Development Agreement, and considered all comments received in writing and all testimony received at the public hearing.

SECTION 2. FINDINGS.

Therefore, on the basis of: (a) the foregoing recitals, which are hereby incorporated herein; (b) the City of Cloverdale's General Plan; and (c) the Alexander Valley Resort Project FEIR and Addendum to said FEIR, the City Council finds and determines that:

A. Pursuant to Government Code section 65867.5, the Development Agreement is consistent with the objectives, policies, general land uses and programs specified and contained in the City's General Plan and the approved Alexander Valley Resort Special Plan in that the property is designated for a destination resort hotel project that includes a spa, restaurant and conference center along with a major open space use, residential use and related commercial uses.

B. The Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use area in which the real property is located and

entitlements associated with such land use area, is consistent with the overall zoning for the site, Alexander Valley Resort Specific Plan and General Plan.

C. The Development Agreement is in conformity with public convenience, general welfare and good land use policies in that the Development Agreement will continue to implement land use guidelines set forth in the General Plan and help ensure a successful development that meets community and market needs. The Development Agreement is consistent with the policies of the Housing Element within the applicable General Plan, in that it allows for future construction of dwelling units as part of the resort development.

D. The Development Agreement will not be detrimental to the health, safety and general welfare in that the Project will proceed in accordance with the programs and policies of the General Plan and other Project Approvals.

E. The Development Agreement will not adversely affect the orderly development of the property, or the preservation of property values, in that the amendment is consistent with the applicable General Plan and the Alexander Valley Resort Specific Plan, and there is no evidence to suggest that this Project will lower property values.

F. The Development Agreement is consistent with and includes the substantive elements of Government Code sections 65864 through 65869.5, and has been processed consistent with all the procedural requirements thereof.

SECTION 3. APPROVAL OF DEVELOPMENT AGREEMENT

The City Council hereby approves the Development Agreement between the City of Cloverdale and Spight Properties attached to this ordinance as Exhibit 1, and authorizes the City Manager to execute the Development Agreement. Within ten (10) days after the Development Agreement is executed by the City Manager and Spight Properties, the City Clerk shall submit the Development Agreement to the County Recorder for recordation.

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 February 9, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this xx day of February, 2016 by the following vote: (Ayes-4; Noes-1; Absent-0)

AYES: Councilmember Palla, Vice Mayor Wolter, Councilmember Russell, and Councilmember Cox
NOES: Mayor Brigham
ABSENT: None
ABSTAIN: None

Mary Ann Brigham, Mayor

ATTEST:

Linda Moore, Deputy City Clerk

Attachment: Exhibit 1-Development Agreement between City of Cloverdale and Spight Properties II, LLC

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CITY OF CLOVERDALE

City Council/Successor Agency
Agenda Item Summary

Agenda Item:	7
Meeting Date:	November 8, 2016

Agenda Section	**Staff Contact**
Consent	Stephen Cramer, Police Chief

Agenda Item Title

Waive second reading and readopt Ordinance No. 705-2016 Repealing and Replacing Cloverdale Municipal Code Chapter 5.24 Relating to Massage Therapy and Massage Establishments

Summary

California Government Code section 36933 requires that within 15 days after the adoption of an ordinance, a city publish a copy of the ordinance and the Council vote in a newspaper of general circulation. The Section also allows a city to only publish a summary of the ordinance instead of the entire document, if the City publishes such summary 5 days prior the adoption, and again within 15 days after the adoption, including the names of those city council members voting for and against the ordinance.

Ordinance No. 705-2016 was adopted by the City Council on March 22, 2016. Due to transitions of staff members, the City inadvertently did not publish a summary of the ordinance in the newspaper at least 5 days prior to the adoption and again within 15 days of the action.

In order to comply with the publishing requirements of Government Code section 36933, and to avoid publishing the entire ordinance, Ordinance No. 705-2016 is being placed before the City Council again for re-adoption. This is simply a re-adoption of the Ordinance. No changes to the substance of the Ordinance has been made.

Options

Waive second reading and readopt Ordinance 705-2016.

Recommended Council Action

Waive the second reading and readopt Ordinance 705-2016, repealing and replacing Cloverdale Municipal Code Chapter 5.24 relating to massage therapy and massage establishments

Attachments:

1. Ordinance 705-2016
2. Adopted Ordinance 705-2016

cc:

2721061.1

P.O. Box 217 • 124 North Cloverdale Blvd. • Cloverdale, CA 95425-0217 • Telephone (707) 894-2521 • FAX (707) 894-3451

ORDINANCE NO. 705-2016
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE REPEALING AND REPLACING CLOVERDALE MUNICIPAL CODE CHAPTER 5.24 RELATING TO MASSAGE THERAPY AND MASSAGE ESTABLISHMENTS

WHEREAS, there is substantial research that indicates that the skillful practice of massage can provide many health benefits including relief of pain from disease, injury and other sources, and that massage can be a valuable component of a wellness program; and

WHEREAS, the City of Cloverdale has an interest in the safe operation and licensing of massage businesses in the City; and

WHEREAS, in 1975, the City Council adopted Cloverdale Municipal Code Chapter 5.24, establishing regulations governing massage therapy businesses and practitioners; and

WHEREAS, on September 27, 2008, the Governor approved Senate Bill 731 ("SB 731"), which sanctioned Business and Professions Code sections 4600 et seq., known as the Massage Therapy Act, to the California Business and Professions Code, which provided for the formation of a nonprofit "Massage Therapy Organization" to oversee a State-sanctioned program of certification for massage therapy practitioners; and

WHEREAS, pursuant to SB 731, the "California Massage Therapy Council" was formed and established a scheme for a voluntary certification process for persons wishing to practice massage therapy in California, with the intention of enabling persons so certified to practice massage therapy in any city within the State without being required to obtain a local permit to practice; and

WHEREAS, SB 731 included a sunset clause, expiring on January 1, 2015, to allow the State to review the law and its impacts; and

WHEREAS, on September 18, 2014, Governor Brown signed Assembly Bill 1147 ("AB 1147"), effective January 1, 2015, which substantially changed Business and Professions Code sections 460, 4600-4621, and Government Code section 51034, by significantly revising existing laws regulating certified massage professionals and gave cities and counties some regulatory authority over massage establishments; and

WHEREAS, there have been significant changes to State laws relating to massage therapy and to the landscape of massage businesses in the City of Cloverdale, since the City of Cloverdale enacted Cloverdale Municipal Code Chapter 5.24; and

WHEREAS, a revision to the Cloverdale Municipal Code relating to massage therapy and massage establishments will streamline licensing procedures while promoting those businesses that provide legitimate and important health and therapeutic services to the community and prohibiting those businesses that conduct illicit activity; and

WHEREAS, a revision to Municipal Code Chapter 5.24 will also bring the City's local ordinance into compliance with uniform statewide regulations enacted by AB 1147; and

WHEREAS, this Ordinance is enacted pursuant to Government Code Sections 51030-51034 and Business and Professions Code Sections 4600 et seq., as amended by AB 1147.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLOVERDALE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Cloverdale Municipal Code Title 5, "Business Taxes, Licenses and Regulations," Chapter 5.24 entitled "Massage Parlors," as presently written, is hereby repealed in its entirety.

SECTION 2. New Chapter 5.24 entitled "Massage Therapy and Massage Establishments" is hereby incorporated into Title 5, "Business Taxes, Licenses and Regulations" and adopted to read as follows:

"Chapter 5.24

MASSAGE THERAPY AND MASSAGE ESTABLISHMENTS

5.24.010 Purpose and Intent.

It is the purpose and intent of this Chapter to provide for the orderly regulation of individuals and businesses providing massage therapy services, and to prevent and discourage the misuse of massage therapy as a front for prostitution, human trafficking, and related activities in violation of State law while protecting the interests of the public health, safety and welfare of the community by providing certain minimum standards for health and safety, building, sanitation, education, and operation standards for massage therapists and businesses.

It is the further intent of this Chapter to update and streamline local massage therapy permitting procedures, while still facilitating and advancing the ethical practice of massage therapy. It is also the intent of the City Council that this Chapter apply to any business, location or individual that provides massage services regardless of the business name or individual's title or position.

5.24.020. Definitions.

For the purpose of this Chapter, unless the context clearly requires a different meaning, the words, terms and phrases set forth in this Section shall have the meanings given them in this section:

A. "Applicant" shall mean the individual or individuals applying for a Massage Therapist Permit or a Massage Establishment Permit. Only an owner(s) may apply for a Massage Establishment Permit.

B. "California Massage Therapy Council" or "CAMTC" shall mean the non-profit organization created to regulate the massage industry set forth Chapter 10.5 of Division 2 of the Business and Professions Code of the State of California (commencing with Section 4600).

C. “CAMTC Certificate” shall mean a current and valid certificate issued by the California Massage Therapy Council to a massage practitioner pursuant to Business and Professions Code section 4601(b) or (c) or any later enacted amendment.

D. “CAMTC certified” shall mean any individual, certified by the CAMTC and possessing a valid CAMTC Certificate and is licensed to practice or administer massage, in exchange for any form of compensation within the City of Cloverdale. All persons certified by CAMTC shall have the right to perform or engage in the practice of massage consistent with the Massage Therapy Act, the qualifications established by his or her certification and the provisions of this Chapter stated herein.

E. “Chair massage” shall mean any massage given to a person who is fully clothed and sitting in an upright position on a professional bodywork seat, stool, office seat, wheelchair or other chair-like device.

F. “City” shall mean the City of Cloverdale.

G. “Client” shall mean the customer or patron who pays for or receives massage services.

H. “Compensation” means the payment, loan, advance, donation, contribution, deposit, exchange or gift of money or anything of value.

I. “Disqualifying offense” shall mean any offense which disqualifies an Applicant from obtaining a Permit pursuant to this Chapter. Disqualifying offenses are any of the following:

1. The Applicant has provided materially false information in his/her application.

2. Within five (5) years immediately preceding the date of the filing of the application, the Applicant has been convicted of, or pled guilty to, any of the following offenses: violation of Penal Code sections 243.4, 261, 266a through 266j, inclusive, 267, 288, 314 to 316 inclusive, 318, 647a, 647b,647d, 647i, 647j, any offenses requiring registration under Penal Code section 290 or Health and Safety Code section 11590; any felony offense involving the possession for sale, sale, transportation, furnishing or giving away of a controlled substance specified in Health and Safety Code sections 11054 to 11058, inclusive, as amended; violation of any charge related to human trafficking including United States Code Title 18, Chapter 77, Sections 1590, 1591 or 1592; any offense in another state which if committed in California, would have been punishable as one or more of the offenses mentioned here; any offense involving the use of force or violence upon the person of another, or any offense involving theft, embezzlement or moral turpitude.

3. Any violation of any provision of this Chapter resulting in a suspension or revocation of any Permit issued under this Chapter, or a violation of a similar law in any other jurisdiction, which resulted in a suspension or revocation of a permit under that law.

J. "Employs or retains" shall mean a person that is a directly paid employee of the massage establishment; or an independent contractor who receives compensation for massage therapy provided to patrons of the massage establishment; or a person that receives a referral of patrons from the massage establishment and, at any time before or after the referral, arranges in any way for compensation to flow to the massage establishment operator (regardless of whether the parties involved acknowledge that compensation is flowing in exchange for the referral, or whether such parties record such compensation in their financial records).

K. "Employee" shall mean any person employed by a massage business who may render any service to the business and who receives any form of compensation from the business. For the purposes of this Chapter, the term "Employee" shall include independent contractors, agents and volunteers.

L. "Home occupation massage therapist" shall mean a massage therapist that practices massage within his or her own residence. All home occupation massage therapists are subject to the requirements for home occupation permits as set forth in Section 18.03.190 of the Cloverdale Municipal Code and no more than two (2) massage therapists may operate as home occupation massage therapists in any single residence.

M. "Inspector" shall mean the person or persons designated by the permit authority to conduct any inspections required or permitted under this Chapter.

N. "Manager" shall mean a person who supervises, manages, directs, organizes, controls, or in any other way is responsible for, or in charge of the conduct of, the activities within a massage business. Evidence of management includes, but is not limited to, evidence that the individual has power to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies. A manager may also be an owner.

O. "Massage," and "Massage Therapy," for purposes of this Chapter are used interchangeably and shall mean the skillful application of touch, and any method of treating the external parts of the body for remedial, health or hygienic purposes for any form of compensation by means of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating, of the external parts of the body with hands or other parts of the body by a practitioner to produce increased awareness, relaxation, pain relief, injury rehabilitation or neuromuscular reeducation, with or without the aid of any mechanical or electrical apparatus or appliances; or with or without such supplementary aids as rubbing alcohol, liniments, antiseptic, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice; or by baths, including but not limited to Turkish, Russian, Swedish, Japanese, vapor, shower, electric tub, sponge, mineral, mud, fermentation or any other type of bath.

P. "Massage business" shall mean any business that offers massage in exchange for compensation, whether at a fixed place of business or at a location designated by the customer or client through outcall or on-site massage services. The term "massage business" includes a Massage Therapist Permit holder or CAMTC certificate holder who is the sole owner, operator and employee of a massage business operating as a sole proprietorship and also includes home occupation massage therapists. For the purposes of this Chapter, the term "massage business" shall include those businesses that provide separate massage services, such as spas and day spas, but shall not apply to massages performed to limited areas of the neck, face and/or scalp, hands or feet of the clients when that massage is accessory to and within the scope of a barber's, cosmetologist's and esthetician's state license.

Q. "Massage establishment" shall mean any business or establishment that offers massage therapy in exchange for compensation at a fixed place of business. Any business or establishment that offers any combination of massage therapy and bath facilities including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs, shall be deemed a massage establishment under this Chapter. For the purposes of this Chapter, the term "massage establishment" shall include those businesses that provide separate massage services, such as spas and day spas, but shall not apply to massages performed to limited areas of the neck, face and/or scalp, hands or feet of the clients when that massage is an accessory to and within the scope of a barber's, cosmetologist's, and esthetician's state license.

R. "Massage establishment owner" or "owner of a massage establishment" or "owner" shall mean and include any of the following persons:

1. The sole proprietor of a sole proprietorship operating a massage establishment.

2. Any general partner of a general or limited partnership that owns a massage establishment.

3. Any person who has a ten percent (10%) or greater ownership interest in a corporation that owns a massage establishment.

4. Any person who is a member of a limited liability company that owns a massage establishment.

5. Any person who has a ten percent (10%) or greater ownership interest in any other type of business association that owns a massage business.

S. "Massage Establishment Permit," or "Permit holder" means the City-issued permit required by this Chapter to operate a massage establishment. Only an owner(s) may apply for a Massage Establishment Permit.

T. "Massage Therapist Permit," or "Permit holder" means the City-issued permit required by this Chapter to operate as a massage therapist.

U. “On-site massage” shall mean a massage given to an individual who remains fully clothed during the massage and at a location other than a massage business, and is limited to massages that take place at malls, business offices, sports complexes, convention centers and public events.

V. “Operator” or “massage establishment operator” or “massage business operator” shall mean any and all owners or managers of a massage establishment.

W. “Out-call massage service” shall mean the engaging in or carrying on of massage therapy for compensation at a location other than a duly licensed massage establishment that has been permitted pursuant to this Chapter.

X. “Patron” shall mean an individual on the premises of a massage establishment for the purpose of receiving massage therapy.

Y. “Permit authority” means the Chief of Police, or his or her designee, charged with the administration of this Chapter.

Z. “Person” shall mean any individual, firm, association, partnership, corporation, joint venture, limited liability company or combination of individuals.

AA. “Reception and waiting area” shall mean the area immediately inside the main entry door of the massage establishment, dedicated to the reception and waiting of patrons, clients and visitors of the massage establishment, which is not a massage therapy room or otherwise used for the provision of massage therapy services.

BB. “Recognized school” shall mean a school of massage which entails the following:

1. Teaches the theory, ethics, practice including anatomy and physiology, profession and work of massage; and

2. Requires a residence course of study to be given and completed before the student is furnished with a diploma, certificate of learning or completion or degree in massage; and

3. The massage program provides an organized plan of study of massage and related subjects for a minimum of 300 hours and has been approved by the State of California Consumer Bureau, or the Department of Consumer Affairs or an accredited college, university or junior college established pursuant to Education Code 100850, or if said school is not located in California, has complied with the standards commensurate with those of a school of equal or greater training that is approved by the corresponding agency in another state, or accredited by an agency recognized by the United States Department of Education.

CC. “Sole-Proprietorship” shall mean a massage business where the owner owns one-hundred percent (100%) of the business, is the only person who provides massage services for

compensation for that business, and has no other employees or independent contractors that perform massage therapy services for the business.

DD. "Spa" or "Day Spa" shall mean a business that offers a variety of services intended to meet personal needs of individuals such as skin treatment, manicures and pedicures and massage.

EE. "Visitor" shall mean any individual not retained or employed by the massage establishment and not receiving or waiting to receive massage therapy services, but excluding law enforcement personnel or governmental officials performing governmental business.

5.24.030. Exemptions.

The provisions of this Chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties in their respective professions:

A. Physicians, surgeons, chiropractors, osteopaths, podiatrists, acupuncturists, physical therapists, nurses or any other person duly licensed to practice any healing art and/or their respective profession under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code when engaging in such practice within the scope of his or her license.

B. Persons operating or employed at hospitals, nursing homes, sanitariums or any other health facility duly licensed by the State of California.

C. Trainers of any amateur, semi-professional or professional athlete or athletic team, so long as such persons' do not practice massage therapy as their primary occupation at any location where they provide such services in the City, and the practice of massage is limited to such athletes and athletic teams.

D. Barbers, cosmetologists or estheticians who are duly licensed under the laws of the State of California, while engaging in practices within the scope of their licenses, so long as the barber, cosmetologist or esthetician limits any massages he/she performs in the course of his/her professional duties to the neck, face and/or scalp, hands or feet of the clients when that massage is accessory to and within the scope of the barber's, cosmetologist's and esthetician's state license.

E. Enrolled students of a school of massage when they are performing massage within the City as part of a formal, supervised, internship or training program operated by the school, without compensation other than school credit, on the premises of a massage establishment duly authorized to operate pursuant to the terms of this Chapter; and provided that the operator of the massage establishment has first notified the permit authority in writing of the name, residence address and school of the students and the dates of the trainings.

F. Persons performing a therapeutic modality for which the State does not offer licenses or certification under the provisions of Division 2 (commencing with Section 500) of the

Business and Professions Code and the modality is performed with minimal touching and the client remains fully clothed at all times, such as Reiki, Reflexology that is performed only to the hands, feet and neck area of a patron's body, or the Bowen Technique and/or somatic practitioners who use no physical touch of any kind at any time in their practice.

G. Persons administering massages or health treatments at single-occurrence athletic, recreational or educational events.

5.24.040. Minimum Requirements for All Massage Therapists and Massage Establishments.

A. Massage Therapists. It shall be unlawful for any person to perform or engage in the practice of massage therapy for compensation within the City unless that person possesses one (1) of the following:

1. A current, valid, unsuspended and unrevoked CAMTC certificate as defined in Section 5.24.020(C); or

2. A current, valid, unsuspended and unrevoked Massage Therapist Permit pursuant to Section 5.24.100

B. Massage Establishments. It shall be unlawful for any massage business or establishment, owner or manager, to employ or retain any person to practice massage therapy for compensation, or to allow any person to perform massage therapy for compensation, unless that person possesses either a CAMTC certificate or a Massage Therapist Permit.

C. Massage Establishments. It shall be unlawful for any massage establishment to operate without possessing a current, valid, unsuspended and unrevoked Massage Establishment Permit pursuant to Section 5.24.080.

5.24.050 Business License Required.

In addition to the minimum requirements set forth in Section 5.24.040, it shall be unlawful to transact and carry on any business, trade, profession, calling or occupation relating to massage without first having procured a business license from the City to transact or carry on said business, trade, profession, calling or occupation, pursuant to Chapter 5.04 of the Cloverdale Municipal Code and the definitions stated therein.

The fee for a City Business License shall be assessed pursuant to Cloverdale Municipal Code 5.04.170, as amended by Council from time to time.

5.24.060. Time For Compliance With Minimum Requirements.

A. Upon application for a Business License pursuant to Chapter 5.04 of the Cloverdale Municipal Code or renewal of an existing Business License for a massage business, the Applicant shall show proof of compliance with Section 5.24.040.

B. All persons, massage businesses or establishments, including its owners, operators, managers and employees shall comply with all other applicable sections of this Chapter upon its effective date.

5.24.070 Home Occupation Massage Therapist.

Any massage therapist conducting, performing, engaging in or giving massages at their residence is deemed a home occupation massage therapist and must obtain a home occupation permit pursuant to Cloverdale Municipal Code 18.03.190 and comply with the standards set forth in Cloverdale Municipal Code 18.09.120. The massage therapist conducting, performing, engaging in or giving massages shall also comply with the requirements of Section 5.24.040(A) of this Chapter.

5.24.080. Massage Establishment Permit – Required for Massage Establishments.

A. Valid Permit Required. It is unlawful and a violation of this Chapter for any person, firm, association, corporation, limited partnership, limited liability company or other entity to own, operate, engage in, conduct, permit or carry on in any way, a massage establishment without a valid, unsuspended, unrevoked, Massage Establishment Permit.

B. Single Permit for Each Location. Only one (1) Massage Establishment Permit shall be granted for each fixed location where any of the massage therapy occurs. The owner of the massage establishment, as defined in this Chapter, shall hold the Permit. If there are multiple owners, the Chief of Police, or his or her designee, will issue the Permit to one of the owners.

C. Permit Not Issued if Disqualifying Offenses Committed. A Massage Establishment Permit shall not be issued to any massage establishment where any owner(s), operator(s), manager(s), employee(s), massage therapist(s), or any other individual associated with the massage establishment has committed a disqualifying offense as defined in Section 5.24.020(K).

5.24.090. Massage Establishment Permit – Requirements, Denial, Suspension and Revocation and Due Process.

A. Application. Any Applicant wishing to obtain a Massage Establishment Permit, shall personally appear at the Police Department and file an application on a form provided by the Chief of Police, or his or her designee. The application shall include the following information:

1. The name, address and telephone number of the Applicant and all persons to be directly or indirectly interested in the Permit, such as other owner(s), if issued;

2. A copy of the Applicant's government issued identification card;

3. The name, address and telephone number, of the massage establishment;

4. The form of business under which the Applicant will be conducting the massage establishment, *i.e.*, corporation, general or limited partnership, limited liability company, or other form. If the Applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each shareholder holding more than ten percent (10%) of the stock of the corporation. If the Applicant is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one (1) or more of the partners is a corporation, the provisions of this Section pertaining to a corporate applicant shall apply. If the Applicant is a limited liability company, the application shall set forth the name and residence address of each of the members. If one (1) or more of the members is a partnership, limited liability company, or corporation, the provisions of this Section pertaining to a partnership, limited liability company or corporate Applicant shall apply, as applicable;

5. The name and address of the owner of the real property upon, in or from which the massage establishment is to be operated. In the event the Applicant is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the Applicant and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a massage establishment will be operated by the applicant upon, in or from the property owner's property;

6. A description of the proposed massage establishment, including the type of treatments to be administered;

7. The name and address of all persons currently employed or intended to be employed, the nature of work each employee is intended to perform and for each person that the massage establishment does or will employ or retain to perform massage therapy for compensation, whether on-site or out-call, a copy of each massage therapists' current government issued identification card and a copy of either their CAMTC certificate or their Massage Therapist Permit;

8. Whether any license or permit has ever been issued to the Applicant by any jurisdiction under the provisions of any ordinance or statute governing massage or somatic practice, and as to any such license or permit, the name and address of the issuing authority, the effective dates of such license or permit, whether such license or permit was ever suspended, revoked, withdrawn or denied; and copies of any documentary materials relating to such suspension, revocation, withdrawal or denial;

9. Whether the Applicant or any other owner(s), employee(s) or intended employee(s), has within the five (5) years immediately preceding the date of application been convicted in any state of any felony;

10. Whether the Applicant or any other owner(s), employee(s) or intended employee(s), is currently required to register under the provisions of Section 290 of the California Penal Code;

11. The Applicant's business, occupation and employment history for five (5) years preceding the date of application, and the inclusive dates of same;

12. One (1) set of fingerprints and photographs of the Applicant and any other person interested in the Permit, such as any other owner(s), in a form satisfactory to the Chief of Police, or his or her designee. At the time of the fingerprinting, the Applicant shall pay the Police Department the fingerprinting fee and the cost of obtaining criminal history information and conducting a background investigation. Fees are set forth in the City's fee schedule in amounts established by resolution of City Council and may be amended by Council from time to time. Any Applicant who is CAMTC certified shall not be subject to a background check or fingerprinting and shall be exempt from this subsection 5.24.090(A)(12);

13. A written statement that neither the Applicant nor any persons to be directly or indirectly interested in the Permit, if granted, have knowingly made any false, misleading, or fraudulent statement of facts in the application for the Permit or in any other document required by the City of Cloverdale;

14. Certification, under penalty of perjury, that neither the Applicant, nor any other owner(s), employee(s) or intended employee(s), have committed any disqualifying offenses as defined by Section 5.24.020(K);

15. Such other information as may be required by the Chief of Police, or his or her designee, or any other City Official to determine compliance with any other eligibility requirements for issuance of the Permit as specified by Federal, State or local law.

B. Application Fee. An application for a Massage Establishment Permit shall be accompanied by a fee as established by the City's Master Fee Schedule.

C. Issuance. The Chief of Police, or his or her designee, shall grant a Massage Establishment Permit to an Applicant who has satisfied the requirements of this Section and all other applicable laws, including, but not limited to, the City's building, zoning and health regulations. The Massage Establishment Permit shall be non-transferrable and cannot be sold.

D. Denial. The Chief of Police, or his or her designee, shall determine, based on the background investigation, fingerprints and the information submitted with the application, whether a Massage Establishment Permit shall be issued. If the Chief of Police, or his or her designee, determines that the Applicant is disqualified due to a disqualified offense, the Chief of

Police, or his or her designee, shall inform the Applicant in writing and specify the reasons for the denial.

E. Notice of Denial-Appeal-Judicial Review. If an application for a Massage Establishment Permit is denied, the Chief of Police, or his or her designee, shall serve on the Applicant, in a manner that conforms to Section 1.14.020 (B) of this Code, a written notice of denial which shall specify the grounds for the denial.

1. Any Applicant aggrieved by the decision of the Chief of Police, or his or her designee, may appeal that decision to the City Manager, or his or her designee, by filing a notice of appeal within ten (10) days of being notified of the decision.

2. The City Manager, or his designee, shall schedule a hearing within thirty (30) days and provide written notice of the time, date and location of the hearing to the appellant. The hearing shall be conducted pursuant to Cloverdale Municipal Code 1.14.090. The City Manager, or his or her designee, shall render a decision within thirty (30) days of the conclusion of the hearing, unless the parties agree otherwise.

3. The written decision of the City Manager, or his or her designee may be appealed and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

F. Display of Permit. Each holder of a Massage Establishment Permit shall display that Permit in an open and conspicuous place on the premises visible from the main entry door and/or reception and waiting area of the massage establishment. The home address of any employee need not be displayed.

G. Term. A Massage Establishment Permit issued pursuant to the terms of this Chapter shall be valid for a term of one (1) year from the date of issuance, and, unless suspended or revoked, must be renewed by the Applicant annually so long as the Applicant is operating within the City. A Massage Establishment Permit may not be renewed or amended by the Applicant unless and until all due and unpaid citations issued to the owner, operator, manager or any employee of the establishment, pursuant to this Chapter, are paid in full. Citations shall not be deemed to be due and unpaid until the thirty (30)-day period for appeal of the citation has passed.

H. Amendments. Whenever the information provided in the application for a Massage Establishment Permit on file with the City changes, for example by a change in employees, the Applicant shall, within ten (10) business days after such change, file with the Chief of Police, or his or her designee, an application for amendment to the Massage Establishment Permit to reflect such change. An application for an amendment to a Massage Establishment Permit shall be accompanied by a fee as established by the City's Master Fee Schedule. It shall be unlawful and a violation of this Chapter for any owner or manager to allow any person to perform massage therapy for compensation unless and until an amended Massage Establishment Permit has been issued by the Chief of Police, or his or her designee.

I. Grounds for Suspension or Revocation. For the purpose of enforcing the requirements of this Chapter, the massage establishment owner, operator and/or manager shall be responsible for the conduct of all massage establishment employees, agents, independent contractors or other representatives while such persons are on the premises of the massage establishment or providing outcall massage services on behalf of the massage establishment.

1. In addition to any other remedy available to the City, any Massage Establishment Permit issued pursuant to this Chapter may be suspended or revoked by the Chief of Police, or his or her designee, after a hearing, where it is found by a preponderance of the evidence, that one (1) or more of the following have occurred on even a single occasion:

a. The Permit holder, or any person employed or retained by the massage establishment, has been found to have violated any provision of this Chapter; or

b. The Permit holder, or any person employed or retained by the massage establishment has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of a provision or provisions of this Chapter or the Massage Therapy Act or some other State or Federal law, including any of the following violation(s) of Penal Code sections 243.4, 261, 266a through 266j, inclusive, 267, 288, 314 to 316 inclusive, 318, 647a, 647b,647d, 647i, 647j, any offenses requiring registration under Penal Code section 290 or Health and Safety Code section 11590; any felony offense involving the possession for sale, sale, transportation, furnishing or giving away of a controlled substance specified in Health and Safety Code sections 11054 to 11058, inclusive, as amended; any offense in another state which if committed in California, would have been punishable as one or more of the offenses mentioned here, any offense involving the use of force or violence upon the person of another, or any offense involving the use of force or violence upon the person of another, or any offense involving theft, embezzlement or moral turpitude; or

c. The Permit holder, or any person employed or retained by the massage establishment, has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to this Municipal Code, or Section 11225 through 11235 of the California Penal Code, or any similar provision of law in any jurisdiction outside the State of California; or

d. The Permit holder, or any person employed or retained by the massage establishment, has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for the massage establishment; or

e. A Massage Establishment Permit was obtained with fraudulent or deceitful information; or

f. The Permit holder has continued to operate or conduct massages after the Massage Establishment Permit was suspended; or

g. Massage treatments are or have been performed on the premises of the massage establishment, with or without the Permit holder's actual knowledge, by any person who does not possess a CAMTC certificate or a Massage Therapist Permit; or

h. The massage establishment is not being maintained in compliance with the provisions of this Chapter, the Massage Therapy Act (Business & Professions Code Sections 4600-4621, any other provision of the Cloverdale Municipal Code or any other local, State or Federal law and the Permit holder has failed to promptly remedy any deficiency for which they have received notice; or

i. There have been one (1) or more acts prohibited under California Penal Code Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 taking place on the premises of the massage establishment, whether or not any criminal prosecution has been pursued or conviction obtained for such acts, and whether or not they occurred with or without the actual knowledge of the Permit Holder.

j. The Permit holder has committed a disqualifying offense pursuant to Section 5.24.020(K).

2. Upon revocation of a Massage Establishment Permit, the Permit holder shall ensure that the massage establishment immediately ceases any operation or business related to massage.

J. Process of Suspension or Revocation.

1. The Chief of Police, or his or her designee, before revoking or suspending any Massage Establishment Permit, shall serve the Permit holder and/or the massage establishment owner(s), operator(s) and/or manager(s) with written Notice of Revocation or Suspension in a manner that conforms to Section 1.14.020(B) of this Code and a date for the hearing on the matter. The Notice shall state the basis for the potential revocation or suspension and the date and time for the hearing.

2. The hearing shall be conducted by the Chief of Police, or his or her designee, and shall be an informal proceeding. The Chief of Police, or his or her designee, shall consider the facts and evidence and shall make a determination, based upon a preponderance of the evidence, whether the Massage Establishment Permit should be revoked or suspended.

3. The Chief of Police, or his or her designee, shall serve the Permit holder and/or the massage establishment owner(s), operator(s) and/or manager(s) with written Notice of Revocation or Suspension in the manner set forth in Section 1.14.090 of this Code. The Notice shall state the grounds for revocation or suspension.

4. Any Permit holder aggrieved by the decision of the Chief of Police, or his or her designee, may appeal that decision to the City Manager, or his or her designee, by filing a notice of appeal within ten (10) days of being notified of the decision.

5. The City Manager, or his or her designee, shall schedule a hearing within thirty (30) days and provide written notice of the time, date and location of the hearing to the appellant. The hearing shall be conducted pursuant to Cloverdale Municipal Code 1.14.090 and 1.14.100. The City Manager, or his or her designee, shall render a decision within thirty (30) days of the conclusion of the hearing, unless the parties agree otherwise.

6. The written decision of the City Manager, or his or her designee may be appealed and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

5.24.100. Massage Therapist Permit – Required for Massage Therapists.

A. Valid Permit Required. It is unlawful and a violation of this Chapter for any person, who is not CAMTC certified, to perform or engage in the practice of massage therapy in the City of Cloverdale without a valid, unsuspended, unrevoked, Massage Therapist Permit.

B. Permit Not Issued if Disqualifying Offenses Committed. A Massage Therapist Permit shall not be issued to any massage therapist where the Applicant has committed a disqualifying offense as defined in Section 5.24.020(K).

C. Any massage therapist who possesses a CAMTC certificate shall be exempt from the requirements of this Section.

5.24.110. Massage Therapist Permit-Minimum Educational Requirements.

A. Massage therapist Applicants must provide the Chief of Police, or his or her designee, with evidence that they possess at least two (2) of the following minimum qualifications before a Massage Therapist Permit may be issued:

1. An original copy of a diploma, certificate or academic transcript that demonstrates completion of three hundred (300) hours of in-class instruction from a recognized school; or

2. Satisfactory passage of the Board Certification Examination, or its equivalent, offered by the National Certification Board for Therapeutic Massage & Bodywork ; or

3. Membership in good standing in a national professional massage organization or association that requires its members to have the following:

a. Substantiation of at least one hundred (100) hours of massage training or education;

b. Possession of practitioner's liability insurance coverage in the minimum amount of one million dollars ($1,000,000) per event;

c. Adherence to a code of ethics; and

d. Renewal of membership at a minimum of once every two (2) years; or

4. The Applicant has a long-standing (over twenty (20) years) history of conducting massages in the City without any complaints or Municipal Code violations.

5.24.120. Massage Therapist Permit - Requirements, Denial, Suspension and Revocation and Due Process.

A. Application. Any Applicant wishing to obtain a Massage Therapist Permit, shall personally appear at the Police Department and file an application on a form provided by the Chief of Police, or his or her designee. The application shall include the following information:

1. If the Applicant is a U.S. citizen, his or her social security number, driver's license number, birth certificate, address and telephone number;

2. If the Applicant is not a U.S. citizen, his or her original Immigration and Naturalization Service documents, to be verified by the Chief of Police, or his or her designee;

3. The name, address and telephone number, of the massage establishment where the Applicant intends to be employed or if the Applicant is a sole-proprietorship or the owner of a business then, the name, address and telephone number of that business;

4. The form of business under which the Applicant will be conducting the massage, *i.e.*, solo practitioner, corporation, general or limited partnership, limited liability company, or other form. If the Applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each shareholder holding more than ten percent (10%) of the stock of the corporation. If the Applicant is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one (1) or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply. If the Applicant is a limited liability company, the application shall set forth the name and residence address of each of the members. If one (1) or more of the members is a partnership, limited liability company, or corporation, the provisions of this section pertaining to a partnership, limited liability company, or corporate Applicant shall apply, as applicable;

5. The name and address of the owner of the real property upon, in, or from which the massage establishment is to be operated. In the event the Applicant is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the Applicant and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a

massage establishment will be operated by the applicant upon, in, or from the property owner's property;

6. A description of the types of massage and services that the massage therapist is qualified to offer;

7. The name, address, telephone number of places of residence and employment of the Applicant for the last five (5) years;

8. Whether any license or permit has ever been issued to the Applicant by any jurisdiction under the provisions of any ordinance or statute governing massage or somatic practice, and as to any such license or permit, the name and address of the issuing authority, the effective dates of such license or permit, whether such license or permit was ever suspended, revoked, withdrawn, or denied; and copies of any documentary materials relating to such suspension, revocation, withdrawal, or denial;

9. Whether the Applicant has, within the five (5) years immediately preceding the date of application, been convicted in any state of any felony;

10. Whether the Applicant is currently required to register under the provisions of Section 290 of the California Penal Code;

11. One (1) set of fingerprints and photographs for each Applicant in a form satisfactory to the Chief of Police, or his or her designee. At the time of the fingerprinting, the Applicant shall pay the Police Department a fingerprinting fee and the cost of obtaining criminal history information and conducting a background investigation. Fees are set forth in the City's fee schedule in amounts established by resolution of City Council and may be amended by Council from time to time;

12. A written statement that neither the Applicant nor any persons to be directly or indirectly interested in the permit, if granted, have knowingly made any false, misleading, or fraudulent statement of facts in the application for the permit or in any other document required by the City of Cloverdale;

13. Certification, under penalty of perjury, that the Applicant has not committed any disqualifying offenses as defined by Section 5.24.020(K);

14. Such other information as may be required by the Chief of Police, or his or her designee, or any other City Official to determine compliance with any other eligibility requirements for issuance of the Permit as specified by Federal, State, or local law. The Chief of Police, or his or her designee, may waive any of the requirements of this section;

15. Any original documents demonstrating the fulfillment of the minimum educational requirements for massage therapists that are not CAMTC certified, as set forth in Section 5.24.110.

B. Home Occupation Massage Therapist. An Application by a person conducting, performing, engaging in or giving massages at their residence is deemed a home occupation massage therapist and must indicate in the Application for a Massage Therapist Permit such an intent to operate as such.

C. Application Fee. An application for a Massage Therapist Permit shall be accompanied by a fee as established by the City's Master Fee Schedule.

D. Issuance. The Chief of Police, or his or her designee, shall grant a Massage Therapist Permit to an Applicant who has satisfied the requirements of this Section and all other applicable laws, including, but not limited to, the City's building, zoning, and health regulations. The Massage Therapist Permit shall be non-transferrable and cannot be sold.

E. Denial. The Chief of Police, or his or her designee, shall determine, based on the background investigation, fingerprints and the information submitted with the application, whether a Massage Therapist Permit shall be issued. If the Chief of Police, or his or her designee, determines that the Applicant is disqualified due to a disqualified offense. The Chief of Police, or his or her designee, shall inform the Applicant in writing and specify the reasons for the denial.

F. Notice of Denial-Appeal-Judicial Review. If an application for a Massage Therapist Permit is denied, the Chief of Police, or his or her designee, shall serve on the Applicant, in a manner that conforms to Section 1.14.020(B) of this Code, a written notice of denial which shall specify the grounds for the denial.

1. Any Applicant aggrieved by the decision of the Chief of Police, or his or her designee, may appeal that decision to the City Manager, or his or her designee, by filing a notice of appeal within ten (10) days of being notified of the decision.

2. The City Manager, or his or her designee, shall schedule a hearing within thirty (30) days and provide written notice of the time, date and location of the hearing to the appellant. The hearing shall be conducted pursuant to Cloverdale Municipal Code 1.14.090. The City Manager, or his or her designee, shall render a decision within thirty (30) days of the conclusion of the hearing, unless the parties agree otherwise.

3. The written decision of the City Manager, or his or her designee may be appealed and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

G. Display of Permit. Each holder of a Massage Therapist Permit shall display that Permit in an open and conspicuous place on the premises visible from the main entry door and/or reception and waiting area of the massage establishment. The home address of any employee need not be displayed.

H. Term. A Massage Therapist Permit issued pursuant to the terms of this Chapter shall be valid for a term of one (1) year from the date of issuance, and, unless suspended or

revoked, must be renewed by the Applicant annually so long as the Applicant is operating within the City. A Massage Therapist Permit may not be renewed or amended by the Applicant unless and until all due and unpaid citations issued to the owner, operator, manager or any employee of the establishment, pursuant to this Chapter, are paid in full. Citations shall not be deemed to be due and unpaid until the thirty (30)-day period for appeal of the citation has passed.

I. Amendments. Whenever the information provided in the application for a Massage Therapist Permit on file with the City changes, for example by a change in address or telephone number, the Applicant shall, within ten (10) business days after such change, file with the Chief of Police, or his or her designee, an application for amendment to the Massage Therapist Permit to reflect such change. An application for an amendment to a Massage Therapist Permit shall be accompanied by a fee as established by the City's Master Fee Schedule. It shall be unlawful and a violation of this Chapter for any owner or manager to allow any person to perform massage therapy for compensation unless and until an amended Massage Therapist Permit has been issued by the Chief of Police, or his or her designee. A Massage Therapist Permit may not be renewed or amended by the Applicant unless and until due and unpaid citations issued to the operator pursuant to this Chapter are paid in full. Citations shall not be deemed to be due and unpaid until the thirty (30)-day period for appeal of the citation has passed.

J. Grounds for Suspension or Revocation.

1. In addition to any other remedy available to the City, any Massage Therapist Permit, issued pursuant to this Chapter, may be suspended or revoked by the Chief of Police, or his or her designee, after a hearing, where it is found by a preponderance of the evidence, that one (1) or more of the following have occurred on even a single occasion:

a. The Permit holder, or any person employed or retained by the Permit holder, has been found to have violated any provision of this Chapter; or

b. The Permit holder, or any person employed or retained by the Permit holder has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of a provision or provisions of this Chapter or the Massage Therapy Act or some other state or federal law, including any of the following violation(s) of Penal Code sections 243.4, 261, 266a through 266j, inclusive, 267, 288, 314 to 316 inclusive, 318, 647a, 647b,647d, 647i, 647j, any offenses requiring registration under Penal Code section 290 or Health and Safety Code section 11590; any felony offense involving the possession for sale, sale, transportation, furnishing, or giving away of a controlled substance specified in Health and Safety Code sections 11054 to 11058, inclusive, as amended; any offense in another state which if committed in California, would have been punishable as one or more of the offenses mentioned here, any offense involving the use of force or violence upon the person of another, or any offense involving the use of force or violence upon the person of another, or any offense involving theft, embezzlement, or moral turpitude; or

c. The Permit holder, or any person employed or retained by the Permit holder, has been subject to a permanent injunction against the conducting or maintaining

of a nuisance pursuant to this Municipal Code, or Section 11225 through 11235 of the California Penal Code, or any similar provision of law in any jurisdiction outside the State of California; or

d. The Permit holder, or any person employed or retained by the Permit holder, has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for the massage establishment; or

e. A Massage Therapist Permit was obtained with fraudulent or deceitful information; or

f. The Permit holder has continued to operate or conduct massages after the Massage Therapist Permit was suspended; or

g. Massage treatments are or have been performed, by any person who does not possess a CAMTC certificate or a Massage Therapist Permit; or

h. The Permit holder is not complying with the provisions of this Chapter, the Massage Therapy Act (Business & Professions Code Sections 4600-4621, any other provision of the Cloverdale Municipal Code or any other local, state or federal law and the Permit holder has failed to promptly remedy any deficiency for which they have received notice; or

i. There have been one (1) or more acts prohibited under California Penal Code Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 taking place on the premises of the massage establishment, whether or not any criminal prosecution has been pursued or conviction obtained for such acts, and whether or not they occurred with or without the actual knowledge of the Permit holder.

j. The Permit holder has committed a disqualifying offense pursuant to Section 5.24.020(K).

2. Upon revocation of a Massage Therapist Permit, the Permit holder shall ensure that he or she immediately ceases any performance or engagement in massage therapy.

K. Process of Suspension or Revocation.

1. The Chief of Police, or his or her designee, before revoking or suspending any Massage Therapist Permit, shall serve the Permit holder and/or the massage establishment owner(s), operator(s) and/or manager(s) with written Notice of Revocation or Suspension in a manner that conforms to Section 1.14.020(B) of this Code and a date for the hearing on the matter. The Notice shall state the basis for the potential revocation or suspension and the date and time for the hearing.

2. The hearing shall be conducted by the Chief of Police, or his or her designee, and shall be an informal proceeding. The Chief of Police, or his or her designee, shall

consider the facts and evidence and shall make a determination, based upon a preponderance of the evidence, whether the Massage Therapist Permit should be revoked or suspended.

3. The Chief of Police, or his or her designee, shall serve the Permit holder and/or the massage establishment owner(s), operator(s) and/or manager(s) with written Notice of Revocation or Suspension in the manner set forth in Section 1.14.090 of this Code. The Notice shall state the grounds for revocation or suspension.

4. Any Permit holder aggrieved by the decision of the Chief of Police, or his or her designee, may appeal that decision to the City Manager, or his or her designee, by filing a notice of appeal within ten (10) days of being notified of the decision.

5. The City Manager, or his or her designee, shall schedule a hearing within thirty (30) days and provide written notice of the time, date and location of the hearing to the appellant. The hearing shall be conducted pursuant to Cloverdale Municipal Code 1.14.090 and 1.14.100. The City Manager, or his or her designee, shall render a decision within thirty (30) days of the conclusion of the hearing, unless the parties agree otherwise.

6. The written decision of the City Manager, or his or her designee, may be appealed and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

5.24.130. Out-call Massage and On-Site Massage Restrictions.

A. No person or massage business shall perform either on-site massage or out-call massage for compensation without possessing either a CAMTC certificate or a Massage Therapist or Establishment Permit in conjunction with a valid City Business License and any other City permits that may be necessary.

B. Out-call massage and on-site massage shall only be conducted between the hours of 7:00 a.m. and 10:00 p.m.

C. Out-call massage or on-site massage shall not be conducted in a hotel/motel room or any other similar location used primarily for transitory habitation purposes.

5.24.140. Health and Safety Requirements for All Massages.

Except as otherwise specifically provided in this Chapter, all massage business owners, operators, employees, sole proprietors, independent contractors, home occupation massage therapists, and any person performing massage within the City shall comply with all of the following health and safety requirements. The Chief of Police, or his or her designee, may waive any of the requirements of this section if the Chief of Police, or his or her designee, determines that such a waiver will have no impact on public safety or neighborhood quality of life. The Chief of Police, or his or her designee, will also take into consideration whether compliance with

the requirements of this Section would place an undue financial burden on or would be physically infeasible.

A. The massage establishment and massage therapists shall at all times be equipped with an adequate supply of clean sanitary towels, non-disposable coverings, and linens, and all massage tables shall be covered with a clean sheet or other clean covering for each patron. After a towel, covering, or linen has been used once, it shall be deposited in a closed receptacle and not used again until properly laundered and sanitized. Towels, non-disposable coverings, and linens shall be laundered either by regular commercial laundering, or by a noncommercial laundering process that includes immersion in water at least one hundred forty (140) degrees Fahrenheit for not less than fifteen (15) minutes during the washing or rinsing operation. Clean towels, coverings, and linens shall be stored in closed, clean cabinets when not in use. Towels, non-disposable coverings, and linens shall not be used on more than one (1) client, unless they have first been laundered and disinfected. Disposable towels and disposable coverings shall not be used on more than one (1) client. Soiled linens and paper towels shall deposited in separate receptacles.

B. In a massage establishment, all massage therapy rooms or cubicles, wet and dry heat rooms, toilet rooms, steam or vapor rooms or cabinets, shower compartments, bathrooms, hot tubs, whirlpool baths and pools shall be thoroughly cleaned and disinfected as needed, and at least once each business day when the premises have been or will be open and such facilities in use, with a hospital-grade disinfectant. All bathtubs shall be thoroughly cleaned and disinfected after each use, with a hospital-grade disinfectant. All walls, ceilings, floors and other physical facilities for the establishment shall be in good repair and maintained in a clean and sanitary condition.

C. All equipment used for massage shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage techniques shall not be used on more than one (1) client unless they have been sterilized, using standard sterilization methods.

D. All liquids, creams or other preparations used on or made available to patrons shall be kept in clean and closed containers. Powders may be kept in clean shakers. All bottles and containers shall be distinctly and correctly labeled to disclose their contents. When only a portion of a liquid, cream or other preparation is to be used on or made available to a patron, it shall be removed from the container in such a way as not to contaminate the remaining portion.

E. No invasive procedures shall be performed on any patron. Invasive procedures include, but are not limited to:

1. Application of electricity that contracts the muscle;

2. Penetration of the skin by metal needles;

3. Removal of skin by means of any razor-edged instrument or other device or tool; and

4. Other similar procedures.

F. All bathrobes, bathing suits, and/or other garments that are provided for the use of patrons shall be fully disposable and not used by more than one (1) patron, or shall be laundered after each use pursuant to subsection (C) of this Section.

G. All combs, brushes, and/or other personal items of grooming or hygiene that are provided for the use of patrons shall be either fully disposable and not used by more than one (1) patron, or shall be fully disinfected after each use.

H. No patrons shall be allowed to use any shower facilities unless such patrons are wearing slip-resistant sandals or flip-flops while in the shower compartment. All footwear such as sandals or flip-flops that are provided for the use of patrons either shall be fully disposable and not used by more than one (1) patron, or shall be fully disinfected after each use.

I. No massage shall be given unless the client's genitalia and female breasts are, at all times, fully covered. Genitalia shall include the genitals, anus, and perineum of any person. The patron's genitals, pubic area, anus, and areola must be fully draped at all times while any individual employed or retained by the massage establishment to practice massage for compensation, or any other employee or operator of the massage establishment, is in the massage therapy room or cubicle with the patron. No massage therapy shall be provided for sexual gratification by intentional contact, or occasional and repetitive contact, with the genitals, pubic area, anus, or areola of a patron, either covered or uncovered.

J. No massage establishment shall have any alcohol for consumption or illegal controlled substance on the premises at any time except for those massage establishments who obtain authorization from the Chief of Police, or his or her designee, and any necessary licenses from the State of California that may be necessary to provide minimal quantities of alcohol to a client as a part of the establishment's services for specific occasions throughout the year such as Mother's Day, Easter, etc.

K. No massage shall be given by any massage therapist who is consuming, or under the influence of, any alcoholic beverage or illegal controlled substance.

L. The following attire and physical hygiene requirements shall be applicable to all employees and any other persons who work permanently or temporarily on the premises, of a massage establishment within the City, including, but not limited to, all persons who are employed or retained to practice massage for the massage establishment and any person performing massage:

1. No person shall dress in:

a. attire that is transparent, see-through, or substantially exposes the person's undergarments;

b. swim attire, if not providing a water-based massage modality approved by the California Massage Therapy Council;

c. a manner that exposes the person's breasts, buttocks, or genitals; and

d. a manner that constitutes a violation of Section 314 of the California Penal Code.

2. No massage establishment operator, employee, or visitor shall, while on the premises of a massage establishment or while performing any outcall massage service, and while in the presence of any patron, customer, employee or visitor, expose his or her genitals, buttocks or chest.

M. All massage therapists shall thoroughly wash their hands with soap and water or any equally effective cleansing agent immediately before providing massage therapy to a patron. No massage therapy shall be provided upon a surface of the skin or scalp of a patron where such skin is inflamed, broken (e.g., abraded or cut), or where a skin infection or eruption is present.

N. No massage therapist or massage establishment shall place, publish or distribute or cause to be placed, published or distributed any advertising material that depicts any portion of the human body that would reasonably suggest to prospective customers that services prohibited by this Chapter are available. nor shall any massage therapist or massage establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited under this Chapter.

O. A massage therapist shall not violate the provisions of Sections 647(a) (soliciting to engage in lewd or dissolute conduct in a public place) and 647 (b) (soliciting to engage in or engaging in any act of prostitution) of the California Penal Code, or any other State law involving a crime of moral turpitude, and such practices shall not be allowed or permitted by the massage business.

5.24.150. Operating Requirements for Massage.

Except as otherwise specifically provided, the following operational requirements shall be applicable to all massage establishments located within the City. The Chief of Police, or his or her designee, may waive any of the requirements of this section if the Chief of Police, or his designee, determines that such a waiver will have no impact on public safety or neighborhood quality of life. The Chief of Police, or is or her designee, will also take into consideration whether compliance with the requirements of this Section would place an undue financial burden on or would be physically infeasible.

A. The CAMTC certificate or the Massage Therapist Permit shall be displayed in the reception area or in the area where massage is to be performed for all massage therapists performing or engaging in massage for the massage establishment or anyone performing or engaging in massage as an out-call, or a home occupation massage therapist. CAMTC certificates or the Massage Therapist Permit of former employees, independent contractors, volunteers shall be removed as soon as those massage therapists are no longer performing massage at a massage establishment. No owner, operator or manager of a massage establishment

shall allow or permit a person to administer massage for such establishment unless the practitioner possesses a valid CAMTC certificate or a Massage Therapist Permit.

B. Massage performed at a massage establishment shall only be performed between the hours of 7:00 a.m. and 10:00 p.m.. No massage business shall be open and no massage shall be provided between 10:00 p.m. and 7:00 a.m. A massage commenced prior to 10:00 p.m. shall terminate prior to 10:00 pm. and all clients shall exit the massage establishment prior to 10:00 pm. The hours of operation of the massage establishment shall be displayed in a conspicuous, public, place in the reception and waiting area and in any front window clearly visible from outside of the massage establishment.

C. Patrons and visitors shall be permitted in the massage establishment only during the hours of operation.

D. During the hours of operation, patrons shall be permitted in massage therapy rooms only if at least one (1) duly authorized massage therapist is present on the premises of the massage establishment.

E. During the hours of operation, visitors shall not be permitted in massage therapy rooms of massage establishments except as follows:

1. The parents or guardian of a patron who is a minor child may be present in the massage therapy room with that minor child;

2. The minor child of a patron may be present in the massage therapy room with the patron when necessary for the supervision of the child; or

3. The conservator, aid, or other caretaker of a patron who is elderly or disabled may be present in the massage therapy room with that elderly or disabled person.

F. During the hours of operation, except as otherwise provided herein, no visitors shall be permitted in massage therapy rooms, dressing rooms, showers, or any other room or part of the massage establishment premises other than the reception and waiting area or the restrooms.

G. Except for a patron who is inside a massage therapy room for the purpose of receiving a massage, no patrons or visitors shall be permitted in or on the massage establishment premises at any time who are less than fully clothed in outer garments of nontransparent material, or who display or expose themselves in underclothing or similar intimate apparel.

H. A list of services available and the cost of such services shall be posted in an open and conspicuous public place on the premises, such as the reception area within the massage establishment, or provided to patrons before services are rendered as an out-call massage therapist or a home occupation massage therapist. The services shall be described in English and may also be described in such other languages as may be convenient. Outcall service providers shall provide such a list to clients in advance of performing any service. No massage

establishment operator, owner, or manager shall permit, and no massage therapist shall offer to perform any service other than those posted or listed, as required herein, nor shall an owner, manager, or operator nor a massage therapist offer or charge a fee for any service other than those on the list of available services posted in the reception area or provided to the client in advance of any services.

I. One (1) main entry door shall be provided for patron entry to the massage establishment, which shall open to an interior patron reception and waiting area immediately. All patrons and any persons other than individuals employed or retained by the massage establishment shall be required to enter and exit through the main entry door. Unless the massage establishment is a sole proprietorship, the main entry door shall be unlocked at all times during business hours.

J. No massage establishment located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs, blurs, or unreasonably darkens the view into the premises.

K. All interior doors of a massage establishment, including massage therapy rooms or cubicles, but excluding individual dressing rooms and toilet rooms, shall be incapable of being locked and shall not be blocked to prevent opening. Draw drapes, curtain enclosures, or accordion-pleated closures in lieu of doors are acceptable on all inner massage therapy rooms or cubicles.

L. Minimum lighting equivalent to at least one (1) 40-watt light shall be provided in any area, cubicle, or room where massage is to be performed.

M. A massage table shall be used for all massage therapy, with the exception of "Thai," "Shiatsu," and similar forms of massage therapy, which may be provided on a padded mat on the floor, provided the patron is fully attired in loose clothing, pajamas, scrubs or similar style of garment. Massage tables shall have a minimum height of eighteen (18) inches.

N. Beds, floor mattresses, and waterbeds are not permitted on the premises of the massage establishment, and no massage establishment, shall be used for residential or sleeping purposes.

O. All locker facilities that may be provided to patrons at a massage establishment shall be fully secured for the protection of the patrons' valuables, and each patron shall be given control of the key or other means of access.

P. The massage establishment shall meet and be maintained in a condition to comply with all applicable building standards and fire code requirements (as adopted by Title 15 of this Code), including, but not limited to, those related to the safety of structures, adequacy of the plumbing, lighting, heating, ventilation, waterproofing of rooms in which showers, water or steam baths are used, and the health and cleanliness of the facility.

Q. Clients of the massage establishment shall be furnished with a private dressing room. Dressing rooms need not be separate from the room in which the massage is being performed.

R. Toilet facilities shall be provided in convenient locations within the massage establishment and shall consist of at least one (1) unisex toilet with lavatories or wash basins provided with soap and both hot and cold running water either in the toilet room or vestibule.

S. A minimum of one (1) wash basin shall be available at all times for massage therapists performing massage. The basin shall be located within or as close as practicable to the area devoted to performing of massage services. Soap and sanitary towels shall also be available at each basin.

T. All records of employees, independent contractors, volunteers who have performed massage for a massage establishment shall be retained for a period of two (2) years and shall be made available to any City Inspector upon request.

U. Massage therapists shall be fully clothed at all times. Clothing shall be of a fully opaque, non-transparent material and said garments shall not expose their genitals, pubic areas, buttocks or breasts.

V. Every massage business, including home occupation massage therapists, shall keep a written or electronic record of the date and hour of each treatment administered, the name and address of each patron, the name of the massage therapist administering treatment, and the type of treatment administered. Such written or electronic record shall be available for inspection by the City inspector. Such records shall be kept for a period of two (2) years and shall be open to inspection by the City.

W. No massage establishment shall simultaneously operate as a school of massage or share facilities with a school of massage.

X. No massage establishment shall allow any person to reside within the massage establishment or in any attached structures owned, leased or controlled by the massage establishment owners. This section does not apply to those businesses that have been properly permitted as a home occupation.

Y. All massage establishments must comply with all State and Federal laws and regulations pertaining to disabled clients.

Z. All massage establishments must comply with the City's Sign Ordinance pursuant to Title 18, Chapter 12 of the Cloverdale Municipal Code.

5.24.160. Inspection of Massage Establishment by Officials.

A. The investigating and enforcing officials of the City, including but not limited to, the Chief of Police, or his or her designees, Chief Building Official, or his or her designees, the

Chief of the Fire Department, or his or her designee, shall have the right to enter the massage establishment premises, from time to time, during regular business hours, without a search or inspection warrant, for the purpose of making reasonable inspections to observe and enforce compliance with applicable laws, statutes and regulations, and with the provisions of this Chapter. The Chief Building Official and/or the Chief of the Fire Department may charge a fee for any safety inspections, which shall be established by Council.

B. The violator shall take immediate action to correct each violation noted by the City inspector. A re-inspection will be performed within thirty (30) days, or sooner as determined by the City official, to ensure that each violation noted by the City inspector has been corrected.

5.24.170. Exchange of Information.

The City may, from time to time, request information from CAMTC pertaining to any person who possesses a CAMTC certificate and who is engaging in the practice of massage in the City. The requested information may include, but need not be limited to, the current status of a person's CAMTC certificate, any history of disciplinary action(s) taken against the person, the home and work addresses of the CAMTC certificate holder and any other information that may be necessary to verify fact relevant to administering the provisions of this Chapter.

5.24.180. Nuisance.

Any massage business or establishment operated, conducted or maintained contrary to the provisions of this Chapter shall be unlawful and a public nuisance, and the City Attorney may, in the exercise of his or her discretion, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinment thereof, in any manner provided by the Cloverdale Municipal Code and by law. All remedies provided for in this Chapter are cumulative.

5.24.190. Prosecutorial Discretion.

Pursuant to the City Attorney's prosecutorial discretion, the City may enforce violations of this Chapter as criminal, civil and/or administrative violations utilizing administrative remedies. All remedies provided for in this Chapter are cumulative.

5.24.200. Criminal Prosecution.

A violation of any of the provisions or failing to comply with any of the mandatory requirements of this Chapter shall constitute a misdemeanor and at the discretion of the City Attorney, a violation of any provision of this Chapter may be prosecuted in a criminal court. Any violation of this Chapter prosecuted as a misdemeanor shall be punishable by a fine of not more than one thousand dollars ($1,000.00), per violation or by imprisonment in the County Jail for a period of not more than six (6) months, or by both fine and imprisonment. All remedies provided for in this Chapter are cumulative.

5.24.210. Administrative Fines.

A violation of any of the provisions or failing to comply with any of the mandatory requirements of this Chapter, may result in the issuance of an administrative citation and the City may, at its discretion, seek an administrative fine of up to one thousand dollars ($1,000.00).

A. Each violation of any provision of this Chapter shall constitute a separate and distinct violation for each and every day during which any violation of any provision of this Chapter is committed, continued or permitted by such person.

B. Notice of the assessed fine shall be served by certified mail with the legal violation and supporting facts in accordance with Section 1.14.020 of the Cloverdale Municipal Code. The notice shall contain an advisement of the right to file an appeal and the process for contesting the imposition of the fine with the City. The appeal process and timeline shall follow those procedures and timelines set forth in Section 1.14.020 through 1.14.140 of the Municipal Code.

C. If an appeal is not filed and the fine is not paid within thirty (30) days from the date of the notice of fine or a notice of determination from the Hearing Officer, the fine may be referred to a collection agency within or external of the City.

D. Any outstanding amounts owed to the City may be recovered through a lien against any real property owned by the offending party or a personal obligation lien against the offending party.

5.24.220. Applicability of Other Ordinances.

Nothing contained in this Chapter shall be construed to exempt any person from complying with the provisions of any other applicable ordinance, rule, or regulation, or to exempt a massage establishment or massage therapist from the provisions of any zoning, licensing or other building ordinance, rule or regulation.

5.24.230. Unlawful Business Practices May Be Enjoined.

Any massage establishment or business operated, conducted, or maintained contrary to the provisions of this Chapter shall constitute an unlawful business practice pursuant to Business & Professions Code section 17200 et seq., and the City Attorney and/or District Attorney may, in the exercise of discretion, in addition to or in lieu of taking any other action permitted by this Chapter, commence an action or actions, proceeding or proceedings in an appropriate court of jurisdiction, seeking an injunction prohibiting the unlawful business practice and/or any other remedy available at law, including but not limited to fines, attorneys' fees and costs."

SECTION 3. California Environmental Quality Act ("CEQA"). This Ordinance is exempt from the California Environmental Quality Act pursuant to the State CEQA Guidelines and does not constitute the approval of a "project" under CEQA, pursuant to section 15060(c)(2) and (3), 15061(b)(3), 15262, and 15378 of the State CEQA Guidelines. Specifically, it can be

seen with certainty that there is no possibility that this Ordinance, containing amendments to the registration, inspection and revocation processes for permits for massage establishments and massage therapists, or its implementation, would have a significant effect on the environment and is covered by the general rule, pursuant to 14 Cal. Code Regulations Section 15061(b)(3).

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 November 8, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 8th day of November, 2016 by the following vote: (Ayes-X; Noes-X; Absent-X)

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved: Attested:

_____ _____

Mary Ann Brigham, Mayor Linda Moore, Deputy City Clerk

2618332.4

ORDINANCE NO. 705-2016
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE REPEALING AND REPLACING CLOVERDALE MUNICIPAL CODE CHAPTER 5.24 RELATING TO MASSAGE THERAPY AND MASSAGE ESTABLISHMENTS

WHEREAS, there is substantial research that indicates that the skillful practice of massage can provide many health benefits including relief of pain from disease, injury and other sources, and that massage can be a valuable component of a wellness program; and

WHEREAS, the City of Cloverdale has an interest in the safe operation and licensing of massage businesses in the City; and

WHEREAS, in 1975, the City Council adopted Cloverdale Municipal Code Chapter 5.24, establishing regulations governing massage therapy businesses and practitioners; and

WHEREAS, on September 27, 2008, the Governor approved Senate Bill 731 ("SB 731"), which sanctioned Business and Professions Code sections 4600 et seq., known as the Massage Therapy Act, to the California Business and Professions Code, which provided for the formation of a nonprofit "Massage Therapy Organization" to oversee a State-sanctioned program of certification for massage therapy practitioners; and

WHEREAS, pursuant to SB 731, the "California Massage Therapy Council" was formed and established a scheme for a voluntary certification process for persons wishing to practice massage therapy in California, with the intention of enabling persons so certified to practice massage therapy in any city within the State without being required to obtain a local permit to practice; and

WHEREAS, SB 731 included a sunset clause, expiring on January 1, 2015, to allow the State to review the law and its impacts; and

WHEREAS, on September 18, 2014, Governor Brown signed Assembly Bill 1147 ("AB 1147"), effective January 1, 2015, which substantially changed Business and Professions Code sections 460, 4600-4621, and Government Code section 51034, by significantly revising existing laws regulating certified massage professionals and gave cities and counties some regulatory authority over massage establishments; and

WHEREAS, there have been significant changes to State laws relating to massage therapy and to the landscape of massage businesses in the City of Cloverdale, since the City of Cloverdale enacted Cloverdale Municipal Code Chapter 5.24; and

WHEREAS, a revision to the Cloverdale Municipal Code relating to massage therapy and massage establishments will streamline licensing procedures while promoting those businesses that provide legitimate and important health and therapeutic services to the community and prohibiting those businesses that conduct illicit activity; and

WHEREAS, a revision to Municipal Code Chapter 5.24 will also bring the City's local ordinance into compliance with uniform statewide regulations enacted by AB 1147; and

WHEREAS, this Ordinance is enacted pursuant to Government Code Sections 51030-51034 and Business and Professions Code Sections 4600 et seq., as amended by AB 1147.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLOVERDALE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Cloverdale Municipal Code Title 5, "Business Taxes, Licenses and Regulations," Chapter 5.24 entitled "Massage Parlors," as presently written, is hereby repealed in its entirety.

SECTION 2. New Chapter 5.24 entitled "Massage Therapy and Massage Establishments" is hereby incorporated into Title 5, "Business Taxes, Licenses and Regulations" and adopted to read as follows:

"Chapter 5.24

MASSAGE THERAPY AND MASSAGE ESTABLISHMENTS

5.24.010 Purpose and Intent.

It is the purpose and intent of this Chapter to provide for the orderly regulation of individuals and businesses providing massage therapy services, and to prevent and discourage the misuse of massage therapy as a front for prostitution, human trafficking, and related activities in violation of State law while protecting the interests of the public health, safety and welfare of the community by providing certain minimum standards for health and safety, building, sanitation, education, and operation standards for massage therapists and businesses.

It is the further intent of this Chapter to update and streamline local massage therapy permitting procedures, while still facilitating and advancing the ethical practice of massage therapy. It is also the intent of the City Council that this Chapter apply to any business, location or individual that provides massage services regardless of the business name or individual's title or position.

5.24.020. Definitions.

For the purpose of this Chapter, unless the context clearly requires a different meaning, the words, terms and phrases set forth in this Section shall have the meanings given them in this section:

A. "Applicant" shall mean the individual or individuals applying for a Massage Therapist Permit or a Massage Establishment Permit. Only an owner(s) may apply for a Massage Establishment Permit.

B. "California Massage Therapy Council" or "CAMTC" shall mean the non-profit organization created to regulate the massage industry set forth Chapter 10.5 of Division 2 of the Business and Professions Code of the State of California (commencing with Section 4600).

C. "CAMTC Certificate" shall mean a current and valid certificate issued by the California Massage Therapy Council to a massage practitioner pursuant to Business and Professions Code section 4601(b) or (c) or any later enacted amendment.

D. "CAMTC certified" shall mean any individual, certified by the CAMTC and possessing a valid CAMTC Certificate and is licensed to practice or administer massage, in exchange for any form of compensation within the City of Cloverdale. All persons certified by CAMTC shall have the right to perform or engage in the practice of massage consistent with the Massage Therapy Act, the qualifications established by his or her certification and the provisions of this Chapter stated herein.

E. "Chair massage" shall mean any massage given to a person who is fully clothed and sitting in an upright position on a professional bodywork seat, stool, office seat, wheelchair or other chair-like device.

F. "City" shall mean the City of Cloverdale.

G. "Client" shall mean the customer or patron who pays for or receives massage services.

H. "Compensation" means the payment, loan, advance, donation, contribution, deposit, exchange or gift of money or anything of value.

I. "Disqualifying offense" shall mean any offense which disqualifies an Applicant from obtaining a Permit pursuant to this Chapter. Disqualifying offenses are any of the following:

1. The Applicant has provided materially false information in his/her application.

2. Within five (5) years immediately preceding the date of the filing of the application, the Applicant has been convicted of, or pled guilty to, any of the following offenses: violation of Penal Code sections 243.4, 261, 266a through 266j, inclusive, 267, 288, 314 to 316 inclusive, 318, 647a, 647b,647d, 647i, 647j, any offenses requiring registration under Penal Code section 290 or Health and Safety Code section 11590; any felony offense involving the possession for sale, sale, transportation, furnishing or giving away of a controlled substance specified in Health and Safety Code sections 11054 to 11058, inclusive, as amended; violation of any charge related to human trafficking including United States Code Title 18, Chapter 77, Sections 1590, 1591 or 1592; any offense in another state which if committed in California, would have been punishable as one or more of the offenses mentioned here; any offense

involving the use of force or violence upon the person of another, or any offense involving theft, embezzlement or moral turpitude.

3. Any violation of any provision of this Chapter resulting in a suspension or revocation of any Permit issued under this Chapter, or a violation of a similar law in any other jurisdiction, which resulted in a suspension or revocation of a permit under that law.

J. "Employs or retains" shall mean a person that is a directly paid employee of the massage establishment; or an independent contractor who receives compensation for massage therapy provided to patrons of the massage establishment; or a person that receives a referral of patrons from the massage establishment and, at any time before or after the referral, arranges in any way for compensation to flow to the massage establishment operator (regardless of whether the parties involved acknowledge that compensation is flowing in exchange for the referral, or whether such parties record such compensation in their financial records).

K. "Employee" shall mean any person employed by a massage business who may render any service to the business and who receives any form of compensation from the business. For the purposes of this Chapter, the term "Employee" shall include independent contractors, agents and volunteers.

L. "Home occupation massage therapist" shall mean a massage therapist that practices massage within his or her own residence. All home occupation massage therapists are subject to the requirements for home occupation permits as set forth in Section 18.03.190 of the Cloverdale Municipal Code and no more than two (2) massage therapists may operate as home occupation massage therapists in any single residence.

M. "Inspector" shall mean the person or persons designated by the permit authority to conduct any inspections required or permitted under this Chapter.

N. "Manager" shall mean a person who supervises, manages, directs, organizes, controls, or in any other way is responsible for, or in charge of the conduct of, the activities within a massage business. Evidence of management includes, but is not limited to, evidence that the individual has power to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies. A manager may also be an owner.

O. "Massage," and "Massage Therapy," for purposes of this Chapter are used interchangeably and shall mean the skillful application of touch, and any method of treating the external parts of the body for remedial, health or hygienic purposes for any form of compensation by means of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating, of the external parts of the body with hands or other parts of the body by a practitioner to produce increased awareness, relaxation, pain relief, injury rehabilitation or neuromuscular reeducation, with or without the aid of any mechanical or electrical apparatus or appliances; or with or without such supplementary aids as rubbing alcohol, liniments, antiseptic, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice; or by baths, including but not limited to Turkish,

Russian, Swedish, Japanese, vapor, shower, electric tub, sponge, mineral, mud, fermentation or any other type of bath.

P. "Massage business" shall mean any business that offers massage in exchange for compensation, whether at a fixed place of business or at a location designated by the customer or client through outcall or on-site massage services. The term "massage business" includes a Massage Therapist Permit holder or CAMTC certificate holder who is the sole owner, operator and employee of a massage business operating as a sole proprietorship and also includes home occupation massage therapists. For the purposes of this Chapter, the term "massage business" shall include those businesses that provide separate massage services, such as spas and day spas, but shall not apply to massages performed to limited areas of the neck, face and/or scalp, hands or feet of the clients when that massage is accessory to and within the scope of a barber's, cosmetologist's and esthetician's state license.

Q. "Massage establishment" shall mean any business or establishment that offers massage therapy in exchange for compensation at a fixed place of business. Any business or establishment that offers any combination of massage therapy and bath facilities including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs, shall be deemed a massage establishment under this Chapter. For the purposes of this Chapter, the term "massage establishment" shall include those businesses that provide separate massage services, such as spas and day spas, but shall not apply to massages performed to limited areas of the neck, face and/or scalp, hands or feet of the clients when that massage is an accessory to and within the scope of a barber's, cosmetologist's, and esthetician's state license.

R. "Massage establishment owner" or "owner of a massage establishment" or "owner" shall mean and include any of the following persons:

1. The sole proprietor of a sole proprietorship operating a massage establishment.

2. Any general partner of a general or limited partnership that owns a massage establishment.

3. Any person who has a ten percent (10%) or greater ownership interest in a corporation that owns a massage establishment.

4. Any person who is a member of a limited liability company that owns a massage establishment.

5. Any person who has a ten percent (10%) or greater ownership interest in any other type of business association that owns a massage business.

S. "Massage Establishment Permit," or "Permit holder" means the City-issued permit required by this Chapter to operate a massage establishment. Only an owner(s) may apply for a Massage Establishment Permit.

T. "Massage Therapist Permit," or "Permit holder" means the City-issued permit required by this Chapter to operate as a massage therapist.

U. "On-site massage" shall mean a massage given to an individual who remains fully clothed during the massage and at a location other than a massage business, and is limited to massages that take place at malls, business offices, sports complexes, convention centers and public events.

V. "Operator" or "massage establishment operator" or "massage business operator" shall mean any and all owners or managers of a massage establishment.

W. "Out-call massage service" shall mean the engaging in or carrying on of massage therapy for compensation at a location other than a duly licensed massage establishment that has been permitted pursuant to this Chapter.

X. "Patron" shall mean an individual on the premises of a massage establishment for the purpose of receiving massage therapy.

Y. "Permit authority" means the Chief of Police, or his or her designee, charged with the administration of this Chapter.

Z. "Person" shall mean any individual, firm, association, partnership, corporation, joint venture, limited liability company or combination of individuals.

AA. "Reception and waiting area" shall mean the area immediately inside the main entry door of the massage establishment, dedicated to the reception and waiting of patrons, clients and visitors of the massage establishment, which is not a massage therapy room or otherwise used for the provision of massage therapy services.

BB. "Recognized school" shall mean a school of massage which entails the following:

1. Teaches the theory, ethics, practice including anatomy and physiology, profession and work of massage; and

2. Requires a residence course of study to be given and completed before the student is furnished with a diploma, certificate of learning or completion or degree in massage; and

3. The massage program provides an organized plan of study of massage and related subjects for a minimum of 300 hours and has been approved by the State of California Consumer Bureau, or the Department of Consumer Affairs or an accredited college, university or junior college established pursuant to Education Code 100850, or if said school is not located in California, has complied with the standards commensurate with those of a school of equal or greater training that is approved by the corresponding agency in another state, or accredited by an agency recognized by the United States Department of Education.

CC. "Sole-Proprietorship" shall mean a massage business where the owner owns one-hundred percent (100%) of the business, is the only person who provides massage services for compensation for that business, and has no other employees or independent contractors that perform massage therapy services for the business.

DD. "Spa" or "Day Spa" shall mean a business that offers a variety of services intended to meet personal needs of individuals such as skin treatment, manicures and pedicures and massage.

EE. "Visitor" shall mean any individual not retained or employed by the massage establishment and not receiving or waiting to receive massage therapy services, but excluding law enforcement personnel or governmental officials performing governmental business.

5.24.030. Exemptions.

The provisions of this Chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties in their respective professions:

A. Physicians, surgeons, chiropractors, osteopaths, podiatrists, acupuncturists, physical therapists, nurses or any other person duly licensed to practice any healing art and/or their respective profession under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code when engaging in such practice within the scope of his or her license.

B. Persons operating or employed at hospitals, nursing homes, sanitariums or any other health facility duly licensed by the State of California.

C. Trainers of any amateur, semi-professional or professional athlete or athletic team, so long as such persons' do not practice massage therapy as their primary occupation at any location where they provide such services in the City, and the practice of massage is limited to such athletes and athletic teams.

D. Barbers, cosmetologists or estheticians who are duly licensed under the laws of the State of California, while engaging in practices within the scope of their licenses, so long as the barber, cosmetologist or esthetician limits any massages he/she performs in the course of his/her professional duties to the neck, face and/or scalp, hands or feet of the clients when that massage is accessory to and within the scope of the barber's, cosmetologist's and esthetician's state license.

E. Enrolled students of a school of massage when they are performing massage within the City as part of a formal, supervised, internship or training program operated by the school, without compensation other than school credit, on the premises of a massage establishment duly authorized to operate pursuant to the terms of this Chapter; and provided that the operator of the massage establishment has first notified the permit authority in writing of the name, residence address and school of the students and the dates of the trainings.

F. Persons performing a therapeutic modality for which the State does not offer licenses or certification under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code and the modality is performed with minimal touching and the client remains fully clothed at all times, such as Reiki, Reflexology that is performed only to the hands, feet and neck area of a patron's body, or the Bowen Technique and/or somatic practitioners who use no physical touch of any kind at any time in their practice.

G. Persons administering massages or health treatments at single-occurrence athletic, recreational or educational events.

5.24.040. Minimum Requirements for All Massage Therapists and Massage Establishments.

A. Massage Therapists. It shall be unlawful for any person to perform or engage in the practice of massage therapy for compensation within the City unless that person possesses one (1) of the following:

1. A current, valid, unsuspended and unrevoked CAMTC certificate as defined in Section 5.24.020(C); or

2. A current, valid, unsuspended and unrevoked Massage Therapist Permit pursuant to Section 5.24.100

B. Massage Establishments. It shall be unlawful for any massage business or establishment, owner or manager, to employ or retain any person to practice massage therapy for compensation, or to allow any person to perform massage therapy for compensation, unless that person possesses either a CAMTC certificate or a Massage Therapist Permit.

C. Massage Establishments. It shall be unlawful for any massage establishment to operate without possessing a current, valid, unsuspended and unrevoked Massage Establishment Permit pursuant to Section 5.24.080.

5.24.050 Business License Required.

In addition to the minimum requirements set forth in Section 5.24.040, it shall be unlawful to transact and carry on any business, trade, profession, calling or occupation relating to massage without first having procured a business license from the City to transact or carry on said business, trade, profession, calling or occupation, pursuant to Chapter 5.04 of the Cloverdale Municipal Code and the definitions stated therein.

The fee for a City Business License shall be assessed pursuant to Cloverdale Municipal Code 5.04.170, as amended by Council from time to time.

5.24.060. Time For Compliance With Minimum Requirements.

A. Upon application for a Business License pursuant to Chapter 5.04 of the Cloverdale Municipal Code or renewal of an existing Business License for a massage business, the Applicant shall show proof of compliance with Section 5.24.040.

B. All persons, massage businesses or establishments, including its owners, operators, managers and employees shall comply with all other applicable sections of this Chapter upon its effective date.

5.24.070 Home Occupation Massage Therapist.

Any massage therapist conducting, performing, engaging in or giving massages at their residence is deemed a home occupation massage therapist and must obtain a home occupation permit pursuant to Cloverdale Municipal Code 18.03.190 and comply with the standards set forth in Cloverdale Municipal Code 18.09.120. The massage therapist conducting, performing, engaging in or giving massages shall also comply with the requirements of Section 5.24.040(A) of this Chapter.

5.24.080. Massage Establishment Permit – Required for Massage Establishments.

A. Valid Permit Required. It is unlawful and a violation of this Chapter for any person, firm, association, corporation, limited partnership, limited liability company or other entity to own, operate, engage in, conduct, permit or carry on in any way, a massage establishment without a valid, unsuspended, unrevoked, Massage Establishment Permit.

B. Single Permit for Each Location. Only one (1) Massage Establishment Permit shall be granted for each fixed location where any of the massage therapy occurs. The owner of the massage establishment, as defined in this Chapter, shall hold the Permit. If there are multiple owners, the Chief of Police, or his or her designee, will issue the Permit to one of the owners.

C. Permit Not Issued if Disqualifying Offenses Committed. A Massage Establishment Permit shall not be issued to any massage establishment where any owner(s), operator(s), manager(s), employee(s), massage therapist(s), or any other individual associated with the massage establishment has committed a disqualifying offense as defined in Section 5.24.020(K).

5.24.090. Massage Establishment Permit – Requirements, Denial, Suspension and Revocation and Due Process.

A. Application. Any Applicant wishing to obtain a Massage Establishment Permit, shall personally appear at the Police Department and file an application on a form provided by the Chief of Police, or his or her designee. The application shall include the following information:

1. The name, address and telephone number of the Applicant and all persons to be directly or indirectly interested in the Permit, such as other owner(s), if issued;

2. A copy of the Applicant's government issued identification card;

3. The name, address and telephone number, of the massage establishment;

4. The form of business under which the Applicant will be conducting the massage establishment, *i.e.*, corporation, general or limited partnership, limited liability company, or other form. If the Applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each shareholder holding more than ten percent (10%) of the stock of the corporation. If the Applicant is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one (1) or more of the partners is a corporation, the provisions of this Section pertaining to a corporate applicant shall apply. If the Applicant is a limited liability company, the application shall set forth the name and residence address of each of the members. If one (1) or more of the members is a partnership, limited liability company, or corporation, the provisions of this Section pertaining to a partnership, limited liability company or corporate Applicant shall apply, as applicable;

5. The name and address of the owner of the real property upon, in or from which the massage establishment is to be operated. In the event the Applicant is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the Applicant and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a massage establishment will be operated by the applicant upon, in or from the property owner's property;

6. A description of the proposed massage establishment, including the type of treatments to be administered;

7. The name and address of all persons currently employed or intended to be employed, the nature of work each employee is intended to perform and for each person that the massage establishment does or will employ or retain to perform massage therapy for compensation, whether on-site or out-call, a copy of each massage therapists' current government issued identification card and a copy of either their CAMTC certificate or their Massage Therapist Permit;

8. Whether any license or permit has ever been issued to the Applicant by any jurisdiction under the provisions of any ordinance or statute governing massage or somatic practice, and as to any such license or permit, the name and address of the issuing authority, the effective dates of such license or permit, whether such license or permit was ever suspended, revoked, withdrawn or denied; and copies of any documentary materials relating to such suspension, revocation, withdrawal or denial;

9. Whether the Applicant or any other owner(s), employee(s) or intended employee(s), has within the five (5) years immediately preceding the date of application been convicted in any state of any felony;

10. Whether the Applicant or any other owner(s), employee(s) or intended employee(s), is currently required to register under the provisions of Section 290 of the California Penal Code;

11. The Applicant's business, occupation and employment history for five (5) years preceding the date of application, and the inclusive dates of same;

12. One (1) set of fingerprints and photographs of the Applicant and any other person interested in the Permit, such as any other owner(s), in a form satisfactory to the Chief of Police, or his or her designee. At the time of the fingerprinting, the Applicant shall pay the Police Department the fingerprinting fee and the cost of obtaining criminal history information and conducting a background investigation. Fees are set forth in the City's fee schedule in amounts established by resolution of City Council and may be amended by Council from time to time. Any Applicant who is CAMTC certified shall not be subject to a background check or fingerprinting and shall be exempt from this subsection 5.24.090(A)(12);

13. A written statement that neither the Applicant nor any persons to be directly or indirectly interested in the Permit, if granted, have knowingly made any false, misleading, or fraudulent statement of facts in the application for the Permit or in any other document required by the City of Cloverdale;

14. Certification, under penalty of perjury, that neither the Applicant, nor any other owner(s), employee(s) or intended employee(s), have committed any disqualifying offenses as defined by Section 5.24.020(K);

15. Such other information as may be required by the Chief of Police, or his or her designee, or any other City Official to determine compliance with any other eligibility requirements for issuance of the Permit as specified by Federal, State or local law.

B. Application Fee. An application for a Massage Establishment Permit shall be accompanied by a fee as established by the City's Master Fee Schedule.

C. Issuance. The Chief of Police, or his or her designee, shall grant a Massage Establishment Permit to an Applicant who has satisfied the requirements of this Section and all other applicable laws, including, but not limited to, the City's building, zoning and health regulations. The Massage Establishment Permit shall be non-transferrable and cannot be sold.

D. Denial. The Chief of Police, or his or her designee, shall determine, based on the background investigation, fingerprints and the information submitted with the application, whether a Massage Establishment Permit shall be issued. If the Chief of Police, or his or her designee, determines that the Applicant is disqualified due to a disqualified offense, the Chief of

Police, or his or her designee, shall inform the Applicant in writing and specify the reasons for the denial.

E. Notice of Denial-Appeal-Judicial Review. If an application for a Massage Establishment Permit is denied, the Chief of Police, or his or her designee, shall serve on the Applicant, in a manner that conforms to Section 1.14.020 (B) of this Code, a written notice of denial which shall specify the grounds for the denial.

1. Any Applicant aggrieved by the decision of the Chief of Police, or his or her designee, may appeal that decision to the City Manager, or his or her designee, by filing a notice of appeal within ten (10) days of being notified of the decision.

2. The City Manager, or his designee, shall schedule a hearing within thirty (30) days and provide written notice of the time, date and location of the hearing to the appellant. The hearing shall be conducted pursuant to Cloverdale Municipal Code 1.14.090. The City Manager, or his or her designee, shall render a decision within thirty (30) days of the conclusion of the hearing, unless the parties agree otherwise.

3. The written decision of the City Manager, or his or her designee may be appealed and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

F. Display of Permit. Each holder of a Massage Establishment Permit shall display that Permit in an open and conspicuous place on the premises visible from the main entry door and/or reception and waiting area of the massage establishment. The home address of any employee need not be displayed.

G. Term. A Massage Establishment Permit issued pursuant to the terms of this Chapter shall be valid for a term of one (1) year from the date of issuance, and, unless suspended or revoked, must be renewed by the Applicant annually so long as the Applicant is operating within the City. A Massage Establishment Permit may not be renewed or amended by the Applicant unless and until all due and unpaid citations issued to the owner, operator, manager or any employee of the establishment, pursuant to this Chapter, are paid in full. Citations shall not be deemed to be due and unpaid until the thirty (30)-day period for appeal of the citation has passed.

H. Amendments. Whenever the information provided in the application for a Massage Establishment Permit on file with the City changes, for example by a change in employees, the Applicant shall, within ten (10) business days after such change, file with the Chief of Police, or his or her designee, an application for amendment to the Massage Establishment Permit to reflect such change. An application for an amendment to a Massage Establishment Permit shall be accompanied by a fee as established by the City's Master Fee Schedule. It shall be unlawful and a violation of this Chapter for any owner or manager to allow any person to perform massage therapy for compensation unless and until an amended Massage Establishment Permit has been issued by the Chief of Police, or his or her designee.

I. Grounds for Suspension or Revocation. For the purpose of enforcing the requirements of this Chapter, the massage establishment owner, operator and/or manager shall be responsible for the conduct of all massage establishment employees, agents, independent contractors or other representatives while such persons are on the premises of the massage establishment or providing outcall massage services on behalf of the massage establishment.

1. In addition to any other remedy available to the City, any Massage Establishment Permit issued pursuant to this Chapter may be suspended or revoked by the Chief of Police, or his or her designee, after a hearing, where it is found by a preponderance of the evidence, that one (1) or more of the following have occurred on even a single occasion:

a. The Permit holder, or any person employed or retained by the massage establishment, has been found to have violated any provision of this Chapter; or

b. The Permit holder, or any person employed or retained by the massage establishment has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of a provision or provisions of this Chapter or the Massage Therapy Act or some other State or Federal law, including any of the following violation(s) of Penal Code sections 243.4, 261, 266a through 266j, inclusive, 267, 288, 314 to 316 inclusive, 318, 647a, 647b,647d, 647i, 647j, any offenses requiring registration under Penal Code section 290 or Health and Safety Code section 11590; any felony offense involving the possession for sale, sale, transportation, furnishing or giving away of a controlled substance specified in Health and Safety Code sections 11054 to 11058, inclusive, as amended; any offense in another state which if committed in California, would have been punishable as one or more of the offenses mentioned here, any offense involving the use of force or violence upon the person of another, or any offense involving the use of force or violence upon the person of another, or any offense involving theft, embezzlement or moral turpitude; or

c. The Permit holder, or any person employed or retained by the massage establishment, has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to this Municipal Code, or Section 11225 through 11235 of the California Penal Code, or any similar provision of law in any jurisdiction outside the State of California; or

d. The Permit holder, or any person employed or retained by the massage establishment, has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for the massage establishment; or

e. A Massage Establishment Permit was obtained with fraudulent or deceitful information; or

f. The Permit holder has continued to operate or conduct massages after the Massage Establishment Permit was suspended; or

g. Massage treatments are or have been performed on the premises of the massage establishment, with or without the Permit holder's actual knowledge, by any person who does not possess a CAMTC certificate or a Massage Therapist Permit; or

h. The massage establishment is not being maintained in compliance with the provisions of this Chapter, the Massage Therapy Act (Business & Professions Code Sections 4600-4621, any other provision of the Cloverdale Municipal Code or any other local, State or Federal law and the Permit holder has failed to promptly remedy any deficiency for which they have received notice; or

i. There have been one (1) or more acts prohibited under California Penal Code Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 taking place on the premises of the massage establishment, whether or not any criminal prosecution has been pursued or conviction obtained for such acts, and whether or not they occurred with or without the actual knowledge of the Permit Holder.

j. The Permit holder has committed a disqualifying offense pursuant to Section 5.24.020(K).

2. Upon revocation of a Massage Establishment Permit, the Permit holder shall ensure that the massage establishment immediately ceases any operation or business related to massage.

J. Process of Suspension or Revocation.

1. The Chief of Police, or his or her designee, before revoking or suspending any Massage Establishment Permit, shall serve the Permit holder and/or the massage establishment owner(s), operator(s) and/or manager(s) with written Notice of Revocation or Suspension in a manner that conforms to Section 1.14.020(B) of this Code and a date for the hearing on the matter. The Notice shall state the basis for the potential revocation or suspension and the date and time for the hearing.

2. The hearing shall be conducted by the Chief of Police, or his or her designee, and shall be an informal proceeding. The Chief of Police, or his or her designee, shall consider the facts and evidence and shall make a determination, based upon a preponderance of the evidence, whether the Massage Establishment Permit should be revoked or suspended.

3. The Chief of Police, or his or her designee, shall serve the Permit holder and/or the massage establishment owner(s), operator(s) and/or manager(s) with written Notice of Revocation or Suspension in the manner set forth in Section 1.14.090 of this Code. The Notice shall state the grounds for revocation or suspension.

4. Any Permit holder aggrieved by the decision of the Chief of Police, or his or her designee, may appeal that decision to the City Manager, or his or her designee, by filing a notice of appeal within ten (10) days of being notified of the decision.

5. The City Manager, or his or her designee, shall schedule a hearing within thirty (30) days and provide written notice of the time, date and location of the hearing to the appellant. The hearing shall be conducted pursuant to Cloverdale Municipal Code 1.14.090 and 1.14.100. The City Manager, or his or her designee, shall render a decision within thirty (30) days of the conclusion of the hearing, unless the parties agree otherwise.

6. The written decision of the City Manager, or his or her designee may be appealed and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

5.24.100. Massage Therapist Permit – Required for Massage Therapists.

A. Valid Permit Required. It is unlawful and a violation of this Chapter for any person, who is not CAMTC certified, to perform or engage in the practice of massage therapy in the City of Cloverdale without a valid, unsuspended, unrevoked, Massage Therapist Permit.

B. Permit Not Issued if Disqualifying Offenses Committed. A Massage Therapist Permit shall not be issued to any massage therapist where the Applicant has committed a disqualifying offense as defined in Section 5.24.020(K).

C. Any massage therapist who possesses a CAMTC certificate shall be exempt from the requirements of this Section.

5.24.110. Massage Therapist Permit-Minimum Educational Requirements.

A. Massage therapist Applicants must provide the Chief of Police, or his or her designee, with evidence that they possess at least two (2) of the following minimum qualifications before a Massage Therapist Permit may be issued:

1. An original copy of a diploma, certificate or academic transcript that demonstrates completion of three hundred (300) hours of in-class instruction from a recognized school; or

2. Satisfactory passage of the Board Certification Examination, or its equivalent, offered by the National Certification Board for Therapeutic Massage & Bodywork ; or

3. Membership in good standing in a national professional massage organization or association that requires its members to have the following:

a. Substantiation of at least one hundred (100) hours of massage training or education;

b. Possession of practitioner's liability insurance coverage in the minimum amount of one million dollars ($1,000,000) per event;

c. Adherence to a code of ethics; and

d. Renewal of membership at a minimum of once every two (2) years; or

4. The Applicant has a long-standing (over twenty (20) years) history of conducting massages in the City without any complaints or Municipal Code violations.

5.24.120. Massage Therapist Permit - Requirements, Denial, Suspension and Revocation and Due Process.

A. Application. Any Applicant wishing to obtain a Massage Therapist Permit, shall personally appear at the Police Department and file an application on a form provided by the Chief of Police, or his or her designee. The application shall include the following information:

1. If the Applicant is a U.S. citizen, his or her social security number, driver's license number, birth certificate, address and telephone number;

2. If the Applicant is not a U.S. citizen, his or her original Immigration and Naturalization Service documents, to be verified by the Chief of Police, or his or her designee;

3. The name, address and telephone number, of the massage establishment where the Applicant intends to be employed or if the Applicant is a sole-proprietorship or the owner of a business then, the name, address and telephone number of that business;

4. The form of business under which the Applicant will be conducting the massage, *i.e.*, solo practitioner, corporation, general or limited partnership, limited liability company, or other form. If the Applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each shareholder holding more than ten percent (10%) of the stock of the corporation. If the Applicant is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one (1) or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply. If the Applicant is a limited liability company, the application shall set forth the name and residence address of each of the members. If one (1) or more of the members is a partnership, limited liability company, or corporation, the provisions of this section pertaining to a partnership, limited liability company, or corporate Applicant shall apply, as applicable;

5. The name and address of the owner of the real property upon, in, or from which the massage establishment is to be operated. In the event the Applicant is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the Applicant and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a

massage establishment will be operated by the applicant upon, in, or from the property owner's property;

6. A description of the types of massage and services that the massage therapist is qualified to offer;

7. The name, address, telephone number of places of residence and employment of the Applicant for the last five (5) years;

8. Whether any license or permit has ever been issued to the Applicant by any jurisdiction under the provisions of any ordinance or statute governing massage or somatic practice, and as to any such license or permit, the name and address of the issuing authority, the effective dates of such license or permit, whether such license or permit was ever suspended, revoked, withdrawn, or denied; and copies of any documentary materials relating to such suspension, revocation, withdrawal, or denial;

9. Whether the Applicant has, within the five (5) years immediately preceding the date of application, been convicted in any state of any felony;

10. Whether the Applicant is currently required to register under the provisions of Section 290 of the California Penal Code;

11. One (1) set of fingerprints and photographs for each Applicant in a form satisfactory to the Chief of Police, or his or her designee. At the time of the fingerprinting, the Applicant shall pay the Police Department a fingerprinting fee and the cost of obtaining criminal history information and conducting a background investigation. Fees are set forth in the City's fee schedule in amounts established by resolution of City Council and may be amended by Council from time to time;

12. A written statement that neither the Applicant nor any persons to be directly or indirectly interested in the permit, if granted, have knowingly made any false, misleading, or fraudulent statement of facts in the application for the permit or in any other document required by the City of Cloverdale;

13. Certification, under penalty of perjury, that the Applicant has not committed any disqualifying offenses as defined by Section 5.24.020(K);

14. Such other information as may be required by the Chief of Police, or his or her designee, or any other City Official to determine compliance with any other eligibility requirements for issuance of the Permit as specified by Federal, State, or local law. The Chief of Police, or his or her designee, may waive any of the requirements of this section;

15. Any original documents demonstrating the fulfillment of the minimum educational requirements for massage therapists that are not CAMTC certified, as set forth in Section 5.24.110.

B. Home Occupation Massage Therapist. An Application by a person conducting, performing, engaging in or giving massages at their residence is deemed a home occupation massage therapist and must indicate in the Application for a Massage Therapist Permit such an intent to operate as such.

C. Application Fee. An application for a Massage Therapist Permit shall be accompanied by a fee as established by the City's Master Fee Schedule.

D. Issuance. The Chief of Police, or his or her designee, shall grant a Massage Therapist Permit to an Applicant who has satisfied the requirements of this Section and all other applicable laws, including, but not limited to, the City's building, zoning, and health regulations. The Massage Therapist Permit shall be non-transferrable and cannot be sold.

E. Denial. The Chief of Police, or his or her designee, shall determine, based on the background investigation, fingerprints and the information submitted with the application, whether a Massage Therapist Permit shall be issued. If the Chief of Police, or his or her designee, determines that the Applicant is disqualified due to a disqualified offense. The Chief of Police, or his or her designee, shall inform the Applicant in writing and specify the reasons for the denial.

F. Notice of Denial-Appeal-Judicial Review. If an application for a Massage Therapist Permit is denied, the Chief of Police, or his or her designee, shall serve on the Applicant, in a manner that conforms to Section 1.14.020(B) of this Code, a written notice of denial which shall specify the grounds for the denial.

1. Any Applicant aggrieved by the decision of the Chief of Police, or his or her designee, may appeal that decision to the City Manager, or his or her designee, by filing a notice of appeal within ten (10) days of being notified of the decision.

2. The City Manager, or his or her designee, shall schedule a hearing within thirty (30) days and provide written notice of the time, date and location of the hearing to the appellant. The hearing shall be conducted pursuant to Cloverdale Municipal Code 1.14.090. The City Manager, or his or her designee, shall render a decision within thirty (30) days of the conclusion of the hearing, unless the parties agree otherwise.

3. The written decision of the City Manager, or his or her designee may be appealed and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

G. Display of Permit. Each holder of a Massage Therapist Permit shall display that Permit in an open and conspicuous place on the premises visible from the main entry door and/or reception and waiting area of the massage establishment. The home address of any employee need not be displayed.

H. Term. A Massage Therapist Permit issued pursuant to the terms of this Chapter shall be valid for a term of one (1) year from the date of issuance, and, unless suspended or

revoked, must be renewed by the Applicant annually so long as the Applicant is operating within the City. A Massage Therapist Permit may not be renewed or amended by the Applicant unless and until all due and unpaid citations issued to the owner, operator, manager or any employee of the establishment, pursuant to this Chapter, are paid in full. Citations shall not be deemed to be due and unpaid until the thirty (30)-day period for appeal of the citation has passed.

I. Amendments. Whenever the information provided in the application for a Massage Therapist Permit on file with the City changes, for example by a change in address or telephone number, the Applicant shall, within ten (10) business days after such change, file with the Chief of Police, or his or her designee, an application for amendment to the Massage Therapist Permit to reflect such change. An application for an amendment to a Massage Therapist Permit shall be accompanied by a fee as established by the City's Master Fee Schedule. It shall be unlawful and a violation of this Chapter for any owner or manager to allow any person to perform massage therapy for compensation unless and until an amended Massage Therapist Permit has been issued by the Chief of Police, or his or her designee. A Massage Therapist Permit may not be renewed or amended by the Applicant unless and until due and unpaid citations issued to the operator pursuant to this Chapter are paid in full. Citations shall not be deemed to be due and unpaid until the thirty (30)-day period for appeal of the citation has passed.

J. Grounds for Suspension or Revocation.

1. In addition to any other remedy available to the City, any Massage Therapist Permit, issued pursuant to this Chapter, may be suspended or revoked by the Chief of Police, or his or her designee, after a hearing, where it is found by a preponderance of the evidence, that one (1) or more of the following have occurred on even a single occasion:

a. The Permit holder, or any person employed or retained by the Permit holder, has been found to have violated any provision of this Chapter; or

b. The Permit holder, or any person employed or retained by the Permit holder has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of a provision or provisions of this Chapter or the Massage Therapy Act or some other state or federal law, including any of the following violation(s) of Penal Code sections 243.4, 261, 266a through 266j, inclusive, 267, 288, 314 to 316 inclusive, 318, 647a, 647b,647d, 647i, 647j, any offenses requiring registration under Penal Code section 290 or Health and Safety Code section 11590; any felony offense involving the possession for sale, sale, transportation, furnishing, or giving away of a controlled substance specified in Health and Safety Code sections 11054 to 11058, inclusive, as amended; any offense in another state which if committed in California, would have been punishable as one or more of the offenses mentioned here, any offense involving the use of force or violence upon the person of another, or any offense involving the use of force or violence upon the person of another, or any offense involving theft, embezzlement, or moral turpitude; or

c. The Permit holder, or any person employed or retained by the Permit holder, has been subject to a permanent injunction against the conducting or maintaining

of a nuisance pursuant to this Municipal Code, or Section 11225 through 11235 of the California Penal Code, or any similar provision of law in any jurisdiction outside the State of California; or

d. The Permit holder, or any person employed or retained by the Permit holder, has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for the massage establishment; or

e. A Massage Therapist Permit was obtained with fraudulent or deceitful information; or

f. The Permit holder has continued to operate or conduct massages after the Massage Therapist Permit was suspended; or

g. Massage treatments are or have been performed, by any person who does not possess a CAMTC certificate or a Massage Therapist Permit; or

h. The Permit holder is not complying with the provisions of this Chapter, the Massage Therapy Act (Business & Professions Code Sections 4600-4621, any other provision of the Cloverdale Municipal Code or any other local, state or federal law and the Permit holder has failed to promptly remedy any deficiency for which they have received notice; or

i. There have been one (1) or more acts prohibited under California Penal Code Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 taking place on the premises of the massage establishment, whether or not any criminal prosecution has been pursued or conviction obtained for such acts, and whether or not they occurred with or without the actual knowledge of the Permit holder.

j. The Permit holder has committed a disqualifying offense pursuant to Section 5.24.020(K).

2. Upon revocation of a Massage Therapist Permit, the Permit holder shall ensure that he or she immediately ceases any performance or engagement in massage therapy.

K. Process of Suspension or Revocation.

1. The Chief of Police, or his or her designee, before revoking or suspending any Massage Therapist Permit, shall serve the Permit holder and/or the massage establishment owner(s), operator(s) and/or manager(s) with written Notice of Revocation or Suspension in a manner that conforms to Section 1.14.020(B) of this Code and a date for the hearing on the matter. The Notice shall state the basis for the potential revocation or suspension and the date and time for the hearing.

2. The hearing shall be conducted by the Chief of Police, or his or her designee, and shall be an informal proceeding. The Chief of Police, or his or her designee, shall

consider the facts and evidence and shall make a determination, based upon a preponderance of the evidence, whether the Massage Therapist Permit should be revoked or suspended.

3. The Chief of Police, or his or her designee, shall serve the Permit holder and/or the massage establishment owner(s), operator(s) and/or manager(s) with written Notice of Revocation or Suspension in the manner set forth in Section 1.14.090 of this Code. The Notice shall state the grounds for revocation or suspension.

4. Any Permit holder aggrieved by the decision of the Chief of Police, or his or her designee, may appeal that decision to the City Manager, or his or her designee, by filing a notice of appeal within ten (10) days of being notified of the decision.

5. The City Manager, or his or her designee, shall schedule a hearing within thirty (30) days and provide written notice of the time, date and location of the hearing to the appellant. The hearing shall be conducted pursuant to Cloverdale Municipal Code 1.14.090 and 1.14.100. The City Manager, or his or her designee, shall render a decision within thirty (30) days of the conclusion of the hearing, unless the parties agree otherwise.

6. The written decision of the City Manager, or his or her designee, may be appealed and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

5.24.130. Out-call Massage and On-Site Massage Restrictions.

A. No person or massage business shall perform either on-site massage or out-call massage for compensation without possessing either a CAMTC certificate or a Massage Therapist or Establishment Permit in conjunction with a valid City Business License and any other City permits that may be necessary.

B. Out-call massage and on-site massage shall only be conducted between the hours of 7:00 a.m. and 10:00 p.m.

C. Out-call massage or on-site massage shall not be conducted in a hotel/motel room or any other similar location used primarily for transitory habitation purposes.

5.24.140. Health and Safety Requirements for All Massages.

Except as otherwise specifically provided in this Chapter, all massage business owners, operators, employees, sole proprietors, independent contractors, home occupation massage therapists, and any person performing massage within the City shall comply with all of the following health and safety requirements. The Chief of Police, or his or her designee, may waive any of the requirements of this section if the Chief of Police, or his or her designee, determines that such a waiver will have no impact on public safety or neighborhood quality of life. The Chief of Police, or his or her designee, will also take into consideration whether compliance with

the requirements of this Section would place an undue financial burden on or would be physically infeasible.

A. The massage establishment and massage therapists shall at all times be equipped with an adequate supply of clean sanitary towels, non-disposable coverings, and linens, and all massage tables shall be covered with a clean sheet or other clean covering for each patron. After a towel, covering, or linen has been used once, it shall be deposited in a closed receptacle and not used again until properly laundered and sanitized. Towels, non-disposable coverings, and linens shall be laundered either by regular commercial laundering, or by a noncommercial laundering process that includes immersion in water at least one hundred forty (140) degrees Fahrenheit for not less than fifteen (15) minutes during the washing or rinsing operation. Clean towels, coverings, and linens shall be stored in closed, clean cabinets when not in use. Towels, non-disposable coverings, and linens shall not be used on more than one (1) client, unless they have first been laundered and disinfected. Disposable towels and disposable coverings shall not be used on more than one (1) client. Soiled linens and paper towels shall deposited in separate receptacles.

B. In a massage establishment, all massage therapy rooms or cubicles, wet and dry heat rooms, toilet rooms, steam or vapor rooms or cabinets, shower compartments, bathrooms, hot tubs, whirlpool baths and pools shall be thoroughly cleaned and disinfected as needed, and at least once each business day when the premises have been or will be open and such facilities in use, with a hospital-grade disinfectant. All bathtubs shall be thoroughly cleaned and disinfected after each use, with a hospital-grade disinfectant. All walls, ceilings, floors and other physical facilities for the establishment shall be in good repair and maintained in a clean and sanitary condition.

C. All equipment used for massage shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage techniques shall not be used on more than one (1) client unless they have been sterilized, using standard sterilization methods.

D. All liquids, creams or other preparations used on or made available to patrons shall be kept in clean and closed containers. Powders may be kept in clean shakers. All bottles and containers shall be distinctly and correctly labeled to disclose their contents. When only a portion of a liquid, cream or other preparation is to be used on or made available to a patron, it shall be removed from the container in such a way as not to contaminate the remaining portion.

E. No invasive procedures shall be performed on any patron. Invasive procedures include, but are not limited to:

1. Application of electricity that contracts the muscle;

2. Penetration of the skin by metal needles;

3. Removal of skin by means of any razor-edged instrument or other device or tool; and

4. Other similar procedures.

F. All bathrobes, bathing suits, and/or other garments that are provided for the use of patrons shall be fully disposable and not used by more than one (1) patron, or shall be laundered after each use pursuant to subsection (C) of this Section.

G. All combs, brushes, and/or other personal items of grooming or hygiene that are provided for the use of patrons shall be either fully disposable and not used by more than one (1) patron, or shall be fully disinfected after each use.

H. No patrons shall be allowed to use any shower facilities unless such patrons are wearing slip-resistant sandals or flip-flops while in the shower compartment. All footwear such as sandals or flip-flops that are provided for the use of patrons either shall be fully disposable and not used by more than one (1) patron, or shall be fully disinfected after each use.

I. No massage shall be given unless the client's genitalia and female breasts are, at all times, fully covered. Genitalia shall include the genitals, anus, and perineum of any person. The patron's genitals, pubic area, anus, and areola must be fully draped at all times while any individual employed or retained by the massage establishment to practice massage for compensation, or any other employee or operator of the massage establishment, is in the massage therapy room or cubicle with the patron. No massage therapy shall be provided for sexual gratification by intentional contact, or occasional and repetitive contact, with the genitals, pubic area, anus, or areola of a patron, either covered or uncovered.

J. No massage establishment shall have any alcohol for consumption or illegal controlled substance on the premises at any time except for those massage establishments who obtain authorization from the Chief of Police, or his or her designee, and any necessary licenses from the State of California that may be necessary to provide minimal quantities of alcohol to a client as a part of the establishment's services for specific occasions throughout the year such as Mother's Day, Easter, etc.

K. No massage shall be given by any massage therapist who is consuming, or under the influence of, any alcoholic beverage or illegal controlled substance.

L. The following attire and physical hygiene requirements shall be applicable to all employees and any other persons who work permanently or temporarily on the premises, of a massage establishment within the City, including, but not limited to, all persons who are employed or retained to practice massage for the massage establishment and any person performing massage:

1. No person shall dress in:

a. attire that is transparent, see-through, or substantially exposes the person's undergarments;

b. swim attire, if not providing a water-based massage modality approved by the California Massage Therapy Council;

c. a manner that exposes the person's breasts, buttocks, or genitals; and

d. a manner that constitutes a violation of Section 314 of the California Penal Code.

2. No massage establishment operator, employee, or visitor shall, while on the premises of a massage establishment or while performing any outcall massage service, and while in the presence of any patron, customer, employee or visitor, expose his or her genitals, buttocks or chest.

M. All massage therapists shall thoroughly wash their hands with soap and water or any equally effective cleansing agent immediately before providing massage therapy to a patron. No massage therapy shall be provided upon a surface of the skin or scalp of a patron where such skin is inflamed, broken (e.g., abraded or cut), or where a skin infection or eruption is present.

N. No massage therapist or massage establishment shall place, publish or distribute or cause to be placed, published or distributed any advertising material that depicts any portion of the human body that would reasonably suggest to prospective customers that services prohibited by this Chapter are available. nor shall any massage therapist or massage establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited under this Chapter.

O. A massage therapist shall not violate the provisions of Sections 647(a) (soliciting to engage in lewd or dissolute conduct in a public place) and 647 (b) (soliciting to engage in or engaging in any act of prostitution) of the California Penal Code, or any other State law involving a crime of moral turpitude, and such practices shall not be allowed or permitted by the massage business.

5.24.150. Operating Requirements for Massage.

Except as otherwise specifically provided, the following operational requirements shall be applicable to all massage establishments located within the City. The Chief of Police, or his or her designee, may waive any of the requirements of this section if the Chief of Police, or his designee, determines that such a waiver will have no impact on public safety or neighborhood quality of life. The Chief of Police, or is or her designee, will also take into consideration whether compliance with the requirements of this Section would place an undue financial burden on or would be physically infeasible.

A. The CAMTC certificate or the Massage Therapist Permit shall be displayed in the reception area or in the area where massage is to be performed for all massage therapists performing or engaging in massage for the massage establishment or anyone performing or engaging in massage as an out-call, or a home occupation massage therapist. CAMTC certificates or the Massage Therapist Permit of former employees, independent contractors, volunteers shall be removed as soon as those massage therapists are no longer performing

massage at a massage establishment. No owner, operator or manager of a massage establishment shall allow or permit a person to administer massage for such establishment unless the practitioner possesses a valid CAMTC certificate or a Massage Therapist Permit.

B. Massage performed at a massage establishment shall only be performed between the hours of 7:00 a.m. and 10:00 p.m.. No massage business shall be open and no massage shall be provided between 10:00 p.m. and 7:00 a.m. A massage commenced prior to 10:00 p.m. shall terminate prior to 10:00 pm. and all clients shall exit the massage establishment prior to 10:00 pm. The hours of operation of the massage establishment shall be displayed in a conspicuous, public, place in the reception and waiting area and in any front window clearly visible from outside of the massage establishment.

C. Patrons and visitors shall be permitted in the massage establishment only during the hours of operation.

D. During the hours of operation, patrons shall be permitted in massage therapy rooms only if at least one (1) duly authorized massage therapist is present on the premises of the massage establishment.

E. During the hours of operation, visitors shall not be permitted in massage therapy rooms of massage establishments except as follows:

1. The parents or guardian of a patron who is a minor child may be present in the massage therapy room with that minor child;

2. The minor child of a patron may be present in the massage therapy room with the patron when necessary for the supervision of the child; or

3. The conservator, aid, or other caretaker of a patron who is elderly or disabled may be present in the massage therapy room with that elderly or disabled person.

F. During the hours of operation, except as otherwise provided herein, no visitors shall be permitted in massage therapy rooms, dressing rooms, showers, or any other room or part of the massage establishment premises other than the reception and waiting area or the restrooms.

G. Except for a patron who is inside a massage therapy room for the purpose of receiving a massage, no patrons or visitors shall be permitted in or on the massage establishment premises at any time who are less than fully clothed in outer garments of nontransparent material, or who display or expose themselves in underclothing or similar intimate apparel.

H. A list of services available and the cost of such services shall be posted in an open and conspicuous public place on the premises, such as the reception area within the massage establishment, or provided to patrons before services are rendered as an out-call massage therapist or a home occupation massage therapist. The services shall be described in English and may also be described in such other languages as may be convenient. Outcall service providers

shall provide such a list to clients in advance of performing any service. No massage establishment operator, owner, or manager shall permit, and no massage therapist shall offer to perform any service other than those posted or listed, as required herein, nor shall an owner, manager, or operator nor a massage therapist offer or charge a fee for any service other than those on the list of available services posted in the reception area or provided to the client in advance of any services.

I. One (1) main entry door shall be provided for patron entry to the massage establishment, which shall open to an interior patron reception and waiting area immediately. All patrons and any persons other than individuals employed or retained by the massage establishment shall be required to enter and exit through the main entry door. Unless the massage establishment is a sole proprietorship, the main entry door shall be unlocked at all times during business hours.

J. No massage establishment located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs, blurs, or unreasonably darkens the view into the premises.

K. All interior doors of a massage establishment, including massage therapy rooms or cubicles, but excluding individual dressing rooms and toilet rooms, shall be incapable of being locked and shall not be blocked to prevent opening. Draw drapes, curtain enclosures, or accordion-pleated closures in lieu of doors are acceptable on all inner massage therapy rooms or cubicles.

L. Minimum lighting equivalent to at least one (1) 40-watt light shall be provided in any area, cubicle, or room where massage is to be performed.

M. A massage table shall be used for all massage therapy, with the exception of "Thai," "Shiatsu," and similar forms of massage therapy, which may be provided on a padded mat on the floor, provided the patron is fully attired in loose clothing, pajamas, scrubs or similar style of garment. Massage tables shall have a minimum height of eighteen (18) inches.

N. Beds, floor mattresses, and waterbeds are not permitted on the premises of the massage establishment, and no massage establishment, shall be used for residential or sleeping purposes.

O. All locker facilities that may be provided to patrons at a massage establishment shall be fully secured for the protection of the patrons' valuables, and each patron shall be given control of the key or other means of access.

P. The massage establishment shall meet and be maintained in a condition to comply with all applicable building standards and fire code requirements (as adopted by Title 15 of this Code), including, but not limited to, those related to the safety of structures, adequacy of the plumbing, lighting, heating, ventilation, waterproofing of rooms in which showers, water or steam baths are used, and the health and cleanliness of the facility.

Q. Clients of the massage establishment shall be furnished with a private dressing room. Dressing rooms need not be separate from the room in which the massage is being performed.

R. Toilet facilities shall be provided in convenient locations within the massage establishment and shall consist of at least one (1) unisex toilet with lavatories or wash basins provided with soap and both hot and cold running water either in the toilet room or vestibule.

S. A minimum of one (1) wash basin shall be available at all times for massage therapists performing massage. The basin shall be located within or as close as practicable to the area devoted to performing of massage services. Soap and sanitary towels shall also be available at each basin.

T. All records of employees, independent contractors, volunteers who have performed massage for a massage establishment shall be retained for a period of two (2) years and shall be made available to any City Inspector upon request.

U. Massage therapists shall be fully clothed at all times. Clothing shall be of a fully opaque, non-transparent material and said garments shall not expose their genitals, pubic areas, buttocks or breasts.

V. Every massage business, including home occupation massage therapists, shall keep a written or electronic record of the date and hour of each treatment administered, the name and address of each patron, the name of the massage therapist administering treatment, and the type of treatment administered. Such written or electronic record shall be available for inspection by the City inspector. Such records shall be kept for a period of two (2) years and shall be open to inspection by the City.

W. No massage establishment shall simultaneously operate as a school of massage or share facilities with a school of massage.

X. No massage establishment shall allow any person to reside within the massage establishment or in any attached structures owned, leased or controlled by the massage establishment owners. This section does not apply to those businesses that have been properly permitted as a home occupation.

Y. All massage establishments must comply with all State and Federal laws and regulations pertaining to disabled clients.

Z. All massage establishments must comply with the City's Sign Ordinance pursuant to Title 18, Chapter 12 of the Cloverdale Municipal Code.

5.24.160. Inspection of Massage Establishment by Officials.

A. The investigating and enforcing officials of the City, including but not limited to, the Chief of Police, or his or her designees, Chief Building Official, or his or her designees, the Chief of the Fire Department, or his or her designee, shall have the right to enter the massage establishment premises, from time to time, during regular business hours, without a search or inspection warrant, for the purpose of making reasonable inspections to observe and enforce compliance with applicable laws, statutes and regulations, and with the provisions of this Chapter. The Chief Building Official and/or the Chief of the Fire Department may charge a fee for any safety inspections, which shall be established by Council.

B. The violator shall take immediate action to correct each violation noted by the City inspector. A re-inspection will be performed within thirty (30) days, or sooner as determined by the City official, to ensure that each violation noted by the City inspector has been corrected.

5.24.170. Exchange of Information.

The City may, from time to time, request information from CAMTC pertaining to any person who possesses a CAMTC certificate and who is engaging in the practice of massage in the City. The requested information may include, but need not be limited to, the current status of a person's CAMTC certificate, any history of disciplinary action(s) taken against the person, the home and work addresses of the CAMTC certificate holder and any other information that may be necessary to verify fact relevant to administering the provisions of this Chapter.

5.24.180. Nuisance.

Any massage business or establishment operated, conducted or maintained contrary to the provisions of this Chapter shall be unlawful and a public nuisance, and the City Attorney may, in the exercise of his or her discretion, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinment thereof, in any manner provided by the Cloverdale Municipal Code and by law. All remedies provided for in this Chapter are cumulative.

5.24.190. Prosecutorial Discretion.

Pursuant to the City Attorney's prosecutorial discretion, the City may enforce violations of this Chapter as criminal, civil and/or administrative violations utilizing administrative remedies. All remedies provided for in this Chapter are cumulative.

5.24.200. Criminal Prosecution.

A violation of any of the provisions or failing to comply with any of the mandatory requirements of this Chapter shall constitute a misdemeanor and at the discretion of the City Attorney, a violation of any provision of this Chapter may be prosecuted in a criminal court. Any violation of this Chapter prosecuted as a misdemeanor shall be punishable by a fine of not

more than one thousand dollars ($1,000.00), per violation or by imprisonment in the County Jail for a period of not more than six (6) months, or by both fine and imprisonment. All remedies provided for in this Chapter are cumulative.

5.24.210. Administrative Fines.

A violation of any of the provisions or failing to comply with any of the mandatory requirements of this Chapter, may result in the issuance of an administrative citation and the City may, at its discretion, seek an administrative fine of up to one thousand dollars ($1,000.00).

A. Each violation of any provision of this Chapter shall constitute a separate and distinct violation for each and every day during which any violation of any provision of this Chapter is committed, continued or permitted by such person.

B. Notice of the assessed fine shall be served by certified mail with the legal violation and supporting facts in accordance with Section 1.14.020 of the Cloverdale Municipal Code. The notice shall contain an advisement of the right to file an appeal and the process for contesting the imposition of the fine with the City. The appeal process and timeline shall follow those procedures and timelines set forth in Section 1.14.020 through 1.14.140 of the Municipal Code.

C. If an appeal is not filed and the fine is not paid within thirty (30) days from the date of the notice of fine or a notice of determination from the Hearing Officer, the fine may be referred to a collection agency within or external of the City.

D. Any outstanding amounts owed to the City may be recovered through a lien against any real property owned by the offending party or a personal obligation lien against the offending party.

5.24.220. Applicability of Other Ordinances.

Nothing contained in this Chapter shall be construed to exempt any person from complying with the provisions of any other applicable ordinance, rule, or regulation, or to exempt a massage establishment or massage therapist from the provisions of any zoning, licensing or other building ordinance, rule or regulation.

5.24.230. Unlawful Business Practices May Be Enjoined.

Any massage establishment or business operated, conducted, or maintained contrary to the provisions of this Chapter shall constitute an unlawful business practice pursuant to Business & Professions Code section 17200 et seq., and the City Attorney and/or District Attorney may, in the exercise of discretion, in addition to or in lieu of taking any other action permitted by this Chapter, commence an action or actions, proceeding or proceedings in an appropriate court of jurisdiction, seeking an injunction prohibiting the unlawful business practice and/or any other remedy available at law, including but not limited to fines, attorneys' fees and costs."

SECTION 3. California Environmental Quality Act ("CEQA"). This Ordinance is exempt from the California Environmental Quality Act pursuant to the State CEQA Guidelines and does not constitute the approval of a "project" under CEQA, pursuant to section 15060(c)(2) and (3), 15061(b)(3), 15262, and 15378 of the State CEQA Guidelines. Specifically, it can be seen with certainty that there is no possibility that this Ordinance, containing amendments to the registration, inspection and revocation processes for permits for massage establishments and massage therapists, or its implementation, would have a significant effect on the environment and is covered by the general rule, pursuant to 14 Cal. Code Regulations Section 15061(b)(3).

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 March 22, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 22 day of March, 2016 by the following roll call vote:

AYES: Councilmember Palla, Vice Mayor Wolter, Councilmember Russell, Councilmember Cox, and Mayor Brigham

NOES:

ABSTAIN:

ABSENT:

APPROVED: ATTEST:

MaryAnn Brigham, Mayor Paul Cayler, City Clerk

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City Council/Successor Agency
Agenda Item Summary

Agenda Item:	8
Meeting Date:	November 8, 2016

Agenda Section	**Staff Contact**
Consent Calendar	Stephen Cramer, Police Chief Jose M. Sanchez, City Attorney

Agenda Item Title

Waive second reading and readopt Ordinance No. 706-2016, Amending Cloverdale Municipal Code Chapter 8.08 Related to Smoking in Public Places.

Summary

California Government Code section 36933 requires that within 15 days after the adoption of an ordinance, a city publish a copy of the ordinance and the Council vote in a newspaper of general circulation. The Section also allows a city to only publish a summary of the ordinance instead of the entire document, if the City publishes such summary 5 days prior the adoption, and again within 15 days after the adoption, including the names of those city council members voting for and against the ordinance.

Ordinance No. 706-2016 was adopted by the City Council on April 12, 2016. Due to transitions of staff members, the City inadvertently did not publish a summary of the ordinance in the newspaper at least 5 days prior to the adoption and again within 15 days of the action.

In order to comply with the publishing requirements of Government Code section 36933, and to avoid publishing the entire ordinance, Ordinance No. 706-2016 is being placed before the City Council again for re-adoption. This is simply a re-adoption of the Ordinance. No changes to the substance of the Ordinance has been made.

Options

Waive second reading and readopt Ordinance 706-2015.

Recommended Council Action

Waive the second reading and readopt Ordinance No. 706-2016, an Ordinance of the City Council of Cloverdale Amending Cloverdale Municipal Code Chapter 8.08, “Smoking in Public Places,” to Align Regulations with Current Law and to Prohibit Smoking at Outdoor Public Events.

Attachments:

1. Ordinance No. 706-2016.
2. Adopted Ordinance No. 706-2016

2721064.1

P.O. Box 217 • 124 North Cloverdale Blvd. • Cloverdale, CA 95425-0217 • Telephone (707) 894-2521 • FAX (707) 894-3451

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 706-2016

AN ORDINANCE OF THE CITY COUNCIL OF CLOVERDALE AMENDING CLOVERDALE MUNICIPAL CODE CHAPTER 8.08, "SMOKING IN PUBLIC PLACES," TO ALIGN REGULATIONS WITH CURRENT LAW AND TO PROHIBIT SMOKING AT OUTDOOR PUBLIC EVENTS

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health challenge, as evidenced by the following:

- Tobacco-related illness is the leading cause of preventable death in the United States, accounting for about 443,000 deaths each year;[1] and
- Scientific studies have concluded that tobacco use can cause chronic lung disease, coronary heart disease and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth;[2] and
- Some of the most common types of cancers, including stomach, liver, uterine, cervix, and kidney are related to tobacco use;[3] and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;[4] and
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;[5] and

1 US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

2 US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

3 Leistikow B, Zubair K, Connolly GN, et al. "Male Tobacco Smoke Load and Non-Lung Cancer Mortality Associations in Massachusetts." *BMC Cancer,* 8:341, 2008. Available at: www.biomedcentral.com/1471-2407/8/341.

4 US Department of Health and Human Services, Office of the Surgeon General. *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basisfor Smoking-Attributable Disease: A Report ofthe Surgeon General*. 2010, p. 9. Report highlights available at: www.surgeongeneral.gov/library/tobaccosmoke/factsheet.html.

5 Resolution 06-01, Cal. Air Resources Bd. (2006) at 5. Available at: www.arb.ca.gov/regact/ets2006/res0601.pdf; *see also* California Environmental Protection Agency, Air Resources Board. *News Release, California Identifies Secondhand Smoke as a "Toxic Air Contaminant."* Jan. 26, 2006. Available at: www.arb.ca.gov/newsrel/nr012606.htm.

- The California Environmental Protection Agency included secondhand smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm;[6] and

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Secondhand smoke is responsible for as many as 3,000 deaths from lung cancer and 46,000 deaths from heart disease among nonsmokers each year in the United States;[7]and
- Exposure to secondhand smoke increases the risk of coronary heart disease by approximately thirty percent;[8] and
- Secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis, in as many as 300,000 children in the United States under the age of 18 months each year, and exacerbates childhood asthma;[9] and

WHEREAS, tobacco use and exposure to secondhand smoke impose great social and economic costs, as evidenced by the following:

- The total annual economic burden of smoking in the United States is $193 billion;[10] and
- From 2001-2004, the average annual health care expenditures attributable to smoking were approximately $96 billion;[11] and
- The medical and other costs to nonsmokers due to exposure to secondhand smoke were estimated at over $10 billion per year in the United States in 2005;[12] and

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6 California Environmental Protection Agency, Office of Environmental Health Hazard Assessment. *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity*. 2006, p. 8 & 17. Available at: www.oehha.ca.gov/prop65/prop65list/files/P65single081106.pdf.

7 US Department of Health and Human Services, Centers for Disease Control and Prevention. ***Tobacco Use: Targeting the Nation's Leading Killer***. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/TobaccoAAG2011508.pdf .

8 Barnoya J and Glantz S. "Cardiovascular Effects of Secondhand Smoke: Nearly as Large as Smoking." *Circulation*, 111: 2684-2698, 2005. Available at: www.circ.ahajournals.org/cgi/content/full/111/20/2684.

9 US Department of Health and Human Services, Centers for Disease Control and Prevention. ***Tobacco Use: Targeting the Nation's Leading Killer***. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/TobaccoAAG2011508.pdf .

10 US Department of Health and Human Services, Centers for Disease Control and Prevention. ***Fact Sheet – Economic Facts about U.S. Tobacco Production and Use***. Available at: www.cdc.gov/tobacco/datastatistics/factsheets/economics/econfacts/index.htm#costs (last updated March 9, 2011).

11 US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Economic Facts about U.S. Tobacco Production and Use,* www.cdc.gov/tobacco/datastatistics/factsheets/economics/econfacts/index.htm#costs (last updated March 9, 2011).

12 Behan DF, Eriksen MP and Lin, Y. ***Economic Effects ofEnvironmental Tobacco Smoke***. Schaumburg, IL: Society of Actuaries, 2005, p. 2. Available at:

(footnote continued)

- California's Tobacco Control Program saved the state and its residents $86 billion in health care expenditures between the year of its inception, 1989, and 2004, with savings growing yearly;[13] and

- Indoor smoking bans have been attributed with reductions in calls for ambulances and reductions in deaths attributed to heart attacks;[14] and

WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke does occur at significant levels outdoors, as evidenced by the following:

- Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on the direction and amount of wind and number and proximity of smokers;[15] and

- Irritation from secondhand smoke begins at levels as low as 4 micrograms per cubic meter, and in some outdoor situations this level can be found as far away as 13 feet from the burning cigarette;[16] and

- Smoking cigarettes near building entryways can increase air pollution levels by more than two times as compared to background levels, with maximum levels reaching the "hazardous" range on the US EPA's Air Quality Index;[17] and

www.soa.org/files/pdf/ETSReportFinalDraft(Final%203).pdf; *see also* US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Fast Facts,* www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/index.htm (last updated March 9, 2011).

13 Lightwood JM, Dinno A and Glantz SA. "Effect of the California Tobacco Control Program on Personal Health Care Expenditures." *PLoS Med,* 5(8): e178, 2008. Available at: www.plosmedicine.org/article/info:doi/10.1371/journal.pmed.0050178.

14 Franklin D. *Smoking Ban Tilts Odds Against Ambulance Calls from Casinos.* Available at: http://www.npr.org/blogs/health/2013/08/05/209149956/smoking-ban-in-casinos-linked-to-fewer-caller-for-ambulances; Shute N. *After Smoking Is Banned, Heart Attacks Drop.* Available at http://www.npr.org/blogs/health/2012/10/29/163889012/after-smoking-is-banned-heart-attacks-drop.

15 Klepeis NE, Ott WR, and Switzer P. *Real-Time Monitoring of Outdoor Environmental Tobacco Smoke Concentrations: A Pilot Study.* San Francisco: University of California, San Francisco and Stanford University, 2004, p. 80, 87. Available at: http://exposurescience.org/pub/reports/OutdoorETSFinal.pdf; *see also* Klepeis NE, Ott WR and Switzer P. "Real-Time Measurement of Outdoor Tobacco Smoke Particles." *Journal ofthe Air & Waste Management Association,* 57: 522534, 2007. Available at: www.ashaust.org.au/pdfs/OutdoorSHS0705.pdf.

16 Junker MH, Danuser B, Monn C, et al. "Acute Sensory Responses of Nonsmokers at Very Low Environmental Tobacco Smoke Concentrations in Controlled Laboratory Settings." *Environmental Health Perspectives,* 109(10):1045-1052, p. 1049-51, 2001. Available at: www.pubmedcentral.nih.gov/picrender.fcgi?artid=1242082&blobtype=pdf; Repace JL. "Benefits Ordinance No. of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review,* 34(4): 1621-1638, p. 1626, 2008. Available at: www.repace.com/pdf/RepaceCh15OutdoorSmoke.pdf.

17 Kaufman P, Zhang, B, Bondy S, et al. "Not just 'a few wisps': real-time measurement of tobacco smoke at entrances to office buildings." *Tobacco Control*. Published Online First: 21 December 2010. doi:10.1136/tc.2010.041277. Abstract available at: http://tobaccocontrol.bmj.com/content/early/2010/12/21/tc.2010.041277.abstract.

- To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move nearly 25 feet away from the source of the smoke, about the width of a two-lane road;[18] and

WHEREAS, cigarette butts pose a health threat to young children and are a major and persistent source of litter; and

WHEREAS, laws restricting the use of tobacco products have recognizable benefits to public health and medical costs, as evidenced by the following:

- Cities with smoke-free laws see an appreciable reduction in hospital admittances for heart attacks in the months and years after such laws are passed;[19] and
- Smoking bans help people reduce the number of cigarettes they smoke or to quit altogether;[20] and
- Strong smoking regulations for restaurants decrease the number of children who transition from experimenting with smoking to becoming actual smokers;[21] and

WHEREAS, the safety and efficacy of electronic cigarettes is still unknown and electronic cigarettes deliver an unknown mix of potentially carcinogenic and toxic compounds, as evidenced by the following: a) nicotine content labeling is not accurate with some electronic cigarette manufacturers;[22] b) nicotine related impurities content in cartridges and refills vary by electronic cigarette manufacturer;[23] and c) the concentrations of some metal and silicate particles in electronic cigarette aerosol were higher than or equal to the levels contained in conventional cigarette smoke;[24] and

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18 Repace JL. "Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review,* 34(4): 1621-1638, p. 1626, 2008. Available at: www.repace.com/pdf/RepaceCh15OutdoorSmoke.pdf.

19 US Department of Health and Human Services, Centers for Disease Control and Prevention. "Reduced Hospitalizations for Acute Myocardial Infarction After Implementation of a Smoke-Free Ordinance – City of Pueblo, Colorado, 2002 – 2006." *Morbidity and Mortality Weekly Report,* 57(51&52): 1373-1377, 2009. Available at: www.cdc.gov/mmwr/preview/mmwrhtml/mm5751a1.htm; Glantz SA. "Meta-Analysis ofthe Effects of Smokefree Laws on Acute Myocardial Infarction: An Update." *Preventive Medicine,* 47(4): 452-453, 2008. Abstract available at: www.ncbi.nlm.nih.gov/pmc/articles/PMC2927851/?tool=pubmed.

20 Neighmond P. "Smoking Bans Help People Quit, Research Shows." *National Public Radio,* October 25, 2007, www.npr.org/templates/story/story.php?storyId=15610995.

21 Siegel M, Albers AB, Cheng DM, et al. "Local Restaurant Smoking Regulations and the Adolescent Smoking Initiation Process: Results of a Multilevel Contexual Analysis Among Massachusetts Youth." *Archives of Pediatrics and Adolescent Medicine,* 162(5): 477-483, 2008. Available at: http://archpedi.ama-assn.org/cgi/reprint/162/5/477.pdf.

22 Trehy ML, Ye W, et al. "Analysis of Electronic Cigarette Cartridges, Refill Solutions, and Smoke for Nicotine and Nicotine Related Impurities." Journal of Liquid Chromatography & Related Technologies, 34:1442–1458, 2011.

23 *Id.*

24 Williams M, Villarreal A, Bozhilov K, Lin S, Talbot P (2013) Metal and Silicate Particles Including Nanoparticles Are Present in Electronic Cigarette Cartomizer Fluid and Aerosol. PLoS ONE 8(3): e57987. doi:10.1371/journal.pone.0057987

WHEREAS, the U.S. Food and Drug Administration conducted laboratory analysis of electronic cigarette samples and found them to contain carcinogens and toxic chemicals to which users and bystanders could potentially be exposed,[25] suggesting that the same concerns present with secondhand smoke from conventional cigarettes may exist with electronic cigarettes; and

WHEREAS, it is unlawful to sell or furnish electronic cigarettes to minors,[26] however minors are still able to obtain access to electronic cigarette products. A national survey revealed that between 2011 and 2012, middle school students who reported ever using electronic cigarettes increased from 1.4% to 2.7% and current use of electronic cigarettes increased from 0.6% to 1.1%.[27] The same survey found that high school students who reported ever using electronic cigarettes increased from 4.7% to 10.0% while current use increased from 1.5% to 2.8%; and

WHEREAS, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions;[28] and state law prohibits smoking within 20 feet of entryways and operable windows of government buildings;[29] and

WHEREAS, there is no Constitutional right to smoke;[30] and

WHEREAS, it is the intent of the City Council, in enacting this Ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking and tobacco use around non-tobacco users, especially children; by protecting the public from exposure to secondhand smoke where they live, work and play; by reducing the potential for children to wrongly associate smoking and tobacco use with a healthy lifestyle; and by affirming and promoting a healthy environment in the City.

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25 US Food and Drug Administration. *News Release, FDA and Public Health Experts Warn About Electronic Cigarettes*. July 22, 2009. Available at: www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm.

26 Cal. Health & Safety Code § 119405 (West 2013).

27 Centers for Disease Control and Prevention. Electronic Cigarette Use Among Middle and High School Students—United States, 2011-2012. *Morbidity and Mortality Weekly Report*. September 6, 2013 (survey results are available at http://www.cdc.gov/tobacco/datastatistics/surveys/nyts.)

28 Cal. Health & Safety Code § 104495 (West 2008).

29 Cal. Gov't Code § 7597 (West 2008).

30 Public Health Law & Policy, Technical Assistance Legal Center. *There Is No Constitutional Right to Smoke*. 2005. Available at www.phlpnet.org/tobacco-control/products/there-no-constitutional-right-smoke.

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

SECTION 1. Amendment of Code. Chapter 8.08 of the Cloverdale Municipal Code is amended to read as follows:

Chapter 8.08

SMOKING IN PUBLIC PLACES

Sections:

8.08.010 Purpose of provisions.
8.08.020 Definitions.
8.08.030 City-owned facilities regulated.
8.08.035 Public events regulated.
8.08.040 Enclosed places where smoking is prohibited.
8.08.050 Places of employment regulated.
8.08.060 Areas exempt from restrictions.
8.08.070 Posting requirements.
8.08.080 Reserved.
8.08.090 Enforcement of provisions.
8.08.100 Retaliation prohibited.
8.08.110 Chapter provisions not exclusive.
8.08.120 Violation—Penalty.

8.08.010 Purpose of provisions.
The purpose of this chapter is to protect the public health and welfare by regulating smoking in public places and places of employment and to strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers to breath smoke-free air, and to recognize that, when these needs conflict, the need to breathe smoke-free air shall have priority.

8.08.020 Definitions.
The following words and phrases, whenever used in this chapter, shall be construed as defined in this section, unless it is apparent from the context that they have a different meaning:

"Bar" means an area which is devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.
"City" means the city of Cloverdale, state of California.

"Electronic smoking device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances.

"Electronic smoking device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. "Electronic smoking device"

does not include any product specifically approved by the United States Food and Drug Administration for the use in the mitigation, treatment, or prevention of disease.

"Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

"Employer" means any person, partnership, corporation, including municipal corporation, who employs the services of more than three persons.

"Enclosed" means closed in by roof and four walls with appropriate openings for ingress and egress.

"Place of employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to, work areas, employee lounges, conference rooms, and employee cafeterias or eating places. A private residence is not a place of employment for purposes of this chapter, unless it is used as a child care or health care facility.

"Smoke" means" the gases, particles or vapors released into the air by combustion, electronic ignition or vaporization when the apparent or usual purpose of the combustion, electronic ignition or vaporization is human inhalation of the resulting combustion products, including but not limited to tobacco smoke, cigarette smoke, marijuana smoke, and gases, aerosol or vapor released by the ignition of e-cigarettes or electronic smoking devices. "Smoke" does not include the product of combustion of incense or similar products when used solely for olfactory purposes and not containing tobacco or nicotine.

"Smoking" means the carrying or holding of a lighted pipe, cigar, cigarette of any kind, including an electronic cigarette or electronic or battery-operated smoking device, or any other lighted smoking equipment or the lighting or emitting or exhaling the smoke or vapor of a pipe, cigar, or cigarette of any kind.

"Sports arena" means the enclosed sports pavilions, gymnasiums, health spas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

8.08.030 City-owned facilities regulated.
All enclosed facilities and transit buses owned, leased, or operated by the city or under control of the city council shall be subject to the provisions of this chapter.

8.08.035 Public events regulated.
Smoking shall be prohibited in enclosed and unenclosed public places, when being used for a public event, including but not limited to a farmers' market, concert, parade, craft fair, festival, bazar, or any other event which may be attended by the general public, provided that Smoking is permitted at least twenty (20) feet from the event area on streets and sidewalks being used in a traditional capacity as pedestrian or vehicular thoroughfares, unless otherwise prohibited by this Chapter or other law.

8.08.040 Enclosed places where smoking is prohibited.
Smoking shall be prohibited in the following places within all areas of the city:

A. All enclosed areas within businesses available to and customarily used by the general public including, but not limited to, retail stores, hotels and motels, pharmacies, banks, attorneys' offices and other offices;

B.Within all restaurants.

C.Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices, except that health facilities shall also be subject to the provisions of Section 8.08.050 of this chapter regulating smoking in places of employment;

D. Elevators, public restrooms, indoor service lines, buses, taxicabs, public airports, and other means of public transit under the authority of the city, and in ticket, boarding, and waiting areas of public transit depots;

E. In public areas of museums and galleries;

F.Enclosed seating areas of theaters, auditoriums, and halls which are used for motion pictures, stage dramas and musical performances, ballets or other exhibitions, except when smoking is part of any such production;

G. Enclosed sports arenas, convention, church, social and auditorium halls;

H. Retail food marketing establishments, including grocery stores and supermarkets;

I. Public schools and other public facilities under the control of another public agency, which are available to and customarily used by the general public, to the extent that the same are subject to the jurisdiction of the city;

J. Notwithstanding any other provisions of this chapter, any owner, operator, manager or other person who controls any establishment subject to this chapter may declare that entire establishment as a nonsmoking establishment.

8.08.050 Places of employment regulated.
A. It shall be the responsibility of employers to make reasonable effort to provide smoke-free area for nonsmokers within existing facilities.

B.Within ninety days of the effective date of the ordinance codified in this chapter, each employer and each place of employment located within the city, shall adopt, implement, make known to employees and public, and maintain a written smoking policy, which shall contain at a minimum the following requirements:

1. Prohibition of smoking in conference and meeting rooms, classrooms, restrooms, medical facilities, hallways and elevators and all other areas as required by state or federal law;

2. Any employee in a place of employment shall be given the right to designate his/her immediate work area as a nonsmoking area and to post the same with an appropriate sign or signs, to be provided by the employer. The policy adopted by the employer shall include a reasonable definition of the term "immediate work area";

C.Reserved.

D. The smoking policy shall be communicated to all employees within three weeks of its adoption, and at least annually thereafter. All new employees shall be informed of the policy during initial orientation and in no case later than three weeks after employment;

E. Notwithstanding the provisions of subsection A of this section, every employer shall have the right to designate any place of employment, or portion thereof, as a nonsmoking area.

8.08.060 Areas exempt from restrictions.
Notwithstanding any other provision of this chapter, the following areas shall not be subject to the smoking restrictions of this chapter:

A. Private residences, unless the residence is used as a child care or a health care facility;

B.Reserved.

C.Hotel or motel rooms rented to guests, as allowable under state law;

D. Retail stores that deal primarily in the sale of tobacco and smoking paraphernalia;

E. Restaurants, hotel and motel conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions, so long as no food is being served;

F.A private enclosed space occupied exclusively by smokers, even though such a place may be visited by nonsmokers, and private enclosed offices, excepting places in which smoking is prohibited by the fire agency of jurisdiction or by any other law, ordinance or regulation.

8.08.070 Posting requirements.
"Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch in height or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is controlled by this chapter, by the owner, operator, manager or other person having control of such building or other places.

8.08.080 Reserved.

8.08.090 Enforcement of provisions.

A. Any owner, manager, operator or employer of any establishment subject to this chapter shall have the responsibility to inform any apparent violator, whether public or employee, about any smoking restrictions in the establishment, and shall attempt at all times to obtain voluntary compliance by any apparent violator.

B. Any citizen who desires to register a complaint under this chapter may initiate the complaint by filing a written complaint with the police department.

C. While an establishment is undergoing otherwise mandated inspections, a "self-certification" will be required from the owner, manager, operator or other person having control of such establishment that all requirements of this chapter have been complied with.

8.08.100 Retaliation prohibited.
No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter.

8.08.110 Chapter provisions not exclusive.
This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

8.08.120 Violation—Penalty.
A. It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to this chapter to fail to:

1. Properly post signs required hereunder,
2. To provide signs for the use of employees in designating their areas;
3. To properly set aside "No Smoking" areas;
4. To adopt a smoking restriction policy; or
5. To comply with any other requirements of this chapter.

B. It is unlawful for any person to smoke in any area restricted by the provisions of this chapter.

C. Any person or business that violates subsections A or B or any other provisions of this chapter shall be guilty of an infraction, punishable by:

1. A fine, not exceeding one hundred dollars for first violation;
2. A fine, not exceeding two hundred dollars for a second violation of this chapter within one year,
3. A fine, not exceeding five hundred dollars for each additional violation of this chapter within five years.

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

The City Council hereby finds that the approval of the amendments in this Ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines section 15061(b)(3) that CEQA only applies to projects that have the potential

for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that this Ordinance will have a significant effect on the environment.

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 November 8, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 8th day of November, 2016 by the following vote: (Ayes-X; Noes-X; Absent-X)

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved: Attested:

_____ _____

Mary Ann Brigham, Mayor Linda Moore, Deputy City Clerk

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 706-2016

AN ORDINANCE OF THE CITY COUNCIL OF CLOVERDALE AMENDING CLOVERDALE MUNICIPAL CODE CHAPTER 8.08, "SMOKING IN PUBLIC PLACES," TO ALIGN REGULATIONS WITH CURRENT LAW AND TO PROHIBIT SMOKING AT OUTDOOR PUBLIC EVENTS

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health challenge, as evidenced by the following:

- Tobacco-related illness is the leading cause of preventable death in the United States, accounting for about 443,000 deaths each year;[1] and
- Scientific studies have concluded that tobacco use can cause chronic lung disease, coronary heart disease and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth;[2] and
- Some of the most common types of cancers, including stomach, liver, uterine, cervix, and kidney are related to tobacco use;[3] and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;[4] and
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;[5] and

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[1] US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

[2] US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer.* 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

[3] Leistikow B, Zubair K, Connolly GN, et al. "Male Tobacco Smoke Load and Non-Lung Cancer Mortality Associations in Massachusetts." *BMC Cancer,* 8:341, 2008. Available at: www.biomedcentral.com/1471-2407/8/341.

[4] US Department of Health and Human Services, Office of the Surgeon General. *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General.* 2010, p. 9. Report highlights available at: www.surgeongeneral.gov/library/tobaccosmoke/factsheet.html.

[5] Resolution 06-01, Cal. Air Resources Bd. (2006) at 5. Available at: www.arb.ca.gov/regact/ets2006/res0601.pdf; *see also* California Environmental Protection Agency, Air Resources Board. *News Release, California Identifies Secondhand Smoke as a "Toxic Air Contaminant."* Jan. 26, 2006. Available at: www.arb.ca.gov/newsrel/nr012606.htm.

- The California Environmental Protection Agency included secondhand smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm;[6] and

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Secondhand smoke is responsible for as many as 3,000 deaths from lung cancer and 46,000 deaths from heart disease among nonsmokers each year in the United States;[7]and
- Exposure to secondhand smoke increases the risk of coronary heart disease by approximately thirty percent;[8] and
- Secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis, in as many as 300,000 children in the United States under the age of 18 months each year, and exacerbates childhood asthma;[9] and

WHEREAS, tobacco use and exposure to secondhand smoke impose great social and economic costs, as evidenced by the following:

- The total annual economic burden of smoking in the United States is $193 billion;[10] and
- From 2001-2004, the average annual health care expenditures attributable to smoking were approximately $96 billion;[11] and
- The medical and other costs to nonsmokers due to exposure to secondhand smoke were estimated at over $10 billion per year in the United States in 2005;[12] and

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[6] California Environmental Protection Agency, Office of Environmental Health Hazard Assessment. *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity.* 2006, p. 8 & 17. Available at: www.oehha.ca.gov/prop65/prop65_list/files/P65single081106.pdf.

[7] US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

[8] Barnoya J and Glantz S. "Cardiovascular Effects of Secondhand Smoke: Nearly as Large as Smoking." *Circulation*, 111: 2684-2698, 2005. Available at: www.circ.ahajournals.org/cgi/content/full/111/20/2684.

[9] US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

[10] US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Economic Facts about U.S. Tobacco Production and Use.* Available at: www.cdc.gov/tobacco/data_statistics/fact_sheets/economics/econ_facts/index.htm#costs (last updated March 9, 2011).

[11] US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Economic Facts about U.S. Tobacco Production and Use,* www.cdc.gov/tobacco/data_statistics/fact_sheets/economics/econ_facts/index.htm#costs (last updated March 9, 2011).

[12] Behan DF, Eriksen MP and Lin, Y. *Economic Effects of Environmental Tobacco Smoke*. Schaumburg, IL: Society of Actuaries, 2005, p. 2. Available at:
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- California's Tobacco Control Program saved the state and its residents $86 billion in health care expenditures between the year of its inception, 1989, and 2004, with savings growing yearly;[13] and

- Indoor smoking bans have been attributed with reductions in calls for ambulances and reductions in deaths attributed to heart attacks;[14] and

WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke does occur at significant levels outdoors, as evidenced by the following:

- Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on the direction and amount of wind and number and proximity of smokers;[15] and

- Irritation from secondhand smoke begins at levels as low as 4 micrograms per cubic meter, and in some outdoor situations this level can be found as far away as 13 feet from the burning cigarette;[16] and

- Smoking cigarettes near building entryways can increase air pollution levels by more than two times as compared to background levels, with maximum levels reaching the "hazardous" range on the US EPA's Air Quality Index;[17] and

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www.soa.org/files/pdf/ETSReportFinalDraft(Final%203).pdf; *see also* US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Fast Facts,* www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/index.htm (last updated March 9, 2011).

[13] Lightwood JM, Dinno A and Glantz SA. "Effect of the California Tobacco Control Program on Personal Health Care Expenditures." *PLoS Med,* 5(8): e178, 2008. Available at: www.plosmedicine.org/article/info:doi/10.1371/journal.pmed.0050178.

[14] Franklin D. *Smoking Ban Tilts Odds Against Ambulance Calls from Casinos.* Available at: http://www.npr.org/blogs/health/2013/08/05/209149956/smoking-ban-in-casinos-linked-to-fewer-caller-for-ambulances; Shute N. *After Smoking Is Banned, Heart Attacks Drop.* Available at http://www.npr.org/blogs/health/2012/10/29/163889012/after-smoking-is-banned-heart-attacks-drop.

[15] Klepeis NE, Ott WR, and Switzer P. *Real-Time Monitoring of Outdoor Environmental Tobacco Smoke Concentrations: A Pilot Study.* San Francisco: University of California, San Francisco and Stanford University, 2004, p. 80, 87. Available at: http://exposurescience.org/pub/reports/Outdoor_ETS_Final.pdf; *see also* Klepeis NE, Ott WR and Switzer P. "Real-Time Measurement of Outdoor Tobacco Smoke Particles." *Journal of the Air & Waste Management Association,* 57: 522-534, 2007. Available at: www.ashaust.org.au/pdfs/OutdoorSHS0705.pdf.

[16] Junker MH, Danuser B, Monn C, et al. "Acute Sensory Responses of Nonsmokers at Very Low Environmental Tobacco Smoke Concentrations in Controlled Laboratory Settings." *Environmental Health Perspectives,* 109(10):1045-1052, p. 1049-51, 2001. Available at: www.pubmedcentral.nih.gov/picrender.fcgi?artid=1242082&blobtype=pdf; Repace JL. "Benefits Ordinance No. of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review,* 34(4): 1621-1638, p. 1626, 2008. Available at: www.repace.com/pdf/Repace_Ch_15_Outdoor_Smoke.pdf.

[17] Kaufman P, Zhang, B, Bondy S, et al. "Not just 'a few wisps': real-time measurement of tobacco smoke at entrances to office buildings." *Tobacco Control.* Published Online First: 21 December 2010. doi:10.1136/tc.2010.041277. Abstract available at: http://tobaccocontrol.bmj.com/content/early/2010/12/21/tc.2010.041277.abstract.

- To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move nearly 25 feet away from the source of the smoke, about the width of a two-lane road;[18] and

WHEREAS, cigarette butts pose a health threat to young children and are a major and persistent source of litter; and

WHEREAS, laws restricting the use of tobacco products have recognizable benefits to public health and medical costs, as evidenced by the following:

- Cities with smoke-free laws see an appreciable reduction in hospital admittances for heart attacks in the months and years after such laws are passed;[19] and
- Smoking bans help people reduce the number of cigarettes they smoke or to quit altogether;[20] and
- Strong smoking regulations for restaurants decrease the number of children who transition from experimenting with smoking to becoming actual smokers;[21] and

WHEREAS, the safety and efficacy of electronic cigarettes is still unknown and electronic cigarettes deliver an unknown mix of potentially carcinogenic and toxic compounds, as evidenced by the following: a) nicotine content labeling is not accurate with some electronic cigarette manufacturers;[22] b) nicotine related impurities content in cartridges and refills vary by electronic cigarette manufacturer;[23] and c) the concentrations of some metal and silicate particles in electronic cigarette aerosol were higher than or equal to the levels contained in conventional cigarette smoke;[24] and

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[18] Repace JL. "Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review,* 34(4): 1621-1638, p. 1626, 2008. Available at: www.repace.com/pdf/Repace_Ch_15_Outdoor_Smoke.pdf.

[19] US Department of Health and Human Services, Centers for Disease Control and Prevention. "Reduced Hospitalizations for Acute Myocardial Infarction After Implementation of a Smoke-Free Ordinance – City of Pueblo, Colorado, 2002 – 2006." *Morbidity and Mortality Weekly Report,* 57(51&52): 1373-1377, 2009. Available at: www.cdc.gov/mmwr/preview/mmwrhtml/mm5751a1.htm; Glantz SA. "Meta-Analysis of the Effects of Smokefree Laws on Acute Myocardial Infarction: An Update." *Preventive Medicine,* 47(4): 452-453, 2008. Abstract available at: www.ncbi.nlm.nih.gov/pmc/articles/PMC2927851/?tool=pubmed.

[20] Neighmond P. "Smoking Bans Help People Quit, Research Shows." *National Public Radio,* October 25, 2007, www.npr.org/templates/story/story.php?storyId=15610995.

[21] Siegel M, Albers AB, Cheng DM, et al. "Local Restaurant Smoking Regulations and the Adolescent Smoking Initiation Process: Results of a Multilevel Contexual Analysis Among Massachusetts Youth." *Archives of Pediatrics and Adolescent Medicine,* 162(5): 477-483, 2008. Available at: http://archpedi.ama-assn.org/cgi/reprint/162/5/477.pdf.

[22] Trehy ML, Ye W, et al. "Analysis of Electronic Cigarette Cartridges, Refill Solutions, and Smoke for Nicotine and Nicotine Related Impurities." Journal of Liquid Chromatography & Related Technologies, 34:1442–1458, 2011.

[23] *Id.*

[24] Williams M, Villarreal A, Bozhilov K, Lin S, Talbot P (2013) Metal and Silicate Particles Including Nanoparticles Are Present in Electronic Cigarette Cartomizer Fluid and Aerosol. PLoS ONE 8(3): e57987. doi:10.1371/journal.pone.0057987

WHEREAS, the U.S. Food and Drug Administration conducted laboratory analysis of electronic cigarette samples and found them to contain carcinogens and toxic chemicals to which users and bystanders could potentially be exposed,[25] suggesting that the same concerns present with secondhand smoke from conventional cigarettes may exist with electronic cigarettes; and

WHEREAS, it is unlawful to sell or furnish electronic cigarettes to minors,[26] however minors are still able to obtain access to electronic cigarette products. A national survey revealed that between 2011 and 2012, middle school students who reported ever using electronic cigarettes increased from 1.4% to 2.7% and current use of electronic cigarettes increased from 0.6% to 1.1%.[27] The same survey found that high school students who reported ever using electronic cigarettes increased from 4.7% to 10.0% while current use increased from 1.5% to 2.8%; and

WHEREAS, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions;[28] and state law prohibits smoking within 20 feet of entryways and operable windows of government buildings;[29] and

WHEREAS, there is no Constitutional right to smoke;[30] and

WHEREAS, it is the intent of the City Council, in enacting this Ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking and tobacco use around non-tobacco users, especially children; by protecting the public from exposure to secondhand smoke where they live, work and play; by reducing the potential for children to wrongly associate smoking and tobacco use with a healthy lifestyle; and by affirming and promoting a healthy environment in the City.

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[25] US Food and Drug Administration. *News Release, FDA and Public Health Experts Warn About Electronic Cigarettes.* July 22, 2009. Available at: www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm.

[26] Cal. Health & Safety Code § 119405 (West 2013).

[27] Centers for Disease Control and Prevention. Electronic Cigarette Use Among Middle and High School Students—United States, 2011-2012. *Morbidity and Mortality Weekly Report.* September 6, 2013 (survey results are available at http://www.cdc.gov/tobacco/data_statistics/surveys/nyts.)

[28] Cal. Health & Safety Code § 104495 (West 2008).

[29] Cal. Gov't Code § 7597 (West 2008).

[30] Public Health Law & Policy, Technical Assistance Legal Center. *There Is No Constitutional Right to Smoke.* 2005. Available at www.phlpnet.org/tobacco-control/products/there-no-constitutional-right-smoke.

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

SECTION 1. Amendment of Code. Chapter 8.08 of the Cloverdale Municipal Code is amended to read as follows:

Chapter 8.08

SMOKING IN PUBLIC PLACES

Sections:

8.08.010 Purpose of provisions.
8.08.020 Definitions.
8.08.030 City-owned facilities regulated.
8.08.035 Public events regulated.
8.08.040 Enclosed places where smoking is prohibited.
8.08.050 Places of employment regulated.
8.08.060 Areas exempt from restrictions.
8.08.070 Posting requirements.
8.08.080 Reserved.
8.08.090 Enforcement of provisions.
8.08.100 Retaliation prohibited.
8.08.110 Chapter provisions not exclusive.
8.08.120 Violation—Penalty.

8.08.010 Purpose of provisions.

The purpose of this chapter is to protect the public health and welfare by regulating smoking in public places and places of employment and to strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers to breath smoke-free air, and to recognize that, when these needs conflict, the need to breathe smoke-free air shall have priority.

8.08.020 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section, unless it is apparent from the context that they have a different meaning:

"Bar" means an area which is devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.
"City" means the city of Cloverdale, state of California.

"Electronic smoking device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances.

"Electronic smoking device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. "Electronic smoking device"

does not include any product specifically approved by the United States Food and Drug Administration for the use in the mitigation, treatment, or prevention of disease.

"Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

"Employer" means any person, partnership, corporation, including municipal corporation, who employs the services of more than three persons.

"Enclosed" means closed in by roof and four walls with appropriate openings for ingress and egress.

"Place of employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to, work areas, employee lounges, conference rooms, and employee cafeterias or eating places. A private residence is not a place of employment for purposes of this chapter, unless it is used as a child care or health care facility.

"Smoke" means" the gases, particles or vapors released into the air by combustion, electronic ignition or vaporization when the apparent or usual purpose of the combustion, electronic ignition or vaporization is human inhalation of the resulting combustion products, including but not limited to tobacco smoke, cigarette smoke, marijuana smoke, and gases, aerosol or vapor released by the ignition of e-cigarettes or electronic smoking devices. "Smoke" does not include the product of combustion of incense or similar products when used solely for olfactory purposes and not containing tobacco or nicotine.

"Smoking" means the carrying or holding of a lighted pipe, cigar, cigarette of any kind, including an electronic cigarette or electronic or battery-operated smoking device, or any other lighted smoking equipment or the lighting or emitting or exhaling the smoke or vapor of a pipe, cigar, or cigarette of any kind.

"Sports arena" means the enclosed sports pavilions, gymnasiums, health spas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

8.08.030 City-owned facilities regulated.
All enclosed facilities and transit buses owned, leased, or operated by the city or under control of the city council shall be subject to the provisions of this chapter.

8.08.035 Public events regulated.
Smoking shall be prohibited in enclosed and unenclosed public places, when being used for a public event, including but not limited to a farmers' market, concert, parade, craft fair, festival, bazar, or any other event which may be attended by the general public, provided that Smoking is permitted at least twenty (20) feet from the event area on streets and sidewalks being used in a traditional capacity as pedestrian or vehicular thoroughfares, unless otherwise prohibited by this Chapter or other law.

8.08.040 Enclosed places where smoking is prohibited.
Smoking shall be prohibited in the following places within all areas of the city:

A. All enclosed areas within businesses available to and customarily used by the general public including, but not limited to, retail stores, hotels and motels, pharmacies, banks, attorneys' offices and other offices;

B. Within all restaurants.

C. Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices, except that health facilities shall also be subject to the provisions of Section 8.08.050 of this chapter regulating smoking in places of employment;

D. Elevators, public restrooms, indoor service lines, buses, taxicabs, public airports, and other means of public transit under the authority of the city, and in ticket, boarding, and waiting areas of public transit depots;

E. In public areas of museums and galleries;

F. Enclosed seating areas of theaters, auditoriums, and halls which are used for motion pictures, stage dramas and musical performances, ballets or other exhibitions, except when smoking is part of any such production;

G. Enclosed sports arenas, convention, church, social and auditorium halls;

H. Retail food marketing establishments, including grocery stores and supermarkets;

I. Public schools and other public facilities under the control of another public agency, which are available to and customarily used by the general public, to the extent that the same are subject to the jurisdiction of the city;

J. Notwithstanding any other provisions of this chapter, any owner, operator, manager or other person who controls any establishment subject to this chapter may declare that entire establishment as a nonsmoking establishment.

8.08.050 Places of employment regulated.
A. It shall be the responsibility of employers to make reasonable effort to provide smoke-free area for nonsmokers within existing facilities.

B. Within ninety days of the effective date of the ordinance codified in this chapter, each employer and each place of employment located within the city, shall adopt, implement, make known to employees and public, and maintain a written smoking policy, which shall contain at a minimum the following requirements:

1. Prohibition of smoking in conference and meeting rooms, classrooms, restrooms, medical facilities, hallways and elevators and all other areas as required by state or federal law;

2. Any employee in a place of employment shall be given the right to designate his/her immediate work area as a nonsmoking area and to post the same with an appropriate sign or signs, to be provided by the employer. The policy adopted by the employer shall include a reasonable definition of the term "immediate work area";

C. Reserved.

D. The smoking policy shall be communicated to all employees within three weeks of its adoption, and at least annually thereafter. All new employees shall be informed of the policy during initial orientation and in no case later than three weeks after employment;

E. Notwithstanding the provisions of subsection A of this section, every employer shall have the right to designate any place of employment, or portion thereof, as a nonsmoking area.

8.08.060 Areas exempt from restrictions.
Notwithstanding any other provision of this chapter, the following areas shall not be subject to the smoking restrictions of this chapter:

A. Private residences, unless the residence is used as a child care or a health care facility;

B. Reserved.

C. Hotel or motel rooms rented to guests, as allowable under state law;

D. Retail stores that deal primarily in the sale of tobacco and smoking paraphernalia;

E. Restaurants, hotel and motel conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions, so long as no food is being served;

F. A private enclosed space occupied exclusively by smokers, even though such a place may be visited by nonsmokers, and private enclosed offices, excepting places in which smoking is prohibited by the fire agency of jurisdiction or by any other law, ordinance or regulation.

8.08.070 Posting requirements.
"Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch in height or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is controlled by this chapter, by the owner, operator, manager or other person having control of such building or other places.

8.08.080 Reserved.

8.08.090 Enforcement of provisions.

A. Any owner, manager, operator or employer of any establishment subject to this chapter shall have the responsibility to inform any apparent violator, whether public or employee, about any smoking restrictions in the establishment, and shall attempt at all times to obtain voluntary compliance by any apparent violator.

B. Any citizen who desires to register a complaint under this chapter may initiate the complaint by filing a written complaint with the police department.

C. While an establishment is undergoing otherwise mandated inspections, a "self-certification" will be required from the owner, manager, operator or other person having control of such establishment that all requirements of this chapter have been complied with.

8.08.100 Retaliation prohibited.
No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter.

8.08.110 Chapter provisions not exclusive.
This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

8.08.120 Violation—Penalty.
A. It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to this chapter to fail to:

1. Properly post signs required hereunder,
2. To provide signs for the use of employees in designating their areas;
3. To properly set aside "No Smoking" areas;
4. To adopt a smoking restriction policy; or
5. To comply with any other requirements of this chapter.

B. It is unlawful for any person to smoke in any area restricted by the provisions of this chapter.

C. Any person or business that violates subsections A or B or any other provisions of this chapter shall be guilty of an infraction, punishable by:

1. A fine, not exceeding one hundred dollars for first violation;
2. A fine, not exceeding two hundred dollars for a second violation of this chapter within one year,
3. A fine, not exceeding five hundred dollars for each additional violation of this chapter within five years.

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

The City Council hereby finds that the approval of the amendments in this Ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines section 15061(b)(3) that CEQA only applies to projects that have the potential

for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that this Ordinance will have a significant effect on the environment.

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 April 12, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 12th day of April, 2016 by the following roll call vote:

AYES: **Councilmember Palla, Vice Mayor Wolter, Councilmember Russell, Councilmember Cox, and Mayor Brigham**
NOES: **None**
ABSTAIN: **None**
ABSENT: **None**

APPROVED: **ATTEST:**

MaryAnn Brigham, Mayor **Paul Cayler, City Clerk**

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CITY OF CLOVERDALE

City Council/Successor Agency
Agenda Item Summary

Agenda Item:	9
Meeting Date:	November 8, 2016

Agenda Section	**Staff Contact**
Consent Calendar	Joanne Cavallari, Finance Manager

Agenda Item and Title

Waive second reading and readopt Ordinance No. 707-2016 amending Cloverdale Municipal Code, Title 3, Chapter 3.04, "Officers Authorized to Sign - Procedure," Section 3.04.020, adding the Assistant City Manager as an officer authorized to sign on behalf of the City.

Summary

California Government Code section 36933 requires that within 15 days after the adoption of an ordinance, a city publish a copy of the ordinance and the Council vote in a newspaper of general circulation. The Section also allows a city to only publish a summary of the ordinance instead of the entire document, if the City publishes such summary 5 days prior the adoption, and again within 15 days after the adoption, including the names of those city council members voting for and against the ordinance.

Ordinance No. 707-2016 was adopted by the City Council on May 24, 2016. Due to transitions of staff members, the City inadvertently did not publish a summary of the ordinance in the newspaper at least 5 days prior to the adoption and again within 15 days of the action.

In order to comply with the publishing requirements of Government Code section 36933, and to avoid publishing the entire ordinance, Ordinance No. 707-2016 is being placed before the City Council again for re-adoption. This is simply a re-adoption of the Ordinance. No changes to the substance of the Ordinance has been made.

Options

Waive second reading and readopt Ordinance No. 707-2016 amending Municipal Code, Title 3, Chapter 3.04.

Recommended Council Action

Waive the second reading and readopt Ordinance No. 707-2016, amending the Cloverdale Municipal Code, Title 3, Chapter 3.04, Section 3.04.020 "Officers Authorized to Sign - Procedure".

Attachment:

Ordinance No. 707-2016

Adopted Ordinance No. 707-2016

2721066.1

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 707-2016

AN ORDINANCE OF THE CITY OF CLOVERDALE AMENDING CLOVERDALE MUNICIPAL CODE CHAPTER 3.04, "OFFICERS AUTHORIZED TO SIGN - PROCEDURE," SECTIONS 3.04.020 ADDING THE ASSISTANT CITY MANAGER AS AN OFFICER AUTHORIZED TO SIGN ON BEHALF OF THE CITY

THE CITY COUNCIL OF THE CITY OF CLOVERDALE DOES ORDAIN AS FOLLOWS:

SECTION 1. Amendment to Section 3.04.020.

The Cloverdale Municipal Code, Chapter 3.04, "Officers authorized to sign - Procedure," Section 3.04.020 is amended as follows:

3.04.020 Officers authorized to sign - Procedure.

A. The following city officers are authorized to sign on behalf of the city warrants drawn on the city treasury, checks, and appropriate bank signature cards:

1. City manager;

2. Assistant City Manager;

3. Mayor;

4. Vice mayor.

SECTION 2. Severability.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The City Council hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION 3. 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 November 8, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 8th day of November, 2016 by the following vote: (Ayes-X; Noes-X; Absent-X)

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved: Attested:

_____ _____

Mary Ann Brigham, Mayor Linda Moore, Deputy City Clerk

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 707-2016

AN ORDINANCE OF THE CITY OF CLOVERDALE AMENDING CLOVERDALE MUNICIPAL CODE CHAPTER 3.04, "OFFICERS AUTHORIZED TO SIGN - PROCEDURE," SECTIONS 3.04.020 ADDING THE ASSISTANT CITY MANAGER AS AN OFFICER AUTHORIZED TO SIGN ON BEHALF OF THE CITY

THE CITY COUNCIL OF THE CITY OF CLOVERDALE DOES ORDAIN AS FOLLOWS:

SECTION 1. Amendment to Section 3.04.020.

The Cloverdale Municipal Code, Chapter 3.04, "Officers authorized to sign - Procedure," Section 3.04.020 is amended as follows:

3.04.020 Officers authorized to sign - Procedure.

A. The following city officers are authorized to sign on behalf of the city warrants drawn on the city treasury, checks, and appropriate bank signature cards:

1. City manager;

2. Assistant City Manager;

3. Mayor;

4. Vice mayor.

SECTION 2. Severability.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The City Council hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION 3. 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 May 24, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 24 day of May 2016 by the following roll call vote: Ayes – 5; Noes- 0

AYES:	**Councilmember Palla, Vice Mayor Wolter, Councilmember Cox, Councilmember Russell, and Mayor Brigham**
NOES:	**0**
ABSENT:	**0**
ABSTAIN:	**0**

APPROVED:

Mary Ann Brigham, Mayor

ATTEST:

Linda Moore, Deputy City Clerk

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CITY OF CLOVERDALE

City Council/Successor Agency Agenda Item Summary

Agenda Item: 10
Meeting Date: November 8, 2016

Agenda Section	**Staff Contact**
Consent	David Kelley, Assistant City Manager/ Community Development Director

Agenda Item Title

Waive the second reading of Ordinance No. 710-2016, of the City of Cloverdale amending Title 18 "Zoning" of the Cloverdale Municipal Code, prezoning certain properties containing approximately 42.5-acres of land lying east of Asti Road, south of existing City limits, generally west of the Russian River and north of the City of Cloverdale wastewater treatment plant and corporation yard (APNs 116-260-004, -030, -033, -045, -046 -050 & -055) to a combination of General Industrial (M-1), Rural Residential (R-R) and Public Institutional (P-I). and making certain changes to the standards of the general industrial zoning district to add live work units as a conditionally permitted use in the General Industrial (M-1) Zoning District.

Summary

On October 11, 2016, the City Council held a Public Hearing to consider the proposed Annexation, General Plan Amendment, Prezoning and CEQA Initial Study/Mitigated Negative Declaration for an approximate 42.5-acre area lying east of existing City boundaries in an unincorporated portion of Sonoma County. The properties all lie within the City of Cloverdale Sphere of Influence and City's Urban Growth Boundary. Attachments No. 1-4 identify the location of the property, the annexation area, proposed general plan land use designations and proposed prezoning districts. The Project also involved consideration of a Conditional Use Permit and Major Design Review for Nu Forest Products, Inc. on approximately 26.85 acres of the overall annexation area.

During the public hearing the City Council introduced and waived the first reading of Ordinance No. 710-2016, amending Title 18 "Zoning" of the Cloverdale Municipal Code, prezoning certain properties containing approximately 42.5-acres of land lying east of Asti Road, south of existing City limits, generally west of the Russian River and north of the City of Cloverdale wastewater treatment plant and corporation yard (APNs 116-260-004, -030, -033, -045, -046 -050 & -055) to a combination of General Industrial (M-1), Rural Residential (R-R) and (Public Institutional P-I), and making certain changes to the standards of the general industrial zoning district to add live work units as a conditionally permitted use in the General Industrial (M-1) Zoning District. On a vote of 5-0, the City Council waived the first reading and introduced the ordinance.

The Ordinance amends the Cloverdale Municipal Code by adding text to the M-1 zoning district in Chapter 18.06 of the Zoning Ordinance to allow "live-work" uses subject to the issuance of a Conditional Use Permit by the Planning Commission and adds Section 18.090.300 to Chapter 18.09 of the Zoning Ordinance by providing specific standards for live-work units. In addition, the Ordinance provides zoning designations for the properties included in the proposed annexation.

<u>Proposed Zoning Designations</u>: Each of the subject properties within the annexation area would be prezoned under the Ordinance. The proposed zoning designations were assigned to the seven properties in the annexation area based on discussions with each of the owners, existing Sonoma County land use property designations and regulations along with existing site conditions. The proposed prezoning is identified on Attachment 4.):

1. *Nu Forest Properties*: These two properties are proposed to be prezoned as General Industrial (M-1). The M-1 zoning district allows lumber mills as a conditional use and a CUP has been requested by NFP.
2. *Cerasoli Property*: General Industrial M-1 zoning based on property owner desire and existing residential and light industrial use on the site.
3. *Schwartzler Trust Property*: Rural Residential (RR), based on an existing residence and property owner desire.
4. *Matovich Trust Property*: Rural Residential (RR), based on property owner desire.
5. *Poustinchian Property*: General Industrial (M-1), based on property owner desire.
6. *PG&E Property*: Proposed for Public Institutional (P-I), consistent with the existing electrical substation on the site.

Background

Nu Forest Products Inc. has requested City support to file an annexation application with Sonoma County Local Agency Formation Commission (LAFCO) in order to obtain City services. Annexation of Nu Forest's property requires that the City Council approve prezoning of the property prior to filing an application for annexation to LAFCO. Nu Forest Products desires to relocate their existing lumber operations from Healdsburg and consolidate all facilities in Cloverdale. Five additional parcels/property owners have been included in the proposed annexation to preclude creation of an unincorporated "County island." All of the subject property owners have requested modification of their General Plan Land Use Designations. On July 26, 2016, the City Council adopted City Council Resolution No 058-2016, initiating a General Plan Amendment on the subject properties. The proposed entitlements were also reviewed by the Planning Commission. The Planning Commission held a public Hearing on September 6, 2016, and all of the project components were unanimously recommended for City Council approval.

Discussion

As previously noted, Nu Forest Products Inc. has requested annexation to the City of Cloverdale to receive municipal services to support the proposed lumber and planing mill. Prezoning of the annexation area is required by State annexation law known as the Cortese Knox Hertzberg Local Government Reorganization Act. Proposed prezoning districts are consistent with the proposed GPA, as required by other portions of state law. After preliminary land use applications have been acted on by the City, annexation requires review and approval by LAFCO. A formal application for annexation will be submitted to LAFCO upon completion of review and approval by the City Council. Prezoning will become effective upon adoption of the Ordinance by the City Council. The actual zoning and associated entitlements including the Conditional Use Permit and Major Design Review for Nu Forest Properties Inc. become effective when the annexation becomes effective upon approval by LAFCO pursuant to Government Code Section 65859(a).

Environmental Assessment. In accordance with CEQA Guidelines section 15063, an Initial Study was prepared to evaluate the potential impacts of the project on the environment and surrounding properties. Based on the result of the Initial Study, a Mitigated Negative Declaration was prepared. A Mitigating Monitoring and Reporting Program was also prepared for reporting on and monitoring of all of the proposed mitigation measures included in the Mitigated Negative Declaration. All mitigation measures and requirements as listed in the Mitigation Monitoring and Reporting Program for the project are incorporated as Conditions of Approval for the project. At the close of the Public Hearing on October 11, 2016, City Council adopted Resolution No. 075-2016 (Attachment 5) adopting a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the project.

Annexation, General Plan Amendment, Conditional Use Permit and Major Design Review. At the close of the Public Hearing on October 11th, the City Council also adopted the following resolutions:

1. City Council Resolution No. 076-2016 (Attachment 6), directing City staff to file an annexation application with Sonoma County Local Agency Formation Commission (LAFCO) for the Nu Forest Products site and adjacent properties to the City of Cloverdale.
2. City Council Resolution No. 077-2016 (Attachment 7), approving an amendment to the Cloverdale General Plan relating to five properties lying adjacent to the Nu Forest site.
3. City Council Resolution No. 078-2016 (Attachment 8), approving the Conditional Use Permit and Major Design Review for Nu Forest Products

Ordinance. City staff recommends waiving the second reading of Ordinance No. 710-2016 (Attachment 9), amending Title 18 "Zoning" of the Cloverdale Municipal Code, prezoning certain properties containing approximately 42.5-acres of land lying east of Asti Road, south of existing City limits, generally west of the Russian River and north of the City of Cloverdale wastewater treatment plant and corporation yard (APNs 116-260-004, -030, -033, -045, -046 -050 & -055) to a combination of General Industrial (M-1), Rural Residential (R-R) and (Public Institutional P-I). and making certain changes to the standards of the general industrial zoning district to add live work units as a conditionally permitted use in the General Industrial (M-1) District.

Options

1. Adopt Ordinance No. 710-2016, of the City of Cloverdale amending Title 18 "Zoning" of the Cloverdale Municipal Code, prezoning certain properties containing approximately 42.5-acres of land lying east of Asti Road, south of existing City limits, generally west of the Russian River and north of the City of Cloverdale wastewater treatment plant and corporation yard (APNs 116-260-004, -030, -033, -045, -046 -050 & -055) to a combination of General Industrial (M-1), Rural Residential (R-R) and (Public Institutional P-I). and making certain changes to the standards of the general industrial zoning district to add live work units as a conditionally permitted use in the General Industrial (M-1) District.
2. Provide alternative direction to Staff.

Budget/Financial Impact

If approved, there would be no immediate fiscal (budgetary or financial) impact associated with the project. Upon final annexation of the property to the City of Cloverdale by LAFCO, the project is expected to generate net positive general fund revenue based on an increase in local property tax revenues associated with an increase in the assessed valuation of the property as well as a potential increase in local sales tax revenue.

Subcommittee Recommendation

None.

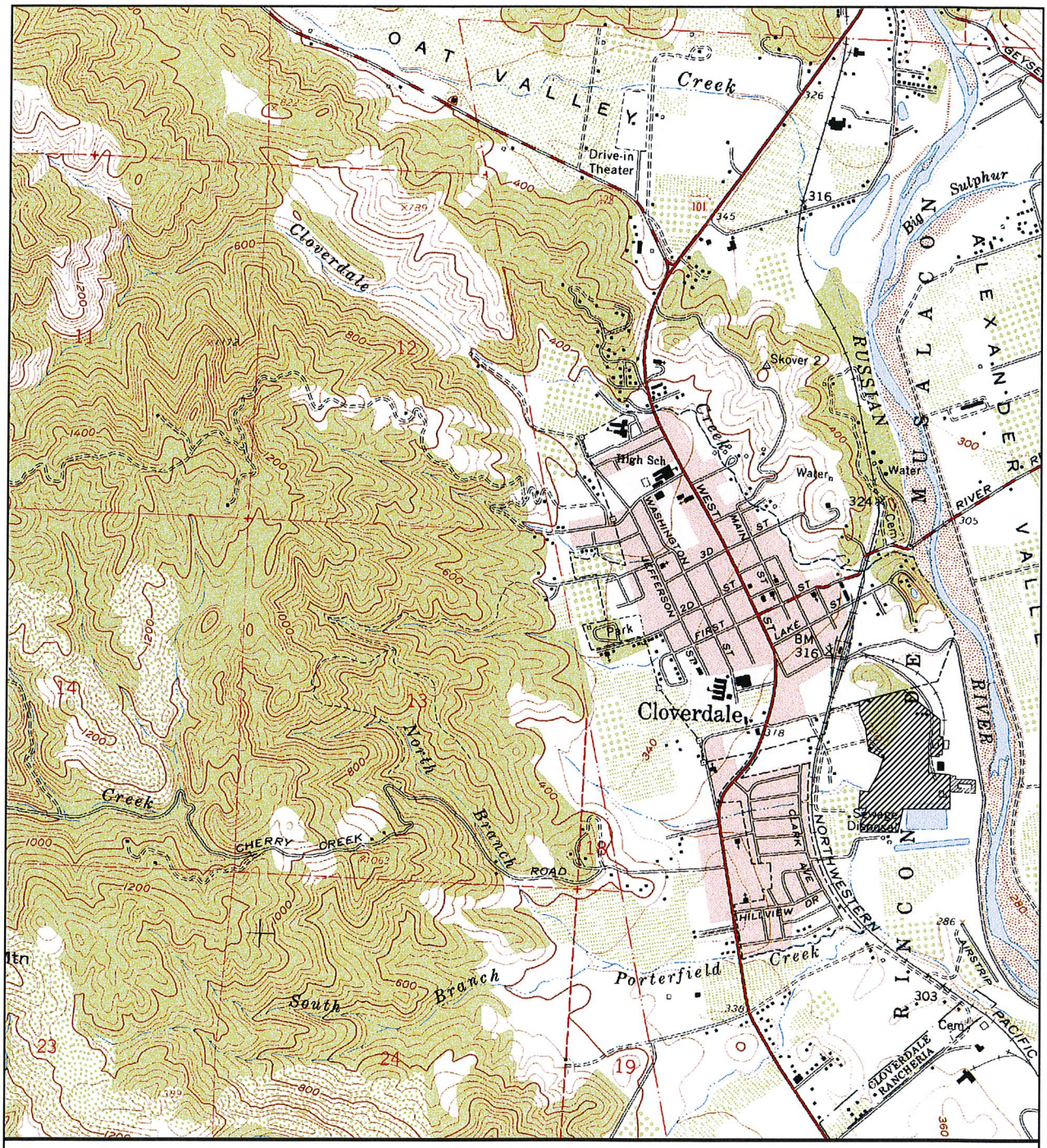
Recommended Council Action

Waive the second reading and adopt Ordinance No. 710-2016 amending Cloverdale Municipal Code, making certain changes to Chapters 18.06 and Chapter 18.09 to add live work units as a conditionally permitted use in the General Industrial (M-1) District and zoning approximately 42.5-acres of land lying east of Asti Road, south of existing City limits, generally west of the Russian River and north of the City of Cloverdale wastewater treatment plant and corporation yard (APNs 116-260-004, -030, -033, -045, -046 -050 & -055) as a combination of General Industrial (M-1), Rural Residential (R-R) and (Public Institutional P-I).

Attachments:

1. Project Location Map
2. Proposed Annexation Area Map Exhibit
3. Proposed General Plan Designation Map Exhibit
4. Proposed Prezoning Districts Map Exhibit
5. City Council Resolution City Council Resolution No. 075-2016 adopting an Initial Study/Mitigated Negative Declaration and Mitigation Monitoring & Reporting Plan (MMRP).
6. City Council Resolution No. 076-2016, directing Staff to File an Annexation application with LAFCO.
7. City Council Resolution No. 077-2016, approving a General Plan Amendment.
8. City Council Resolution No. 078-2016, approving a Conditional Use Permit & Major Design Review for the Nu Forest Products Project Inc.
9. Ordinance No. 710-2016

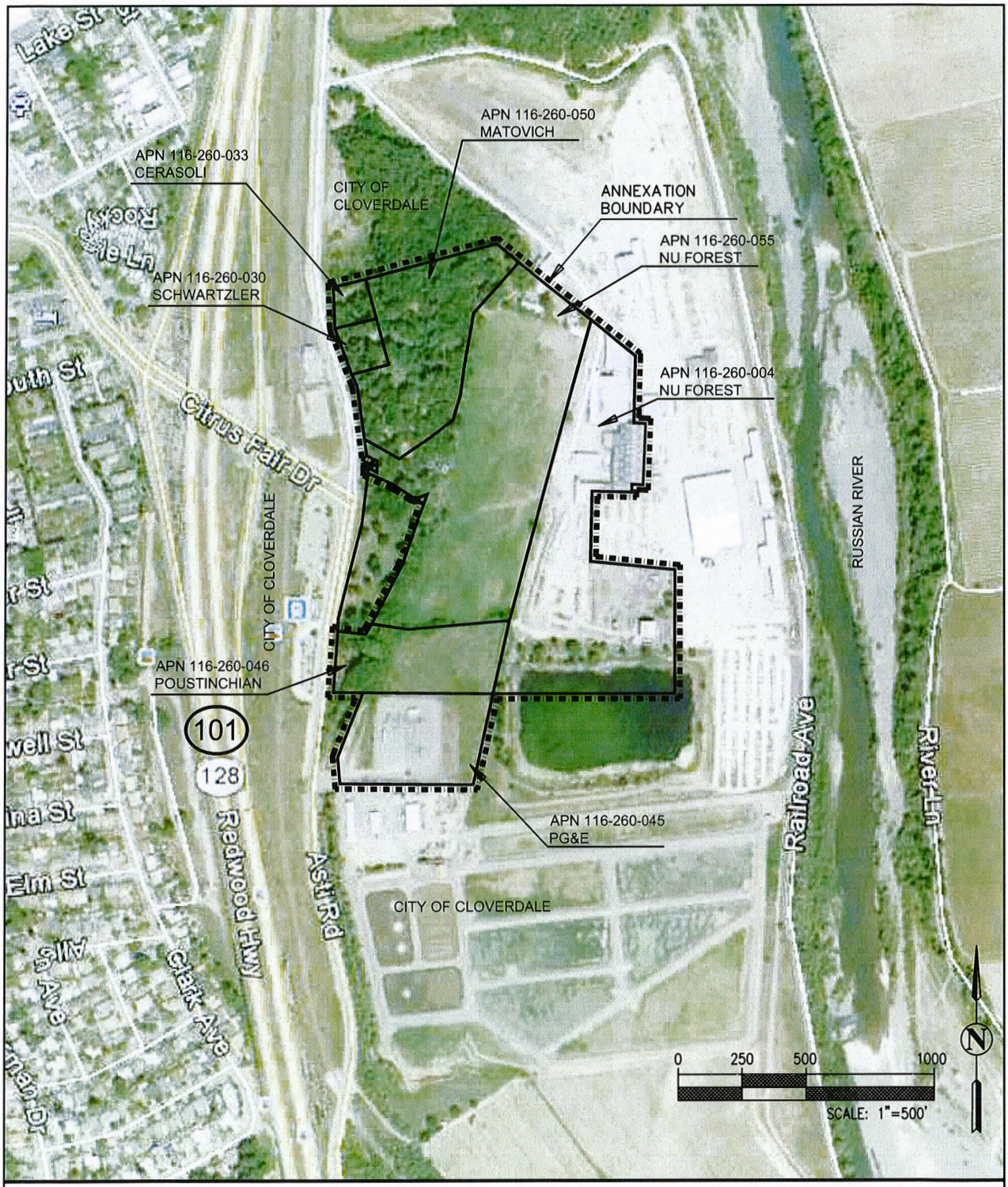
X:\Agenda Development\COUNCIL\2016 REPORTS\10.25.16\B. Consents\13- Ord 710 -Nu Forest\City Council Agenda Report - Nu Forest Annexation and Rezone Ordinance_10-25-2016.docx



Attachment 1
Project Location

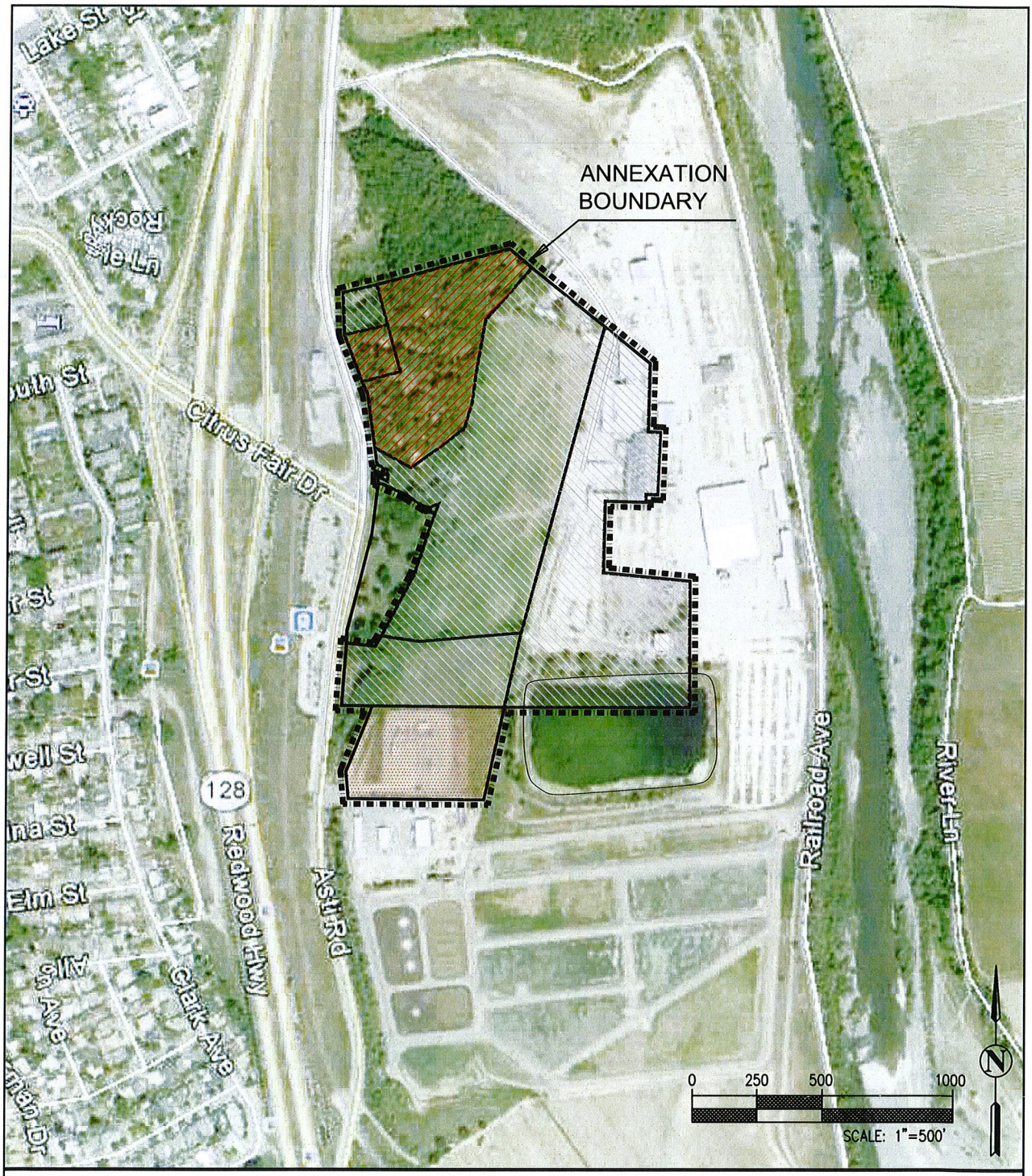
0 1000 2000 4000

SCALE: 1"=2000'



APN	Owner	Area (per AP Map)
116-260-004	Nu Forest Products	12.17 acres
116-260-030	Schwartzler	0.73 acres
116-260-033	Cerasoli	0.45 acres
116-260-045	PG&E	4.05 acres
116-260-046	Poustinchian	4.07 acres
116-260-050	Matovich	6.30 acres
116-260-055	Nu Forest Products	14.68 acres

Attachment 2
Annexation Area



Legend:

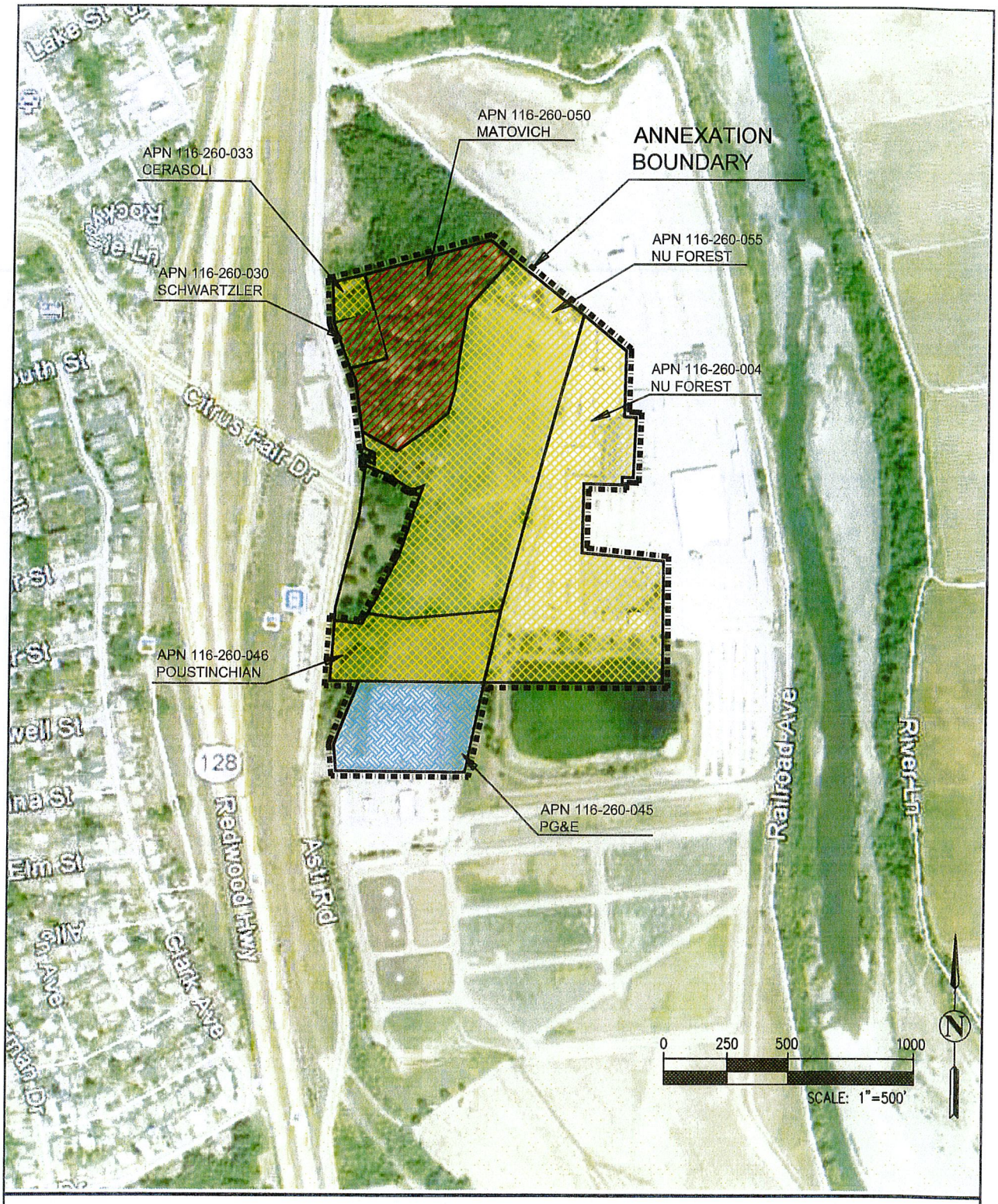
Proposed General Plan

RR – Rural Residential

GI – General Industrial

P – Public, Quasi-Public, Infrastructure

Attachment 3
Proposed General Plan Designations



Attachment 4
Proposed Prezoning Districts

Legend:

Proposed Use

GI – General Industrial

RR – Rural Residential

P–I – Public Institutional

CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 075-2016

RESOLUTION OF THE CITY COUNCIL ADOPTING A MITIGATED NEGATIVE DECLARATION (MND) AND MITIGATION MONITORING AND REPORTING PLAN (MMRP) FOR THE NU FOREST ANNEXATION AND DEVELOPMENT PROJECT ON APPROXIMATELY 42.5 ACRES OF LAND GENERALLY LYING EAST OF ASTI ROAD, WEST OF THE RUSSIAN RIVER, SOUTH OF EXISTING CITY BOUNDARIES AND NORTH OF THE CLOVERDALE WASTEWATER TREATMENT FACILITY AND CORPORATION YARD (APNs 116-260-004, -030, -033, -045, -046 -050 & -055)

WHEREAS, the City of Cloverdale desires to annex approximately 42.5 acres of land into the City, all located within the City's sphere of influence, Urban Growth Boundary and Urban Service Area; and

WHEREAS, the City has undertaken a General Plan Amendment and associated prezoning for the affected properties, that includes a mix of General Industrial (M-1), Rural Residential (R-R) and Public Institutional (PI) districts that are generally compatible with existing County of Sonoma zoning for the properties and current area development patterns; and

WHEREAS, the largest property owner within the annexation area, Nu Forest Products, desires to expand and existing lumber milling and related uses on the site. Other uses that would be permitted on certain properties in the annexation area after the effective date of the prezoning would include a single family dwellings and light industrial and live-work units; and

WHEREAS, CEQA, together with the State Guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared; and

WHEREAS, the City caused an Initial Study to be prepared to assess the impacts of the project, which is identified as the "Nu Forest Annexation and Development Project Initial Study/Mitigated Negative Declaration, Cloverdale, Sonoma County, California" dated June 2016 (Exhibit 1); and

WHEREAS, the Initial Study analyzed all of the environmental topics required in Appendix G of the CEQA Implementing Guidelines; and

WHEREAS, the Initial Study identified potentially significant impacts with respect to the following topics: aesthetics, biological resources, hazards and hazardous materials and noise; and

WHEREAS, the Initial Study also sets forth a number of mitigation measures to reduce all potentially significant impacts to a less-than-significant level; and

WHEREAS, since the Initial Study determined that all potentially significant impacts can be reduced to a less-than-significant level, adoption of a Mitigated Negative Declaration has been recommended to satisfy CEQA requirements for the Nu Forest Annexation and Development Project; and

WHEREAS, the Initial Study/Mitigated Negative Declaration was circulated for public review for a 30-day period between June 3, 2016 and July 6, 2016; and

WHEREAS, the City received two comments during the review period that did not raise any new issues or require additional analysis that was not included in the Initial Study; and

WHEREAS, on September 6, 2016, the Planning Commission held a properly noticed public hearing on the Project, at which time all interested parties had the opportunity to be heard; and

WHEREAS, a Staff Report dated September 6, 2016, and incorporated herein by reference described and analyzed the Project and related CEQA documentation for the Planning Commission and recommended City Council adoption of the Mitigated Negative Declaration and MMRP by adoption of Planning Commission Resolution No. 013-2016; and

WHEREAS, the Planning Commission considered the Initial Study and Mitigated Negative Declaration and all above-referenced reports, recommendations, and testimony before making a recommendation on the Project; and

WHEREAS, on October 11, 2016, the City Council held a properly noticed public hearing on the MND and MMRP and the related Project, at which time all interested parties had the opportunity to be heard; and

WHEREAS, a Staff Report dated October 11, 2016, and incorporated herein by reference described and analyzed the Project and related MND and MMRP for the City Council and recommended adoption of the MND and MMRP and approval of the Project by the City Council.

WHEREAS, following the close of the public comment period, the City has made a number of small technical changes to the text of the Initial Study that do not materially change the scope or effectiveness of the Mitigation Measures or the level or severity of impacts identified in the Initial Study. No new impacts have been identified after the close of the CEQA comment period. These are included as Exhibit 2 to this Resolution; and

WHEREAS, the City of Cloverdale has prepared a Mitigation Monitoring and Reporting Program as required by CEQA (Exhibit 3) that includes the updated Mitigation Measures as well as agencies and organizations responsible for implementing the various mitigation measures; and

NOW, THEREFORE BE IT RESOLVED that the foregoing recitals are true and correct and are part of this resolution.

BE IT FURTHER RESOLVED that the City Council makes the following findings to support the determination that a Mitigated Negative Declaration is required under CEQA for the proposed project. These findings are based on information contained in the Initial Study, the staff report, and all other information contained in the record before the City Council. These findings constitute a summary of the information contained in the entire record. The detailed facts to support the findings are set forth in the Mitigated Negative Declaration and elsewhere in the record. Other facts and information in the record that support each finding that are not included below are incorporated herein by reference:

1. The City Council has reviewed and considered the Initial Study/Mitigated Negative Declaration, the associated staff report and other associated material pertinent to the project.

2. The Initial Study/Mitigated Negative Declaration adequately described the environmental impacts of the proposed project. On the basis of the whole record before it, the Planning Commission finds that there is no substantial evidence that the project, as mitigated, will have a significant effect on the environment.

3. The Initial Study/Mitigated Negative Declaration and MMRP have been completed in compliance with CEQA and the CEQA Guidelines.

4. The Initial Study/Mitigated Negative Declaration and MMRP are complete, adequate and reflects the City's independent judgment and analysis as to the environmental effects of the proposed project.

BE IT FURTHER RESOLVED that the City Council of the City of Cloverdale does hereby adopt a Mitigated Negative Declaration for the Nu Forest Annexation and Development Project as noted in the recitals above. A Mitigation Monitoring and Reporting Program (MMRP) is also adopted, which lists all mitigation measures, the time frame for compliance and the agency or organization responsible for implementation.

It is hereby certified that the foregoing Resolution No. 075-2016 was duly introduced and duly adopted by the City Council of the City of Cloverdale at its regular meeting held on October 11, 2016, by the following roll call vote: (Ayes-5; Noes-0)

AYES: Councilmember Palla, Councilmember Russell, Councilmember Cox, Vice Mayor Wolter, and Mayor Brigham
NOES: 0
ABSENT: 0
ABSTAIN: 0

APPROVED:

Mary Ann Brigham, Mayor

ATTESTED:

Linda Moore, Deputy City Clerk

Exhibits Attached:
Exhibit 1 - Nu Forest Annexation and Development Project CEQA Initial Study/Mitigated Negative Declaration
Exhibit 2 - Corrections and Modifications to Initial Study/Mitigated Negative Declaration
Exhibit 3 - CEQA Mitigation Monitoring and Reporting Program

Resolution - Exhibit 2

Corrections and Modifications to the Nu Forest Annexation & Development Project

Initial Study/Mitigated Negative Declaration (IS/MND)

August 5, 2016

The following changes are made by reference into the Initial Study document dated June 2016. None of the changes to the project would change any of the impact analyses or conclusions of the Initial Study document.

1) The General Plan land use designation for the Schwartzler Trust property (APN 116-260-030) is proposed to be changed from "CF-Conservation Feature" to "RR-Rural Residential. The Initial Study described the proposed General Plan Amendment from "CF-Conservation Feature" to "GI-Light Industrial." After further discussions with the property owner, the owner desires a Rural Residential land use designation.

Since the property currently is developed with a single family dwelling and the proposed RR designation would continue to allow this use, the proposed General Plan change would result in fewer and less intensive environmental impacts in terms of traffic generation, noise, air quality and similar impacts.

2) The General Plan land use designation for the PG&E property (APN 116-260-45) is proposed to be changed from "TOD-Transit Oriented Development" to "Public/Quasi-Public" to reflect the existing PG&E electric substation. There would be no changes to the environmental analysis contained in the Initial Study since there would be no changes to the status of the substation. The intent of the project is to include this property in the annexation to avoid creating a county island.

Exhibit 3

City of Cloverdale
Nu Forest Annexation & Development Project
Mitigation Monitoring and Reporting Program

September 2016

Mitigation Measure	Implementing Responsibility	Monitoring Responsibility	Monitoring Schedule	Verification
Aesthetics-1. Future grading and/or development on any parcels of land fronting on Asti Road in the annexation area shall be reviewed by a California-certified arborist to identify methods to provide for maximum tree protection. These methods shall be reflected in final development plans. If mature trees cannot be protected, replacement native trees shall be planted on the site at a 2:1 ratio with adequate measures to ensure successful growth of the replacement trees. No Certificate of Occupancy shall be granted on any lot with required replacement tree plantings until tree replantings are reviewed and approved by the Cloverdale Community Development Department.	Project Applicant(s)	Cloverdale Planning Department	Prior to approval of grading plans for parcels of land fronting on Asti Road	
Aesthetics-2. Future development on parcels of land in the annexation area with substantial tree cover shall include measures identified by a California-certified arborist that ground disturbing activities will not significantly impact native trees on the lot. This	Project Applicant(s)	Cloverdale Planning & Building Departments	Prior to approval of grading plans and during grading and construction for parcels of land fronting on Asti Road	

Mitigation Measure	Implementing Responsibility	Monitoring Responsibility	Monitoring Schedule	Verification
shall include installation of exclusion fencing at locations approved by the arborist during project construction, provision of adequate irrigation of trees during construction, limitations on grading within exclusion areas and limitations of use (e.g. no storage of construction materials) under tree drip lines and other protection measures as may be recommended by the arborist.				
Aesthetics-3. Future development on parcels of land fronting on Asti Road should be screened from view to the fullest extent feasible by landscape buffers or fences that limit views of new development from adjacent streets and roadways._	Project Applicant(s)	Cloverdale Planning Department	Prior to issuance of building permits	
Aesthetics-4. The design of future structures on properties fronting on Asti Road shall exclude use of highly reflective materials, including but not limited to window glass, porch railings or other accent materials. Other exterior building materials shall be of neutral colors and tones to minimize visibility.	Project Applicant(s)	Cloverdale Planning Department	Prior to approval of building permits for parcels of land fronting on Asti Road	
BIO-1. Prior to issuance of a grading and/or a building permit for parcels located on the east side of Asti Road, a site-specific biological reconnaissance shall be completed by a qualified biological firm as approved by the Cloverdale Community Development Department. The reconnaissance shall include a literature search and site inspection of the presence of special-status plants or wildlife. If no special-status species are identified, no further action is required. If special-status species are identified, the biologist shall recommend an action plan to ensure that any special-status species are fully protected.	Project Applicant(s)	Cloverdale Planning Department	Prior to approval of grading plans for parcels of land fronting on Asti Road	

Mitigation Measure	Implementing Responsibility	Monitoring Responsibility	Monitoring Schedule	Verification
Protective actions may include first, avoiding the species during construction and post –construction or relocation of the species to an alternative suitable site. Any relocation actions shall occur in consultation with the California Department of Fish & Wildlife and/or the U.S. Fish & Wildlife Service. Necessary permits and approvals shall be obtained prior to relocation. No work on portions of the affected site may occur until clearances are granted by the City of Cloverdale, the California Department of Fish & Wildlife or the U. S. Fish & Wildlife Service, as appropriate.				
BIO-2. Prior to issuance of a grading and/or a building permit for any parcel of land in the project area, a qualified wetland biologist as approved by the Cloverdale Community Development Department shall survey the site for the potential presence of wetlands, other waters or riparian habitat. If none is found, no further action shall be required. If wetlands, other waters or riparian habitat is identified, the wetland biologist shall prepare an action plan for the approval of the City of Cloverdale. These methods may include, but are not limited to, preparing a formal wetland delineation, permanent on-site protection of wetlands or off-site relocation of wetlands to an approved alternative site. If relocated off-site, the applicant or property owner shall obtain necessary permits and approvals from the Regional Water Quality Control Board, the California Department of Fish & Wildlife, the U. S. Army Corps of Engineers or other agencies. No construction near wetlands, other waters or riparian	Project Applicant(s)	Cloverdale Planning Department	Prior to approval of grading plans for app parcels of land in project area	

Mitigation Measure	Implementing Responsibility	Monitoring Responsibility	Monitoring Schedule	Verification
habitat areas may proceed until the approval action plan is approved and implemented.				
GEO-1. Prior to issuance of a grading and/or a building permit for any parcel of land in the annexation area where no recent soils or geotechnical report has been prepared, a qualified California-registered engineering geologist or equivalent, as approved by the Cloverdale Community Development Department, shall prepare a report analyzing soil and geologic conditions on that particular property. The report shall include specific construction methods to be undertaken to reduce potential soil hazards to a less-than-significant level, including but not limited to landslides, ground failure and other potential hazards. The recommendations of the soils and geotechnical report shall be incorporated into all project grading and construction plans to ensure that future hazards from landsliding or similar hazards are reduced to a standard level of care.	Project Applicant(s)	Cloverdale Public Works Department	Prior to issuance of a grading or building permit, whichever is first	
HAZ-1. Prior to issuance of a demolition permit for any existing residence or other major structure in the annexation area (as determined by the Cloverdale Building Official), a licensed contractor shall determine the presence or absence of lead based paints or asbestos material on the site. If found in quantities at or above actionable levels as determined by the Cloverdale Building Department or Fire District, these materials shall be safely removed consistent with the Occupational Safety and Health Administration (OSHA) and other applicable standards and disposed of in an appropriate location.	Project Applicant(s)	Cloverdale Building Department	Prior to issuance of a demolition permit, if needed, or demolition of existing structures, if no demolition permit needed	

Mitigation Measure	Implementing Responsibility	Monitoring Responsibility	Monitoring Schedule	Verification
Necessary permits and approvals shall be secured from appropriate regulatory agencies.				
Noise-1. Prior to issuance of a building permit for future residential and major industrial uses in the annexation area, a qualified acoustical consultant as approved by the City of Cloverdale shall conduct a site-specific analysis to ensure that future uses and site activities comply with City standards set forth in the Noise Element of the Cloverdale General Plan and other applicable local noise regulations. Each analysis shall contain, at minimum, a summary of recent 24-hour noise measurements and specific measures to be incorporated into final building plans and specifications to reduce exterior and interior noise to City standards.	Project Applicant(s)	Cloverdale Planning Department	Prior to approval of building permits	
Noise-2. All future construction activities for properties in the annexation area shall be limited to the hours of 7 a.m. to 6 p.m. Monday through Saturdays. No construction shall occur on state or federal holidays. Exceptions to these restrictions may be granted by the Cloverdale Community Development Director for unusual or emergency conditions.	Project Applicant(s)	Cloverdale Building Department	During all phases of project construction	

Initial Study/
Mitigated Negative Declaration

Project:
Nu Forest Products Annexation & Development

Lead Agency:
City of Cloverdale

June 2016

1. **Project title**:	Nu Forest Products Annexation and Development Project
2. **Lead agency name and address**:	City of Cloverdale 124 N. Cloverdale Boulevard Cloverdale, CA 95425
3. **Contact person and phone number**:	Jerry Haag, Consulting Planner
4. **Project location**:	East side of Asti Road, south of current City limits, north of the City's Corporation Yard and west of the Russian River. Assessor's Parcels 116-260-004, -030, -033, -046, -046 -050 & -55. Exhibit 1 shows the regional location of the project area and Exhibit 2 shows the area in relation to the City of Cloverdale. (Note: All exhibits are attached to the back of this Initial Study.)
5. **Project sponsors name and address**:	Nu Forest Products PO Box 727 Healdsburg CA 95448 Attn: Sharmaine Ege
6a. Existing General Plan designations	*Sonoma County*: LI-Light Industrial AR- Agricultural Residential
6b. Proposed General Plan designations:	*City of Cloverdale*: CF-Conservation Features (proposed to be deleted) RR-Rural Residential (proposed to be added) GI-General Industrial (proposed to be expanded) P-Public
7a. Existing Zoning:	*County of Sonoma*: L-I, Light Industrial AR, Agricultural Residential
7b. Proposed Pre-Zoning:	*City of Cloverdale:* M-1, Light Industrial RR, Rural Residential P, Public

8. Description of project:

Overview. Proposed General Plan Amendment, Prezoning, Conditional Use Permit/Design Review and annexation to the City of Cloverdale for an approximate 42.6-acre area lying east of existing City boundaries. The properties all lie within the City of Cloverdale Sphere of Influence and City's Urban Growth Boundary. See Exhibit 3 that depicts the annexation area and affected property ownerships iproposed for annexation.

The major property owner in the annexation area, Nu Forest Products, currently operates a lumber mill, wood drying yard and lumber storage facility in south Healdsburg. NuForest also operates a lumber storage yard with no milling or other industrial use on the eastern portion of the annexation area. The Nu Forest owner is seeking annexation to Cloverdale consolidate operations within the proposed annexation area.

Major elements of the project include a General Plan Amendment, Prezoning, Design Review for the proposed relocation and expansion of the Nu Forest operation and annexation of the Nu Forest site and adjacent properties to the City of Cloverdale. These elements are described below.

General Plan Amendment: Changes are proposed to the City of Cloverdale General Plan land use map from CF (Conservation Features) and TOD (Transit Oriented Development) land use designations to the following land use designations GI, General Industrial, RR, Rural Residential and P, Public. Existing General Plan land use designations are shown on Exhibit 4A and proposed amendments to the General Plan Land Use Map are shown on Exhibit 4B. The amendments have been proposed based on existing site conditions, development patterns and property owner sentiment.

Prezoning: the City proposes to prezone the various properties comprising the project to the following zoning districts: M-1, General Industrial, RR, Rural Residential and P, Public. If approved by the Cloverdale City Council, the zoning would become effective upon completion of the annexation process. The proposed prezoning would allow for the expanded use of the existing Nu Forest Products operation to allow the milling, processing, offices and increased storage of wood products on the site. The approved zoning would allow for one single family and associated accessory structures to be built on the Grace Matovich Trust property (AP 116-260-050), future light industrial uses on the Cerasoli (AP 115-260-033), Schwartzler Trust (AP 116-260-030) and Poustinchian (AP 116-260-046) properties. The existing PG&E substation on the southern portion of the site (AP 116-260-045) would remain in its current condition and would be zoned P-Public. If approved, proposed zoning would be consistent with the amended General Plan Land Use Map.

Part of the proposed zoning would include revising the text of the City's M-1 District to allow live-work development to occur in this District subject to the issuance of a conditional use permit by the Cloverdale Planning Commission.

Exhibit 5 shows proposed City of Cloverdale prezoning districts.

Conditional Use Permit & Major Design Review (Nu Forest): A part of the application includes a Conditional Use Permit and Major Design Review approval for Nu Forest to expand current storage and administrative office uses on the site. In addition to wood storage, future operations would include wood milling and processing. Table 18.06.030-A of the Cloverdale Zoning Code requires approval of a conditional use permit for heavy manufacturing uses in the M-1 District. The Zoning ordinance further defines heavy manufacturing to include planing mills, sawmills and wood products. Section 18.03.150 of the Zoning Code requires Major Design Review for industrial development projects that includes review of overall building design, use of materials and similar features.

The proposed Nu Forest site plan is shown on Exhibit 6. Proposed improvements would include demolition of a number of older structures on the site and construction of four 100-ft x 100-ft industrial canopy structures on a portion of the property, totalling up to 40,000 square feet. Each canopy structure would have a concrete foundation and floor, a solid roof supported by large uprights and beams but would not include surrounding walls. Lumber milling, planing and related activities would occur under the canopy structures. A portion of the site would be devoted to open storage of raw and milled lumber, awaiting shipment. Milling activities would generate sawdust and "slash," another milling by-product. Both products would be temporarily stored on site and trucked to off-site recycled materials businesses for reuse.

Large semi-trucks would be used to haul logs onto the site and transport finished material to customers. Preliminarily, it is estimated that up to 8 truck trips per day would be generated.

Other improvements on the Nu Forest site would include paved parking areas on portions of the site and construction of a water quality and drainage basin on the south side of site. Existing office uses on the site would continue. Upon completion of the annexation process, the City water and sewer lines would be extended to the site to support the expansion of lumber operations. The precise location of water and sewer extensions to serve the annexation properties is being determined; however, it is anticipated that a water line would be extended in an easterly direction from Asti where an existing 16-in. diameter line currently exists to connect to an existing City water line on the All-Coast property to the west, providing a looped water system. A sewer line is anticipated to be constructed from the approximate center of the Nu Forest site in a western direction to Asti Road, then south to connect to the City's wastewater treatment plant. The sewer line extension is anticipated to require construction of one lift (pumping) station on the Nu Forest site.

Stormwater runoff would be directed to an onsite water quality and retention pond located on the south side of the Nu Forest site to accommodate stormwater and release it into the nearby Russian River via an open swale. The pond would also be designed to provide water quality features per City of Cloverdale standards prior to release into the river.

An existing pond exists in the easterly portion of the annexation area. This pond is jointly owned by Nu Forest Products and the property owner to the east, All-Coast and was constructed to provide a reservoir for fire suppression purposes. The pond is primarily owned and maintained by All-Coast and may remain after construction of planned improvements on the Nu Forest site.

At build out, the Nu Forest facility would have up to 73 full-time and seasonal employees on the site (including millworkers and office staff) and would operate 5 days per week (plus two Saturdays per month during the peak summer season), from 7 a.m. to 3:30 p.m. During peak summer months, work may commence at 6 a.m. Maintenance of machinery generally would occur during non-production hours.

Prior to development, other properties in the annexation area (excluding Nu Forest) would be required to complete Plot Plan Reviews, Design Reviews, Conditional Use Permits and other municipal review procedures prior required by the Cloverdale Zoning Code prior to building permit issuance by the City, following completion of the annexation process.

Annexation to the City of Cloverdale: The Nu Forest property owner has requested annexation to the City of Cloverdale. The Cloverdale City Council will be requested to adopt a resolution formally requesting this action. Five adjacent properties are proposed to be included in the annexation in order to avoid creating a "county island" which would be properties within an unincorporated portion of the County surrounded by properties within the City.

See Table 1 with a summary of Assessor's Parcels, ownership and approximate acreage for properties included in the annexation.

Table 1. Ownerships and Characteristics of Annexation Area

Assessor Parcel No.	Site Address	Owner	Acres	Existing Use	Proposed Use
116-260-033	340 Asti Road	Cerasoli	0.45 acre	single family dwelling	Single family dwelling & light industrial
116-260-030	29550 Ivy Dell Ln.	Schwartzler Trust	0.45 acre	single Family dwelling	Single family dwelling
116-260-050	428 Asti Road	Matovich Trust	6.3 acres	vacant	Single family dwelling
116-260-046	(no address)	Poustinchian	4.07 acres	vacant	Light industrial
116-260-055	428 Asti Road	Nu Forest	14.68 acres	Single family dwelling	Lumber Mill
116-260-004	280 Asti Road	Nu Forest	12.17 acres	Lumber Storage	Lumber Mill
116-260-045	650 Asti Road	PG&E	4.5 acres	Power substation	No change

Source: City of Cloverdale, 2016

Adjacent properties are located on the east side of Asti Road and range in size from approximately one-half acre to 6.3 acres in size. The annexation would also include an existing PG&E substation located in the southern portion of the annexation area. No changes are proposed to PG&E's substation.

Upon completion of the annexation process, City water and sewer service could be extended to all properties within the annexation area as well as police services from the Cloverdale Police Department. All affected properties are currently within the boundary of the Cloverdale Fire Protection District (CFPD) and the annexation would not affect CFPD boundaries or operations. No changes are proposed to the boundaries of the Cloverdale Unified School District, since the affected properties already lie in this District. All other municipal services provided by the City would be extended to the properties included in the annexation.

9. Surrounding land uses and setting: The eastern portion of the project site is used by Nu Forest lumber mill operations that are proposed to be expanded by this project, with the

western portion of the Nu Forest site vacant. Smaller properties on the east side of Asti Road under various ownerships are either vacant or have been developed with a single family detached residence. These properties on the western side of the annexation area generally have moderate to steep topography with significant tree cover. A drainage course generally runs in a north-south direction on the east side of Asti Road. A PG&E unmanned substation exists on the southern portion of the annexation area.

Properties to the north of the annexation area are located within the City of Cloverdale and are vacant. The property east and north of the annexation area is developed with All-Coast Forest Products, Inc., a mill operation similar to the Nu Forest facility and is located in the unincorporated portion of Sonoma County. The Russian River lies further east of the All-Coast lumber mill site. Properties south of the annexation area lie in the City of Cloverdale and are developed with City infrastructure facilities. The 101 freeway is located west of the site as well as existing railroad tracks, a SMART train station (currently unused) and train maintenance facility, all of which are within the City of Cloverdale.

10. Other public agencies whose approval is required:

- Local Agency Formation Commission (annexation)
- City of Cloverdale (demolition & building permits, utility extensions & easements, encroachment permits)
- State Department of Fish & Wildlife (creeks and wetlands, possible)
- North Coast Regional Water Quality Control Board (wetlands, possible)
- Army Corps of Engineers (wetlands, possible)
- Northern Sonoma County Air Pollution Control District (air quality permits)
- State Water Resources Control Board (Notice of Intent)

Environmental Factors Potentially Affected

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "potentially significant impact" as indicated by the checklist on the following pages.

X	Aesthetics	-	Agricultural Resources	-	Air Quality
X	Biological Resources	-	Cultural Resources	X	Geology/Soils
-	Greenhouse Gas Emissions	X	Hazards and Hazardous Materials	-	Hydrology/Water Quality
-	Land Use/ Planning	-	Mineral Resources	X	Noise
-	Population/Housing	-	Public Services	-	Recreation
-	Transportation/ Circulation	-	Utilities/Service Systems	-	Mandatory Findings of Significance

Determination (to be completed by Lead Agency):

On the basis of this initial evaluation:

____ I find that the proposed project **could not** have a significant effect on the environment and a **Negative Declaration** will be prepared.

_X_ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described on an attached sheet have been added to the project. A **Mitigated Negative Declaration** will be prepared.

___ I find that although the proposed project **may** have a significant effect on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on earlier analysis as described on the attached sheets, if the effect is a "potentially significant impact" or "potentially significant unless mitigated." An **Environmental Impact Report** is required, but must only analyze the effects that remain to be addressed.

___ I find that although the proposed project could have a significant effect on the environment, there **will not** be a significant effect in this case because all potentially significant effects (a) have been analyzed adequately in an earlier EIR pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR, including revisions or mitigation measures that are imposed on the proposed project.

Signature: David J. Kelley Date: 6/1/16

Printed Name: David J. Kelley For: City of Cloverdale

Evaluation of Environmental Impacts

1) A brief explanation is required for all answers except "no impact" answers that are adequately supported by the information sources a lead agency cites in the parenthesis following each question. A "no impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g. the project falls outside a fault rupture zone). A "no impact" answer should be explained where it is based on project-specific factors as well as general factors (e.g. the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

2) All answers must take account of the whole action, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3) "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect is significant. If there are one or more "potentially significant impact" entries when the determination is made, an EIR is required.

4) "Negative Declaration: Less-Than-Significant Unless Mitigation Incorporated" implies elsewhere the incorporation of mitigation measures has reduced an effect from "potentially significant effect" to a "less than significant impact." The lead agency must describe the mitigation measures and briefly explain how they reduce the effect to a less than significant level.

5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration Section 15063(c) (3)(D). In this case, a brief discussion should identify the following:

   a. Earlier Analysis Used. Identify and state where they are available for review.
   b. Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
   c. Mitigation Measures. For effects that are "Less-Than-Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

6) Lead Agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

8) This is a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.

9) The explanation of each agency should identify: (a) the significance criteria or threshold, if any, used to evaluate each question; and (b) the mitigation measure identified, if any, to reduce the impact to a less than significant level.

V. ENVIRONMENTAL CHECKLIST

The following Environmental Checklist form is used to describe the impacts of the proposed project, as detailed in the Project Description. Potential environmental impacts are described as follows:

Potentially Significant Impact: An environmental impact that could be significant and for which no feasible mitigation is known. If any potentially significant impacts are identified in this Checklist, an Environmental Impact report (EIR) must be prepared.

Potentially Significant Unless Mitigated: An environmental impact that requires the incorporation of mitigation measures to reduce that impact to a less-than-significant level.

Less-Than-Significant-Impact: An environmental impact may occur, however, the impact would not be considered significant based on CEQA environmental standards.

No Impact: No environmental impacts would occur.

1. Aesthetics

Environmental Setting

The annexation area consists of two smaller subareas. Properties fronting along the east side of Asti Road contain moderate to steep slopes with a generally dense canopy of native and introduced trees. Three homes and out buildings have been constructed along this frontage (the Cerasoli property, Nu Forest property and the Schwartzler Trust property). The Matovich Trust property and the Poustinchian properties are currently vacant.

The eastern portion of the annexation area, the Nu Forest Products property, is partially developed with an existing lumber storage area and office space. A portion of the Nu Forest property contains a pond used to store fire suppression water (shared with the neighboring All-Coast Lumber operation) with the remainder currently vacant.

An existing PG&E substation is located in the southern portion of the annexation area.

A number of existing security lights have been installed on the existing Nu Forest property, existing residences and the PG& E substation.

Asti Road that forms the western boundary of the site is not designated as a State or local scenic highway based on the General Plan EIR (source: http://www.dot.ca.gov/hq/LandArch/16_livability/scenic_highways/.)

Surrounding uses include US 101 Freeway and Asti Road west of the site, vacant land north of the site, All-Coast Lumber Mill and the Russian River east of the site and the City of Cloverdale Corporation Yard and Water Treatment Plant south of the site.

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the Proposal:				
a. Have a substantial adverse effect on a scenic vista?				X
b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a		X		

state scenic highway?				
c. Substantially degrade the existing visual character or quality of the site and its surroundings?		X		
d. Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?			X	

Discussion

a) No impact. The annexation area generally contains private properties with no public vistas, public parks, playgrounds, overlooks or other public gathering places that would constitute a vista. There would be no impact with respect to this topic.

b) Less-Than-Significant with Mitigation. Future development that could occur on the parcels of land fronting on the east side of Asti Road could remove or damage mature native and introduced trees to allow the development of new residences, live-work units, industrial buildings, driveways, parking lots, pedestrian paths and other improvements. Such activities could result in Loss of tree cover or damage to mature trees. This would be a potentially significant impact but would be reduced to a less-than-significant level by adherence to the following measures.

Mitigation Measure Aesthetics-1: Future grading and/or development on any parcels of land fronting on Asti Road in the annexation area shall be reviewed by a California-certified arborist to identify methods to provide for maximum tree protection. These methods shall be reflected in final development plans. If mature trees cannot be protected, replacement native trees shall be planted on the site at a 2:1 ratio with adequate measures to ensure successful growth of the replacement trees. No Certificate of Occupancy shall be granted on any lot with required replacement tree plantings until tree replantings are reviewed and approved by the Cloverdale Community Development Department.

Mitigation Measure Aesthetics-2: Future development on parcels of land in the annexation area with substantial tree cover shall include measures identified by a California-certified arborist that ground disturbing activities will not significantly impact native trees on the lot. This shall include installation of exclusion fencing at locations approved by the arborist during project construction, provision of adequate irrigation of trees during construction, limitations on grading within exclusion areas and limitations of use (e.g. no storage of construction materials) under tree drip lines and other protection measures as may be recommended by the arborist.

c) Less-Than-Significant with Mitigation. Future development that could occur on the parcels of land fronting on the east side of Asti Road could significantly degrade the existing visual quality and character of the site by removing existing tree cover, changing existing topography and constructing a number of residences and light industrial buildings where none currently exist. A number of these properties are currently vacant and are visible from Asti Road and from the nearby 101 freeway. Future proposed development on the Nu Forest site would be located behind a small hill and would not be significantly visible from either Asti Road or the 101 freeway.

Potential impacts to the existing visual character for properties fronting on Asti Road could be a potentially significant impact as a result of constructing new structures and other improvements where none are current visible. Use of reflective building materials could result in a potentially significant impact on passers-by. This impact would be reduced to a less-than-significant level by adherence to the following mitigation measures.

Mitigation Measure Aesthetics-3: Future development on parcels of land fronting on Asti Road should be screened from view to the fullest extent feasible by landscape buffers or fences that limit views of new development from adjacent streets and roadways.

Mitigation Measure Aesthetics-4: The design of future structures on properties fronting on Asti Road shall exclude use of highly reflective materials, including but not limited to window glass, porch railings or other accent materials. Other exterior building materials shall be of neutral colors and tones to minimize visibility.

d) Less-than-Significant impact. Construction of future improvements within the project area would include the addition of new exterior lights associated with proposed industrial development on the Nu Forest site and new buildings on properties fronting on Asti Road. However, new development in the annexation area will be subject to General Plan Policy UL 1-2 (Minimize light spillage that carries off the property where lights are located). Adherence to this Policy when individual Plot Plans are reviewed by the City will ensure this impact will be less-than-significant.

2. Agricultural and Forestry Resources

Environmental Setting

No portion of the project area is used for or zoned for agricultural production. No Williamson Act contract or Timber Preserve contract exists in the area. The western portion of the site contains a significant tree cover of native and introduced species.

Project Impacts:

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?				X
b. Conflict with existing zoning for agricultural use, or a Williamson Act contract?				X
c. Conflict with existing zoning for, or cause rezoning of forest land (as defined by PRC Sec. 12220(g), timberland (as defined in PRC Sec. 4526), or timberland zoned Timberland Production (as defined in PRC Sec. 51104 (g)?				X
d. Result in the loss of forest land or conversion of forest land to non-forest use?		X		
e. Involve other changes in the existing environment which, due to their location or nature, could result in conversion of farmland to a non-				X

agricultural use or conversion of forest land to a non-forest use?				

Discussion

a-c) No impact. There would be no impact to agricultural resources since the project area has been developed with a lumber mill facility and scattered residences. No portion of the site is used for agricultural production, no Williamson Act contracts exist on the site and the site is not zoned for agricultural uses. No impacts would therefore result.

d) Less-than-Significant with Mitigation. The western portion of the site contains a moderate to dense cover of mature native and introduced trees. Future development on these properties that could be allowed under the amended General Plan and zoning could have a potentially significant impact on these resources. Adherence to Mitigation Measures Aesthetics 1 and 2 (see above) will reduce impacts to trees and forest resources to a less-than-significant impact.

e) No impact. There would be no impact with respect to other changes in the environment that would result conversion of farmland to a non-agriculture use or the conversion of forestland to a non-forest use since the predominance of development associated with the project would occur on the eastern, vacant portion of the project area. This is where the expansion of the Nu Forest lumber mill and associated operations would occur.

3. Air Quality

Environmental Setting

The City of Cloverdale is located at the northern end of Sonoma County and lies within the Northern Sonoma County Air Pollution Control District (NSCAPCD) jurisdiction. The NSCAPCD develops rules and regulations, and establishes permitting requirements, inspects emissions sources, and enforces such measures through educational programs or fines when necessary.

Major air pollutants regulated by federal, state and local air quality authorities include ozone, particulate matter (PM 10 and 2.5), toxic air contaminants (airborne substances that may cause cancer) and odors.

Minimal air pollutants are found in the annexation area since a majority of the properties are vacant. A portion of the Nu Forest property is used for office space and lumber storage. No milling or similar operations currently occur on this site. Similarly, no sensitive air receptors are located near the annexation area, including but not limited to hospitals, convalescent care facilities, schools, parks or similar land uses.

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the Proposal:				
a. Conflict with or obstruct implementation of the applicable air quality plan?				X
b. Violate any air quality standard or contribute substantially to an existing or projected air quality violation?			X	
c. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?			X	
d. Expose sensitive receptors to substantial pollutant concentrations?				X
e. Create objectionable odors affecting a substantial number of people?				X

Discussion

a-e) Less-than-Significant/No Impact. Air pollution concerns for the City of Cloverdale were addressed in the Environmental Impact Report (EIR) for the General Plan update completed in 2009. According to the General Plan EIR, due to the temporary nature of construction related impacts and required compliance with NSCAPCD rules and regulations, these impacts will not result in the generation significant air pollutants or

cause excess exposure of pollutants to sensitive receptors and are considered to be less than significant.

The NSCAPSD is currently in attainment for all criteria pollutants and any increase in criteria emissions is already accommodated for by the air district. As a result, the area will remain in attainment for criteria pollutants and any impacts from increased emissions from the City of Cloverdale are considered less than significant.

The primary land use proposed in the annexation area, Nu Forest Products, would be a relocation of existing lumber milling, storage and similar operations already occurring elsewhere in the NSCAPCD in the City of Healdsburg. Therefore, there could be a very small net increase in criteria pollutants following expansion of the Nu Forest site proposed for annexation to Cloverdale. Minimal other development is proposed for the annexation that could significantly impact local or regional air quality.

4. Biological Resources

Environmental Setting

The western portion of the project site is partially developed with Nu Forest lumber storage and offices. This portion of the project site has been highly disturbed for a number of years as a result of historic light industrial operations and does not contain any special-status or protected plant or wildlife species.

The eastern portion of the site is largely vacant and contains an extensive cover of native and introduced tree species and groundcover. Although the City's 2009 General Plan EIR does not indicate these properties contain special-status or protected plant or wildlife species (see Figure 4.10-3), it is possible that these properties have the potential to provide habitat for special-status bird, mammal, reptile and plant species. A site-specific biological resource reconnaissance was not conducted as part of this Initial Study.

Figure 4.10-2 contained in the General Plan EIR notes the presence of two potential wetlands on or adjacent to the annexation area. The first is a pond in located on a portion of the Nu Forest ownership, on the southeast corner of the annexation area, used as a reservoir for fire protection and co-owned with the All-Coast property owner. The second is an unnamed intermittent stream that flows through the annexation area, along the western boundary of the Nu Forest property. This tributary flows to the Russian River to the east.

Based on information contained in the General Plan EIR, no portion of the annexation area is located within a Habitat Conservation Plan or Natural Community Conservation Plan area.

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal result:				
a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?		X		
b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?		X		
c. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?		X		

d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?			X	
e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?			X	
f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				X

Discussion

a) Less-than-Significant with Mitigation. Future grading operations and development of parcels of land fronting Asti Road for residential, live-work or industrial uses could significantly impact nesting or roosting birds, including special-species birds, as well as decrease bird habitat in this portion of Cloverdale. Future development could also impact other special-status wildlife and/or plants, although no such species are identified in the General Plan EIR. To ensure this impact is reduced to a less-than-significant level, future development on parcels of land fronting on the east side of Asti Road shall implement Mitigation Measure BIO-1 and BIO-2 to reduce impacts to candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service to a level less than significant.

Mitigation Measure BIO-1: Prior to issuance of a grading and/or a building permit for parcels located on the east side of Asti Road, a site-specific biological reconnaissance shall be

completed by a qualified biological firm as approved by the Cloverdale Community Development Department. The reconnaissance shall include a literature search and site inspection of the presence of special-status plants or wildlife. If no special-status species are identified, no further action is required. If special-status species are identified, the biologist shall recommend an action plan to ensure that any special-status species are fully protected. Protective actions may include first, avoiding the species during construction and post – construction or relocation of the species to an alternative suitable site. Any relocation actions shall occur in consultation with the California Department of Fish & Wildlife and/or the U.S. Fish & Wildlife Service. Necessary permits and approvals shall be obtained prior to relocation. No work on portions of the affected site may occur until clearances are granted by the City of Cloverdale, the California Department of Fish & Wildlife or the U. S. Fish & Wildlife Service, as appropriate.

b,c) Less-than-Significant with Mitigation. Future development on the eastern portion of the Nu Forest property or other properties fronting on Asti Road could impact wetlands, other waters and/or riparian habitats. Such impacts could include installing sewer and/or water line extensions through potential wetland area, full or partial fill of wetlands or discharge of polluted runoff into wetland areas. Such actions would be a potentially significant impact. This impact would be reduced to a less-than-significant level.

Mitigation Measure BIO-2: Prior to issuance of a grading and/or a building permit for any parcel of land in the project area, a qualified wetland biologist as approved by the Cloverdale Community Development Department shall survey the site for the potential presence of wetlands, other waters or riparian habitat. If none is found, no further action shall be required. If wetlands, other waters or riparian habitat is identified, the wetland biologist shall prepare an action plan for the approval of the City of Cloverdale. The action plan shall identify specific steps to be taken to ensure that any future impacts to wetlands, other waters or riparian habitat is less-than-significant. These methods may include, but are not limited to, preparing a formal wetland delineation, permanent on-site protection of wetlands or off-site relocation of wetlands to an approved alternative site. If relocated off-site, the applicant or property owner shall obtain necessary permits and approvals from the Regional Water Quality Control Board, the California Department of Fish & Wildlife, the U. S. Army Corps of Engineers or other agencies. No construction near wetlands, other waters or riparian habitat areas may proceed until the approval action plan is approved and implemented.

d) Less-than-Significant. Several parcels in the annexation area are fenced to preclude wildlife migration or are developed with lumber storage uses. A major wildlife and fish corridor exists east of the site along the Russian River. This impact would be less-than-significnt.

e) Less-than-Significant. Proposed development on all parcels of land proposed for annexation to the City of Cloverdale will be required to comply with all municipal requirements protecting local biological resources, including but not limited to tree

protection ordinances. Compliance will be required at the time development is proposed in the City and this impact would ne less-than-significant.

f) No Impact. No Habitat Conservation Plans or Natural Community Conservation Plans have been adopted within the City of Cloverdale and no impact would occur with respect to this topic.

5. Cultural Resources

Environmental Setting

The City of Cloverdale General Plan EIR (2009) does not identify the presence of any historic, prehistoric, paleontological or Native American resources within the annexation area. Major historic resources within the Cloverdale Planning area, as identified in the General Plan EIR, include the Isaac Shaw building, the Pinschower house, an historic bridge over the Russian River and the Gould Shaw house. None are located within the annexation area.

The General Plan EIR concluded, based on a records search at the University of California, Berkeley Museum of Paleontology, that no paleontological resources have been identified in Cloverdale.

Although the General Plan EIR did not identify the presence of buried prehistoric resources or Native American resources in or near the annexation area, the close proximity of the area to the Russian River may result in a moderate to high potential to encounter such resources within the area. Typically Native American settlements were located near major bodies of water, such as rivers, creeks and streams.

As part of the CEQA process, City staff initiated an SB 18 Native American Tribal Consultation with the State of California Native American Heritage Commission in February 2016.

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal result: in: impacts to:				
a. Cause a substantial adverse change in the significance of a historical resource as defined in Sec. 15064.5?				X

b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to Sec. 15064.5?			X	
c. Directly or indirectly destroy a unique paleontolgical resource or site or unique geologic feature?			X	
d. Disturb any human remains, including those interred outside of formal cemeteries?			X	

Discussion

a) No Impact. Based on the General Plan EIR and site observations, no above-ground historic resources are present within the annexation area and no impacts would result with respect to this topic.

b-d) Less-Than-Significant Impact. The relatively close proximity of the annexation area to the Russian River may be linked to historic Native American or other historic settlements in this location. Although future construction and ground-disturbing activities could impact buried cultural, Native American and/or paleontological resources, adherence to General Plan implementing Measure CDO 4-2.a ("Maintain standard conditions of approval for CEQA and project review of development projects including agricultural conversion that require cultural resources studies where applicable and require that work be halted and studies conducted if cultural or archeological resources are discovered; require that such studies be conducted by qualified historians or archeologists; and require notification pursuant to law if human remains are discovered") and Implementing Measure CDO 4.2b ("Coordinate with the Native American Heritage Commission and local tribal members to determine if the study area or developments contain any artifacts or areas used for religious purposes."). As required by the General Plan, future specific development proposals in the annexation area will be conditioned to implement the above-referenced General Plan Implementing Measures to ensure that future impacts to Native American, historic, paleontological and similar resources will be less-than-significant.

6. Geology and Soils

Environmental Setting

This section of the Initial Study is based on an analysis of local geologic conditions conducted by the firm of PJC & Associates Inc dated November 5, 2015, which is incorporated by reference

into this Initial Study. The PJC report is available for review at the Cloverdale Planning Department during normal business hours.

The eastern portion of the annexation area is relatively flat with the western portion characterized by moderate to steeply sloping areas. The entire annexation area is located in the Coast Ranges Geomorphic Province of California that includes many separate mountain ranges, hills and valleys located between the Pacific Ocean and the Great Valley to the east.

Flatter portions of the annexation area are underlain by alluvial deposits with layers of sand, gravel, silt and clay with a top covering of alluvium.

It is likely that the western portion of the annexation area is underlain by harder geologic material that has not eroded due to action of the nearby Russian River.

The PJC & Associates report notes that the site is not within an Alquist-Priolo Earthquake Fault Study zone. Three active fault zones have been identified near the annexation area: the Maacama (South), the Maacama (central) and the Collayomi Faults. These are located from 2.7 miles to approximately 13.9 miles from the project area. Existing and future development on the project area is and would continue to be subject moderate to severe ground shaking as a result of earthquake activity on one of these fault zones. The risk of ground rupture is considered low due to lack of identified faults in the general area.

The eastern portion of the project site is considered to have very high liquefaction potential. Liquefaction is a seismic hazard where there is a rapid, temporary loss of soil strength that could damage structures on that site.

The PJC & Associates report finds that the risk of lateral spreading, soil lurching or the presence of expansive (high shrink-swell potential) soils is low.

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:		X		
i) Rupture of a known earthquake fault, as			X	

	delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.			
	ii) Strong seismic ground shaking?			X
	iii) Seismic-related ground failure, including liquefaction?			X
	iv) Landslides?		X	
b.	Result in substantial soil erosion or the loss of topsoil?			X
c.	Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?		X	
d.	Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?			X
e.	Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available			X

for the disposal of waste water?				

Discussion

a) Less-than-Significant with Mitigation. The site geotechnical report concludes that the annexation area is not located within an Alquist-Priolo Earthquake Fault Zone or State of California Earthquake Fault Studies Zone, and there are no active faults in the annexation area. There is a potential for strong seismic shaking on the site from nearby active faults. Future buildings in the annexation area will be designed in accordance with the California Building Code standards adopted for the City that includes strict seismic safety design standards to resist the effects of groundshaking and building failure.

No preliminary soils reports have been prepared for properties located in the eastern portion of the annexation area. These properties exhibit moderate to steep slopes and future structures could be subject to landslide potential. Future landslides or soil failure could be a potentially significant impact for project properties and for other nearby properties as well. Adherence to the following will reduce this impact to a less-than-significant level.

Mitigation Measure GEO-1: Prior to issuance of a grading and/or a building permit for any parcel of land in the annexation area where no recent soils or geotechnical report has been prepared, a qualified California-registered engineering geologist or equivalent, as approved by the Cloverdale Community Development Department, shall prepare a report analyzing soil and geologic conditions on that particular property. The report shall include specific construction methods to be undertaken to reduce potential soil hazards to a less-than-significant level, including but not limited to landslides, ground failure and other potential hazards. The recommendations of the soils and geotechnical report shall be incorporated into all project grading and construction plans to ensure that future hazards from landsliding or similar hazards are reduced to a standard level of care.

b) Less-than-Significant Impact. Future improvements within the annexation area will be subject to City of Cloverdale construction and post-construction erosion control and water quality protection requirements, including placement of silt fences and desilting basins to trap construction erosion and placement of water quality ponds to filter erosion from parking lots and landscaped areas. This impact would be less-than-significant with adherence to City standards.

c) Less-than-Significant with Mitigation. Future construction of parcels of land located on the eastern side of the annexation area could be subject to landslide potential and other soil-related hazards. Adherence to Mitigation Measure GEO-1 will reduce this impact to a less-than-significant level.

d) Less-than-Significant Impact. The PJC & Associates report prepared for the Nu Forest property within the annexation area determined that the risk of liquefaction on future site improvements is considered low. Other properties within the annexation area are located on moderate to steeply sloping areas that are generally not prone to liquefaction.

e) Less-than-Significant Impact. A number of properties in the annexation area use septic systems. Upon completion of the annexation area, all properties would be allowed to connect to the City of Cloverdale wastewater system. However, if wastewater facilities are not proximate to individual properties, existing septic systems may be allowed to continue. All existing septic systems are under the jurisdiction of the Sonoma County Permit and Resource Management Department of Sonoma County.

7. Greenhouse Gas Emissions

Environmental Setting

The annexation area is partially developed with existing Nu Forest Products operations that include storage and transport of milled lumber, company offices and a number of existing single-family residences. Greenhouse gasses are currently emitted into the atmosphere from passenger vehicles, trucks and forklift operations on the Nu Forest property.

Greenhouse Gasses include carbon dioxide, methane, nitrous oxides, perflorocarbons, sulphur hexafluoride and hydroflorocarbons. It is generally recognized that greenhouse gasses trap heat and moisture near the earth's surface, increasing the ambient temperature, also known as global warming. Effects of global warming, include changing of ocean circulation patterns, a reduction of global ice coverage and general changes to climatic conditions.

Sonoma County has taken the lead in preparing a County-wide Climate Action Plan (CAP) with the intent of reducing the amount of greenhouse gasses for all cities in the County, including Cloverdale. The amount of targeted reduction is 25% below the 1990 emission level by the year 2020.

The draft CAP estimates that the City of Cloverdale emitted 57,300 metric tons of carbon monoxide in 1990 and 59,000 metric tons in 2010, the most recent estimate available.

Project Impacts:

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Generate greenhouse gas emissions, either directly or indirectly, that may have a			X	

significant impact on the environment?			
b. Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?		X	

Discussion:

a) Less-than-significant. Proposed annexation, development and operation of the Nu Forest lumber mill and other uses proposed for the annexation area would increase the amount of greenhouse gas emissions into the atmosphere as a result of increased traffic, operations of the expanded lumber mill and other operations that would be included in the annexation area. In terms of potential greenhouse gas emissions, the major land use change proposed for the annexation area, the Nu Forest lumber mill, would not be a new land use in the local air basin, but would be a relocation from its existing operation in Healdsburg. Thus there would not be a significant net increase in the amount of greenhouse gasses emitted into the atmosphere from approval and implementation of this project. Although replacement land uses on the existing Healdsburg site could generate greenhouse gasses, future uses of the Healdsburg site are unknown and beyond the jurisdiction of the City of Cloverdale. Future uses on the existing Nu Forest site in Healdsburg will be required to complete CEQA review for GHG emissions at the time such new use or uses are proposed.

b) Less than Significant Impact. Neither the City of Cloverdale nor Sonoma County have an adopted Climate Action Plan (CAP), although such a draft plan has been prepared is being considered for adoption by the County and the various incorporated cities in the County, including Cloverdale. The CAP includes a goal of reducing county greenhouse gas emissions by 25 percent below 1990 levels by 2015, but has no mandatory provisions that would apply to the project. In addition to the CAP, the State of California has adopted regulations that apply to the project that will help the County achieve its reduction goal. The proposed project will be conditioned by the City of Cloverdale to comply with the California Green Building Standards Code, which includes requirements to increase recycling, reduce waste, reduce water use, increase bicycle use, and other measures that will reduce greenhouse gas emissions. Motor vehicle emissions associated with the project would be reduced through compliance with state regulations on fuel efficiency and fuel carbon content. The regulations include the Pavley fuel efficiency standards that require manufacturers to meet increasing stringent fuel mileage rates for vehicles sold in California and the Low Carbon Fuel Standard that requires reductions in the average carbon content of motor vehicle fuels. Emissions related to electricity consumption by the project would be reduced as the electric utility complies with the Renewable Portfolio Standard, which requires utilities to increase its mix of renewable energy sources to 33 percent by 2020. The project would not conflict with the Sonoma

County CAP and regulations adopted by the State of California to reduce greenhouse gas emissions.

The representative from Nu Forest Products, the largest owner and future user within the annexation area, have committed to operating an employee shuttle from Healdsburg to the annexation area site to reduce vehicle trips. The owners are also exploring the placement of on-site solar collectors to reduce dependency on the electric grid. Waste material generated by milling are operations are recycled rather than deposited in a local landfill. These actions would reduce air quality and greenhouse gas emissions below normal business as usual and would serve to reduce overall GHG emissions from vehicle trips from the annexation area.

No impacts are anticipate with respect to this topic.

8. Hazards

Environmental Setting

Portions of the annexation area have been developed with single-family residences (along Asti Road) and a lumber storage and office operation on the eastern portion of the site.

Earlier environmental analyses for the Nu Forest site determined that portions of the site were contaminated by previous deposits of diesel fuel and motor oil in the local groundwater above the Environmental Screening Levels adopted by the San Francisco Regional Water Quality Control Board (see "Expanded Phase I Environmental Site Assessment" by Anchor Environmental Consultants, Inc. dated September 21, 2008 and "Limited Phase II Subsurface Investigation" prepared by AEI Consultants dated November 6, 2014). These two documents are hereby incorporated by reference into this document and are available for review at the City of Cloverdale Community Development Department during normal business hours.

A follow-on subsurface investigation of the site was completed by SCS Engineers in November , 2015 ("Report of Limited Subsurface Investigation, 280 Asti Road, Cloverdale California"). This document is also incorporated by reference into this Initial Study and is available for review at the City of Cloverdale Community Development Department during normal business hours.

The project site is located to the north of Cloverdale Municipal Airport and is outside the jurisdiction of the Comprehensive Airport Land Use Plan for the airport (http://www.sonoma-county.org/prmd/docs/airport/ch8-excerpt.htm).

Based on a recent discussion with representatives of the Cloverdale Fire Protection District, the annexation area lies outside of an urban/wildland high fire hazard area (source: B. Elliott, Cloverdale Fire Protection District, 3/14/16).

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?			X	
b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?		X		
c. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				X
d. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?				X
e. For a project located				

within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?				X
f. For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?				X
g. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?				X
h. Expose people or structures to a significant risk of loss, injury or death involving wildland fire, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?				X

Discussion

a) Less-than-Significant Impact. Future industrial and potential agricultural uses (on the Matovich Trust property, proposed for Rural-Residential prezoning) within the annexation area would likely involve the transport, use, storage and disposal of potentially hazardous materials, including but not limited fuels and lubricants for forklifts, potential servicing of trucks, other industrial solvents that would be used in the proposed Nu Forest lumber mill. Future residential uses could involve the transport, use and storage of normal and customary quantities of household paints and solvents and yard and garden care substances. Transport, use, storage and disposal of potentially hazardous materials is strictly regulated and controlled by a variety of local state and federal laws and regulations. The proposed expansion of Nu Forest Products and associated use of

potentially hazardous materials would be approximately the same as other, similar industrial uses in Cloverdale. Future transport, use, storage and disposal of potentially hazardous materials will be subject to review and inspection by the Cloverdale Fire Protection District and other regulatory agencies, including but not limited to the California Highway Patrol and OSHA, to ensure this impacts will be less-than-significant.

b) Less-than-Significant With Mitigation. Proposed demolition of older structures within the annexation area could release lead based paints and/or asbestos containing material into the environment. Adherence to the following measure will mitigate this impact to a less-than-significant level.

Mitigation Measure HAZ-1: Prior to issuance of a demolition permit for any existing residence or other major structure in the annexation area (as determined by the Cloverdale Building Official), a licensed contractor shall determine the presence or absence of lead based paints or asbestos material on the site. If found in quantities at or above actionable levels as determined by the Cloverdale Building Department or Fire District, these materials shall be safely removed consistent with the Occupational Safety and Health Administration (OSHA) and other applicable standards and disposed of in an appropriate location. Necessary permits and approvals shall be secured from appropriate regulatory agencies.

c) No Impact. No public schools are located within a one-quarter radius of the project site (source: Cloverdale Unified School District website, http://www.cusd.org/Page/1) so there would be no impact with respect to this topic.

d) No Impact. None of the properties included in the annexation area are listed on the State of California Cortese List as of March 16, 2016. No impacts are therefore anticipated with respect to this topic.

e,f) No Impact. As identified in the Environmental Setting section of this Initial Study, the annexation area is located north of the Cloverdale Municipal Airport and lies outside of the applicable airport land use plan. No impacts would result with respect to this topic.

g) No Impact. Proposed improvements that could be constructed within the annexation area would be built on private properties and would not block public roads or other public accessways used for emergency access. Future buildings constructed in the annexation area will be reviewed for adequate access by the Cloverdale Police Department and the Cloverdale Fire Protection District prior to approval by the City. This will ensure that no impacts would occur with respect t interference with emergency evacuation.

h) No Impact. Based on a discussion with the Cloverdale Fire Protection District, the annexation area does not lie in a wildland/urban interface area and no impact would occur.

9. Hydrology and Water Quality

Environmental Setting

The project area is located near and to the west of the Russian River. One major property, All-Coast Lumber, is located between the annexation area and the River. A local intermittent creek flows through the approximate center of the annexation area. A second hydrologic feature is an existing pond in the southern portion of the annexation area that is used to store fire suppression water for the Nu Forest and All-Coast lumber operations.

A number of existing uses have been constructed within the annexation area, including lumber storage facilities on a portion of the Nu Forest property, single-family dwellings on three other properties and a small number of uninhabited outbuildings. All existing residences and industrial uses (Nu Forest offices) are served by private on-site septic systems.

The easterly portion of the annexation area lies within the 100-year flood hazard area as mapped by FEMA (source: Eric Janzen, City of Cloverdale, 3/9/16).

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Violate any water quality standards or waste discharge requirements?			X	
b. Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level?			X	
c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would			X	

result in substantial erosion or siltation on-or off-site?				
d. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on-or off-site?			X	
e. Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?			X	
f. Otherwise substantially degrade water quality?			X	
g. Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?				X
h. Place within a 100-year flood hazard area structures which would impede or redirect flood flows?				X
i. Expose people or structures to a significant risk of loss, injury or death			X	

involving flooding, including flooding as a result of the failure of a levee or dam?				
j. Inundation by seiche, tsunami, or mudflow?				X

Discussion

a) Less-than-Significant Impact. A primary concern of storm water runoff is the potential amount of pollution associated with the construction and development within the annexation area, following completion of the annexation. Sediment from grading and excavation activities, oil and grease from equipment and vehicles, fertilizers and herbicides associated with landscaping are all considered non-point source (NSP) pollutants. As part of the normal and customary development review process, the City of Cloverdale will require the preparation and approval of an Erosion Control Plan for all future development projects in the annexation area. The Erosion Control Plan must document that development will not increase the flow or intensity of flow of rainwater runoff from the existing conditions. Low Impact Development (LID) measures are to be added to offset the impact of new impervious surfaces as required by NPDES No. CA0025054 and Cloverdale Municipal Code Section 16.10.160, which invoke the Santa Rosa LID Manual as adopted by the City of Cloverdale. The plan will be required to be submitted and approved by the Engineering Department prior to issuance of grading permits on all annexation properties.

In terms of the City's Wastewater Treatment Plant discharge and water quality standards, future annexation and development of properties within the annexation area would increase flows into the City's wastewater treatment plant. The Wastewater Treatment plant currently experiences an average daily inflow of 0.55 mgd (million gallons per day) during dry weather conditions and is approved by the North Coast Water Resources Control Board to process up to 1.0 mgd during dry weather. As of October 2014, the plant had a surplus capacity of 0.45 mgd (source: City of Cloverdale 2014 Infrastructure audit, 2014). The maximum design capacity during wet weather conditions is 8.25 mgd with average inflows of 4.10 mgd as of 2014, leaving a surplus capacity of 4.15 mgd.

Development under the proposed annexation could generate up to 4,680 gallons of wastewater per day that would need to be treated at the City's wastewater plant (see Table 2). The amount of wastewater demand to be added to the City's municipal wastewater as a result of project build out could be accommodated in the City's wastewater treatment and disposal system. As a part of the proposed annexation and development project, property owners and/or future developers would generally be required to construct a wastewater collection system sized to accommodate future wastewater flows to connect to the City's system.

Table 2. Annexation Build Out Wastewater Demand

Land Use Type	Wastewater Use Factor	Land Use/Amount	Wastewater Generation (gpd)
Light Industrial/ Nu Forest	50 gal/day/employee	73 employees[1]	3650
Other Light Industrial	same as above	3 employees[2]	150
Single Family Residential	220/gpd/dwelling[3]	4	880
Estimated Water Demand	--		**4680**

Notes:
1. Based on future Nu Forest build out per Nu Forest estimate
2. Based on 1 employee per 1,000 square feet
3. Based on City of Cloverdale estimate
Source: City of Cloverdale, 2016

b) Less-than-Significant Impact. Properties within the annexation area that have been developed (including a portion of the Nu Forest property, the Cerasoli property and the Schwartzler property) rely on on-site private wells for domestic water. Following annexation, all properties would be allowed to connect to the City's municipal water supply, although it would be the responsibility of individual owners to install necessary infrastructure to connect to the City system, including but not limited to sewer laterals. Since existing private wells in the annexation area rely on approximately the same groundwater resources as the municipal water system, no significant impacts are anticipated with respect to depletion of groundwater resources. Construction of new buildings in the City of Cloverdale following annexation would be required to comply with water conservation features required in the California Building Code, so that future water use could be less under City jurisdiction than is currently used in the unincorporated County.

c-e) Less-than-Significant Impact. Construction of future improvements within the annexation area would increase the amount of impervious surfaces which, in turn, would increase the amount of stormwater runoff. Impervious surfaces that would be created on the Nu Forest property would include building areas, paved parking areas and driveways. Additional construction on other properties would also increase the amount of impervious surfaces, including but not limited to a new single-family dwellings on the Matovich Trust property, live-work buildings on the Cerasoli property, light industrial building(s) on the Poustinchian property as well as driveways and other paved surfaces on some or all of the properties. No specific development applications have been submitted to the City for these non-Nu Forest properties; however, future development on the Nu Forest properties would be limited to single family residences and small industrial buildings that would not result in a significant impact with respect to this topic.

Future development projects in the annexation area will be required to submit grading plans and have these plans approved by the Cloverdale Public Works Department. Based on the City's NPDES permit granted by the Regional Water Quality Control Board, grading plans must demonstrate that proposed future development would not increase the flow or intensity of flow of storm water runoff over the existing conditions. Low Impact Development (LID) measures must be included in each development project to offset the impact of new impervious surfaces as required by NPDES No. CA0025054 and Cloverdale Municipal Code Section 16.10.160, which invoke the Santa Rosa LID Manual as adopted by the City of Cloverdale. Typical measures implementing this requirement include use of detention or retention ponds to store excess peak flows to ensure that existing or planned downstream drainage facilities will not be significantly impacted. It is anticipated that, due to the relatively small size of properties included in the annexation, the courses of local creeks or streams within or adjacent to the annexation area would not be significantly changed or altered. A water quality pond is proposed to be constructed on the southwest portion of the Nu Forest site that would also detain stormwater prior to discharge into the Russian River.

Similarly, the City will require the submittal and approval of site-specific erosion control plans to limit the amount of polluted runoff from each property to a less-than-significant level when future developments are proposed. Future erosion control plans must cover both construction and post-construction operations of each future development project.

Additionally, the standard conditions require payment of development impact fees, targeted for construction of citywide public infrastructure projects, including water and drainage improvements that address the cumulative impacts of development.

Overall, future impacts related to drainage, stream course alteration and the generation of significant quantities of polluted runoff will be less-than-significant.

g-j) Less-than-Significant Impact. The eastern portion of the annexation area is located within a 100-year flood hazard area (an "AE" zone) and would be subject to inundation on the event of a 100-year storm. The western portion of the annexation area is at a higher topographic elevation and lies above the AE flood hazard zone.

Future development that could occur on the eastern portion of the annexation area would consist of the expansion of the existing Nu Forest Products lumber mill, wood processing and storage operations. No future housing would be located in a flood hazard area and improvements constructed within the annexation area would meet flood construction methods and materials required by the California Building Code, as enforced by the City of Cloverdale. Portions of the annexation area would be subject to inundation by water in the event of a dam failure upstream of the site along the Russian River. This is documented on Figure PS-1f contained in the Public Safety Element of the

Sonoma County General Plan 2020 (http://www.sonoma-county.org/prmd/gp2020/fig-ps1f.pdf). It is likely such portions of the site would be limited to the flatter eastern portion closest to the Russian River. Future potential flooding of this portion of the area would likely be the same as the impact experienced from a 100-year flood event and would be less-than-significant as discussed above.

10. Land Use

Environmental Setting

The annexation area consists of a mix of developed properties (portions of the Nu Forest site), three single-family residences, older barns and other accessory buildings. Surrounding uses include light industrial uses to the west (All-Coast Forest Products) under County jurisdiction, City of Cloverdale wastewater treatment facilities and a corporation yard to the south within the City of Cloverdale, a train station/maintenance structure and the 101 freeway to the west (in the City of Cloverdale) and vacant land to the north in the City of Cloverdale.

Project Impacts:

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Physically divide an established community?				X
b. Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?				X
c. Conflict with any applicable habitat conservation plan or natural community conservation plan?				X

Discussion

a-c) No Impact. If approved, the proposed annexation would change the status of the affected properties from the unincorporated portion of Sonoma County to the City of Cloverdale. Other than the proposed expansion of operations on the Nu Forest site, no other land use changes would immediately occur in the annexation area. However, under the proposed General Plan Amendment and prezoning, future development would be allowed on all properties, which would generally be consistent with development patterns that would be allowed under existing Sonoma County land use regulations. No impacts are anticipated with respect to this topic.

None of the properties included in the proposed annexation lie within a Habitat Conservation Plan or a Natural Community Conservation Plan.

11. Mineral Resources

Environmental Setting

No significant mineral resources exist in the project area based on the Land Use Diagram of the Cloverdale General Plan.

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				X
b. Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?				X

Discussion

a-b) The General Plan notes no deposits of minerals on or adjacent to the annexation area and no impacts would result.

12. Noise

Environmental Setting

The project area is located on the east side of the 101 freeway, a major noise generator in this portion of Cloverdale. Another source of localized noise is lumber mill operations from the existing Nu Forest storage yard (primarily truck and forklift noise) on the eastern portion of the annexation area and lumber mill, truck and forklift operations to the east on the All-Coast property.

Noise is currently generated by vehicle traffic using Asti Road that forms the western boundary of the area. Based on limited traffic on this roadway, local roadway noise from Asti Road is not considered significant. The General Plan EIR does not identify any major sources of stationary (non-vehicular) noise on or adjacent to the annexation area.

The annexation area is located a significant distance north of Cloverdale Municipal Airport and is not subject to significant noise from this source (see Figure 4.7-1 contained in the Cloverdale General Plan EIR).

Project Impacts and Mitigation Measures

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?		X		
b. Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?			X	
c. A substantial permanent increase in ambient noise levels in the				X

	project vicinity above levels existing without the project?			
d.	A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?		X	
e.	For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?			X
f.	For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?			X

Discussion

a) Less-than-Significant with Mitigation. The project involves the expansion of the existing Nu Forest lumber mill on the east side of the annexation area and the construction of other light industrial facilities and one dwelling within the area. Operation of these uses could have the effect of exposing existing and future residents near the annexation area to levels of noise above the 65 dB level. In addition future dwellings constructed on the site either in the proposed General Industrial zoning district or the proposed Rural Residential district could be subject to significant noise either from future traffic, especially trucks, using Asti Road or from future lumber mill operation on the Nu Forest site. Pursuant to the California Building Code, interior noise levels for residences cannot exceed 45 decibels (Ldn/CNEL). Consistency with this requirement will be confirmed during review of site-specific building plans for future residences. Exceedances of City of Cloverdale exterior noise levels of 65 decibels (Ldn/CNEL) could occur with respect to

future dwellings that could be constructed within the annexation area and on surrounding properties as a result of future operational noise related to Nu Forest operations. This would be a potentially significant and would be reduced to a less-than-significant level by adherence to the following measure.

Mitigation Measure Noise-1: Prior to issuance of a building permit for future residential and major industrial uses in the annexation area, a qualified acoustical consultant as approved by the City of Cloverdale shall conduct a site-specific analysis to ensure that future uses and site activities comply with City standards set forth in the Noise Element of the Cloverdale General Plan and other applicable local noise regulations. Each analysis shall contain, at minimum, a summary of recent 24-hour noise measurements and specific measures to be incorporated into final building plans and specifications to reduce exterior and interior noise to City standards.

b) Less-than-significant. None of the proposed improvements within the annexation area would generate significant groundborne vibration since normal construction techniques would be used. No unusually tall buildings are proposed that could require pile driving or similar construction methods that would generate significant levels of vibration. The one property that could potentially generate vibration would be the proposed expansion of Nu Forest Products. However, no significant receptors currently exist or are proposed immediately adjacent to the Nu Forest site. The closest use to Nu Forest is the All Coast lumber mill. located immediately west of the Nu Forest site, that would be an equivalent use and would not be a sensitive receptor. This impact would be less-than-significant.

c) Less-than-Significant. No significant noise above existing ambient level of noise would be created in the project location without annexation and future construction of project improvements. This impact would be less-than-significant.

d) Less-than-Significant with Mitigation. Future construction of residential and light industrial uses within the annexation area could result in potentially significant noise during normally quiet times of the day, which is evening and night time periods. This would be a potentially significant on existing and future residences that could be allowed in the annexation area. Adherence to the following measure will ensure this impact will be reduced to a less-than-significant level.

Mitigation Measure Noise-2: All future construction activities for properties in the annexation area shall be limited to the hours of 7 a.m. to 6 p.m. Monday through Saturdays. No construction shall occur on state or federal holidays. Exceptions to these restrictions may be granted by the Cloverdale Community Development Director for unusual or emergency conditions.

e, f) No Impact. The project area is not located within an approved land use plan or near the Cloverdale Municipal Airport, the closest public or private airport to the area. No impacts would occur with respect to this topic.

13. Population and Housing

Environmental Setting

The annexation area is currently partially developed with Nu Forest lumber operations, three single-family dwellings and a PG&E electric substation. Surrounding uses include vacant land to the north (within the City of Cloverdale), a lumber mill and the Russian River to the east (unincorporated County territory), City of Cloverdale infrastructure and a corporation yard to the south (within the City) and the 101 freeway, a train station/maintenance shed and railroad right-of-way to the west (within the City).

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?				X
b. Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				X
c. Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?				X

Discussion

a) No Impact. The proposed project would have no impact on substantial population growth within the City of Cloverdale since the project would allow for the development of one new single family dwelling within the annexation area.

b-c) No Impact. The proposed project could result in removal of one existing dwelling within the annexation area on the Nu Forest property and would allow construction of one dwelling on the Matovich Trust property. No impact would result with respect to this topic.

14. Public Services

Environmental Setting

Essential public services to the project area are provided as follows:

- *Fire Protection.* Fire protection services are provided by the Cloverdale Fire Protection District, which is headquartered at 451 S. Cloverdale Boulevard. A fire station is located at the district headquarters. The District also provides emergency rescue and fire code inspection services and maintains a variety of fire suppression apparatus at the headquarters Fire Station. The District maintains automatic aid agreements with the Geyserville Fire District and City of Healdsburg Fire Department (source: B. Elliott, Cloverdale Fire Protection District, 3/4/16).

- *Police Protection.* Police and security protection is provided by the Sonoma County Sheriff's Department based on Santa Rosa. The Sheriff's Department provides five deputies to patrol northern Sonoma County, including the annexation area, on a 24-hour per day basis (source: Al Tupman, Sheriff Department, 3/28/16). The City of Cloverdale Police Department maintains a mutual aid agreement with the County Sheriff, so that Cloverdale personnel may be the first responder to the annexation area in the event of an emergency (source: S. Cramer, Cloverdale Police Department, 3/28/16).

- *Schools.* Public educational services for residents of the project site are provided by the Cloverdale Unified School District. The District provides K-12 educational services for residents of Cloverdale and the surrounding unincorporated area. Private schools are also available in the greater Cloverdale area.

  Local schools serving the project site include Jefferson Elementary School, Washington Middle School and Cloverdale High School.

- *Library Service.* Sonoma County Library provides library service to Cloverdale as well as the greater Sonoma County. Numerous branch libraries are located in both incorporated cities and unincorporated communities throughout the County. The library administrative headquarters is located in Santa Rosa. The branch library closest to the annexation area is located at 401 N. Cloverdale Boulevard in Cloverdale.

- *Maintenance*. Maintenance of local streets, roads and other governmental facilities within the unincorporated portion of the County are the responsibility of the County of Sonoma.

- *Energy*. Residents of Cloverdale receive electrical power from Pacific Gas & Electric Company (PG&E), a regulated public utility serving northern and central California.

- *Communication facilities*. Major communication facilities in Cloverdale are provided by AT&T although other providers are also available.

Project Impacts

	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
Fire protection?				X
Police protection?				X
Schools?				X
Parks?				X

Other public facilities?				X

Discussion

a) No Impact. The proposed annexation and subsequent development that would be allowed under City of Cloverdale jurisdiction would not adversely impact the level of service provided by the Cloverdale Fire Protection District, the Cloverdale Unified School District or the Sonoma County Library, since there would be no change to the status of these providers upon annexation or their respective boundaries. Representatives from the Cloverdale Fire Protection District have indicated that no new or expanded facilities would be needed to serve the proposed annexation and future development (source: B. Elliott, CFPD)

Should the annexation be approved, police protection services would be provided by the City of Cloverdale Police Department instead of the County Sheriff. Based on discussions with the Cloverdale Police Chief, the City's Police Department could provide an enhanced level of emergency and non-emergency response times to calls for service from properties in the annexation area, since the Cloverdale Police Department is located closer to the area than the County Sheriff's office and provides a higher level of staffing than the County Sheriff than is currently available to the affected properties.

Upon future development within the annexation area, property owners or developers would be required to pay development impact fees that support these City Departments and special districts, such as the Cloverdale Fire Protection District.

Maintenance of local roads and other public facilities would be provided by the City of Cloverdale and would be funded by City property taxes and fees paid by future residents. Library service to the project area would continue to be provided by the Sonoma County Library system.

No changes to the boundary of the Cloverdale Unified School District is proposed as part of this project.

There would be no changes to annexation area properties in terms of electrical, natural gas or telecommunication services since such services are not affected by local municipal boundaries.

Overall, impacts to public services would be less-than-significant.

For impacts to parks, refer to item 15, below.

15. Recreation

Environmental Setting

The annexation area is partially developed with much of the area vacant. No parks, playgrounds or similar uses are present on the project area.

The closest public parks are south of the site on West Second Street and West First Street. City Park is located at 450 W. Second and the City pool is located at 205 West First Street.

The City of Cloverdale and Sonoma County Regional Parks Department operate Cloverdale River Park located at 31820 McCray Road on the west bank of the Russian River, north of the annexation area.

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?				X
b. Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?				X

Discussion

a-b) No Impact. The proposed annexation project would not significantly impact the existing City of Cloverdale recreational facilities or regional park facilities, such that the facilities

would be substantially degraded. If annexed into the City, future development that would be allowed would be subject to City of Cloverdale Parks and Recreation Facilities development impact fees which are used for City wide park projects relating to community needs.

Future development within the annexation area could include construction of one new dwelling and the removal of one dwelling, which would have no impact on City or regional park facilities.

16. Traffic and Transportation

Environmental Setting

Primary local access to the annexation area is provided by Asti Road, a collector road extending through the City of Cloverdale in a north-south direction. Regional access is provided by the US 101 freeway immediately west of the annexation area.

Access to individual properties within the annexation area is via a number of driveways off of Asti Road. Access to the Nu Forest property is provided via a private drive north of the annexation area that also serves the All-Coast Lumber mill to the east.

The 2008 General Plan EIR analyzed the intersection of the US 101 freeway northbound and southbound at Citrus Fair Drive under AM and PM peak hour conditions. This intersection is the closest to the annexation area. The EIR documents that existing and build out peak hour operations of this intersection would be Level of Service (LOS) A, which is the highest level of service. LOS A is characterized by minimal delay and minor, if any, congestion.

Public transportation to the City of Cloverdale and the annexation area is provided by the Sonoma County Transit Agency (SCTA). SCTA provides regional service to communities to the south and an intercity Cloverdale Shuttle for local trips.

Existing railroad tracks are located just west of the annexation area and west of Asti Road, These tracks are presently not in use but are planned for future SMART train operations. A station has been constructed along the tracks just west of the annexation area but is not currently used.

No bicycle paths or sidewalks are located along Asti Road adjacent to the annexation area.

No public or private airports or airstrips exist on or adjacent to the annexation area.

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?			X	
b. Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?			X	
c. Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?				X
d. Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?				X

e. Result in inadequate emergency access?				X
f) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?				X

Discussion

a, b) Less-than-Significant Impact. As noted in the Environmental Setting section of this Initial Study, existing and future operations of the nearest major intersection to the annexation area, Citrus Fair Drive and the 101 north and south bound freeway ramps, is expected to operate at an acceptable level of service through the build-out of the General Plan, which is 2025. Table 4.5-8 contained in the General Plan EIR documents that the Highway 101 on- and off-ramps at Citrus Fair Drive are expected to operate at LOS A or C during both A.M. and P.M. peak hour periods.

The following table (Table 3) estimates the number of total and peak hour trips that could be generated in the annexation area. The table shows that up to 133 daily trips could be generated as a result of annexation and build out of the subject properties. There would be up to 120 peak trips during the morning peak period and up to 112 peak trips in the pm peak.

Table 3. Annexation Build Out Estimated Trip Generation

Land Use Type	Amount	Total Daily Trips	AM Peak	PM Peak
Nu Forest (existing)[1]	--	12		
Nu Forest – proposed[1]	--	71		
Subtotal Nu Forest trips	--	*59*	*54*	*57*
Industrial[2]	3,000 SF	21	19	20
Single Family Residential (*existing & proposed*)[3]	3	29	22	29
Total Trips	--	**133**	**120**	**112**

Notes:

1. Existing and proposed Nu Forest trip generation based on field observation and future estimates provided by project applicant.
2. Future industrial uses include up to 1,000 square foot live-work industrial space on Cerasoli site & up to 2,000 square foot industrial space on Poustinchian property

3. Existing dwellings on Cerasoli, Schwartzler & Nu Forest properties, per property owners.
4. Proposed dwelling on Matovich Family trust property, per landowner representative.
Trip rates per ITE Trip Generation Manual, 9th Edition, 2012

The addition of anticipated project trips on the local transportation system near the project site is not expected to significantly increase congestion or conflict any local or regional transportation plan or policy dealing with transportation. The primary landowner in the annexation area, Nu Forest Products, is considering the operation of an employee shuttle to and from Healdsburg for mill employees. If implemented, the shuttle would reduce overall and peak hour trips as identified in the above table.

Furthermore, the City of Cloverdale Streets and Thoroughfare Development Impact Fee will be collected before any project in the annexation area is developed. These fees provide for cumulative improvements of the roadway system to accommodate citywide traffic needs at ultimate General Plan build out.

c) No Impact. As noted in the Environmental Setting section of this Initial Study, no public or private airports or airstrips exist on or adjacent to the annexation area. The area is not located within the airport land use plan for Cloverdale Municipal Airport, so there would be no impacts with respect to this topic.

d, e) No Impact. Properties included in the annexation area are all served by private driveways from Asti Road. If no changes to current structures are proposed, existing driveways may remain as they currently exist. New development proposals will be reviewed by the City of Cloverdale Community Development Department, Public Works Department and Fire Department to ensure consistency with City standards and to ensure there would be no hazards or impediments to emergency vehicle access. Future development proposals would also be reviewed by the Cloverdale Fire Protection District to ensure that District design criteria are met in terms of emergency access. No impact would result with respect to this topic.

f) No Impact. The proposed annexation and future development would be consistent with the Cloverdale General Plan, as amended by the project. There would be no impacts with respect to potential conflicts with alternative modes of transportation.

17. Utilities and Service Systems

Environmental Setting

The annexation area received public utilities from the following sources:

- *Water supply*. Private on-site wells.
- *Sewage collection*. Private on-site septic systems.
- *Sewage treatment and disposal*. Private on-site septic systems
- *Storm drainage*. Sheet flow from individual properties and private open channels.
- *Solid waste service*. Private disposal.

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the project				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board			X	
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?			X	
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?			X	
d) Have sufficient water supplies available to serve the project from existing water entitlements and resources, or are new or expanded entitlements needed?			X	
e) Result in a determination by			X	

the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the providers existing commitments?				
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?			X	
g) Comply with federal, state and local statutes and regulations related to solid waste?			X	

Discussion

a) Less-than-Significant. Upon annexation to the City of Cloverdale, all properties would be eligible to connect to the City's wastewater collection, treatment and disposal system. Property owners would be responsible for constructing sewer lines and other related facilities to connect to the City's system. Any extensions on public land would be required to be designed to City engineering standards, encroachment permit(s) from the City would be required and easements over private properties obtained, as needed. Preliminarily, a sewer line would be extended west from the approximate center of the Nu Forest property to Asti Road, then south to connect to the City's wastewater treatment plant. The extension would be sized to accommodate the anticipated maximum build-out of uses in the annexation area, but could be oversized to accommodate other unserved properties in the annexation area, as determined by the Cloverdale City Engineer.

A report prepared by the City of Cloverdale in late 2014 (2014 Infrastructure and Public Service Audit, 10/15/14) documented that the City's wastewater treatment plant, located just south of the annexation area, is permitted by the Regional Water Quality to treat up to 1.0 million gallons of wastewater per day (mgd) during average-day dry weather periods. The peak treatment capacity is permitted to be 2.2 mgd. The City is permitted up to treat 8.25 mgd during wet weather periods. As of late 2014, the treatment plant was processing 0.55 mgd on an average day and 1.4 mgd during peak conditions. The peak wet weather flow was documented at 4.1 mgd during the same time period. Treated wastewater is transported to municipal ponds adjacent to the Russian River where treated effluent can percolate into the soil or evaporate into the atmosphere. Disposal of treated wastewater is based on the City's permitted treatment capacity and there is currently no issue with disposal capacity.

Build-out of the proposed annexation would be estimated to generate 4,230 gallons per day of wastewater. This is based on information provided in Table 2, in the Hydrology section.

Based on the above information, future development that could be accommodated in the annexation area could be served by the City of Cloverdale wastewater treatment system with out exceeding the requirements of the Regional Water Quality Board and a less-than-significant impact would result.

The City of Cloverdale may allow continued use of septic systems for future development if such development would be located 300 feet or greater from a sewer collection line.

b) Less-than-Significant. Property owners in the project area would have the ability to be connected to the City's municipal water system upon completion of the annexation process. Nu Forest Products has proposed to extend a municipal water line from their property to connect to the City's water system in Asti Road, west of the annexation area. Other properties may also connect to the City system. All costs to extend municipal water would be at the expense of individual owners.

The same 2014 Infrastructure and Pubic Services Audit referenced in subsection "a," above, notes that the City recently completed two new water wells as of 2014. New wells were financed by the US Department of Agriculture. Improvements were also made to the City's water system to "de-aerate" water prior to entering the City's water treatment plans that improved the efficiency of the treatment plant. Water system improvements are now on-line and a part of the municipal water system which includes five wells. The 2014 Infrastructure Audit reported that with the recently completed improvements, the daily capacity of the municipal water system is approximately 3.69 mgd. The 2014 estimated maximum demand for water was approximately 2.55 mgd, with 28,000 gallons/day allocated to other pending development projects This would leave approximately 392,000 gallons per day for future development in the community, including development proposed in the annexation area.

Table 4 provides an estimate based on City information regarding the estimated quantity of water to be used by build-out of proposed land uses in the annexation area. The estimated maximum use of water 5,128 gpd, is less that the estimated 392,000 gpd that is currently available to serve future development so there would be an adequate long-term supply of water available for the proposed annexation and development of future uses.

The City of Cloverdale will also require, as a normal and customary condition of development approval for future buildings in the annexation area, that builders install high water efficiency fixtures and appliances to minimize water use to the fullest extent. Such improvements may likely include but will not be limited to use of low-flow toilets

and showers, possible use of non-water urinals, use of water efficient appliances, limitations on installation of landscaping and similar features.

Table 4. Annexation Build Out Water Demand

Land Use Type	Water Use Factor	Land Use/Amount	Water Use (gpd)
Light Industrial/Nu Forest	50 gallons/day/employee	73	3,650
Other Light Industrial	same as above	3	150
Single Family Residential	332/gpd/dwelling	4	1,328
Estimated Water Demand	--	--	**5,128**

Source: City of Cloverdale, 2016

c) Refer to the Hydrology section of this Initial Study for a discussion of drainage facilities.

f, g) Construction of future development within the project area would result in a slight increase in the amount of solid waste generated by the project that would be accommodated in local and regional landfill facilities. Upon annexation, the City's franchised waste hauler, Redwood Empire Disposal, would collect solid waste and recyclables .A representative of Redwood Empire Disposal (Mike Lockwood) has confirmed there will be no impacts to the company. The proposed project would have no impact with regard to federal, state or local statutes or laws governing solid waste.

18. Mandatory Findings of Significance

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the				X

number of or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?				
b) Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals?				X
c) Does the project have impacts that are individually limited, but cumulatively considerable?				X
d) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?				X

Discussion

a-b) The project does not have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory. The project is located on property not involving a creek, stream or other waterway, nor is the area identified as having populations of wildlife.

c) Cumulative impacts have been reviewed in the annual infrastructure audit. There are sufficient public facilities to serve the proposed future development.

d) The project will not have direct nor indirect environmental effects on human beings. Noise and other impacts from the development will be minimal and within the thresholds set forth in the General Plan.

Initial Study Preparers

Jerry Haag, Consulting Planner

City of Cloverdale staff
Paul Cayler, City Manager
David Kelley, Assistant City Manager/Community Development Director
Vanessa Apodaca, PE, City Engineer
Eric Janzen, Engineering Technician
Rafael Miranda, Associate Planner
Stephen Cramer, Police Chief

Cloverdale Fire Protection District
Brian Elliott

Local Agency Formation Commission
Mark Bramfitt, Executive Director
Carole Cooper, Assistant Executive Director

Redwood Empire Disposal
Mike Lockwood

Applicant Team
Sharmaine Ege, Nu Forest Products
Kurt Kelder, civil engineer

References

CEQA Guidelines, Bay Area Air Quality Management District, May 2011

General Plan Update Environmental Impact Report, City of Cloverdale 2009

Cortese List, California Department of Toxic Substances Control, March, 2016

Design Level Geotechnical Investigation, 280 Asti Road, PJC & Associates, November 2015

Draft EIR for Climate Action 2020: Community Climate Action Plan, ICF International, March 2016

California Department of Water Resources (http://wdl.water.ca.gov)

Report of Limited Subsurface Investigation, 280 Asti Road, Cloverdale CA, SCS Engineers, November 2015

Infrastructure and Public Services Audit, City of Cloverdale, October 2014

Exhibits

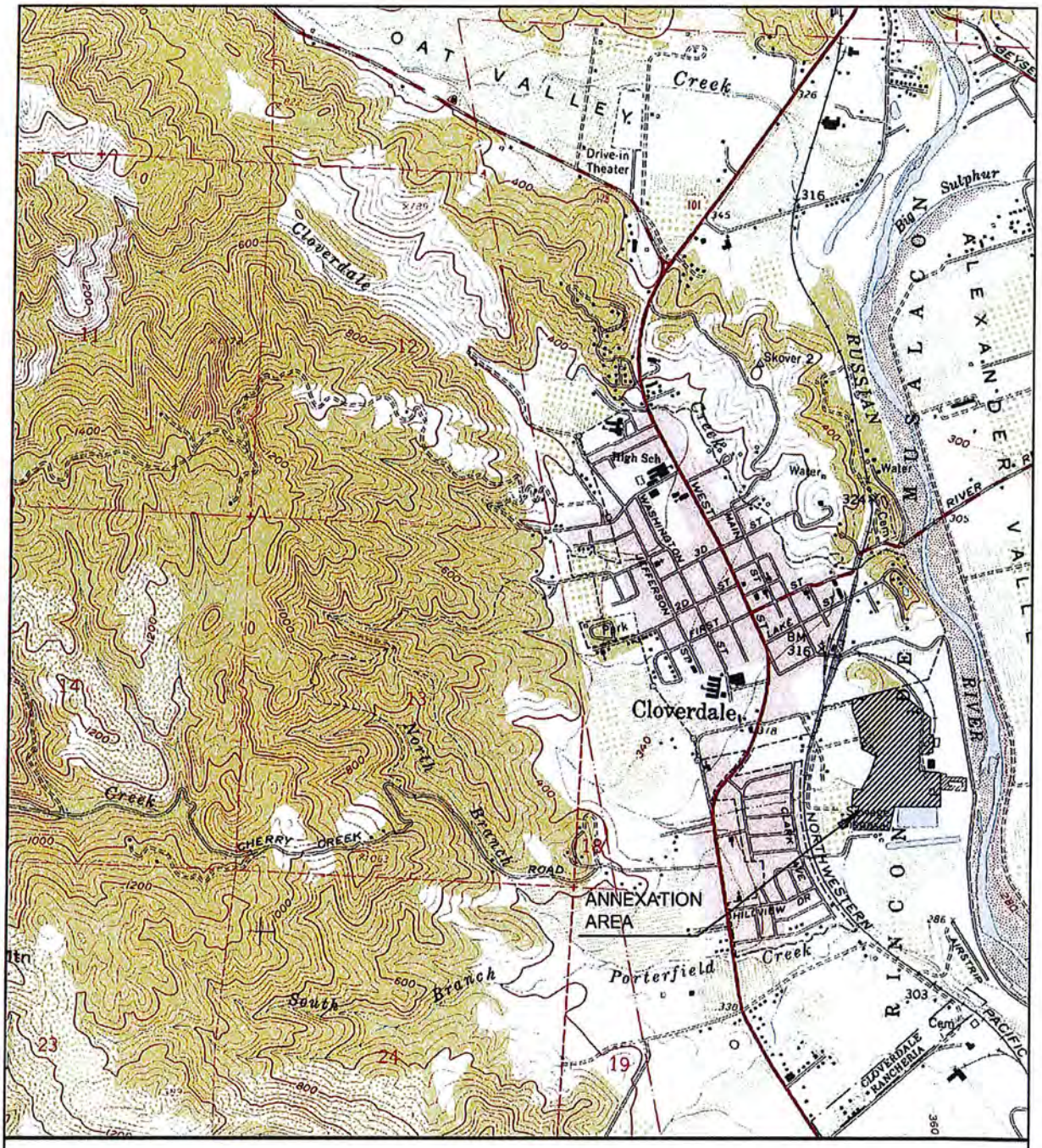
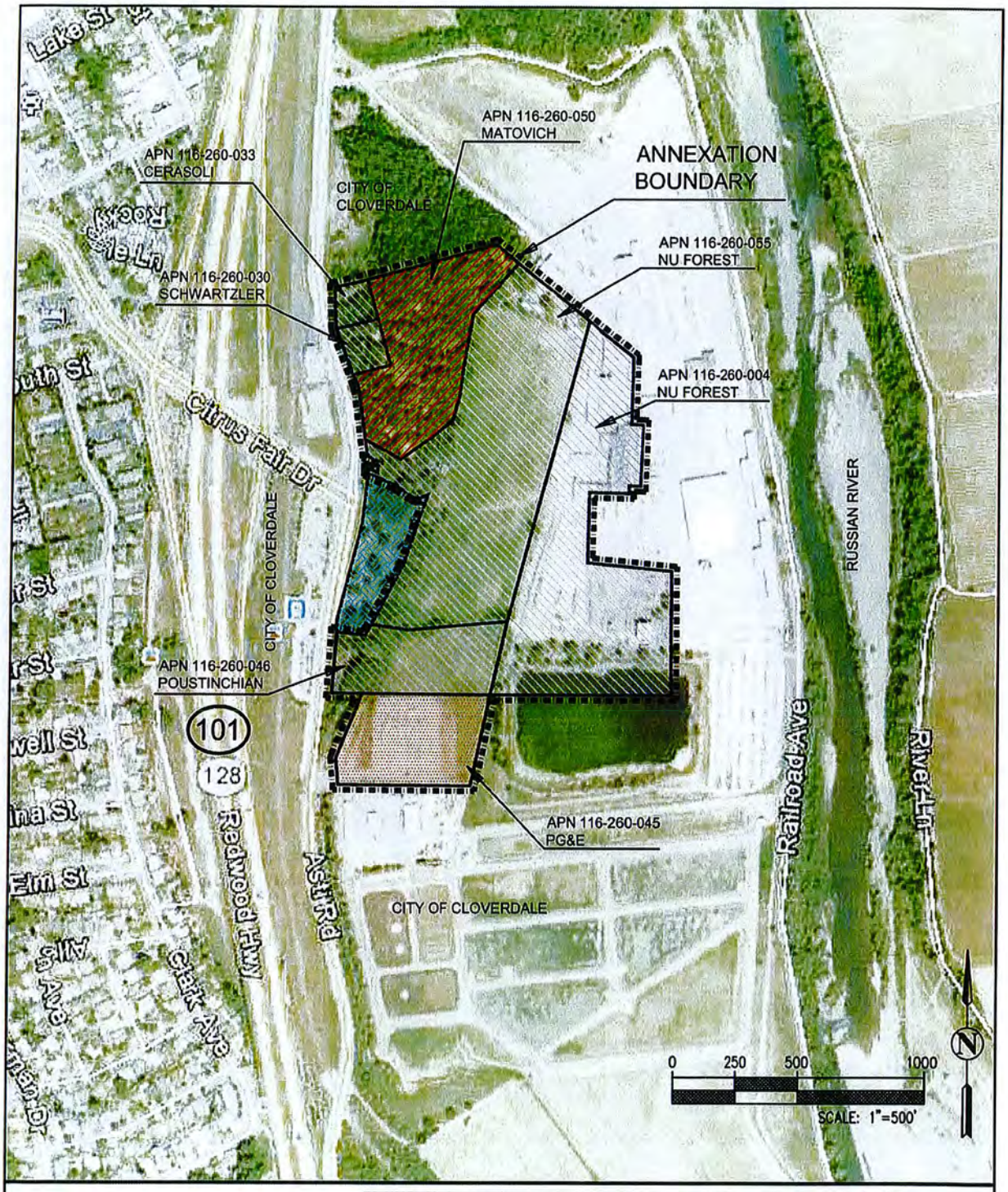


EXHIBIT 2
LOCAL CONTEXT

0 1000 2000 4000

SCALE: 1"=2000'

N



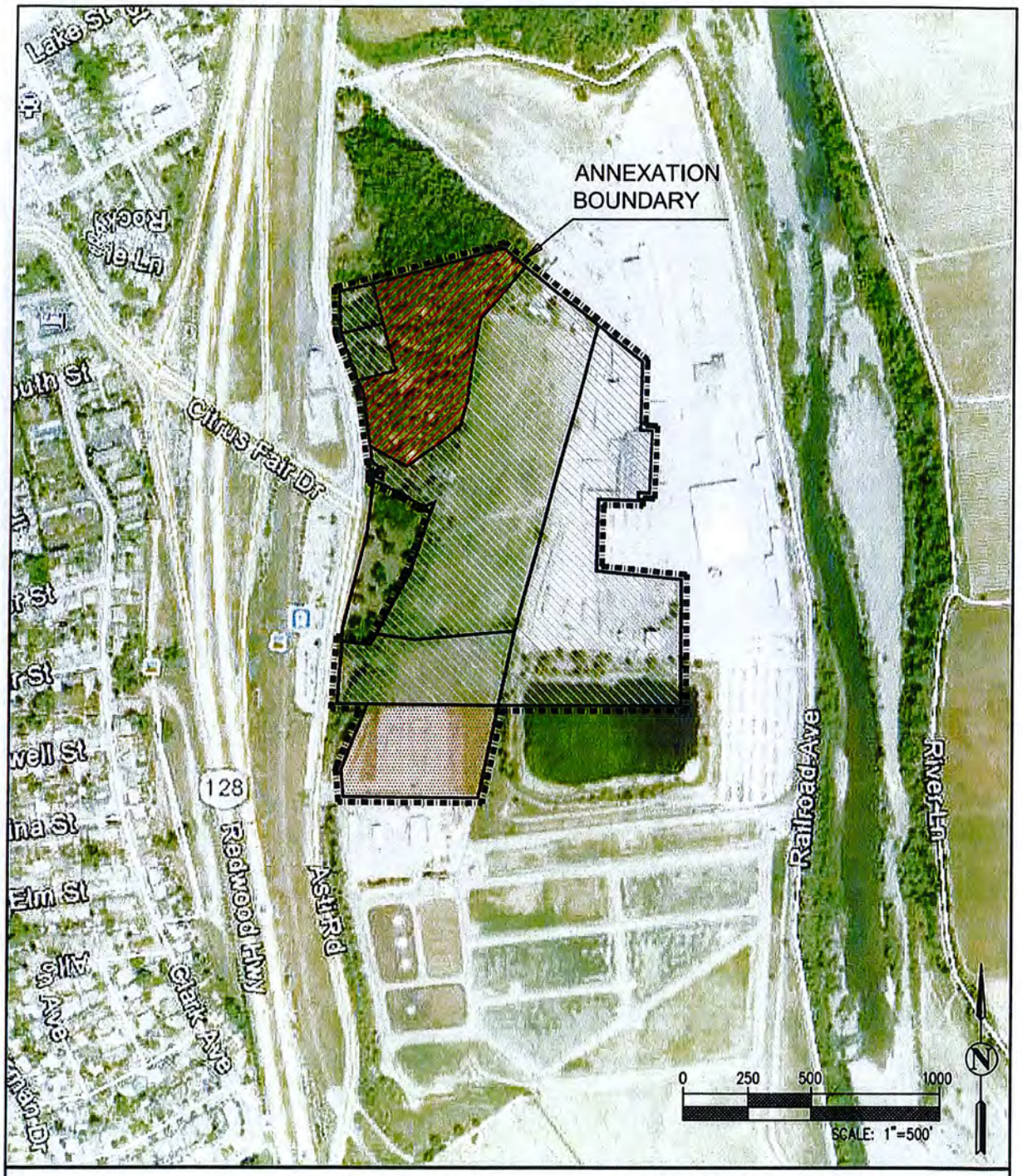
APN	Owner	Area (per AP Map)
116-260-004	Nu Forest Products	12.17 acres
116-260-030	Schwartzler	0.73 acres
116-260-033	Cerasoli	0.45 acres
116-260-045	PG&E	4.05 acres
116-260-046	Poustinchian	4.07 acres
116-260-050	Matovich	6.30 acres
116-260-055	Nu Forest Products	14.68 acres

Exhibit 3
City of Cloverdale
Proposed Annexation

Legend: Existing General Plan

- CF – Conservation Feature
- GI – General Industrial
- TOD – Transit Oriented Development
- P – Public

Exhibit 4A
City of Cloverdale
Existing General Plan
Land Use Designation



Legend:

Proposed General Plan

RR – Rural Residential

GI – General Industrial

P – Public

Exhibit 4B
City of Cloverdale
Proposed General Plan
Land Use Designation

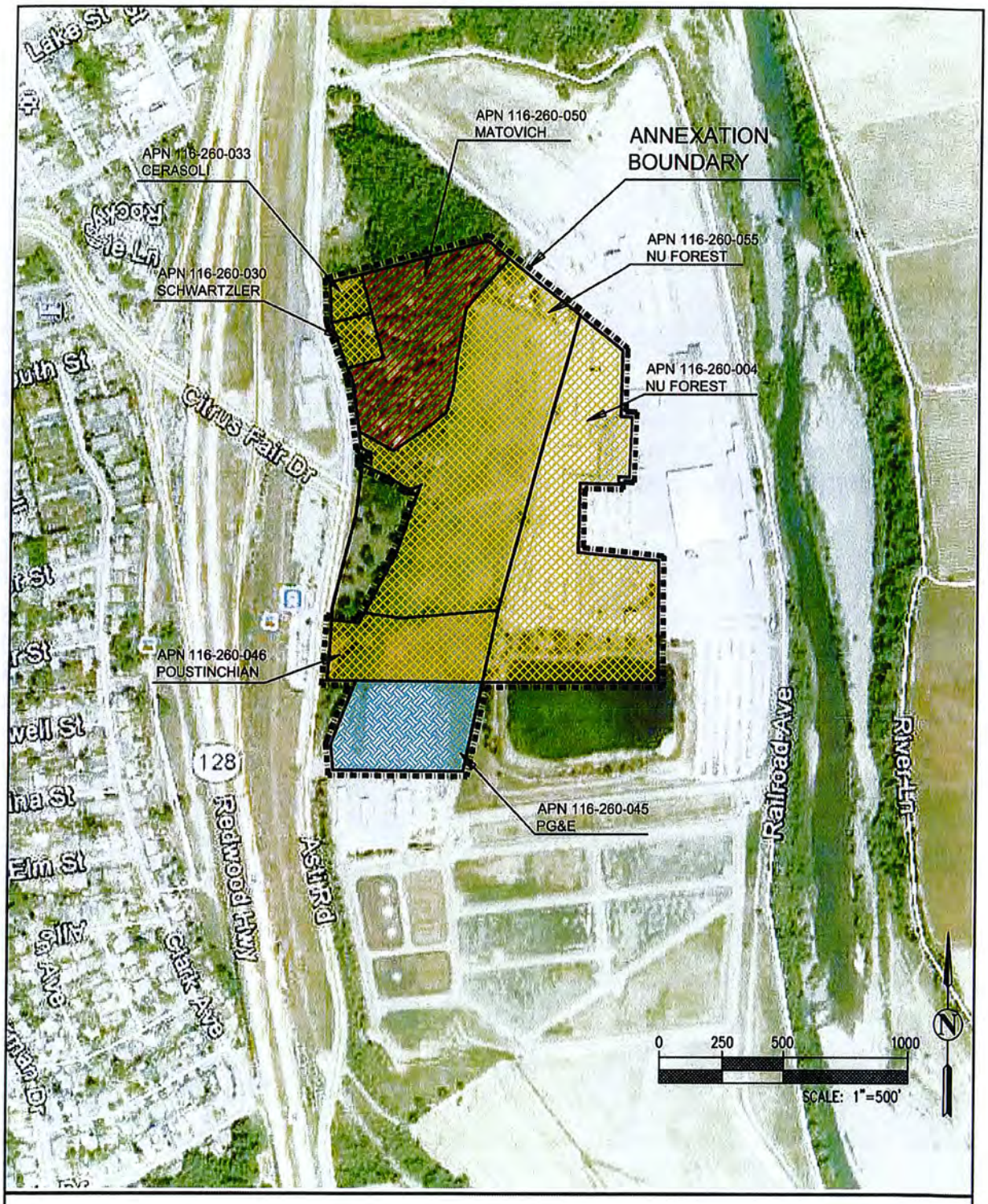


Exhibit 5
City of Cloverdale
Prezoning Map

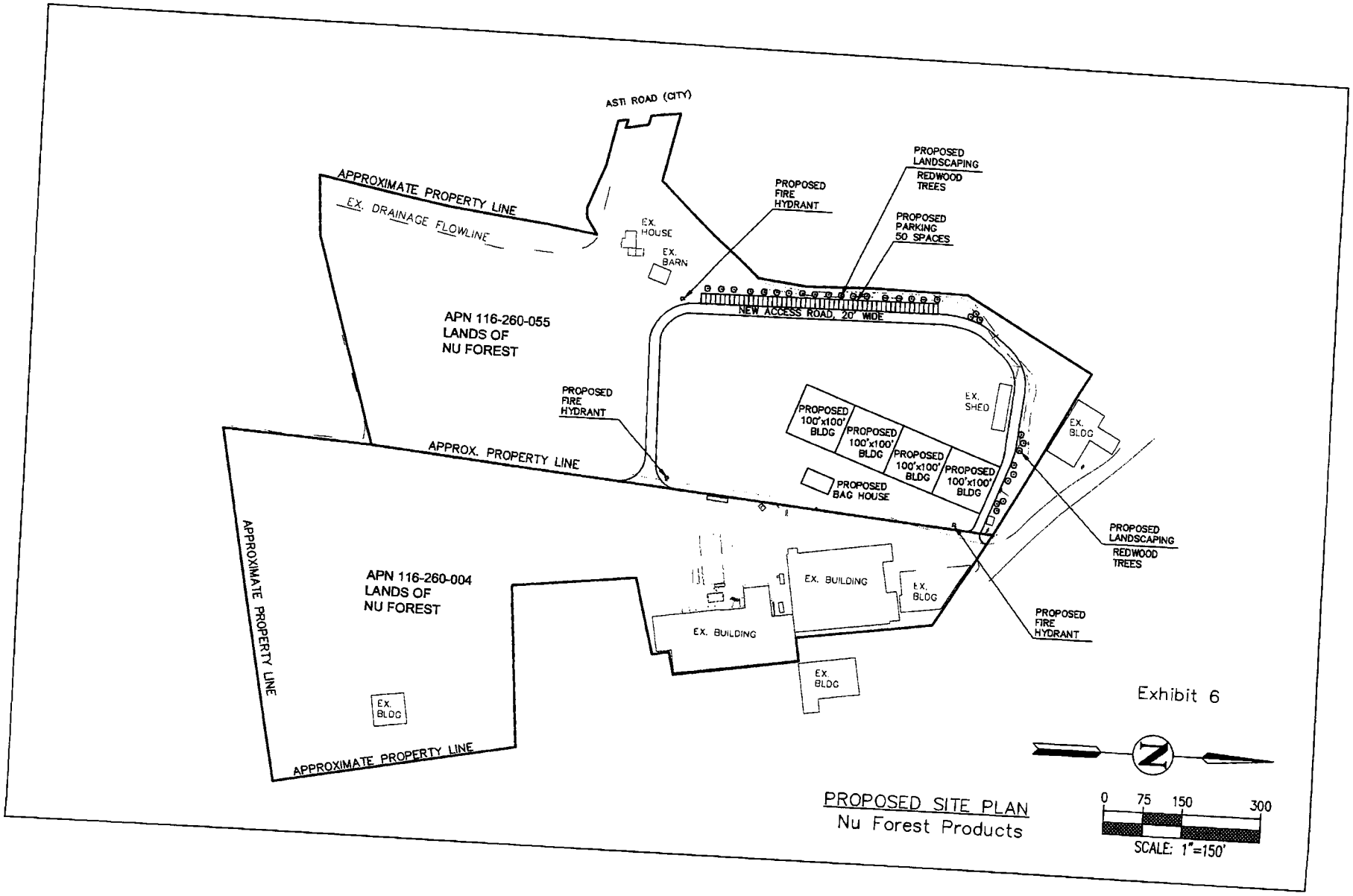
Legend:

Proposed Use

GI – General Industrial

RR – Rural Residential

P–I – Public Institutional


ASTI ROAD (CITY)
APPROXIMATE PROPERTY LINE
EX. DRAINAGE FLOWLINE
EX. HOUSE
EX. BARN
APN 116-260-055
LANDS OF
NU FOREST
PROPOSED FIRE HYDRANT
PROPOSED LANDSCAPING
REDWOOD TREES
PROPOSED PARKING 50 SPACES
NEW ACCESS ROAD, 20' WIDE
PROPOSED FIRE HYDRANT
APPROX. PROPERTY LINE
PROPOSED 100'x100' BLDG
PROPOSED 100'x100' BLDG
PROPOSED 100'x100' BLDG
PROPOSED 100'x100' BLDG
PROPOSED BAG HOUSE
EX. SHED
EX. BLDG
PROPOSED LANDSCAPING
REDWOOD TREES
PROPOSED FIRE HYDRANT
APPROXIMATE PROPERTY LINE
APN 116-260-004
LANDS OF
NU FOREST
EX. BUILDING
EX. BUILDING
EX. BLDG
EX. BLDG
EX. BLDG
APPROXIMATE PROPERTY LINE
Exhibit 6
PROPOSED SITE PLAN
Nu Forest Products
0 75 150 300
SCALE: 1"=150'

CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 076-2016

RESOLUTION OF THE CITY COUNCIL DIRECTING STAFF TO FILE ANNEXATION APPLICATION FOR "CLOVERDALE REORGANIZATION NO. 2016-01 (NU FOREST) FOR THE NU FOREST PRODUCTS PROPERTIES AND ADJACENT PROPERTIES CONSISTING OF APPROXIMATELY 42.5 ACRES OF LAND GENERALLY LYING EAST OF ASTI ROAD, WEST OF THE RUSSIAN RIVER, SOUTH OF EXISTING CITY BOUNDARIES AND NORTH OF THE CLOVERDALE WASTEWATER TREATMENT FACILITY AND CORPORATION YARD (APNs 116-260-004, -030, -033, -045, -046, -050 & -055)

WHEREAS, the Applicant, Nu Forest Products, has requested annexation of two adjacent properties owned by them lying east of the current boundary of the City of Cloverdale (APNs 116-260-004 & -055) to the City; and

WHEREAS, to create a more logical boundary to the City, several other properties lying west of the Nu Forest properties and between the Nu Forest properties and the current City boundary are also proposed for annexation to the City. These additional properties include:

- Cerasoli (0.45 acre), APN 116-260-033
- Schwartzler Trust (0.45 acre), APN 116-260-030
- Matovich Trust (6.3 acres), APN 116-260-050
- Poustinchian (4.07 acres), APN 116-260-046
- PG & E (4.05 acres), APN 116-260-045; and

WHEREAS, all of the properties proposed for annexation to the City are shown on the attached Attachment 1, which is hereby incorporated by reference into this resolution; and

WHEREAS, all of the properties proposed for annexation to the City lie within the Sphere of Influence and Urban Service Boundary of the City of Cloverdale; and

WHEREAS, the California Environmental Quality Act (CEQA), together with the State Guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared; and

WHEREAS, to comply CEQA, the City of Cloverdale prepared an Initial Study/Mitigated Negative Declaration for this project, including annexation of properties and development of the Nu Forest Products site, with the finding that all potentially significant impacts associated with the project could be mitigated to a less-than-significant level and would be subject to mitigation measures identified in the initial study that will be made project conditions of approval; and

WHEREAS, the City of Cloverdale has determined that all requisite municipal services can be provided to the Nu Forest site and adjacent properties; and

WHEREAS, on September 6, 2016, the Planning Commission held a properly noticed public hearing on the Project, at which time all interested parties had the opportunity to be heard; and

WHEREAS, a Staff Report to the Planning Commission dated September 6, 2016, and incorporated herein by reference described and analyzed the proposed annexation to the City of Cloverdale; and

WHEREAS, on September 6, 2016, the Planning Commission adopted Resolution No. 013-2016, recommending that the City Council adopt a Mitigated Negative Declaration for the Project and Resolution No. 014-2016 which recommends that City staff file the Nu Forest annexation with the Sonoma County Local Agency Formation Commission, both resolutions are incorporated herein by reference and is available for review at City Hall during normal business hours; and

WHEREAS, on October 11, 2016, the City Council held a properly noticed public hearing on the proposed annexation and other related Project applications, at which time all interested parties had the opportunity to be heard; and

WHEREAS, prior to taking action on the annexation, the City Council approved City Council Resolution No. 075-2016, adopting a Mitigated Negative Declaration for the annexation of the Nu Forest properties and related properties to the City of Cloverdale as well as other related applications; and

NOW, THEREFORE BE IT RESOLVED that the foregoing recitals are true and correct and made a part of this resolution.

BE IT RESOLVED that the City Council makes the following findings and directs City staff to file the Nu Forest Annexation with the Sonoma County Local Agency Formation Commission:

1. The proposed annexation area lies within the City of Cloverdale LAFCO-approved Sphere of Influence and the City's Urban Service Area as identified in the Cloverdale General Plan and the Urban Growth Boundary area.

2. Future development of the annexation area will be consistent with the Cloverdale General Plan, as amended as part of this project.

3. The annexation action and City of Cloverdale prezoning is not in conflict with any City or County policies.

It is hereby certified that the foregoing Resolution No. 076-2016 was duly introduced and duly adopted by the City Council of the City of Cloverdale at its regular meeting held on October 11, 2016, by the following roll call vote: (Ayes-5; Noes-0)

AYES: Councilmember Palla, Councilmember Russell, Councilmember Cox, Vice Mayor Wolter, and Mayor Brigham
NOES: 0
ABSENT: 0
ABSTAIN: 0

APPROVED:

Mary Ann Brigham, Mayor

ATTESTED:

Linda Moore, Deputy City Clerk

CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 077-2016

RESOLUTION OF THE CITY COUNCIL APPROVING AN AMENDMENT TO THE GENERAL PLAN FOR FIVE PROPERTIES ON APPROXIMATELY 11.27 ACRES OF LAND GENERALLY LYING EAST OF ASTI ROAD, WEST OF THE RUSSIAN RIVER, SOUTH OF EXISTING CITY BOUNDARIES AND NORTH OF THE CLOVERDALE WASTEWATER TREATMENT FACILITIES AND CORPORATION YARD (APNs 116-260-030, -033, -045 -046 & -050)

WHEREAS, on July 26 2016, by Resolution No 058-2016, the City Council initiated a General Plan Amendment to change the land use designation for approximately 11.27 +/- acres of land located on the east side of Asti Drive approximately at the easterly terminus of Citrus Fair Drive and north of the City Corporation Yard and wastewater treatment plant from "CF-Conservation Features," "General Industrial" and "Transit Oriented Development" to a combination of "General Industrial" and "Rural Residential" within the proposed Nu Forest Annexation and Development project area; and

WHEREAS, the five properties are identified by the following property owner names and Assessor Parcel Numbers (APNs): Richard Cerasoli - APN 116-260-033, Charles Schwartzler Trust - APN 116-260-030, Gladys Matovich Trust - APN 116-260-050, M. Poustinchian - APN 116-260-046 and PG&E - APN 116-260-045; and

WHEREAS, Exhibit 1 shows existing City of Cloverdale General Plan land use designations and Exhibit 2 shows proposed General Plan land use designations and both Attachments are hereby incorporated by reference into this Resolution; and

WHEREAS, the project area consists of five parcels of record containing approximately 11.27 acres of land located east of Asti Road, south of existing City of Cloverdale limits, generally west of the Russian River and north of the City of Cloverdale corporation yard and wastewater treatment plan; and

WHEREAS, the California Environmental Quality Act (CEQA), together with the State Guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared. To comply with CEQA, the City prepared an Initial Study and Mitigated Negative Declaration with the finding that all potentially significant environmental impacts can be reduced to a less-than-significant level by adherence to mitigation measures included in the IS/MND; and

WHEREAS, on September 6, 2016, the Planning Commission held a properly noticed public hearing on the Project, at which time all interested parties had the opportunity to be heard; and

WHEREAS, a Staff Report dated September 6, 2016 and incorporated herein by reference described and analyzed the Project and related Mitigated Negative Declaration for the Planning Commission and recommended adoption of the General Plan Amendment for the Project; and

WHEREAS, on September 6, 2016, the Planning Commission adopted Resolution No. 013-2016, recommending that the City Council adopt a Mitigated Negative Declaration for the Project, and Resolution No. 015-2016 recommending that the Cloverdale City Council approve the requested General Plan Amendment, both resolutions are incorporated herein by reference and is available for review at City Hall during normal business hours; and

WHEREAS, on October 11th, 2016, the City Council held a properly noticed public hearing on the requested General Plan Amendment at which time all interested parties had the opportunity to be heard; and

WHEREAS, prior to taking action on the General Plan Amendment, the City Council approved City Council Resolution No. 075-2016, adopting a Mitigated Negative Declaration for the General Plan Amendment and the associated Nu Forest Annexation and Development Project; and

WHEREAS, based on the staff report, public testimony and other relevant information available to the City Council, the Council voted to approve the General Plan Amendment for the Project that would change land use designations from "CF-Conservation Features," "General Industrial" and "Transit Oriented Development" to a combination of "General Industrial" and "Rural Residential" within the proposed Nu Forest Annexation and Development project area.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Cloverdale, that the City Council hereby makes the following findings and determination with respect to the approval of the General Plan Amendment:

1. That approval of the General Plan Amendment would not make the General Plan internally inconsistent as demonstrated in City Council staff report dated October 11, 2016 and incorporated by reference into this Resolution.

2. That approval of the General Plan Amendment would not be detrimental to the public health, safety or welfare of the City because potential public health and safety issues associated with the Project were fully examined and mitigated to a level of less-than-significance where needed as documented in the Initial Study and Mitigated Negative Declaration prepared for the project. In terms of providing positive effects of welfare to Cloverdale, the proposed Project will result in employment opportunities for local residents as well as increasing tax revenues to the City.

3. The Project site is physically suitable for the proposed General Plan Amendment because the proposed Amendment would allow uses similar to what is currently found on the properties included in the Amendment.

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the City Council, that the City Council hereby approves the General Plan Amendment for a portion of the Nu Forest Products Annexation and Development project area, site generally located east of Asti Road, south of existing City limits along the All-Coast/Nu Forest access road, west of the Russian River and north of the City of Cloverdale wastewater treatment plant and corporation yard attached hereto as Attachments 1 and 2.

It is hereby certified that the foregoing Resolution No. 077-2016 was duly introduced and duly adopted by the City Council of the City of Cloverdale at its regular meeting held on October 11, 2016, by the following roll call vote: (Ayes-5; Noes-0)

AYES: Councilmember Palla, Councilmember Russell, Councilmember Cox, Vice Mayor Wolter, and Mayor Brigham
NOES: 0
ABSENT: 0
ABSTAIN: 0

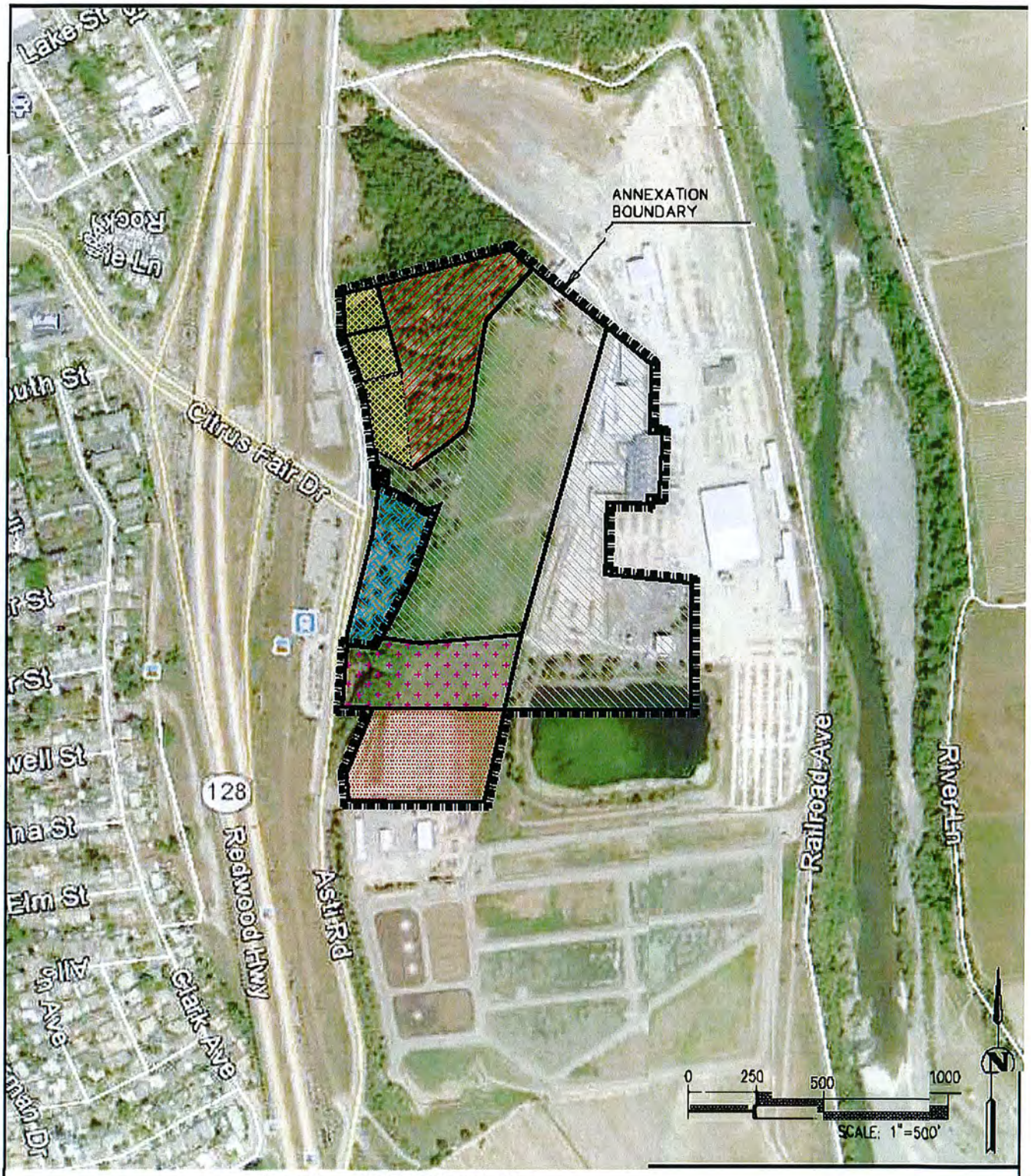
APPROVED:

Mary Ann Brigham, Mayor

ATTESTED:

Linda Moore, Deputy City Clerk

Exhibits Attached:
Exhibit 1 – Existing General Plan Designations
Exhibit 2 – Proposed General Plan Designations



Legend: Existing General Plan

- CF – Conservation Feature
- CF – Conservation Feature
- GI – General Industrial
- GI – General Industrial
- TOD Transit Oriented Development
- TOD – Transit Oriented Development
- TOD – Existing Transit Oriented Development

Exhibit 1
City of Cloverdale
Existing General Plan
Land Use Designation

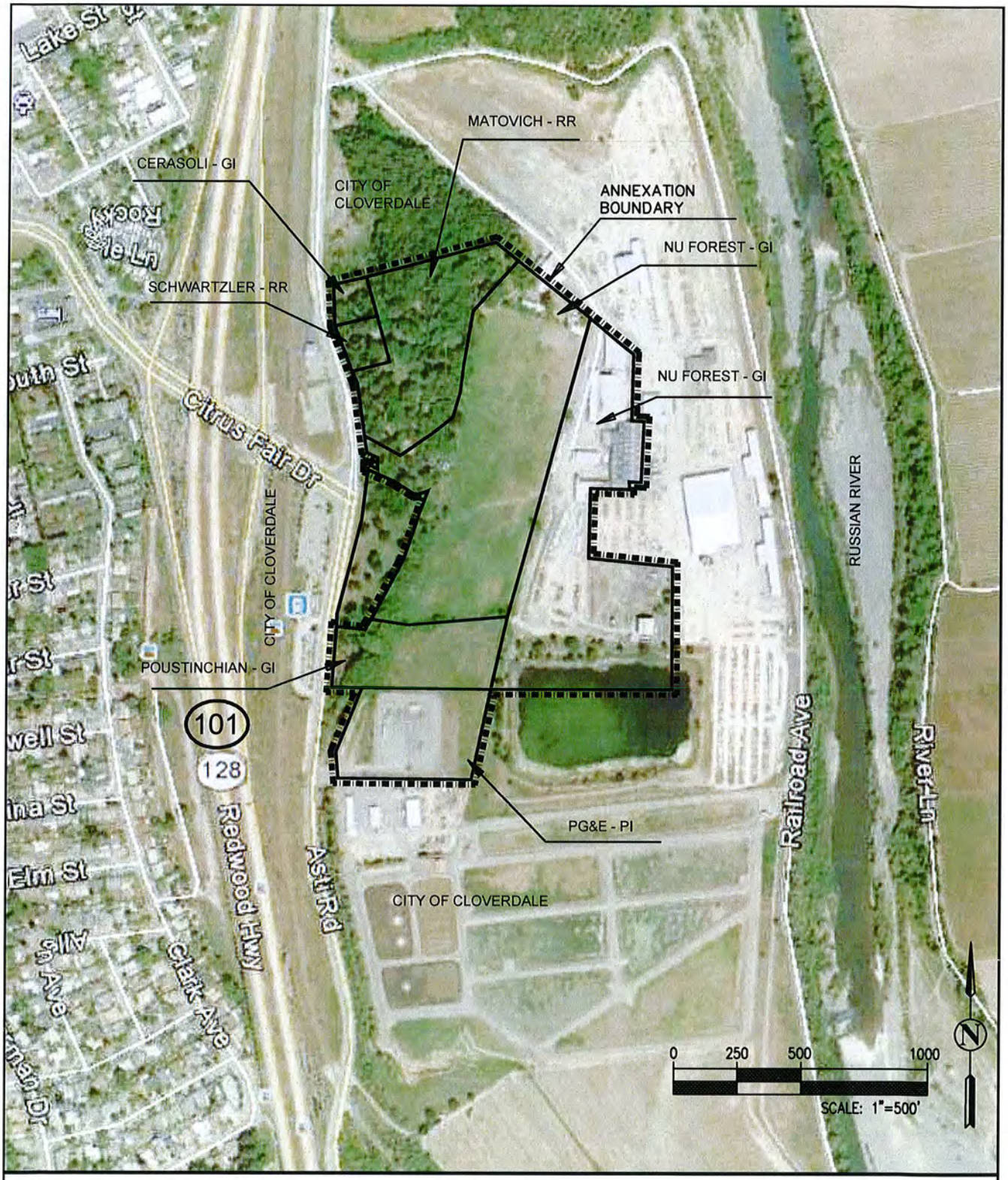


Exhibit 2
City of Cloverdale Proposed
General Plan Designations

Property Owner	Current General Plan	Proposed General Plan
Cerasoli	Conservation Feature (CF)	General Industry (GI)
Schwartlzer	Conservation Feature (CF) General	Rural Residential (RR)
Matovich	Industry (GI)	Rural Residential (RR)
Poustinchian	Transit Oriented Development (TOD)	General Industry (GI)
PG&E	Transit Oriented Development (TOD)	Public/Quasi-Public (PI)

CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 078-2016

RESOLUTION OF THE CITY COUNCIL APPROVING A CONDITIONAL USE PERMIT (FILE NO. CUP 029-2015) AND A MAJOR DESIGN REVIEW (FILE NO. DR 029-2015) FOR NU FOREST PRODUCTS, INC. LOCATED AT 280 ASTI ROAD (APNs 116-260-004 & -055)

WHEREAS, Nu Forest Products submitted an application to the City of Cloverdale to expand their current limited lumber mill and wood storage operations on a 26.85-acre site located west of the Russian River, north of the City's wastewater treatment plant, and east of Asti Road in the unincorporated portion of Sonoma County; and

WHEREAS, Nu Forest Products has requested annexation to the City of Cloverdale and the City Council has adopted a Resolution (Resolution No. 076-2016) directing the Cloverdale City staff to file an annexation application with the Sonoma County Local Agency Formation Commission (LAFCO); and

WHEREAS, the Nu Forest site is designated General Industrial (GI) on the City's adopted General Plan Land Use Map. The property owner has requested prezoning of the property to the General Industrial (M-1) district, which permits heavy manufacturing uses such as lumber and planing mills with the approval of a Conditional Use Permit (see Zoning Ordinance Table 18.06.030-A); and

WHEREAS, the property owner also desires to expand existing lumber storage and office on the site to include lumber milling and planing, lumber storage, administrative offices, parking, solar collectors and related uses within a maximum of four 10,000 square foot open canopy structures and related uses including but not limited to open parking lots and a water quality and retention pond and similar ancillary uses, which require City approval of Major Design Review pursuant to Zoning Ordinance Section 18.03.150.C.1; and

WHEREAS, the proposed Conditional Use Permit and Major Design Review long with all other project components, including a General Plan Amendment, prezoning, and annexation are considered a project under the California Environmental Quality Act (CEQA) and CEQA Guidelines and the City has prepared an Initial Study/Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program (MMRP) for the proposed project; and

WHEREAS, as required by California Government Code Section 65091, the Planning Commission of the City of Cloverdale gave legal notice of a public hearing on the Conditional Use Permit and Major Design Review applications; and

WHEREAS, the Planning Commission held a public hearing on September 6, 2016, for the purpose of reviewing the application for a Conditional Use Permit and Major Design Review for the proposed expansion of the Nu Forest lumber mill and considered all written and verbal communication, including the staff report; and

WHEREAS, the applicant and members of the public were present to speak on the application; and

WHEREAS, on September 6, 2016, the Planning Commission adopted Resolution No. 013-2016, recommending that the City Council adopt a Mitigated Negative Declaration and Mitigated Monitoring and Reporting Program for the Project, and this resolution is incorporated herein by reference and is available for review at City Hall during normal business hours; and

WHEREAS, the Planning Commission has determined that the findings required for the Conditional Use Permit required by Section 18.03.110 of the Zoning Ordinance have been met. Based on the application information and the information contained in the staff report, the following findings have been made:

1. The proposed use is conditionally permitted within the M-1 District pursuant to the provisions of this Section (18.03.110) and complies with all the applicable provisions of this ordinance, goals and objectives of the Cloverdale General Plan, applicable Industrial Development Guidelines and other development policies and standards of the City.

   According to Chapter 18.14 (Zoning Ordinance Definitions) of the Zoning Ordinance, the proposed expansion of the Nu Forest operation is considered as a "heavy manufacturing use" and requires Conditional Use Permit approval. The proposed use is consistent with the General Industrial General Plan land use designation in that this designation allows for employment opportunities in Cloverdale and specifically identifies lumber mills as an allowed land use. Therefore, approval of the proposed project would be consistent with the General Plan, the Zoning Ordinance, the City's Industrial Development Guidelines and other development policies of the City.

2. The proposed use would not impair the integrity and character of the Zoning District in which it is to be established or located.

   The proposed use is compatible with the proposed M-1 (General Industrial) zoning district, which conditionally permits lumber mills in this district. To ensure that the proposed lumber and planing mill would not impair the integrity or character of the M-1 district as applied to the subject site, the City has completed an environmental analysis pursuant to the California Environmental Quality Act and has determined that all potentially significant impacts can be reduced to a less-than-significant level. Therefore, the proposed use would not impair the integrity or character of the M-1 District in which the use will be located.

3. The site is suitable for the type and intensity of use or development that is proposed.

   The project site is generally flat and currently contains exiting storage facilities and offices for Nu Forest Products, Inc. Approximately one-half of the property is vacant, contains no significant stands of trees and could accommodate the proposed Nu Forest expansion. Another lumber facility, All Coast Forest Products, is established immediately east of the Nu Forest property.

4. There are adequate provisions for water, sanitation and public utilities and services to ensure public health and safety.

   The proponent of the annexation, Nu Forest Products, has agreed to extend municipal water, wastewater and drainage facilities. Adequate provisions for water, sanitation, storm drainage and other public utilities and services exist to ensure public health and safety. Installation of such facilities will be required prior to occupancy for future buildings in the annexation area.

5. The proposed use will not be detrimental to the public health, safety, or welfare or materially injurious to properties and improvements in the vicinity.

   The proposed expanded lumber mill is located in a remote portion of Cloverdale with few sensitive receptors near the project site. An existing lumber mill (All Coast Forest Products) is located immediately adjacent to the Nu Forest site and the City of Cloverdale is unaware of any complaints regarding health, safety or the general welfare from nearby property owner or

residents. In addition, the City has conducted a thorough analysis of potential environmental effects of the proposed project consistent with the California Environmental Quality Act and has determined that all potentially significant.

WHEREAS, the Planning Commission has also determined that the findings required for the Major Design Review required by Section 18.03.150 (E) of the Zoning Ordinance have been met. Based on the application information and the information contained in the staff report, the following findings have been made:

1. The proposal is consistent with the general plan, any applicable specific plan and the provisions of this title, including but not limited to development standards and design review standards for the zoning district in which the property is located and with the design guidelines for the City of Cloverdale and/or design guidelines in which the project is located.

   The proposed expansion of the Nu Forest Products lumber mill is consistent with the General Plan land use designation of "General Industry" that specifically notes that lumber mills, warehousing and distribution are allowed uses in this designation. Review of the Nu Forest site plan and building elevations indicate that the proposed facility is consistent with City development standards and with applicable design guidelines.

2. The proposal will not be detrimental to the health, safety, comfort and general welfare of the persons residing or working in the neighborhood of the proposed project.

   The proposed expanded lumber mill is located in a remote portion of Cloverdale with few sensitive receptors near the project site. An existing lumber mill (All Coast Forest Products) is located immediately adjacent to the Nu Forest site and the City of Cloverdale is unaware of any complaints regarding health, safety or the general welfare from nearby property owner or residents. In addition, the City has conducted a thorough analysis of potential environmental effects of the proposed project consistent with the California Environmental Quality Act and has determined that all potentially significant impacts can be reduced to a less-than-significant level.

3. The general appearance of the proposal is in keeping with the character of the neighborhood.

   The proposed general appearance of the expanded Nu Forest Products facility would be generally consistent with current Nu Forest uses on the site as well as being consistent with a similar use to the east on the All Coast Forest Products site. Therefore, the appearance of the expanded facility would be in keeping with the appearance of the neighborhood.

WHEREAS, the City Council of the City of Cloverdale gave legal notice of a public hearing on the Conditional Use Permit and Major Design Review applications; and

WHEREAS, the City Council held a public hearing on October 11, 2016, for the purpose of reviewing the application for a Conditional Use Permit and Major Design Review for the proposed expansion of the Nu Forest lumber mill and considered all written and verbal communication, including the staff report; and

WHEREAS, the applicant and members of the public were present to speak on the application.

WHEREAS, the City Council concurs with the findings made by the Planning Commission on September 6, 2016 for the Conditional Use Permit and Major Design Review required by Cloverdale Zoning Ordinance; and

NOW, THEREFORE BE IT RESOLVED the above recitals are true and correct and incorporated herein by reference; and

NOW, THEREFORE BE IT FURTHER RESOLVED that the City Council of the City of Cloverdale does hereby approval a Conditional Use Permit and Major Design Review for a lumber and planing mill consisting of up to 40,000 square feet of canopy space, lumber storage, parking areas, a water quality pond with solar collectors and other ancillary buildings on approximately 26.85 acres of land located on Assessors Parcels 116-200-004 & -055 to take effect when the zoning of the site to M-1 becomes effective pursuant to Government Code section 65859(a), with the further recommendation that the Conditional Use Permit and Major Design Review be made subject to the attached Conditions of Approval attached hereto in Exhibit A, which is incorporated herein by reference.

It is hereby certified that the foregoing Resolution No. 078-2016 was duly introduced and duly adopted by the City Council of the City of Cloverdale at its regular meeting held on October 11, 2016, by the following roll call vote: (Ayes-5; Noes-0)

AYES: Councilmember Palla, Councilmember Russell, Councilmember Cox, Vice Mayor Wolter, and Mayor Brigham

NOES: 0
ABSENT: 0
ABSTAIN: 0

APPROVED:

Mary Ann Brigham, Mayor

ATTESTED:

Linda Moore, Deputy City Clerk

Attached Exhibit:
Exhibit A – Nu Forest Conditions of Approval

EXHIBIT A - CONDITIONS OF APPROVAL
Nu Forest Products Inc,
280 Asti Road
APNs 116-200-04 & -055

Planning:

1. A Conditional Use Permit approval is granted to allow expansion and continued operation of a lumber mill, lumber storage and office complex at the site identified above. Development shall be in substantial conformance with the plans submitted to the City of Cloverdale dated 9/31/16. The applicant shall adhere to the Conditional Use Permit conditions of approval as set forth in this resolution. Any deviation from the conditions of approval requires Community Development Department or Planning Commission approval.

2. All conditions of this Conditional Use Permit are necessary to protect the general health, safety and welfare, and to minimize or eliminate adverse environmental effects of the project. If any condition of this permit is held to be invalid by a court, then the entire permit shall be invalid. The Planning Commission specifically declares that it would not have issued this permit unless all of the conditions herein are held as valid.

3. This permit shall be subject to revocation or modification by the Planning Commission if the Commission finds that there has been a) noncompliance with any of the foregoing conditions, or b) the Commission finds that the use for which this permit is hereby granted is so exercised as to be substantially detrimental to persons or property in the neighborhood of the use. Any such revocation shall be preceded by a public hearing noticed and heard pursuant to the City of Cloverdale Municipal Code.

4. This Conditional Use Permit shall expire, and become null and void, two years from the date of approval unless exercised through the commencement of the business operations or a written request for an extension of time is submitted to the Community Development Department prior to the expiration date and an extension is granted by the Planning Commission.

5. The approval of this permit shall be subject to the latest adopted ordinances, resolutions, policies and fees of the City of Cloverdale. Applicant shall be responsible for any and all costs associated with any required special inspections and environmental monitoring necessary for the project.

6. The applicant and property owner shall defend, indemnify, and hold harmless the City of Cloverdale and its agents, officers, and employees from any claim, action, or proceeding against the City of Cloverdale or its agents, officers, or employees to attack, set aside, void, or annul an approval of the City of Cloverdale or its advisory agency, appeal board, Planning Commission, City Council, Community Development Director, or any other department, committee, or agency of the City to the extent such actions are brought within the time period required by Government Code Section 66499.37 or other applicable law; provided, however, that the Developer's duty to so defend, indemnify,

and hold harmless shall be subject to the City's promptly notifying the applicant and property owner of any said claim, action, or proceeding and the City's full cooperation in the defense of such actions or proceedings.

7. The future on-site sawdust hopper shall be limited to a height of 65 feet above the final grade. The hopper is subject to City administrative design review regarding the location, design and exterior color of the hopper. Final approval may be referred to the Planning Commission, at the Director's discretion.

8. The location and design of the future propane fueling facility, solar collectors and refuse/recycling facilities shall be consistent with existing City of Cloverdale standards (Zoning Ordinance section 18.09.240 for solar collectors and Section 18.05.050 for lighting are subject to administrative design review by the City of Cloverdale. Final approval may be referred to the Planning Commission, at the Director's discretion.

9. Building and other necessary permits and approvals shall be obtained for the sawdust hopper, fueling facility and solar collector array prior to installation of these facilities.

10. Hours of lumber milling operation shall be limited to 6 am to 8 pm during spring and summer months and from 7 am to 5 pm during fall and winter months (October – March). Delivery and shipping of products, administrative office use and maintenance of equipment are not included in these hour limitations.

11. A final landscape plan shall be submitted for City of Cloverdale Community Development Department review and approval, prior to issuance of a building permit. The final permit shall include:

    a. All material shall be native plant material and identified as "drought tolerant." Appropriate decorative hardscaping may also be used in lieu of plantings.

    b. A minimum 150 square feet of landscape/hardscape material, or equivalent decorative material, shall be provided at the site's main entrance along the private access road.

12. Freestanding light poles shall be limited to a height of 25 feet above final grade. Light fixtures shall be directed in a downward direction to minimize spill over of light and glare from the site.

13. All exterior lights shall be turned off when the facility is closed, except for any security lighting required by the Cloverdale Police Department.

14. All permits and approvals granted by the City and all activities undertaken by the applicant on the Property shall implement and be subject to the following mitigation measures each of which shall be continuing conditions of approval for any and all uses made at the Property from and after the date of the approval of this CUP and Major Design Review. City costs associated with administering the MMRP shall be reimbursable to the City. Mitigation measures include:

    Mitigation Measure Aesthetics-1: Future grading and/or development on any parcels of land fronting on Asti Road in the annexation area shall be reviewed by a

California-certified arborist to identify methods to provide for maximum tree protection. These methods shall be reflected in final development plans. If mature trees cannot be protected, replacement native trees shall be planted on the site at a 2:1 ratio with adequate measures to ensure successful growth of the replacement trees. No Certificate of Occupancy shall be granted on any lot with required replacement tree plantings until tree replantings are reviewed and approved by the Cloverdale Community Development Department.

Mitigation Measure Aesthetics-2: Future development on parcels of land in the annexation area with substantial tree cover shall include measures identified by a California-certified arborist that ground disturbing activities will not significantly impact native trees on the lot. This shall include installation of exclusion fencing at locations approved by the arborist during project construction, provision of adequate irrigation of trees during construction, limitations on grading within exclusion areas and limitations of use (e.g. no storage of construction materials) under tree drip lines and other protection measures as may be recommended by the arborist.

Mitigation Measure Aesthetics-3: Future development on parcels of land fronting on Asti Road should be screened from view to the fullest extent feasible by landscape buffers or fences that limit views of new development from adjacent streets and roadways.

Mitigation Measure Aesthetics-4: The design of future structures on properties fronting on Asti Road shall exclude use of highly reflective materials, including but not limited to window glass, porch railings or other accent materials. Other exterior building materials shall be of neutral colors and tones to minimize visibility.

Mitigation Measure BIO-1: Prior to issuance of a grading and/or a building permit for parcels located on the east side of Asti Road, a site-specific biological reconnaissance shall be completed by a qualified biological firm as approved by the Cloverdale Community Development Department. The reconnaissance shall include a literature search and site inspection of the presence of special-status plants or wildlife. If no special-status species are identified, no further action is required. If special-status species are identified, the biologist shall recommend an action plan to ensure that any special-status species are fully protected. Protective actions may include first, avoiding the species during construction and post –construction or relocation of the species to an alternative suitable site. Any relocation actions shall occur in consultation with the California Department of Fish & Wildlife and/or the U.S. Fish & Wildlife Service. Necessary permits and approvals shall be obtained prior to relocation. No work on portions of the affected site may occur until clearances are granted by the City of Cloverdale, the California Department of Fish & Wildlife or the U. S. Fish & Wildlife Service, as appropriate.

Mitigation Measure BIO-2: Prior to issuance of a grading and/or a building permit for any parcel of land in the project area, a qualified wetland biologist as approved by the Cloverdale Community Development Department shall survey the site for the potential presence of wetlands, other waters or riparian habitat. If none is found, no further action shall be required. If wetlands, other waters or riparian habitat is identified, the wetland biologist shall prepare an action plan for the approval of the City of Cloverdale. The action plan shall identify specific steps to be taken to ensure that any future impacts to wetlands, other waters or riparian habitat is less-than-significant. These methods may include, but are not limited to, preparing a formal wetland delineation, permanent on-site protection of wetlands or off-site relocation of wetlands to an approved alternative site. If relocated off-site, the applicant or property owner shall obtain necessary permits and approvals from the Regional Water Quality Control Board, the California Department of Fish & Wildlife, the U. S. Army Corps of Engineers or other agencies. No construction near wetlands, other waters or riparian habitat areas may proceed until the approval action plan is approved and implemented.

Mitigation Measure GEO-1: Prior to issuance of a grading and/or a building permit for any parcel of land in the annexation area where no recent soils or geotechnical report has been prepared, a qualified California-registered engineering geologist or equivalent, as approved by the Cloverdale Community Development Department, shall prepare a report analyzing soil and geologic conditions on that particular property. The report shall include specific construction methods to be undertaken to reduce potential soil hazards to a less-than-significant level, including but not limited to landslides, ground failure and other potential hazards. The recommendations of the soils and geotechnical report shall be incorporated into all project grading and construction plans to ensure that future hazards from landsliding or similar hazards are reduced to a standard level of care.

Mitigation Measure HAZ-1: Prior to issuance of a demolition permit for any existing residence or other major structure in the annexation area (as determined by the Cloverdale Building Official), a licensed contractor shall determine the presence or absence of lead based paints or asbestos material on the site. If found in quantities at or above actionable levels as determined by the Cloverdale Building Department or Fire District, these materials shall be safely removed consistent with the Occupational Safety and Health Administration (OSHA) and other applicable standards and disposed of in an appropriate location. Necessary permits and approvals shall be secured from appropriate regulatory agencies.

Mitigation Measure Noise-1: Prior to issuance of a building permit for future residential and major industrial uses in the annexation area, a qualified acoustical consultant as approved by the City of Cloverdale shall conduct a site-specific analysis to ensure that future uses and site activities comply with City standards set forth in the Noise Element of the Cloverdale General Plan and other applicable local noise

regulations. Each analysis shall contain, at minimum, a summary of recent 24-hour noise measurements and specific measures to be incorporated into final building plans and specifications to reduce exterior and interior noise to City standards.

Mitigation Measure Noise-2: All future construction activities for properties in the annexation area shall be limited to the hours of 7 a.m. to 6 p.m. Monday through Saturdays. No construction shall occur on state or federal holidays. Exceptions to these restrictions may be granted by the Cloverdale Community Development Director for unusual or emergency conditions.

15. No City of Cloverdale permits or approvals shall be effective until the annexation to the City of Cloverdale is complete and the associated prezoning ordinance has taken legal effect in accordance with Government Code Section 65859(a).

16. Prior to issuance of a Certificate of Occupancy, the applicant shall have received approval of a Transportation Demand Management (TDM) program by the Cloverdale Community Development Department. The contents of the TDM may include but shall not be limited to implementation of an employee shuttle, encouragement of employee ridesharing and other techniques to reduce peak hour commute trips.

Public Works/Engineering:

Prior to issuance of a building permit, the following conditions shall be satisfied:

17. The applicant shall submit to the City of Cloverdale for review and approval, grading and utility plans prepared by a Registered Civil Engineer; and shall post sufficient surety guaranteeing the construction of any public improvements.

18. The applicant shall submit to the City of Cloverdale for review and approval, a detailed Soils Report certified by a Geotechnical Engineer registered in the State of California and qualified to perform geotechnical investigations. The report shall include a minimum of geotechnical investigation with regard to liquefaction, bearing capacity, compressibility, expansive soils, and seismic safety. The grading and foundation plans shall incorporate the recommendations of the approved Soils Report.

19. The applicant shall submit the applicable FIRM map and hydrology and hydraulic calculations with the improvement plans per current City and Sonoma County Water Agency Standards.

20. The applicant shall submit to the City of Cloverdale for review and approval, drainage plans and hydraulic calculations prepared by a Registered Civil Engineer; shall enter into an agreement with the City of Cloverdale to complete the improvement and shall post sufficient surety guaranteeing the construction of the improvements. The drainage plans and calculations shall indicate the following conditions:

    a. Post development runoff shall be limited to predevelopment levels. Post-development storm drain flows shall be limited to pre-development flows. Any facilities needed to accommodate this (i.e. oversized pipes, detention basins,

etc.) shall be installed within the development and be privately owned and maintained.

21. The applicant shall design the project to include storm water post-construction low-impact development (LID) best management practices (BMPs), CMC Section 16.10 et. seq. Refer to the City of Santa Rosa Low-Impact Development Manual and calculator for details. Both references are available online at:

    http://srcity.org/departments/utilities/stormwatercreeks/swpermit/Pages/swLIDtecManual.aspx

22. The applicant shall submit to the City of Cloverdale for review and approval, evidence of provisions for ongoing maintenance of LID BMPs.

23. The applicant shall indicate, in writing, to the City of Cloverdale the disposition of any water well(s) and any other water that may exist within the site. If any wells are proposed to be abandoned, or if they are abandoned and have not been properly sealed, they must be destroyed per Sonoma County Environmental Health Standards and/or Department of Health Services.

24. All haul routes shall be approved by the City Director of Public Works.

25. Handicap ramps and parking shall be provided as required by State of California Title 24.

<u>In conjunction with issuance of the Building Permit, the following conditions shall be satisfied:</u>

26. The applicant shall offer to dedicate to the City of Cloverdale for public use, all new sewer service mains constructed to serve the parcel(s) and located in the public right-of-way.

<u>During Construction, the following shall apply:</u>

27. That prior to any work being conducted within the public right-of-way, the applicant shall obtain an Encroachment Permit from the appropriate agency.

28. If any hazardous waste is encountered during the construction of this project, all work shall be immediately stopped and the Sonoma County Environmental Health Department, the Fire Department, the Police Department, and the City Inspector shall be notified immediately. Work shall not proceed until clearance has been issued by all of these agencies.

29. Prior to final preparation of the subgrade and placement of base materials, all underground utilities shall be installed and service connections stubbed out behind the sidewalk. Public utilities, Cable TV, sanitary sewers, and water lines, shall be installed in a manner which will not disturb the street pavement, curb, gutter and sidewalk, when future service connections or extensions are made.

30. The California Construction General Permit requires preparation of a storm water pollution prevention plan (SWPPP) for the project. SWPPP must be prepared by a State licensed QSD and implemented by a State licensed QSD or QSP.

31. If grading is to take place between October 15 and April 15, both temporary and permanent erosion control plans shall be submitted for review and approval along with the grading plan. Permanent erosion control measures shall include hydro- seeding of all graded slopes within 60 days of completion of grading.

32. The developer shall keep adjoining public streets free and clean of project dirt, mud, materials, and debris during the construction period, as is found necessary by the City Director of Public Works.

33. If any street damage occurs during construction of this project, applicant shall be responsible for repair at no cost to the City.

34. The applicant shall perform dust control at the project site to the City's satisfaction.

35. Where soil or geologic conditions encountered in grading operations are different from that anticipated in the soil and/or geologic investigation report, or where such conditions warrant changes to the recommendations contained in the original soil investigation, a revised soil or geologic report shall be submitted for approval by the City Engineer. It shall be accompanied by an engineering and geological opinion as to the safety of the site from hazards of land slippage, erosion, settlement, and seismic activity.

36. Prior to placing the final lift of asphalt, all public sanitary sewer lines shall be video inspected at the expense of the contractor/developer. All video tapes shall be submitted to the City. If any inadequacies are found, they shall be repaired prior to the placement of the final lift of asphalt.

37. Work hours are limited to Monday through Friday from 7:00 a.m. to dark, but in no case shall work continue later than 7:00 p.m. Work hours on Saturdays shall be from 8:00 a.m. to 5:00 p.m. No work shall occur on Sundays. Inspection will be available Monday through Thursday from 1:00 p.m. to 4:00 p.m. Contractors shall schedule inspections 48 hours in advance by calling the Building Department at (707) 894-1725.

38. Prior to acceptance of public improvements and bond exoneration, the following conditions shall be satisfied:

38. Sufficient surety (maintenance bond) guaranteeing public improvements constructed for the proposed project for a period of one year shall be provided by the applicant.

40. If substantial changes in the size, alignment, grades, etc. during construction, original "as-built" plans on the standard size sheets will be certified by the Civil Engineer and returned to the City Engineering Department.

<u>Other special conditions:</u>

STREETS

41. If any damage occurs to existing City streets during construction, the contractor/developer shall be responsible for repair at no cost to the City. All repairs shall meet current City Standards.

STORM DRAIN

42. Lot-to-lot drainage will not be permitted without adequate easements. Drainage facilities constructed for the proposed project shall be designed to intercept any drainage and route it into an approved storm drain system.

43. All storm drain systems will be sized for the 10-year storm event, except for overland 100-year overflows. 100-year overflows shall be provided between the necessary lots and permanent structures shall be prohibited from being built within the overflow area. No regarding of overflows will be allowed. 100-year overflow easement shall be shown on the final map.

GRADING

44. Erosion control plan must be submitted with the grading plan. All measures must be implemented no later than Oct. 1of any given year.

45. Dust control must be maintained to the City's satisfaction for the duration of the project.

WATER

46. Any existing valve or newly installed valve in the water system shall not be turned by the contractor. All valves connected to the public system must be operated by City Water Department personnel. Applicant shall include this condition on the improvement plans.

47. Testing of all water improvements must be observed by City water department.

48. All on-site water improvements shall be privately owned and privately maintained. Backflow devices shall be installed as close as practical to the connection points with the City water mains.

49. The applicant shall submit with the improvement plans a water analysis demonstrating that the size of service lateral(s) proposed for the project are adequate for fire protection. Plans and calculations shall be submitted to both the City and Cloverdale Fire Protection District (CFPD).

50. Water lines for the project shall connect to the existing 16-inch water main in Asti Road.

51. Water meter(s) shall be located in the public right-of-way.

52. Fire hydrant requirement and placement shall be per the Cloverdale Fire Protection District (CFPD). If any new hydrants are required on the site, they shall be privately owned and maintained.

SEWER

53. The proposed development may require the construction of a private force main. All private force mains shall empty into a private manhole and gravity feed into the public portion of the sewer system. The private system shall be considered private until its entrance into the City's sewer main.

54. All force main sewer line lateral(s) serving the parcel(s) shall be privately owned and privately maintained. The maintenance of these lines shall be specified in either a maintenance agreement recorded with each parcel or in the CC&R's.

55. If any non-gravity systems require pumps to lift the sewage from the lot into the City's main, the design of the pump stations shall be submitted to the City for review and approval. Improvement plans shall include volume and flow calculations, pump sizes, etc.

56. Sewer stub(s) shall be provided where the new sewer lateral enters the public right-of-way on Asti Road to permit future connection from developments located north of the Nu Forest parcel(s).

57. New sewer segment constructed under Asti Road shall be sized to accommodate anticipated future development on parcels located north of the proposed project.

58. The City shall consider the formation of an Area of Benefit for any benefiting properties to pay back costs associated with the oversizing costs associated with construction of the new gravity sewer main under Asti Road. Any reimbursements shall be in accordance with the City's policies.

Building Department:

59. The applicant shall submit a plot plan with setbacks from property line and adjacent structures

60. The plot plan shall identify the occupancy group/ construction type for proposed structures.

61. A foundation plan with structural details shall be submitted to the Cloverdale Building Department.

62. A roof framing plan with structural details shall be submitted to the Cloverdale Building Department.

63. Submitted plans shall include building elevations, structural sections and ADA accessibility details (i.e., pedestrian parking path of travel and other accommodations).

Fire District:

64. Fire Department access and water supply is required per Chapter 5 of the adopted CA Fire Code.

65. Provide premise identification on the building and at the connection of private drives to public streets for the benefit of first responders.

66. New buildings shall be equipped with automatic fire sprinklers per Chapter 9 of the adopted CA Fire Code.

67. A water supply test (hydrant flow) shall be performed on nearest available fire hydrant to determine the capability of the water system to supply fire protection water for this project.

68. A fire flow analysis of the proposed building (total build out) is needed to determine the project demand.
69. The on-site fire protection water supply system shall comply with NFPA 24 "Private Fire Service Mains"
70. The access road shall comply with Chapter 5 of the adopted CA Fire Code and a fire department "Knox" padlock shall be provided on gates across fire department access roads.
71. The relocated LPG tank shall comply with Chapter 61 of the adopted CA Fire Code.
72. The facility shall comply with Chapter 28 of the adopted CA Fire code "Lumber Yards & Woodworking Facilities."
73. The fueling station shall comply with the adopted CA Fire Code Chapter 23 on "Motor Vehicle (fleet) Fuel Dispensing" and Chapter 57 for "Flammable Liquids" and Chapter 27 for "Hazardous Materials."
74. Ground mount or solar canopy photovoltaic installations shall comply with Section 605.11 of the adopted CA Fire Code.
75. Permits Required for:
    a. Private fire main installation
    b. Automatic fire sprinkler installation
    c. Fire alarm (sprinkler monitoring) installation
    d. Liquid Petroleum Gas installation
    e. Lumber Yards & Woodworking
    f. Above-ground fuel storage & fuel dispensing

****

ATTACHMENT 9

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 710- 2016

AN ORDINANCE OF THE CITY OF CLOVERDALE AMENDING TITLE 18, "ZONING," OF THE CITY MUNICIPAL CODE, PREZONING CERTAIN PROPERTIES CONTAINING APPROXIMATELY 42.5 ACRES OF LAND GENERALLY LOCATED EAST OF ASTI ROAD, WEST OF THE RUSSIAN RIVER AND NORTH OF THE CITY OF CLOVERDALE CORPORATION YARD (APNs 116-260-004, -030, -033, -045, -046 -050 & -055) TO A COMBINATION OF RURAL RESIDENTIAL (RR), GENERAL INDUSTRIAL (M-1) AND PUBLIC INSTITUTIONAL (P-I) DISTRICTS AND MAKING CERTAIN CHANGES TO THE STANDARDS OF THE GENERAL INDUSTRIAL ZONING DISTRICT TO ALLOW LIVE-WORK UNITS WITH THE ISSUANCE OF A CONDITIONAL USE PERMIT

THE CITY COUNCIL OF THE CITY OF CLOVERDALE HEREBY ORDAINS AS FOLLOWS:

SECTION 1. RECITALS

A. The owner of the Nu Forest Products property (APNs 116-260-004 & -055), containing approximately 26.85 acres of land located in unincorporated Sonoma County territory has requested annexation to the City of Cloverdale.

B. As required by California State Law, California Government Code Sec. 56375 (a) (7), all requests for annexation must not create "county islands" which would not promote the local or efficient expansion of communities in California. In this instance, other properties lying west of the Nu Forest Products land and east of the current boundary of the City of Cloverdale to ensure that a logical municipal boundary is created. Smaller properties included in the proposed annexation in addition to the Nu Forest ownership include the following:

- APN 116-260-033, Cerasoli, 0.45 acre (proposed M-1 zoning);
- APN 116-260-030, Schwartlzler Fam. Trust, 0.73 acre (proposed RR zoning);
- APN 116-260-050, Matovich Trust, 6.3 acres (proposed RR zoning).
- APN 116-260-046, Poustinchian, 4.07 acres (proposed M-1 zoning);
- APN 116-260-045, PG &E, 4.05 acres (proposed P-I zoning); and
- APNs 116-260-004 &-055, Nu Forest, 26.85 acres (proposed M-1 zoning).

C. As mandated by state law and Sonoma County Local Agency Formation Commission (LAFCO) requirements, the City of Cloverdale is obligated to prezone the affected properties identified above prior to annexation. Proposed prezoning includes

classifying individual properties within the annexation area to a combination of Rural Residential (RR), General Industrial (M-1) and Public Institutional (P-I) districts as summarized above and as shown on Exhibit 1, which is hereby incorporated by reference to this ordinance.

D. The ordinance also includes revisions to Chapter 18.06 of the Cloverdale Municipal Ordinance conditionally permitting "live-work units" in the M-1 District, amending Chapter 18.09 of the Cloverdale Municipal Code to provide development standards for live-work land uses and amending Chapter 18.14 of the Cloverdale Municipal Code to include a definition of the term "live-work" as summarized and shown on Exhibit 2, which is hereby incorporated by reference to this ordinance

E. The California Environmental Quality Act ("CEQA"), together with the State guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared. To comply with CEQA, the City prepared a Mitigated Negative Declaration for this project with the finding that with adherence to mitigation measures included in the Initial Study for the project, there would be no significant or potentially significant impacts associated with the project.

F. The City Council has makes the following findings related to (1) the prezoning the properties, described as County Assessor's Parcel Numbers (APNs) 116-260-033, 116-260-046, 116-260-004 & 116-260-055 to the General Industrial (M-1) District; APNs 116-260-030 and 116-260-050 to the Rural Residential (RR) District; and APN 116-260-045 to the Public-Institutional (P-I) District; (2) amending Chapter 18.06 of the Municipal Code to add a "Live-Work units" as a conditionally approved use in the M-1 District; (3) amending Chapter 18.09 of the Municipal Code to provide development standards for live-work units in the M-1 District; and (4) amending Chapter 18.14 of the Municipal Code to add a definition of "live-work in the Municipal Code:

1. The proposed prezoning is consistent with the goals, objectives, policies and programs of the Cloverdale General Plan and is necessary and desirable to implement the provisions of the General Plan.

    a. *The proposed prezoning of properties within the Nu Forest annexation area, as described above and shown on Exhibit 1, is consistent with the amended Land Use Map of the Cloverdale General Plan.*

    b. *Proposed development standards to be added to the M-1 District will expand opportunities for future employment opportunities in the community as well as potentially increasing available places for artists in the community to maximize studio and living spaces.*

2. The proposed prezoning will not adversely affect the public health, safety and welfare or result in an illogical land use pattern.

    a. *The Initial Study/Mitigated Negative Declaration prepared for this project has evaluated the public health, safety and welfare issue, and mitigation measures included in the Initial Study will eliminate or mitigate all such impacts to a less than significant level.*

    b. *The land use pattern proposed for the annexation is generally consistent with existing development patterns within the annexation area and with existing County of Sonoma zoning as applied to these properties.*

3. The proposed prezoning is consistent with the purpose and intent of Chapter 18.03.080.D of the Cloverdale Municipal Code, as follows.

    a. *The proposed prezoning has been requested prior to annexation of the properties requested for annexation to the City of Cloverdale and will not become effective until the annexation process is complete.*

4. The proposed prezoning is consistent with the purpose and intent of Chapter 18.03.080.E of the Cloverdale Municipal Code, as follows.

    a. *The proposed prezoning is consistent with the Cloverdale General Plan, as amended by this project.*

    b. *The proposed project is consistent with all other provisions of the Cloverdale Municipal Code, as revised by this project to include live-work units as a conditionally permitted use in the M-1 zoning district.*

    c. *The proposed prezoning will not be detrimental to the public health, safety or welfare to the use of land in the annexation area or adjacent lands as documented by finding #2, above.*

    d. *The properties proposed for prezoning are suitable for the proposed used that will be allowed by the City of Cloverdale zoning districts with the application of certain CEQA mitigation measures contained in the Initial Study/Mitigated Negative Declaration prepared for this project.*

G. On October 11, 2016, the City Council held a properly noticed public hearing regarding this Zoning Ordinance Amendment and considered all comments received in writing and all testimony received at the public hearing.

SECTION 1. PURPOSE AND INTENT

The purpose and intent of these changes is to amend the City of Cloverdale Zoning Map (18.01.060 (b) CMC) to prezone the approximately 42.5-acre area lying east of Asti Road, south of the current City limits in this portion of Cloverdale, generally west of the Russian River and north of the City's wastewater treatment plant and corporation yard to General Industrial (M-1), Rural Residential (RR) and Public Institutional (P-I) Districts as shown on Exhibit 1, which prezoning will become effective when the zoning of the sites becomes effective upon completion of the annexation process pursuant to Government Code section 65859(a) and to amend the M-1 District Zoning Ordinance text to add a "live-work units" as a conditionally permitted use in the M-1 District, adding appropriate definitions to the Municipal Code and development standards as shown for this land use on Exhibit 2.

SECTION 2. FINDINGS

The above recitals are hereby declared to be true and correct and hereby incorporated herein as the required Findings of the City Council of the City of Cloverdale.

SECTION 3. AMENDMENTS TO TITLE 18 OF THE CLOVERDALE MUNICIPAL CODE

Sections 18.14.030, Definitions, is amended as set forth in Exhibit 2, Section 18.060.30, is amended by revising Table 18.06.030-A to conditionally allow live-work units in the M-1 District and Chapter 18.090 is amended to establish Section 18.090.300 - Development Standards for live-work units, as set forth in Exhibit 2.

SECTION 4. RECLASSIFIED PROPERTIES

The City of Cloverdale Zoning Map (18.01.060 (b) CMC) is hereby amended so as to zone individual properties located east of Asti Road, south of current City boundaries, generally west of the Russian River and north of the City of Cloverdale Corporation Yard and Wastewater Treatment Plant General Industrial (M-1), Rural Residential (RR) and Public Institutional (P-I) zoning districts, each property to be zoned as shown in Exhibit 1. Pursuant to the provisions of Government Code section 65859, the zoning established for the properties by this ordinance shall become effective at the same time that the annexation becomes effective.

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. Said zoning shall not be deemed effective until completion of the annexation pursuant to Government Code Section 65859(a).

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 November 8, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 8th day of November, 2016 by the following vote: (Ayes-X; Noes-X; Absent-X)

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved: Attested:

_____ _____

Mary Ann Brigham, Mayor Linda Moore, Deputy City Clerk

Exhibits Attached:

Exhibit 1 – Prezoning Districts
Exhibit 2 – Section 18.090.300 of the Municipal Code establishing development standards for live-work units

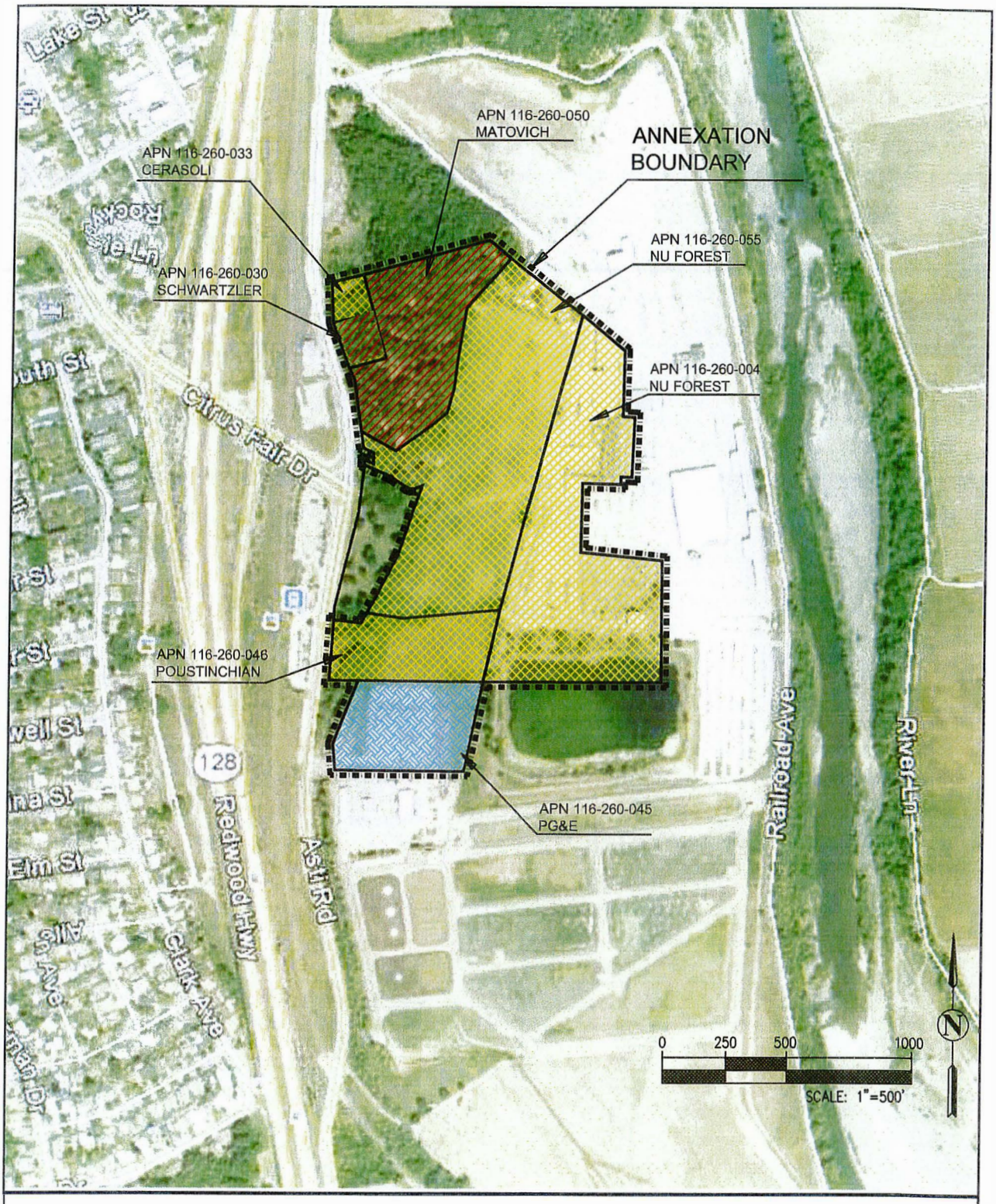


Exhibit 1 -
Prezoning Districts

Legend:

Proposed Use

GI – General Industrial

RR – Rural Residential

P–I – Public Institutional

Exhibit 2 - Nu Forest Prezoning Ordinance No. 710-2016

Definitions. Section 18.14.030 of the Cloverdale Municipal Codes is amended as follows to add a definition for "live-work" uses as follows:

> **"Live-work unit"** or **"live-work space"** means a building or spaces within a building used jointly for commercial and residential purposes where the residential use of the space is secondary or accessory to the primary use as a place of work.
>
> **"Live-work unit"** means a structure or portion of a structure:
> (a) That combines a commercial or manufacturing activity allowed in the zone with a residential living space for the owner of the commercial or manufacturing business, or the owner's employee, and that person's household;
> (b) Where the resident owner or employee of the business is responsible for the commercial or manufacturing activity performed; and
> (c) Where the commercial or manufacturing activity conducted takes place subject to a valid business license and applicable zoning permit(s) associated with the premises.

Uses Permitted: Section 18.060.30 is amended by revising Table 18.06.030-A, as follows:

> "Add Live-Work units as a conditionally permitted use (C) in the M-1 District."

Land Uses	**M-1**	**M-P**	**Reference**
Accessory Uses	M-1	M-P	Reference
Work-Live Unit	C	NP	18.090.300

Development Standards. Chapter 18.090 is hereby amended by adding Section 18.090.300 – Special Development Standards for Live-Work Units.

> "Live-work units may be allowed on property zoned as M-1 (General Industrial) subject to the following minimum standards to minimize land use interface impacts. Additional standards may be imposed through the conditional use permit process.
>
> 1. Maximum Lot Coverage. Maximum Lot Coverage shall be sixty (60) percent of a lot for live-work uses, which shall include both residential and work (industrial) components.
>
> 2. Residential Area Requirements. A maximum of 50 percent of a live-work total square footage shall be devoted to residential use.
>
> 3. Location of living and working space. Living and working spaces on individual lots may either be integrated or two separate structures. Proper

separation shall be provided as required by the California Building Code. Live/Work units containing 2,000 square feet of gross square feet or greater shall have a minimum of two exits as defined by the Uniform Building Code.

4. Occupancy. A live-work unit shall be occupied and used by the operator of the business on the site or at least one member of a household shall be the business operator. No portion of a live-work unit shall be rented or sold separately. Up to two persons may be employed within a live-work business who do not live on the site, unless more restrictive requirements are imposed as a condition of the conditional use permit issued pursuant to Section 18.03.110 of the Cloverdale Municipal Code.

5. Parking. Parking shall be provided on a live-work site based on the parking requirements in Table 18.11.050-A of the Cloverdale Municipal Code. Parking requirements for uses not specifically set forth in Table 18.11.050-A shall be based upon similar uses, or evidence of actual demand bases on traffic engineering or planning data or as approved through the conditional use permit process.

6. Building Sizes, Height and Setbacks. Structures constructed for the purpose of housing live-work occupancies shall conform to all building requirements of the M-1 zoning district.

7. Required Findings. Approval of a conditional use permit for a live-work unit shall require the Planning Commission to make the following findings in addition to the normally required findings as set forth in Section 18.03.110 (D) of the Cloverdale Municipal Code.

    a. The proposed residential use of a property does not detract from the primary industrial use of the property or interrupt the continuity of businesses n an industrial area.

CITY OF CLOVERDALE

City Council
Agenda Item Summary

Agenda Item:	11
Meeting Date:	11/18/16

Agenda Section	**Staff Contact**
Public Hearing	David Kelley, Assistant City Manager / Comm. Dev. Director

Agenda Item Title

Adoption of the 2016 California Building Standards Codes and the 2016 Fire Code by Reference and amending Title 15, "Buildings and Construction" of the Cloverdale Municipal Code.

Background

The California Building Standards Commission (CBSC) is the state body responsible for the administration of the processes for development, adoption, approval, publication, and implementation of California's building codes. Every three (3) years the CBSC conducts code development hearings to gain input from developers, building officials, local and state government leaders and other interested parties to review the Building Code Standards for the State of California. These standards contain the minimum building requirements for the State of California and are automatically adopted for local jurisdictions. Although each new edition contains minor technical changes, these changes can be incorporated in the design of the projects and generally do not have a significant impact on constructability.

Summary

It is mandatory that each jurisdiction within the State of California including the City of Cloverdale implement the 2016 Building codes. In order to effectively accomplish this, each jurisdiction must adopt rules and requirements for administering these codes. Title 15 of the Cloverdale Municipal Code contains the administrative requirements for implementation of the California Building Code. However, these requirements need to be modified to accommodate the new editions of the California Building, Residential, Electrical, Plumbing, and Mechanical codes every three years. Any amendments by the City must be as stringent as the CBSC, however, local jurisdictions can adopt more restrictive amendments if necessary, to account for local climatic, geographical, or topographical conditions. The attached proposed changes will address the needed requirements.

The local modifications proposed for Cloverdale are contained in the proposed Ordinance, and include the following local environmental conditions:

1. Climatic Conditions
    a. Precipitation and Relative Humidity
    b. Temperature
    c. Winds
2. Geologic Conditions
    a. Seismic
3. Topographic
    a. Soils
    b. Natural and man-made borders
    c. Water supply

The attached draft ordinance adopting the 2016 CBSC generally represents a continuation of existing City practice with regard to local modifications. It revalidates and readopts the City's current local amendments, and includes Cloverdale's modifications due to local climatic, geologic and topographic conditions.

This year, Cloverdale amended various codes to add definitions of New Construction, Alteration of Floor Area, Substantial Remodel and Substantial Addition. Additionally, Section 15.06.160 was added to the Residential Code (Chapter 15.06) to reflect the change in the Municipal Code relating to the cultivation of marijuana allowed in a detached structure pursuant to Municipal Code Section 18.09.300. City staff also coordinated with the Cloverdale Fire District on the update of the Fire Code that is part of the City's Municipal code to ensure consistency between the City of Cloverdale's and Fire District's plan review process. The Fire Code was amended to reflect new definitions of Alteration of Floor Area, Substantial Remodel and Substantial Addition as well as Unwarranted Alarm. Additionally, there are amendments to sprinkler system requirements in new and existing buildings.

There are considerable changes to the reference numbering in the new California Codes, and the proposed ordinance reflects these new reference numbers in order to ensure that the Municipal Code continues to relate accurately to the California Building Standards Code.

Options

1) Introduce and waive first reading of Ordinance adopting the 2016 California Building Standards Codes and the 2016 Fire Code by Reference and amending Title 15, "Buildings and Construction" of the Cloverdale Municipal Code and set public hearing for Second reading; or
2) Provide alternative direction to City Staff regarding the proposed Municipal Code Update.

Budget/Financial Impact

None.

Subcommittee Recommendation

None.

Recommended Council Action

1) Introduce and Waive first reading:

Ordinance No. 712-2016 of the City of Cloverdale Repealing in its Entirety Cloverdale Municipal Code Chapters 15.00 to up to and including 15.18 and Chapter 15.35 and Adopting By Reference the 2016 California Building Standards Code, Title 24, as adopted by the California Building Standards Commission, which includes adoption of the 2016 California Building Standards Administrative Code (Part 1 of Title 24) including Tables; the 2016 California Building Code (Part 2 of Title 24) including Tables and Appendices C, I, and J; the 2016 California Residential Building Code (Part 2.5 of Title 24) including Tables and Appendix H; the 2016 California Electrical Code (Part 3 of Title 24) including Tables and Appendices A, B, C, F, and G; the 2016 California Mechanical Code (Part 4 of Title 24) including Tables and Appendix D; the 2016 California Plumbing Code (Part 5 of Title 24) including Tables and Appendices A, B, D, and I; the 2016 California Energy Code (Part 6 of Title 24) including Tables and Appendix 1-A; the 20163 California Historical Building Code (Part 8 of Title 24) including Tables and Appendix A; the 2016 California Fire Code (Part 9 of Title 24) with Appendices, Standards and NFPA Standards for Reference; the 2016 California Existing Building Code (Part 10 of Title 24) including Tables; the 2016 California Green Building Standards Code (Part 11 of Title 24) including Tables and Appendices A4 and A5; the 2016 California Reference Standards Code (Part 12 of Title 24) including Tables; and the 2015 International Code Council Property Maintenance Code.

2) Schedule public hearing for second reading of Ordinance No. 712-2016.

Attachments:

1. Ordinance No. 712-2016
2. Notice of Public Hearing

2724973.1

City of Cloverdale
Ordinance No. 712-2016

An Ordinance of the City of Cloverdale Repealing in its Entirety Cloverdale Municipal Code Chapters 15.00 up to and including 15.18 and Chapter 15.35 and Adopting By Reference the 2016 California Building Standards Code, Title 24, as adopted by the California Building Standards Commission, which includes adoption of the 2016 California Building Standards Administrative Code (Part 1 of Title 24) including Tables; the 2016 California Building Code (Part 2 of Title 24) including Tables and Appendices C, I, and J; the 2016 California Residential Building Code (Part 2.5 of Title 24) including Tables and Appendix H; the 2016 California Electrical Code (Part 3 of Title 24) including Tables and Appendices A, B, C, F, and G; the 2016 California Mechanical Code (Part 4 of Title 24) including Tables and Appendix D; the 2016 California Plumbing Code (Part 5 of Title 24) including Tables and Appendices A, B, D, and I; the 2016 California Energy Code (Part 6 of Title 24) including Tables and Appendix 1-A; the 2016 California Historical Building Code (Part 8 of Title 24) including Tables and Appendix A; the 2016 California Fire Code (Part 9 of Title 24) with Appendices, Standards and NFPA Standards for Reference; the 2016 California Existing Building Code (Part 10 of Title 24) including Tables; the 2016 California Green Building Standards Code (Part 11 of Title 24) including Tables and Appendices A4 and A5; the 2016 California Reference Standards Code (Part 12 of Title 24) including Tables; and the 2015 International Code Council Property Maintenance Code

WHEREAS, the California Building Standards Commission has adopted a new Title 24 of the California Code of Regulations, also referred to as the 2016 California Building Standards Code, that will become effective statewide on January 1, 2017; and

WHEREAS, California Health and Safety Code Sections 17958, 17958.5, 17958.7 and 18941.5 establish the authority for a city to adopt and make local amendments and modifications to the building standards in the California Building Standards Code to establish more restrictive building standards than those contained in the California Building Standards Code; and

WHEREAS, California Health and Safety Code Sections 17958,17958.5, 17958.7 and 18941.5 permit a city to make such local amendments and modifications as the city determines are reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, California Health and Safety Code Sections 17958, 17958.5, 17958.7 and 18941.5 require a city, before making any amendments and modifications to the California Building Standards Code, make an express finding that such amendments and modifications are reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, Government Code Section 50022.2 permits enactment of city ordinances that adopt codes or statutes, including codes of the State of California, by reference; and

WHEREAS, notice of the Ordinance was published in accordance with Government Code Sections 50022.3 and 6066; and that such notice was sufficient to give notice to interested persons of the purpose of the ordinance and the subject matter thereof.

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

Section 1. Old Codes Repealed: Chapters 15.00 up to and including 15.18 and Chapter 15.35 of Title 15, "Buildings and Construction," of the Cloverdale Municipal Code are hereby repealed in their entirety.

Section 2. Findings: The City Council of the City of Cloverdale finds that, in order to best protect the health, safety and welfare of the citizens of the City of Cloverdale, the building standards within the community must comply with State law, except where local climatic, geological and topographical conditions warrant more restrictive regulations.

Pursuant to Section 17958 of the California Health and Safety Code, the governing body of the City of Cloverdale, in its ordinance adopting the California Building Standards Code and uniform industry codes, may establish

amendments which are more restrictive than those adopted by the State of California commonly referred to as Title 24 of the California Code of Regulations, based on local climatic, geological and topographical conditions.

Based on the materials presented by, and the recommendations of the Cloverdale Building Official and the Fire Code Official of the Cloverdale Fire Protection District, the City Council makes the factual finding set forth below and finds that the amendments the California Building Standards Code adopted in this Ordinance are reasonably necessary because of the local climatic, geological or topographical conditions set forth below.

The local conditions that mandate amendments to the California Building Standards Code are based on the following local climatic, geological and topographical conditions which shall apply to all amendments:

A. CLIMATE: The City, on average, experiences an approximate annual rainfall of 40 inches. This rainfall can normally be expected between October and April. During the winter months, the City may experience periods of heavy rain, which causes local flooding. Winter storms are often accompanied by high winds, which have uprooted trees and damaged power lines. During the dry period, temperatures range from 70 degrees to over 105 degrees. These temperatures are often accompanied by light to moderate gusty winds, which coupled with highly flammable vegetation and neighborhoods located in wildland-urban interface areas create hazardous fire conditions. With increased development spreading into the brush covered foothill area, wind driven fires could have severe consequences, as has been demonstrated on several occasions throughout the state.

B. GEOLOGY: The City is susceptible to seismic hazards resulting from movement along any one of several known faults in the area. The most serious direct earthquake hazard threat is from the damage or collapse of buildings and other structures due to ground movement. In addition to damage caused by earthquakes, there is the possibility of earthquake-induced fires starting because of damage to gas lines, power lines or heat producing appliances and the unavailability of water for fire control due to broken water mains. In addition, unstable slopes have been identified in the City, which present a significant potential for landslides. In the event of a major earthquake or landslide, many areas of the City may not be accessible to emergency equipment and, if bridges or roads are damaged, the City may be isolated from outside assistance. The City is located at the northern end of Sonoma County at the Mendocino County border, which further reduces the City's ability to receive outside assistance because the communities north of Cloverdale are rural.

C. TOPOGRAPHY: The City borders include hilly terrain on the north, east and west portions of the City. The roadway systems in these hills are designed around the lay of the land with respect to narrow, winding and steep access ways. The grades of these roadways sometimes exceed 25% and road widths of less than 12 feet are not uncommon. The City is also bordered by Highway 101 and the Russian River to the east; there is a railroad right-of-way just east of Highway 101 on the east edge of the City. The railroad, river and freeway all create barriers, which may obstruct traffic patterns and delay response time for fire equipment. The water supply within the City is directly affected by the topographical layout. The water distribution system consists of two pressure zones, which carry water by gravity from various reservoirs. Water flow within the City can vary from less than 1,000 gallons per minute to flows in excess of 4,000 gallons per minute. This wide variation causes major problems to development and fire suppression efforts.

D. SUMMARY: The above local climatic, geologic and topographical conditions increase the magnitude, exposure, accessibility problems and fire hazards presented to the Cloverdale Fire Protection District. Fires in areas determined to be moderate, high or very high fire severity zones, as outlined by the State of California (CalFire) fire severity zone map, place additional fire suppression demands on the responding fire agency. A fire following an earthquake has the potential of causing greater loss of life and property damage than the earthquake itself. The majority of the City's industrial areas are located in the highest seismic risk zones, which also contain the largest concentration of hazardous materials. Hazardous materials, particularly toxic gases, could pose the greatest threat to the largest number of persons should a significant seismic event occur. The City's and Fire District's resources would have to be prioritized to mitigate the greatest threat, and may be unavailable for vegetation or structure fires.

Other variables that may tend to intensify the situation include:

1. The extent of damage to the water system;

2. The extent of isolation due to bridge and/or freeway overpass collapse;

3. The extent of roadway damage and/or amount of debris blocking roadways;

4. Climatic conditions (hot, dry weather with high winds);

5. The amount of traffic on roadways, which could intensify the risk to life during normal business hours; and

6. The availability of timely mutual aid or military assistance.

E. CONCLUSION: Local climatic, geologic and topographical conditions impact fire prevention efforts and the frequency, spread, intensity, and size of fire involving buildings in Cloverdale. Further, these conditions increase the potential for significant damage to all structures from earthquake and subsequent fire. Therefore, it is found to be reasonably necessary to amend the California Building Standards Code to mitigate the effects of these conditions. As a result of the findings, as set forth in this section, which identify various climatic, geographical and topographical elements, those additional requirements as specified in the amendments to the adopting ordinance supplementing and amending the Code herein, are considered necessary and reasonable modifications and do not lessen, diminish or change the standards set forth within the uniform codes except as authorized by law.

F. ENERGY EFFICIENCY REQUIREMENTS COST EFFECTIVENESS: Pursuant to California Public Resources Code Section 25402.1 and California Code of Regulations, Title 24, Part 1, Section 10-106 (Locally Adopted Energy Standards), a city may require additional energy conservation measures and set more stringent energy budgets in a local green building ordinance than the standards set forth in the California Energy Code if the city demonstrates the energy cost-effectiveness of the standards and files with the California Energy Commission the basis of the city's determination that the standards are cost effective. This determination that the standards are cost effective must be adopted by the governing body at a public meeting. Based upon the Climate Zone 2 Energy Cost-Effectiveness Study prepared by Gable Associates, LLC, August 11, 2010, for Pacific Gas and Electric Company, which is hereby adopted by the City Council and attached to and made a part of this ordinance, the City Council finds and determines that the Cal Green Tier 1 energy efficiency requirements are cost effective.

Section 3. Adoption of California Building Standards Code: Pursuant to Section 50022.2 of the California Government Code, the following codes are hereby adopted by reference in this chapter as defined herein and as adopted and amended by the California Building Standards Commission under Title 24, including the amendments listed in this ordinance, which are made pursuant to the findings of fact set forth herein: the 2016 California Building Standards Code, Parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12 with tables and adopted appendices; and the 2015 International Code Council Property Maintenance Code.

Section 4. Modifications: Chapters 15.00 through 15.18 and Chapter 15.35 are hereby added to Cloverdale Municipal Code, Title 15, "BUILDINGS AND CONSTRUCTION" as follows:

Title 15

BUILDING AND CONSTRUCTION*

Chapters:

15.00	General Provisions
15.02	Permits and Fees
15.03	California Building Standards Administrative Code
15.05	California Building Code
15.06	California Residential Building Code
15.07	California Electrical Code
15.08	California Mechanical Code
15.09	California Plumbing Code
15.10	California Energy Code
15.12	California Historical Building Code
15.13	International Code Council Property Maintenance Code
15.14	California Fire Code
15.16	California Existing Building Code
15.17	California Green Building Standards Code
15.18	California Referenced Standards Code
15.20	Flood Damage Prevention
15.24	Manufactured Homes
15.28	Mobil Home Parks
15.30	Water Efficient Landscape
15.32	Solid Fuel Space Heating Devices
15.34	Residential Growth Management Plan
15.35	Violations – Penalty
15.36	Procedure for Installation of Public Improvements
15.37	Telecommunication Facility and Antenna Criteria
15.38	Solar Energy Systems, Expedited Permitting Process for Small Residential Rooftop Solar Systems

* For statutory provisions authorizing cities to regulate buildings and construction, see Government Code §§38601 and 38660; for provisions on the construction of housing, see Health and Safety Code §17910 et seq.; for provisions authorizing cities to adopt codes by reference, see Gov. Code §50022.1, et seq.

Chapter 15.00

GENERAL PROVISIONS

Sections:

15.00.010 Purpose
15.00.020 Exemptions from permit requirements
15.00.030 Persons to whom permits may be issued
15.00.040 Building official—-Administrative authority
15.00.050 Incomplete applications
15.00.060 Adoption of standard plans and standard construction specifications

15.00.010 – Purpose. This chapter is adopted as the buildings and construction code of the City of Cloverdale, adopting by reference the California Building Standards Code set forth in Chapters 15.00 through and including 15.18 and Chapter 15.35 of this title, with amendments and deletions, based on local climatic, geological and topographic conditions. The regulations set forth in this title are additions and/or amendments to the California Building Standards Code, and where any California Building Standards Code provisions are in conflict therewith, it is the intent of the ordinance codified in Chapters 15.00 through and including 15.18 and Chapter 15.35 to amend or delete such conflicting rules or regulations so that the provisions of Title 15 shall be controlling.

15.00.020 – Exemptions from permit requirements. Permit fees and plan check fees as provided in this chapter shall be collected for all work in the City performed by or for the City, county, state, United States of America, or any agency thereof, except where exempt under law.

15.00.030 – Persons to whom permits may be issued. Permits for building, construction, alteration, repair, electrical work, plumbing work, mechanical work and all other building and/or construction work shall be issued only on the application of the holder of a contractor's license issued by the state, licensing such person to engage in the type of work anticipated by the application for such permit, except that owners' permits may be issued as provided by law.

15.00.040 – Building Official-Administrative authority. The Building Official is appointed and designated administrative authority, as such terms are used and such positions are established in the California Building Standards Code, as set forth in Title 24 of the California Code of Regulations and all codes contained therein. The Building Official is charged with the enforcement of and given the authority to administer all provisions of such codes and City regulations and requirements adopted under the authority provided in Government Code Section 38660.

15.00.050 – Incomplete applications. Where plan review is commenced and it is determined that the application is incomplete, the applicant shall have fifteen working days after receiving notice by telephone or U.S. mail to submit any required plans and documentation so that plan review may continue. If the required plans or documentation are furnished within the fifteen working day period, no additional plan review fee will be assessed. If the documentation is not furnished within the fifteen working day period but is furnished within thirty calendar days after notice is provided to the applicant, the applicant shall pay a new plan review fee, which shall be fifty percent of the amount fixed by the fee schedule. Where documentation is not received within thirty days of notice to the applicant, the application shall expire, and the applicant shall pay a new plan review fee upon reapplication.

15.00.060 – Adoption of standard plans and standard construction specifications. The City Council may, by resolution, adopt City standard plans and standard specifications.

Chapter 15.02

PERMITS AND FEES

Sections

ARTICLE I. GENERALLY

15.02.010 Applicability

ARTICLE II. DEPARTMENT OF BUILDING PERMIT FEE TABLE

15.02.020 Single forms

ARTICLE III. PLAN REVIEW FEES

15.02.030 Fees
15.02.040 Additional plan review
15.02.050 Expiration of plan review applications

ARTICLE IV. PERMIT FEES

15.02.060 Fees

ARTICLE V. MISCELLANEOUS FEES

15.02.080 Re-inspection fee
15.02.100 Investigation fees – Work without a permit
15.02.110 Exception for emergency work

ARTICLE I. GENERALLY

15.02.010 – Applicability.

A. Any person desiring to perform work regulated by currently adopted editions of the California Building Standards Code, and/or any amendments, ordinances or other regulations administered by the Building Department, or that may be adopted and administered in the future, shall secure permits and pay fees as set forth in this chapter.

B. The determination of valuation under any of the provisions of this code shall be made by the Building Official. The valuation to be used in computing the permit and plan review fees shall be the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire extinguishing systems, paving, profit and overhead, and any other permanent work or permanent equipment.

ARTICLE II DEPARTMENT OF BUILDING PERMIT FEE TABLE

15.02.020 – Single forms. The Building Department shall issue permits heretofore required, including but not limited to grading permits, building permits, plumbing permits, mechanical permits and electrical permits on a single form, which designates these permits. The permit fee shall be based on the cumulative value of all the work for which a permit is sought.

A. Fees for the issuance of such permits shall be payable in the amounts fixed by resolution of the City Council, based on the valuation listed therein. The fees shall be charged and collected at the time of issuance of the permit.

B. A permit is required for any change in the character or use of any building which would place the building in a different division of the same group of occupancy or in a different group of occupancies. The Building Official shall determine the minimum permit fee for such change, unless otherwise provided by the fee schedule adopted by resolution of the City Council.

ARTICLE III. PLAN REVIEW FEES

15.02.030 – Fees. A plan review fee shall be paid to the Building Department at the time of submitting plans and specifications for review. Such plan review fee shall be payable in the amount fixed by the fee schedule adopted by the City Council by resolution.

15.02.040 – Additional plan review. Where additional plan review is required due to changed plans and/or incomplete plans, an additional plan review fee shall be charged at a rate established by the Building Official.

15.02.050 – Expiration of Plan Review Applications.

A. Plan review applications shall expire if no permit has been issued within 180 days following the date the application is filed with the City. Upon request by the applicant, the Building Official may extend the plan review application one time for a period not to exceed 180 days.

B. Every permit issued by the Building Official shall expire if the work authorized by such permit is not commenced within 180 days from the date of issuance, or if work is suspended or abandoned for a period of 180 days after work is commenced. Upon written request, the Building Official may extend the permit one time for a period not to exceed 180 days.

ARTICLE IV. PERMIT FEES

15.02.060 – Fees. All permit fees shall be fixed by the fee schedule adopted by the City Council by resolution.

ARTICLE V. MISCELLANEOUS FEES

15.02.080 – Re-inspection fee. A re-inspection fee as fixed by the fee schedule adopted by the City Council by resolution shall be charged and collected for each extra inspection made necessary, as follows:

A. Work not ready at the time requested for inspections; and/or

B. Work required to be corrected on previous inspection not ready and/or correction not made at the time requested for inspection.

15.02.100 – Investigation fees — Work without a permit.

A. Investigation. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work.

B. Fee. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this code. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

15.02.110 – Exception for emergency work. Section 15.02.100 shall not apply to emergency work when it shall be proved to the satisfaction of the Building Official that such work was urgently necessary and that it was not practical to obtain a permit therefore before the commencement of work.

Chapter 15.03

CALIFORNIA BUILDING STANDARDS ADMINISTRATIVE CODE

Sections:

15.03.010 Adoption and Citation

15.03.010 – Adoption and Citation. The California Building Standards Administrative Code, 2016 edition, including tables, as set forth in Part 1 of Title 24 of the California Code of Regulations is hereby adopted by reference in its entirety by the City, except that for purposes of citation, said code shall be renumbered by adding "15.03" before the sections of the California Building Standards Administrative Code.

Chapter 15.05

CALIFORNIA BUILDING CODE

Sections:

15.05.010 Adoption and Citation
15.05.015 Section 1.8.4.2 Fees Chapter One Division 1 & Section 109 Fees Chapter One Division II
15.05.020 Section 105.2 – Work exempt from permits (exception)
15.05.030 Section 202 - Definitions – New Construction added
15.05.031 Section 202 – Definitions – Alteration of Floor Area added
15.05.032 Section 202 – Definitions – Substantial Remodel added
15.05.033 Section 202 – Definitions – Substantial Addition added
15.05.040 Section 501.2 - Address Identification
15.05.050 Section 501.2.1 - Numbers for One and Two Family Dwellings
15.05.060 Section 501.2.2 - Numbers for Other than One and Two Family Dwellings
15.05.070 Section 701A.6 - Defensible Space
15.05.080 Section 702A - Definitions
15.05.090 Section 903.2 - When Required
15.05.100 Section 903.2.20 - Local Fire Sprinkler System Requirements
15.05.110 Section 903.2.20.1 – System Requirements
15.05.120 Section 903.2.20.2 - Additions - Residential
15.05.130 Section 903.2.20.3 - Additions - Commercial
15.05.140 Section 903.2.20.4 - Remodels, Alterations, or Repairs
15.05.150 Section 903.2.20.5 - Changes in Occupancy
15.05.160 Section 903.2.20.6 - Elevation of Existing Buildings
15.05.170 Section 903.2.20.7 – Residential Sprinkler Pressure Relief
15.05.180 Section 903.2.20.8 – Residential Freeze Protection
15.05.190 Section 903.3 - Installation Requirements
15.05.200 Section 903.3.1 - Standards Design Criteria
15.05.210 Section 903.3.7 - Fire Department Connections
15.05.220 Section 903.4 - Sprinkler System Supervision and Alarms
15.05.230 Section 903.4.1 - Monitoring
15.05.240 Section 903.4.2 - Alarms
15.05.250 Section 905.3.1 - Building Height
15.05.260 Section 905.9 - Valve Supervision
15.05.270 Section 907.2.8.1 - Manual Fire Alarm Systems
15.05.280 Section 1505.1 - General - Roof Covering Materials
15.05.290 Section 1512.1 - Solar Photovoltaic Panels/Modules
15.05.300 Section 1612.3 – Establishment of Flood Hazard Areas

15.05.010 – Adoption and Citation. The California Building Code, 2016 edition, including tables and Appendices C, I, and J as set forth in Part 2 of Title 24 of the California Code of Regulations, is hereby adopted by reference in its entirety by the City, as amended herein, except that for purposes of citation, said code shall be renumbered by adding "15.05" before the sections of the California Building Code.

15.05.015 – Section 1.8.4.2 Fees of Chapter One Division I and Section 109 Fees of Chapter One Division II. Sections 1.8.4.2 of Chapter One Division I and Section 109 of Chapter One Division II are deleted in their entirety and replaced to read as follows: Permit fees, Plan Review fees, and Investigation fees shall be assessed as provided in Cloverdale Municipal Code Chapter 15.02. The provisions of Cloverdale Municipal Code section 15.02.050, Expiration of Plan Review Applications, shall be applicable to plans submitted pursuant to this chapter.

15.05.020 – Section 105.2 Work Exempt from Permit (Exception). Section 105.2 (Exception 1) is added to read as follows: One story detached accessory structures used as tool sheds, playhouses, and similar uses, whose floor area is less than 120 square feet that contain plumbing and electrical installations are not exempt from the permit requirements.

15.05.030 – Section 202 Definitions. Section 202 is amended to add a definition for "New Construction" to read as follows: NEW CONSTRUCTION: "For the purposes of enforcing the provisions of the California Fire Code, California Building Code, and the California Residential Building Code, any work, addition to, remodel, repair, renovation, or alteration of any building(s) or structure(s) shall be considered "New Construction" when 50 percent or more of the exterior weight bearing walls are removed or demolished."

15.06.031 – Section 202 Definitions. Section 202 is amended to add a definition for "Alteration of Floor Area" to read as follows: ALTERATION OF FLOOR AREA: "For the purpose of this definition, the following criteria shall be considered in determining the percentage of "alteration of floor area." The 50% referred to under "Substantial Remodel" applies to the entire building's gross floor area in plan view. The entire room or space where the remodel is taking place will be considered in the calculation, either alone or in combination with any of the following:

a. Removing wall finishes and exposing framing of;
    - Interior wall (where finishes are removed from one side only the room or space to which the framing is exposed will be included in the calculation).
    - Perimeter exterior wall (one or both sides).
b. New wall construction, removing, or repositioning, either interior or perimeter exterior walls, the rooms or spaces on both sides of the wall will be included in the calculation.
c. Removal of the ceiling in any room or space to expose rafters, trusses, beams, purlins, or floor joists.
d. Removal of the roof structure (only rooms or spaces that are directly below the removed roof structure will be included in the calculation).
e. Removal of floor finishes which exposes floor framing and/or removal of concrete slab.
f. Relocating plumbing fixtures in a bathroom or kitchen will cause that entire room or space to be included in the calculation.
g. Other alterations considered substantial by the Fire Code Official (see DSA-AC definition of "Alteration" in the 2016 California Building Code).

15.06.032 – Section 202 Definitions. Section 202 is amended to add a definition for "Substantial Remodel" to read as follows: SUBSTANTIAL REMODEL: "In all existing buildings or structures, any alteration of floor area that is greater than fifty percent (50%) of the existing gross floor area."

15.06.033 – Section 202 Definitions. Section 202 is amended to add a definition for "Substantial Addition, Group R-3" to read as follows: SUBSTANTIAL ADDITION, GROUP R-3: "In all existing Group R-3 buildings or structures, any addition of floor area that exceeds fifty percent (50%) of the existing gross floor area."

15.06.033 – Section 202 Definitions. Section 202 is amended to add a definition for "Substantial Addition" to read as follows: All existing buildings or structures not classified as Group R-3 occupancy, any addition of floor area that is greater than twenty-five percent (25%) of the existing gross floor area.

15.05.040 – Section 501.2 Address Identification. Section 501.2 is amended to read as follows: New buildings and tenant spaces shall have approved illuminated address numbers or building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall be in contrasting color with their background. Address numbers shall be Arabic numerals or alphabetical letters. Numbers shall not be spelled out. Where it is impractical to install illuminated numbers due to long driveways or other circumstances, approved reflective numbers with those properties listed above may be installed at the intersection of the driveway and road fronting the parcel. For existing properties, any additions, alterations or other work requiring a permit with a valuation over $20,000, approved numbers or addresses shall be installed.

15.05.050 – Section 501.2.1 Numbers for One and Two Family Dwellings. Section 501.2.1 is added to read as follows: Numbers for one and two- family dwellings shall be a minimum of 4 inches high with a minimum stroke width of 0.5 inches. Numbers shall not be spelled out. Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole, or other sign or means shall be used to identify the structure.

15.05.060 – Section 501.2.2 Numbers for Other that One and Two Family Dwellings. Section 501.2.2 is added to read as follows: Numbers for other than one and two-family dwellings shall be a minimum of 12 inches high with a minimum stroke width of 1 inch. Numbers shall not be spelled out. Suite numbers for other than one and two-family dwellings shall be a minimum of 6 inches high and with a minimum stroke width of 0.5 inches.

Exception: These requirements may be modified with the approval of the Fire Code Official.

15.05.070 – Section 701A.6 Defensible Space. Section 701A.6 is added to read as follows: Buildings and structures located within any Moderate, High or Very High Fire Severity Zone as designated by the CDF Director or in a High Fire Severity Zone as identified by the Cloverdale General Plan shall maintain a defensible space as outlined in Government Code sections 51175-51189 and the fire department's "Construction and Defensible Space Standard within Designated Fire Severity Zones" document.

15.05.080 – Section 702A Definitions. Section 702A is amended to read as follows: Wildland-Urban Interface Fire Area is a geographical area located within any Moderate, High or Very High Fire Severity Zone as recommended by the CDF Director pursuant to Public Resource Code Sections 4201-4204 and Government Code Sections 51175-51189, in a Very High Fire Severity Zone as identified in the Local Responsibility Area (LRA) as recommended by the CFD Director, or as conditioned by Cloverdale Development Requirements.

15.05.090 – Section 903.2 Where Required. Section 903.2 is amended to read as follows: Approved automatic sprinkler systems in new buildings and structures shall be provided as described in this section. Additional local requirements are described in Section 903.2.20 and may supersede the following requirements. The most restrictive requirements shall apply.

15.05.100 – Section 903.2.20 Local Fire Sprinkler System Requirements. Section 903.2.20 is added to read as follows: Section 903.2.20 Local Fire Sprinkler System Requirements shall be in accordance with Sections 903.2.20.1 through 903.2.20.8.

15.05.110 – Section 903.2.20.1 System Requirements. Section 903.2.20.1 is added to read as follows: An automatic sprinkler system shall be installed and maintained in all newly constructed buildings.

Exceptions:

1. Detached Group U occupancies 1,000 sq. ft. or less. Agricultural buildings and private riding arenas as approved by the fire or building code official.
2. Detached pool houses up to 1,000 sq. ft. in floor area within 50 feet of the pool and limited to a single bathroom.
3. Detached non-combustible motor vehicle fuel dispensing canopies classified as Group M occupancy and conforming with CBC Section 406.7. Detached Car Ports of non-combustible construction with no habitable space above.
4. Detached Group B or M occupancies 500 sq. ft. or less.

15.05.120 – Section 903.2.20.2 Additions–Residential. Section 903.2.20.2 is added to read as follows: Additions to existing R-3 occupancy residential buildings that meet the definition of substantial addition, Group R-3 shall meet the requirements for new construction. All additions to all Group R occupancy residential buildings with an existing approved automatic sprinkler system shall be required to extend the sprinkler system into the addition.

Additions to existing Group R-1 occupancies that result in additional guest room(s) shall meet the requirements for a newly constructed building.

15.05.130 – Section 903.2.20.3 Additions–Commercial. Section 903.2.20.3 is added to read as follows: Additions to existing commercial buildings that increase the total square footage of existing floor area by 25% or greater shall meet the requirements for a newly constructed building. All additions to commercial buildings with an existing approved automatic sprinkler system shall be required to extend the sprinklers into the addition.

Additions to existing Group R-1 occupancies that result in additional guest room(s) shall meet the requirements for a newly constructed building.

15.05.140 – Section 903.2.20.4 Remodels, Alterations, or Repairs. Section 903.2.20.4 is added to read as follows: For remodels, alterations or repairs to an existing building involving demolition, removal or repair which meets the definition of a Substantial Remodel, the building shall meet the automatic fire sprinkler requirements for a newly constructed building.

Exceptions:

1. Alterations or additions made solely for the purpose of complying with the Americans with Disabilities Act.
2. Whenever there are practical difficulties involved, the Fire Code Official shall have the authority to grant modifications in individual cases provided the modifications do not lessen the health, life, and fire safety requirements as permitted in Section 104.8 of the Fire Code.
3. Additions or repairs solely for the purpose of seismic retrofit.

15.05.150 – Section 903.2.20.5 Changes in Occupancy. Section 903.2.20.5 is added to read as follows: When any change of occupancy occurs where the proposed new occupancy classification is more hazardous based on fire and life safety risks as determined by the Fire Code Official, including, but not limited to, the conversion of residential buildings to condominiums, the building shall meet the requirements for a newly constructed building.

15.05.160 – Section 903.2.20.6 Elevation of Existing Buildings. Section 903.2.20.6 is added to read as follows: An automatic fire extinguishing system shall be installed throughout all existing buildings when the building is elevated to: three or more stories, or more than 35 feet in height, from grade to the exposed roof.

Exceptions: An automatic fire-extinguishing system need not be provided when the area above 35 feet is provided for aesthetic purposes only and is a non-habitable space.

15.05.170 – Section 903.2.20.7 Residential Sprinkler Pressure Relief. Section 903.2.20.7 is added to read as follows: Residential fire sprinkler systems must have an NFPA 13D approved pressure relief valve when static pressures are greater than 80 psi.

15.05.180 – Section 903.2.20.8 Residential Freeze Protection. Section 903.2.20.8 is added to read as follows: Residential fire sprinkler systems shall have adequate freeze protection to address outside temperatures below 40 degrees Fahrenheit. This can be achieved by insulating coverings or other reliable means of maintaining a minimum temperature of 40 degrees Fahrenheit.

15.05.190 – Section 903.3 Installation Requirements. Section 903.3 is amended to read as follows: Sprinkler systems shall be designed and installed in accordance with NFPA 13, NFPA 13R, if approved by the Fire Code Official, and NFPA 13D,

15.05.200 – Section 903.3.1 Standards - Design Criteria. Section 903.3.1 is amended to read as follows: Fire sprinkler systems installed in buildings of an undetermined use shall be designed and installed to have a design density of .33 gallons per minute per square foot over a minimum design area of 3,000 square feet. Where a subsequent occupancy change requires a system with greater capacity, it shall be the building owner's responsibility to upgrade the system to the required density.

15.05.210 – Section 903.3.7 Fire Department Connections. Section 903.3.7 is amended to read as follows: The location of the fire department connections (FDC's) shall be approved by the Fire Code Official. Approved locking caps shall be provided on all newly installed FDC's and on any existing FDC's found to be vandalized.

15.05.220 – Section 903.4 Sprinkler System Supervision and Alarms. Section 903.4 is amended to read as follows: Except for Group R, Division 3 Occupancies, all valves controlling the water supply for automatic sprinkler systems, and associated pumps, tanks, water levels and water flow switches shall be electronically supervised.

15.05.230 – Section 903.4.1 Monitoring. Section 903.4.1 is amended to read as follows: Alarm, supervisory and trouble signals shall be distinctly different and shall be automatically transmitted to an approved central station, remote supervising station, or proprietary supervising station as defined in NFPA 72 or, when approved by the Fire Code Official, shall sound an audible alarm at a constantly attended location. Exception to remain.

15.05.240 – Section 903.4.2 Alarms. Section 903.4.2 is amended to read as follows: One exterior approved audible and visual sprinkler water flow alarm device shall be connected to every automatic fire sprinkler system in an approved location. Such device shall be activated by water flow equivalent to the flow of a single sprinkler of the smallest orifice size installed in the system. Where a building fire alarm system is installed, actuation of the automatic fire sprinkler system shall also actuate the building fire alarm system.

Every new commercial fire alarm system installed as a sprinkler system monitoring alarm shall also provide notification for the purpose of initiating emergency action, including those systems activated solely by the fire sprinkler systems, so that occupants of the building shall be notified audibly and visually within each suite or building division. A minimum of one notification appliance shall be located in each suite or building division in an occupied location.

15.05.250 – Section 905.3.1 Building Height. Section 905.3.1 is amended to read as follows: Standpipes shall be installed in buildings three stories or more in height, with approved outlets on each floor above or below grade and the roof. Said outlets may be connected to the building's fire sprinkler system.

15.05.260 – Section 905.9 Valve Supervision. Section 905.9 (Exception 2) is deleted.

15.05.270 – Section 907.2.8.1 Manual Fire Alarm Systems. Section 907.2.8.1 (Exception 2.2) is amended to read as follows: 2.2 Notification devices installed in the common areas serving the residential units shall operate upon sprinkler water flow or manual station activation.

15.05.280 – Section 1505.1 General - Roof Covering Materials. Section 1505.1 is added to read as follows: Regardless of other provisions of this chapter, the roof covering or roofing assembly on any structure within the City of Cloverdale shall be not less than Class "A" fire rated as classified in ASTM E 108 or UL 790. This requirement shall apply to all new structures and every existing structure when 25 percent or more of the total roof area is re-roofed within a one-year period. Roofing shall be secured or fastened to the supporting roof construction and shall provide weather protection for the building at the roof.

15.05.290 – Section 1512.1 Solar Photovoltaic Panels/Modules. Section 1512.1 is added to read as follows: Roof mounted photovoltaic panels/modules shall comply with the requirements of the California Building Code as amended, California Electrical Code, the California Fire Code as amended and the City of Cloverdale Fire Department Standards for installation of Photovoltaic Power Systems.

15.05.300 – Section 1612.3 Establishment of Flood Hazard Areas. Section 1612.3 is amended as follows: "Insert Name of Jurisdiction" is hereby deleted and replaced with "The City of Cloverdale." "Insert Date of Issuance" is hereby deleted and replaced with, "December 2, 2008."

Chapter 15.06

CALIFORNIA RESIDENTIAL BUILDING CODE

Sections:

15.06.010	Adoption and Citation
15.06.015	Section 1.8.4.2 Fees Chapter One Division I and Section R108 Fees Chapter One Division II.
15.06.020	Section R105.2 – Work Exempt from Permit Building #1: (Exception)
15.06.030	Section R202 – Definitions – New Construction added
15.06.031	Section R202 – Definitions – Alteration of Floor Area added
15.06.032	Section R202 – Definitions – Substantial Remodel added
15.06.033	Section R202 – Definitions – Substantial Addition added
15.06.040	Section R313.2 – One and Two Family Dwelling Automatic Fire System
15.06.050	Section R313.2.1.1 – Other Occupancies
15.06.060	Section R313.2.2 – Additions - Residential
15.06.070	Section R313.2.3 – Remodels, Alterations, and/or Repairs
15.06.080	Section R313.4 – Residential Sprinkler Pressure Relief
15.07.090	Section R313.5 – Residential Freeze Protection
15.06.100	Section R319 – Site Address
15.06.110	Section R337.2 – Definitions
15.06.120	Section R337.1.5.1 – Defensible Space
15.06.130	Section R404.1.1.1– Foundations and Retaining Walls
15.06.140	Section R902.1 – Roof Covering Materials
15.06.150	Section R907.1 – Solar Photovoltaic Panels/Modules
15.06.160	Section R350 – Limited Cultivation of Medical Marijuana

15.06.010 – Adoption and Citation. The California Residential Building Code, 2016 edition, including tables and appendix "H", as set forth in Part 2.5 of Title 24 of the California Code of Regulations is hereby adopted by reference in its entirety by the City, as amended herein, except that for purposes of citation, said code shall be renumbered by adding "15.06" before the sections of the California Residential Building Code.

15.06.015 – Section 1.8.4.2 Fees of Chapter One Division I and Section R108 Fees of Chapter One Division II. Sections 1.8.4.2 of Chapter One Division I and Section R108 of Chapter One Division II are deleted in their entirety and replaced to read as follow: Permit fees, Plan Review fees, and Investigation fees shall be assessed as provided in Cloverdale Municipal Code Chapter 15.02. The provisions of Cloverdale Municipal Code section 15.02.050, Expiration of Plan Review Applications, shall be applicable to plans submitted pursuant to this chapter.

15.06.020 – Section R105.2 Work Exempt from Permit Building: #1 (Exception). Section R105.2 Building #1: (Exception 1) is added to read as follows: One story detached accessory structures used as tool sheds, playhouses, and similar uses, whose floor area is less than 120 square feet that contain plumbing and electrical installations are not exempt from the permit requirements.

15.06.030 – Section R202 Definitions. Section R202 is amended to add a definition for "New Construction" to read as follows: NEW CONSTRUCTION: "For the purposes of enforcing the provisions of the California Fire Code, California Building Code, and the California Residential Building Code, any work, addition to, remodel, repair, renovation, or alteration of any building(s) or structure(s) may be defined as "New Construction" when 50 percent or more of the exterior weight bearing walls are removed or demolished".

15.06.031 – Section R202 Definitions. Section R202 is amended to add a definition for "Alteration of Floor Area" to read as follows: ALTERATION OF FLOOR AREA: "For the purpose of this definition, the following criteria shall be considered in determining the percentage of "alteration of floor area." The 50% referred to under "Substantial Remodel" applies to the entire building's gross floor area in plan view. The entire room or space where the remodel is taking place will be considered in the calculation, either alone or in combination with any of the following:

a. Removing wall finishes and exposing framing of;
   - Interior wall (where finishes are removed from one side only the room or space to which the framing is exposed will be included in the calculation).
   - Perimeter exterior wall (one or both sides).

b. New wall construction, removing, or repositioning, either interior or perimeter exterior walls, the rooms or spaces on both sides of the wall will be included in the calculation.

c. Removal of the ceiling in any room or space to expose rafters, trusses, beams, purlins, or floor joists.

d. Removal of the roof structure (only rooms or spaces that are directly below the removed roof structure will be included in the calculation).

e. Removal of floor finishes which exposes floor framing and/or removal of concrete slab.

f. Relocating plumbing fixtures in a bathroom or kitchen will cause that entire room or space to be included in the calculation.

g. Other alterations considered substantial by the Fire Code Official (see DSA-AC definition of "Alteration" in the 2016 California Building Code).

15.06.032 – Section R202 Definitions. Section R202 is amended to add a definition for "Substantial Remodel" to read as follows: SUBSTANTIAL REMODEL: "In all existing buildings or structures, any alteration of floor area that is greater than fifty percent (50%) of the existing gross floor area."

15.06.033 – Section R202 Definitions. Section R202 is amended to add a definition for "Substantial Addition, Group R-3" to read as follows: SUBSTANTIAL ADDITION, GROUP R-3: "In all existing Group R-3 buildings or structures, any addition of floor area that exceeds fifty percent (50%) of the existing gross floor area."

15.06.040 – Section R313.2 One and Two Family Dwelling Automatic Fire System. Section R313.2 is amended to read as follows: An automatic sprinkler system shall be installed and maintained in all newly constructed California Residential Code regulated buildings.

Exceptions:

1. Detached Group U occupancies 1,000 sq. ft. or less. Agricultural buildings and private riding arenas as approved by the fire or building code official.
2. Detached pool houses up to 1,000 sq. ft. in floor area within 50 feet of the pool and limited to a single bathroom.
3. Detached Car Ports of non-combustible construction with no habitable space above.

15.06.050 – Section R313.2.1.1 Other Occupancies. Section R313.2.1.1 is added to read as follows: Group S occupancies located on private residential zoned parcels shall be designed to NPFA 13D as approved by the Fire Code Official.

15.06.060 – Section R313.2.2 Additions – Residential. Section R313.2.2 is added to read as follows: Additions to any existing California Residential Building Code regulated buildings that meet the definition of "Substantial Addition" shall meet the requirements for a newly constructed building. All additions to any existing California Residential Building Code regulated building with an existing automatic sprinkler system regardless of size shall be required to extend the sprinkler system into the addition per Section R313.2.

15.06.070 – Section R313.2.3 Remodels, Alterations, or Repairs. Section R313.2.3 is added to read as follows: For remodels, alterations, or repairs to an existing California Residential Building Code regulated building involving demolition, alterations, or repair which meets the definition of a Substantial Remodel, the building shall meet the requirements for a newly constructed building.

Exceptions:

1. Alterations or additions made solely for the purpose of complying with the Americans with Disabilities Act.
2. Whenever there are practical difficulties involved, the Fire Code Official shall have the authority to grant modifications in individual cases provided

the modifications do not lessen the health, life, and fire safety requirements as permitted in Section 104.8 of the Fire Code.

3. Additions or repairs solely for the purpose of seismic retrofit.

15.06.080 – Section R313.4 Residential Sprinkler Pressure Relief. Section R313.4 is added to read as follows: Residential fire sprinkler systems must have an NFPA 13D approved pressure relief valve when static pressures are greater than 80 psi.

15.06.090 – Section R313.5 Residential Freeze Protection. Section R313.5 is added to read as follows: Residential fire sprinkler systems shall have adequate freeze protection to address outside temperatures below 40 degrees Fahrenheit. This can be achieved by insulating coverings or other reliable means of maintaining a minimum temperature of 40 degrees Fahrenheit.

15.06.100 – Section R319 Site Address. Section R319 is deleted in its entirety and amended to read as follows: New buildings under the scope of the California Residential Code shall have approved illuminated address numbers or building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall be in contrasting color with their background. Address numbers shall be Arabic numerals or alphabetical letters. Numbers shall not be spelled out. Where it is impractical to install illuminated numbers due to long driveways or other circumstances, approved reflective numbers with those properties listed above may be installed at the intersection of the driveway and road fronting the parcel. For existing properties, any additions, alterations or other work requiring a permit with a valuation over $20,000, approved numbers or addresses shall be installed. Numbers for buildings under the scope of the California Residential Code shall be a minimum of 4 inches high with a minimum stroke width of 0.5 inches. Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole, or other sign or means shall be used to identify the structure.

15.06.110 – Section R337.2 Definitions. Section R337.2, definition of Wildland-Urban Interface Fire Area is amended to read as follows: Wildland-Urban Interface Fire Area is a geographical area located within any Moderate, High or Very High Fire Severity Zone as recommended by the CDF Director pursuant to Public Resource Code Sections 4201—4204 and Government Code Sections 51175—51189, in a Very High Fire Severity Zone as identified in the Local Responsibility Area (LRA) as recommended by the CDF Director, or as conditioned by Cloverdale Development Requirements.

15.06.120 – Section R337.1.5.1 Defensible Space. Section R337.1.5.1 is added to read as follows: Buildings and structures located within any Moderate, High or Very High Fire Severity Zone as designated by the CDF Director or in a Very High or High Fire Severity Zone as identified by the Cloverdale General Plan shall maintain a defensible space as outlined in Government Code sections 51175-51189 and the fire department's "Construction and Defensible Space Standard within Designated Fire Severity Zones" document.

15.06.130 – Section R404.1.1.1 Foundation and Retaining Walls. Section R404.1.1.1 is added to read as follows: Concrete and masonry foundation walls and retaining walls with a height of four (4) feet measured from the bottom of the footing shall have the construction documents approved and stamped by a California licensed architect or engineer. Where applicable, the design parameters in this chapter may be used.

15.06.140 – Section R902.1 Roof Covering Materials. Section R902.1 is added to read as follows: Regardless of other provisions of this chapter, the roof covering or roofing assembly on any structure within the City of Cloverdale shall be not less than Class "A" fire rated as classified in ASTM E 108 or UL 790. This requirement shall apply to all new structures and every existing structure when 25 percent or more of the total roof area is re-roofed within a one-year period. Roofing shall be secured or fastened to the supporting roof construction and shall provide weather protection for the building at the roof.

15.06.150 – Section R907.1 Solar Photovoltaic Panels/Modules. Section R907.1 is amended to read as follows: Rooftop mounted photovoltaic panels/modules shall comply with the requirements of this section, Section R324, California Electrical Code, the California Fire Code as amended and the City of Cloverdale Fire Department Standards for installation of Photovoltaic Power Systems.

15.06.130 – Section R350 Limited Cultivation of Marijuana. Section R350 is added to read as follows: Limited cultivation of marijuana as only allowed in detached structures shall be considered a U occupancy and shall be in accordance with the City of Cloverdale's Municipal Code section 18.09.300. Permit application and plan submittal is required.

Chapter 15.07

CALIFORNIA ELECTRICAL CODE

Sections:

15.07.10 Adoption and Citation
15.07.20 Section 89.108.4.2 Fees

15.07.10 – Adoption and Citation. The California Electrical Code, 2016 edition, including tables and appendices “A”, “B”, “C”, “F”, and “G”, as set forth in Part 3 of Title 24 of the California Code of Regulations is hereby adopted by reference in its entirety by the City as amended herein, except that for purposes of citation, said code shall be renumbered by adding "15.07" before the sections of the California Electrical Code.

15.07.20 - Section 89.108.4.2 Fees. Section 89.108.4.2 is deleted in its entirety and replaced to read as follows: Permit fees, Plan Review fees, and Investigation fees shall be assessed as provided in Cloverdale Municipal Code Chapter 15.02. The provisions of Cloverdale Municipal Code section 15.02.050, Expiration of Plan Review Applications, shall be applicable to plans submitted pursuant to this chapter.

Chapter 15.08

CALIFORNIA MECHANICAL CODE

Sections :

15.08.010 Adoption and Citation

15.08.020 Section 1.8.4.2 Fees Chapter One Division I and Sections 104.3.2 through 104.4, Sections 104.5 through 104.5.2 Fees Chapter One Division II

15.08.010 – Adoption and Citation. The California Mechanical Code, 2016 edition, including tables, as set forth in Part 4 of Title 24 of the California Code of Regulations, is hereby adopted by reference in its entirety by the City, as amended herein, except that for purposes of citation, said code shall be renumbered by adding "15.08" before the sections of the California Mechanical Code.

15.08.020 – Section 1.8.4.2 Fees of Chapter One Division I and Section 104.3.2 through 104.4, Sections 104.5 through 104.5.2 Fees of Chapter One Division II. Sections 1.8.4.2 of Chapter One Division I and Sections 104.3.2 through 104.4, Sections 104.5 through 104.5.2 of Chapter One Division II shall be deleted in their entirety and replaced to read as follows: Permit fees, Plan Review fees, and Investigation fees shall be assessed as provided in Cloverdale Municipal Code Chapter 15.02. The provisions of Cloverdale Municipal Code section 15.02.050, Expiration of Plan Review Applications, shall be applicable to plans submitted pursuant to this chapter.

Chapter 15.09

CALIFORNIA PLUMBING CODE

Sections :

15.09.010 Adoption and Citation
15.09.020 Section 1.8.4.2 Fees Chapter One Division I and Section 104.3.2, 104.3.3, and 104.5 through 104.5.2 Fees Chapter One Division II

15.09.010 – Adoption and Citation. The California Plumbing Code, 2016 edition, including tables and appendices "A", "B", "D", and "I", as set forth in Part 5 of Title 24 of the California Code of Regulations, is hereby adopted by reference in its entirety by the City, as amended herein, except that for purposes of citation, said code shall be renumbered by adding "15.09" before the sections of the California Plumbing Code.

15.09.020 – Section 1.8.4.2 Fees of Chapter One Division I and Section 104.3.2, 104.3.3 and 104.5 through 104.5.2 Fees of Chapter One Division II. Sections 1.8.4.2 of Chapter One Division I and Section 104.3.2, 104.3.3, and 104.5 through 104.5.2 of Chapter One Division II are deleted in their entirety and replaced to read as follows: Permit fees, Plan Review fees, and Investigation fees shall be assessed as provided in Cloverdale Municipal Code Chapter 15.02. The provisions of Cloverdale Municipal Code section 15.02.050, Expiration of Plan Review Applications, shall be applicable to plans submitted pursuant to this chapter.

Chapter 15.10

CALIFORNIA ENERGY CODE

Sections:

15.10.10 Adoption and Citation

15.10.10 – Adoption and Citation. The California Energy Code, 2016 edition, including tables and appendix "1-A", as set forth in Part 6 of Title 24 of the California Code of Regulations, is hereby adopted by reference in its entirety by the City, except that for purposes of citation, said code shall be renumbered by adding "15.10" before the sections of the California Energy Code.

Chapter 15.12

CALIFORNIA HISTORICAL BUILDING CODE

Sections:

15.12.010 Adoption and Citation

15.12.010 – Adoption and Citation. The California Historical Building Code, 2016 edition, including tables and appendix "A" as set forth in Part 8 of Title 24 of the California Code of Regulations, is adopted by reference in its entirety by the City, except that for purposes of citation, said code shall be renumbered by adding "15.12" before the sections of the California Historical Building Code.

Chapter 15.13

INTERNATIONAL CODE COUNCIL PROPERTY MAINTENANCE CODE

Sections :

15.13.010	Adoption and Citation
15.13.020	Section 102.3 - Applications of Other Codes
15.13.030	Section 103.5 - Fees
15.13.040	Section 303.2 - Enclosures
15.13.050	Section 304.3 - Premises Identification
15.13.060	Section 304.3.1 - Numbers for One and Two Family Dwellings
15.13.070	Section 304.3.2 - Numbers for Other than One and Two Family Dwellings
15.13.080	Section 307.1 – General
15.13.090	Conflicts

15.13.010 – Adoption and Citation. The International Code Council Property Management Code, 2015 edition is hereby adopted by reference in its entirety by the City, as amended herein, except that for purposes of citation, said code shall be re-numbered by adding "15.13" before the sections of the International Code Council Property Management Code.

15.13.020 – Section 102.3 Application of Other Codes. Section 102.3 is amended to read as follows: Repairs, additions, or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the 2016 California Title 24 Codes as adopted by the City of Cloverdale.

15.13.030 – Section 103.5 Fees. Section 103.5 is amended to read as follows: Permit fees, Plan Review fees, and Investigation fees shall be assessed as provided in Cloverdale Municipal Code Chapter 15.02.

15.13.040 – Section 303.2 Enclosures. Section 303.2 is amended to read as follows: Enclosures for private swimming pools, hot tubs, and spas shall be maintained as provided in Section 3109 of the 2016 California Building Code. Enclosures for public swimming pools, hot tubs, and spas shall be maintained as provided in Section 3118B of the 2016 California Building Code. No existing pool enclosure shall be removed or changed in a manner that reduces its effectiveness as a safety barrier. Replaced pool enclosures shall be in compliance with the current requirements of the 2016 California Building Code.

15.13.050 – Section 304.3 Premises Identification. Section 304.3 is deleted in its entirety and replaced to read as follows: New buildings and tenant spaces shall have approved illuminated address numbers or building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall be in contrasting color with their background. Address numbers shall be Arabic numerals or alphabetical letters. Numbers shall not be spelled out. Where it is impractical to install illuminated numbers due to long driveways or other circumstances, approved reflective numbers with those properties listed above may be installed at the intersection of the driveway and road fronting the parcel. For existing properties, any additions, alterations or other work requiring a permit with a valuation over $20,000, approved numbers or addresses shall be installed.

15.13.060 – Section 304.3.1 Numbers for One and Two Family Dwellings. Section 304.3.1 is added to read as follows: Numbers for one and two- family dwellings shall be a minimum of 4 inches high with a minimum stroke width of 0.5 inches. Numbers shall not be spelled out. Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole, or other sign or means shall be used to identify the structure.

15.13.070 – Section 304.3.2 Numbers for Other that One and Two Family Dwellings. Section 304.3.2 as added to read as follows: Numbers for other than one and two-family dwellings shall be a minimum of 12 inches high with a minimum stroke width of 1 inch. Numbers shall not be spelled out. Suite numbers for other than one and two-family dwellings shall be a minimum of 6 inches high with a minimum stroke width of 0.5 inches.

Exception: These requirements may be modified with the approval of the Fire Code Official.

15.13.080 – Section 307.1 General. Section 307.1 is deleted in its entirety and replaced to read as follows: Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition. The remodel or replacement of handrails and guard rails shall comply with the requirements specified in Sections 1014 and 1015 of the California Building Code.

15.13.090 - Conflicts. In the event of any conflicts between this Code and the provisions and requirements of the adopted California Title 24 Codes (Part 1 through Part 12) adopted in this title, the provisions of the adopted California Title 24 Codes (Part 1 through Part 12) shall apply.

Chapter 15.14

CALIFORNIA FIRE CODE

Sections:

15.14.010 Adoption and Citation
15.14.020 Section 101.1 - Division II - Title
15.14.030 Section 102.3 - Change in Use or Occupancy
15.14.040 Section 102.7.3 - Supplemental Rules, Regulations, and Standards
15.14.050 Section 104.3 - Right of Entry
15.14.060 Section 104.11.4 - Charges
15.14.070 Section 105.2 - Application for Permit: Fees
15.14.080 Section 109.4 - Violation Penalties
15.14.090 Section 111.4 - Failure to Comply
15.14.100 Section 202 – Definitions added
15.14.110 Section 202 – Definitions amended
15.14.120 Section 401.3.2.1 – Unwarranted Alarm Notification
15.14.130 Section 402.1 - Definitions
15.14.140 Section 503.1.1 - Building and Facilities
15.14.150 Section 503.2.1 - Dimensions
15.14.160 Section 503.2.3 - Surface
15.14.170 Section 503.2.4 - Turning Radius
15.14.180 Section 503.2.6 - Bridges and Elevated Surfaces
15.14.190 Section 503.2.6.1 - Evaluation
15.14.200 Section 503.2.6.2 - Bridge Maintenance
15.14.210 Section 503.2.7 - Grade
15.14.220 Section 503.4 - Obstruction of Fire Apparatus Access Roads
15.14.230 Section 505.1 - Address Identification
15.14.240 Section 505.1.1 – Numbers for One and Two Family Dwellings
15.14.250 Section 505.1.2 - Numbers for Other than One and Two Family Dwellings
15.14.260 Section 505.1.3 – Complex Directory
15.14.270 Section 506.1 - Key Boxes
15.14.280 Section 507.5 - Fire Hydrant Systems
15.14.290 Section 507.5.1 - Where Required
15.14.300 Section 507.5.1 - Exception Deletion
15.14.310 Section 507.5.1.1 – Hydrant for Fire Department Connection
15.14.320 Section 507.5.7 – Fire Hydrant Street Marker
15.14.330 Section 510.1 - Emergency Responder Radio Coverage in Buildings
15.14.340 Section 510.1 - Exception 1 Deletion
15.14.350 Section 510.3 - Section Deletion
15.14.360 Section 605.11 - Solar Photovoltaic Systems
15.14.370 Section 901.7.7 - Problematic and Unreliable Fire Alarms
15.14.380 Section 902.1 - Definitions
15.14.390 Section 903.2 - Where Required
15.14.400 Section 903.2.1 – Group A
15.14.405 Section 903.2.1.1 thru 903.2.1.5 – Section Deletions
15.14.410 Section 903.2.1.6 – Assembly occupancies on Roofs
15.14.415 Section 903.2.1.7 – Section Deletion
15.14.420 Section 903.2.2 - Ambulatory Care Facilities
15.14.425 Section 903.2.3 – Group E
15.14.430 Section 903.2.4 – Group F
15.14.435 Section 903.2.4.1 – Section Deletion
15.14.440 Section 903.2.5.3 – Pyroxylin Plastics
15.14.445 Section 903.2.6.1 – Group I-2
15,14,450 Section 903.2.6.2 – Group I-3
15.14.455 Section 903.2.7 – Group M

15.14.460	Section 903.2.8.1 – Group R-3
15.14.465	Section 903.2.9 – Group S
15.14.470	Section 903.2.9.1 through 903.2.9.2 – Section Deletions
15.14.475	Section 903.2.10 – Group S2 Enclosed Parking Garages
15.14.480	Section 903.2.10.1 – Section Deletion
15.14.485	Section 903.2.11 – Specific Building Areas and Hazards
15.14.490	Section 903.2.11.3 – Exceptions Deletions
15.14.495	Section 903.2.11.7 Undetermined Use Design
15.14.500	Section 903.2.11.8 – High Pile Storage
15.14.505	Section 903.2.20 - Local Fire Sprinkler System Requirements
15.14.510	Section 903.2.20.1 - System – Requirements
15.14.5150	Section 903.2.20.2 - Additions – Residential
15.14.520	Section 903.2.20.3 - Additions – Commercial
15.14.525	Section 903.2.20.4 - Remodels, Alterations, or Repairs
15.14.530	Section 903.2.20.5 - Changes in Occupancy
15.14.535	Section 903.2.20.6 – Elevation of Existing Buildings
15.14.540	Section 903.2.20.7 – Residential Sprinkler Pressure Relief
15.14.545	Section 903.2.20.8 – Residential Freeze Protection
15.14.550	Section 903.3 – Installation Requirements
15.14.555	Section 903.3.1 – Standards
15.14.560	Section 903.3.7 – Fire Department Connections
15.14.565	Section 903.4 – Sprinkler System Supervision and Alarms
15.14.570	Section 903.4.1 - Monitoring
15.14.575	Section 903.4.2 - Alarms
15.14.580	Section 903.6 – Where Required in Existing Buildings and Structures
15.14.585	Section 903.6.1 – Substantial Remodel
15.14.590	Section 903.6.2 – Substantial Addition
15.14.595	Section 903.6.3 – Substantial Alterations
15.14.600	Section 904.12 – Commercial Cooking Systems
15.14.605	Section 905.3.1 - Standpipe Systems Building Height
15.14.610	Section 905.9 - Valve Supervision
15.14.615	Section 907.2.8.1 - Group R-1Fire Alarm Systems
15.14.620	Section 912.2 – Location
15.14.625	Section 1103.1 – Required Construction
15.14.630	Section 1103.2 – Emergency Responder Radio Coverage in Existing Buildings
15.14.635	Sections 1103.3 through 1103.5.4 – Section Deletions
15.14.640	Section 1104 – Section Deletion
15.14.645	Section 1105 – Section Deletion
15.14.650	Section 3102.1 Definitions
15.14.655	Section 3314.3 – Where Required
15.14.660	Section 3314.5 Detailed Requirements
15.14.665	Section 4902.1 - Definitions
15.14.670	Section 4906.2 - Application
15.14.675	Section 4907 - Defensible Space
15.14.680	Section 5001.5.3 - Electronic Reporting
15.14.685	Section 5003.3.1 - Unauthorized Discharges
15.14.690	Section 5806.2 – Geographical Limits
15.14.695	Section 5608.3 – Prohibition of Fireworks
15.14.700	Section 5704.2.9.6.1 – Locations where above ground tanks are prohibited
15.14.705	Section 5706.2.4.4 – Locations where above ground tanks are prohibited
15.14.710	Section 5806.2 – Limitations
15.14.715	Section 6104.2 – Maximum capacity within established limits
15.14.720	Chapter 80 Referenced Standards NFPA 13D-16
15.14.725	Chapter 80 Referenced Standards NFPA 13R-16
15.14.730	Chapter 80 Referenced Standards NFPA 72-16
15.14.735	Section A101 - Appendix A-Appeals of Fireworks Booth Sales Permits

15.14.740	Section B105.1 - Appendix B - One and Two Family Dwellings
15.14.745	Section B105.2 - Appendix B - Buildings Other than One and Two Family Dwellings
15.14.750	Appendix Table B105.1(1)
15.14.755	Appendix Table B105.2
15.14.760	Section C103.1 – Hydrant Spacing
15.14.765	Section C103.2 – Average Spacing
15.14.770	Section C103.3 – Maximum Spacing
15.14.775	Table C102.1 & C105.1 - Appendix C - Footnote Additions
15.14.780	Section D103.1 – Access Road Width with a Hydrant
15.14.785	Section D103.2 - Appendix D - Grade
15.14.790	Section D103.3 - Appendix D - Turning Radius
15.14.795	Section D103.4.1 - Appendix D - Dead End Roads
15.14.800	Table D103.4 - Appendix D - Deleted
15.14.805	Section D103.6 - Appendix D – Signs
15.14.810	Section D103.6.1 – Section Deleted
15.14.815	Section D103.6.2 – Section Deleted
15.14.820	Section D104.2 - Appendix D - Buildings Exceeding 62,000 Square Feet in Area
15.14.825	Section D106.1 - Appendix D - Projects Having More than 50 Dwelling Units (Exception)
15.14.830	Section D106.2 - Appendix D – Section Deletion
15.14.835	Section D107.1 - Appendix D - One and Two Family Residential Developments
15.14.840	Section D107.1 - Appendix D - Exception Deletion

15.14.010 – Adoption and Citation. The California Fire Code, 2016 Edition, with appendices Chapter 4, B, C, D, E, F, G, H, I, J, and K and standards, as set forth in Title 9 of Title 24 of the California Code of Regulations, is hereby adopted by reference in its entirety by the City, as amended herein, except that for purposes of citation, said code shall be renumbered by adding "15.14" before the sections of the California Fire Code.

15.14.020 – Section 101.1 Division II - Title. Section 101.1 is amended to read as follows: These regulations shall be known as the Fire Code of the City of Cloverdale, hereinafter referred to as "this code."

15.14.030 – Section 102.3 Change of use or occupancy. Section 102.3 is amended to read as follows: No change shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure is made to comply with the requirements of this code and the California Building Code as adopted by the City of Cloverdale City Council (City Council). Subject to the approval of the Fire Code Official, the use or occupancy of an existing structure shall be allowed to be changed and the structure is allowed to be occupied for purposes in other groups without conforming to all the requirements of this code and the California Building Code as adopted by the City Council for those groups, provided the new or proposed use is less hazardous, based on fire and life safety risks, than the existing use.

15.14.040 – Section 102.7.3 Supplemental rules, regulations and standards. Section 102.7.3 is added to read as follows: The Fire Code Official is authorized to render interpretations of this code and to make and enforce rules and supplemental regulations and to develop Fire Prevention Standards to carry out the application and intent of its provisions.

15.14.050 – Section 104.3 Right of Entry. Section 104.3 is amended to read as follows:

A. The Fire Code Official or his authorized representative, in the performance of duties herein prescribed, shall have the right to enter upon and into any and all premises under his jurisdiction, at all reasonable hours for the purpose of inspecting the same to determine whether or not the provisions of this code and all applicable laws or ordinances pertaining to the protection of persons and property from fire, explosion or exposure to hazardous materials are observed therein. Provided, however, that an inspection warrant, issued pursuant to Title 13, Part 3 of the Code of Civil Procedure shall be first secured where entry is

refused, except in an emergency situation. No owner, occupant or any other person having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the Fire Code Official or his authorized representative for the purpose of inspection and examination pursuant to this code. Failure to permit such entry shall constitute a misdemeanor.

B. The Fire Code Official and his duly authorized representative shall have the authority to enter any building or premises for the purpose of extinguishment or controlling any fire, performing rescue operations, investigating the existence of suspected or reported fires, gas leaks or other hazardous conditions or taking any other action necessary in the reasonable performance of their duty.

15.14.060 – Section 104.11.4 Charges. Section 104.11.4 is added to read as follows: The expense of securing any emergency that is within the responsibility for enforcement of the Fire Code Official as given in Section 104.11 is a charge against the person who caused the emergency. Damages and expenses incurred by any public agency having jurisdiction or any public agency assisting the agency having jurisdiction shall constitute a debt of such person to the City and shall be collectable by the Fire Code Official for proper distribution in the same manner as in the case of an obligation under an expressed or implied contract. Expenses as stated above shall include, but not be limited to, equipment and personnel committed and any payments required by the public agency to outside business firms requested by the public agency to secure the emergency, monitor remediation and clean up the site.

15.14.070 – Section 105.2 Application for Permit: Fees. Section 105.2 is amended to read as follows: All applications for a permit required by this code shall be made to the Bureau of Fire Prevention or the Unified Program Agency in such form and detail as it shall prescribe. Application for permits shall be accompanied by such plans as required by the Bureau. The City Council may establish fees, by resolution, for permit applications.

15.14.080 – Section 109.4 Violation Penalties. Section 109.4 is amended to read as follows:

A. Every person who violates any provision of this chapter, including any provision of the California Fire Code as amended, shall be guilty of a misdemeanor, punishable by a fine of not more than $1,000.00 and/or by imprisonment for up to six (6) months. A person is guilty of a separate offense for each day during which he/she commits, or continues or permits a violation of said Code, or each time he/she disobeys a valid order of a firefighter or enforcement officer.

B. In addition to any other enforcement remedies available to the City under any applicable state or federal statute, or pursuant to any other lawful power the City may possess, any violation of this chapter may be prosecuted or enforced as a nuisance and enforced by a civil court action as provided in Chapter 1.13 of the Cloverdale Municipal Code or via administrative enforcement as a nuisance pursuant to Cloverdale Municipal Code Chapters 1.10, 1.11, 1.14 and 1.15 as those chapters may be amended from time to time. The City may also prosecute or enforce violations of this chapter as a criminal offense by seeking the appointment of a receiver, or in any other manner provided by law.

C. Administrative citation pursuant to California Health & Safety Code Section 12557. In addition to any other remedies available to the City under any applicable state or federal statute or pursuant to any other lawful power the City may possess, any violation of section 15.14.560 of this chapter may be enforced by administrative citation pursuant to California Health & Safety Code section 12557 when a violation relates to the possession, use, storage, sale and/or display of fireworks classified as dangerous fireworks as defined herein and/or the use of state approved fireworks as defined herein on or at dates, times and/or locations other than those permitted by this section.

1. The imposition of fines related to dangerous fireworks under this section shall be limited to persons who possess, sell, use and/or display, or to the seizure of less than 25 pounds (gross weight) of such dangerous fireworks.

2. Fines collected pursuant to this section shall not be subject to California Health & Safety Code section 12706, which provides that certain fines collected by a court of the state be deposited with, and disbursed by, the County Treasurer. However, the City shall provide cost reimbursement to the State Fire Marshal pursuant to regulations as adopted, or as may be adopted by the State Fire Marshal addressing the State Fire Marshal's cost for the transportation and disposal of dangerous fireworks seized by the City, which costs will be part of any administrative fine imposed. Unless and until such regulations have been adopted by the State of California, the City shall hold in trust $250 or 25% of any fine collected, whichever is greater, to cover the cost reimbursement to the State Fire Marshal for the cost of transportation and disposal of any dangerous fireworks seized by the City.

3. Other than as expressly modified herein, enforcement of violations by administrative citation pursuant to California Health & Safety Code section 12557 shall be subject to the provisions of Cloverdale Municipal Code Chapter 1.14.

15.14.090 – Section 111.4 Failure to Comply. Section 111.4 is amended to read as follows: Any person, who shall continue to work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable for a fine as determined by the City of Cloverdale Municipal Code or State law.

15.14.100 – Section 202 Definitions. Section 202 is amended to add the following definitions:

Alteration of Floor Area. For the purpose of this definition, the following criteria shall be considered in determining the percentage of "alteration of floor area." The 50% referred to under "Substantial Remodel" applies to the entire building's gross floor area in plan view. The entire room or space where the remodel is taking place will be considered in the calculation, either alone or in combination with any of the following:

1. Removing wall finished and exposing framing of:
    a. Interior wall (where finishes are removed from one side only the room or space to which the framing is exposed will be included in the calculation).
    b. Perimeter exterior wall (one or both sides).
2. New wall construction, removing, or repositioning, either interior or perimeter exterior walls. The rooms or spaces on both sides of the wall will be included in the calculation.
3. Removal of the ceiling in any room or space to expose rafters, trusses, beams, purlins, or floor joists. The floor joists must be within a floor/ceiling assembly.
4. Removal of the roof structure (only rooms or spaces that are directly below the removed roof structure will be included in the calculation).
5. In the non-residential portion of multi-tenant buildings, individual tenant space improvements in which the space is reduced to a "shell" condition shall require that the future tenant improvements comply with these fire sprinkler requirements.
6. Other alterations considered substantial by the Fire Code Official (see DSA-AC definition of "Alteration" in the 2016 California Building Code).

Items 7, 8 and 9 are not to be included in the alteration of floor area calculations:

7. Partial removal of wall finishes necessary for repair due to flooding.
8. Removal of floor finishes which exposes floor framing and/or the removal of concrete slab, unless part of a floor/ceiling assembly.
9. Relocating plumbing fixtures in bathrooms and/or kitchen.

Membrane Structure. An air-inflated, air-supported, cable or frame-covered structure as defined by the California Building Code and not otherwise defined as a ten or umbrella structure. See Chapter 31 of the California Building Code.

Substantial Addition. An existing building or structure not classified as Group R-3 occupancy, which undergoes any addition of floor area that is greater than twenty-five percent (25%) of the existing gross floor area.

Substantial Addition, Group R-3. An existing Group R-3 building or structure, which undergoes any addition of floor area that exceeds fifty percent (50%) of the existing gross floor area.

Substantial Remodel. In all existing building or structures, any alteration of floor area that is greater than fifty percent (50%) of the existing gross floor area or meets the definition of a substantial improvement as defined by the California Building Code. (see Alteration of floor area).

Umbrella Structure. A structure, enclosure or shelter with or without sidewalls or drops, constructed of fabric or pliable material supported by a central pole. (See Membrane Structure and Tent).

Unwarranted Alarm. The giving, signaling or transition of an alarm notification to a public fire station or emergency communication center with such alarm is the result of a defective condition of an alarm system, system servicing testing, construction activities, ordinary household activities, false alarm or other cause when no such danger exists.

15.14.110 – Section 202 Definitions. Section 202 definition of "Tent" is amended to read as follows: A structure, enclosure, umbrella structure or shelter with or without sidewalls or drops, constructed of fabric or pliable material supported by any manner except by air or the contents that it protects.

15.14.120 – Section 401.3.2.1 Unwarranted Alarm Notification. Section 401.3.2.1 is added to read as follows: Notification of emergency responders based on an unwarranted alarm may be punishable by a fine in accordance with the adopted fee schedule. In addition, the responsible party may be liable for the operational and administrative costs, incurred from the emergency response or mitigation procedures resulting from an unwarranted alarm notification. The Fire Code Official may determine a fire alarm to be an unwarranted alarm notification upon receipt of more than four (4) false alarms within a twelve-month period. Upon making such a finding, the Fire Code Official may order the following:

1. For any nuisance alarm where the system is not restored, the Fire Code Official may require the system owner to provide standby personnel or take such other measures, as the Fire Code Official deems appropriate. Persons or activities required by the Fire Code Official shall remain in place until a fire department approved fire alarm maintenance firm certifies in writing to the Fire Code Official that the alarm system has been restored to a reliable condition. The Fire Code Official may require such tests, as he deems necessary to demonstrate the adequacy of the system.
2. Upon the fifth (5th) and sixth (6th) nuisance alarms from the alarm system within a twelve (12) month period, the system owner shall pay a mitigation fee to the fire department of $150.00, plus the cost of fire engine response, for each occurrence.
3. Upon the seventh (7th) and eighth (8th) nuisance alarms from the alarm system within a twelve (12) month period, the system owner shall pay a mitigation fee to the fire department of $300.00, plus the cost of fire engine response.
4. Upon the ninth (9th) and following nuisance alarms from the alarm system within a twelve (12) month period, the system owner shall pay a mitigation fee to the fire department of $500.00, plus the cost of fire engine response, for each occurrence.

The responsible party may be liable for additional operational and administrative costs, incurred from the emergency response or mitigation procedures resulting from an unwarranted alarm notification.

15.14.130 – Section 402.1 Definitions. Section 402.1 is amended to add as follows: Unwarranted Alarm.

15.14.140 – Section 503.1.1 Building and Facilities. Section 503.1.1(Exception 1) is amended to read as follows:

Exception:
The building is equipped throughout with an approved automatic sprinkler system installed in accordance with this chapter and City standards.

15.14.150 – Section 503.2.1 Dimensions. Section 503.2.1 is amended to read as follows: Fire apparatus access roads serving four or more parcels (minor/major subdivision) shall have an unobstructed width from curb to curb that is consistent with the Cloverdale General Plan or no less than 20 feet, exclusive of shoulders. Driveways serving three or fewer structures may have the following widths: Three structures, 16 feet; two structures, 12 feet; and one structure, 10 feet and an unobstructed vertical clearance of not less than 13 feet 6 inches. In areas designated as Wildland Urban Interface (WUI) as shown in the Cloverdale General Plan, access roads shall have a flammable vegetation clearance area on each side of the road or driveway of not less than ten (10) feet unless otherwise authorized by the Fire Code Official due to extenuating circumstances.

15.14.160 – Section 503.2.3 Surface. Section 503.2.3 is amended to read as follows: Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather driving capabilities. Roadways or driveways in excess of 15% shall have a concrete surface with a thickness and aggregate base approved by the Fire Code Official and City Engineer.

15.14.170 – Section 503.2.4 Turning Radius. Section 503.2.4 is amended to read as follows: The inside turning radius of a fire apparatus access road shall not be less than 40 feet unless otherwise approved by the Fire Code Official.

15.14.180 – Section 503.2.6 Bridges and Elevated Surfaces. Section 503.2.6 is amended to read as follows: Where a bridge or an elevated surface is part of a fire apparatus access road, the bridge shall be constructed and maintained in accordance with the American Association of State Highway and Transportation Officials (AASHTO) HB-17. Bridges and elevated surfaces shall be designed for a live load sufficient to carry the imposed loads of fire apparatus. Vehicle load limits shall be posted at both entrances to bridges. Where elevated surfaces designed for emergency vehicle use are adjacent to surfaces which are not designed for such use, approved barriers, approved signs or both shall be installed and maintained when required by the Fire Code Official.

15.14.190 – Section 503.2.6.1 Evaluation. Section 503.2.6.1 is added to read as follows: All existing private bridges and elevated surfaces that are part of the fire department access roadway, shall be evaluated by a California licensed civil engineer experienced in structural engineering or a California licensed structural engineer, for the purposes of safety and weight rating, in accordance with American Association of State Highway and Transportation Officials (AASHTO) Manual: “The Manual for Bridge Evaluation”, Second Edition, or other approved standard. Vehicle load limits shall be posted at both entrances to bridges. All bridges and elevated structures providing fire department access shall be routinely maintained in accordance with Section 503.2.6 or when directed by the Fire Code Official or authorized designee.

15.14.200 – Section 503.2.6.2 Bridge Maintenance. Section 503.2.6.2 is added to read as follows: All new and existing private bridges and elevated structures providing emergency access shall be routinely evaluated and maintained in accordance with the American Association of State Highway and Transportation Officials (AASHTO) Manual: ``The Manual for Bridge Evaluation," Second Edition, 2011, published by the American Association of State Highway and Transportation Officials or other approved standard.

15.14.210 – Section 503.2.7 Grade. Section 503.2.7 is amended to read as follows: No road or driveway shall have a maximum grade in excess of fifteen percent (15%) unless approved by the Fire Code Official, which may require additional fire protection measures. To accommodate unusual access constraints, a road or driveway may include grades up to 20% for distances not exceeding three hundred (300) feet.

15.14.220 – Section 503.4 Obstruction of Fire Apparatus Access Roads. Section 503.4 is amended to read as follows: Fire apparatus access roads shall not be obstructed in any manner, including the parking of vehicles. The minimum widths and clearances as established in Section 503.2.1 and 503.2.2 shall be maintained at all times. Vehicles found to be parked in public and private areas identified as Fire Lanes, Hydrant Zones, or any other fire department access way identified by this code may be immediately towed if, in the opinion of the fire or police department, the vehicle would hinder or impede access to the property, area or fire protection device.

15.14.230 – Section 505.1 Address Identification. Section 505.1 is amended to read as follows: New buildings and tenant spaces shall have approved illuminated address numbers or building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall be in contrasting color with their background. Address numbers shall be Arabic numerals or alphabetical letters. Numbers shall not be spelled out. Character size and stroke shall be in accordance with Section 505.1.1 through 505.1.2. Where required by the Fire Code Official, address identification shall be provided in additional approved locations to facilitate emergency response in accordance with this code and Section 505.1.3. Where access is by means of a private road and the building cannot be viewed from the public way or when determined by the Fire Code Official, a monument, pole, or other approved illuminated sign or other approved means shall be used to identify the structure. Address identification shall be maintained. For existing properties, any additions, alterations or other work requiring a permit with a valuation over $20,000, approved numbers or addresses shall be installed.

15.14.240 – Section 505.1.1 Numbers for One and Two Family Dwellings. Section 505.1.1 is added to read as follows: Numbers for one and two- family dwellings shall be a minimum of 4 inches high with a minimum stroke width of 0.5 inches. Numbers shall not be spelled out. Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole, or other sign or means shall be used to identify the structure.

15.14.250 – Section 505.1.2 Numbers for Other than One and Two Family Dwellings. Section 505.1.2 as added to read as follows: Numbers for other than one and two-family dwellings shall be a minimum of 12 inches high with a minimum stroke width of 1 inch. Numbers shall not be spelled out. Suite numbers for other than one and two-family dwellings shall be a minimum of 6 inches high with a minimum stroke width of 0.75 inches.

Exception: These requirements may be modified with the approval of the Fire Code Official.

15.14.260 – Section 505.1.3 Complex Directory. Section 505.1.3 is added to read as follows: Where two or more buildings cannot be viewed from the public way or when determined by the Fire Code Official, an approved illuminated complex directory, monument, pole, or other approved sign or means shall be used to identify the structures at the main entrances to the property.

15.14.270 – Section 506.1 Key Boxes - Where Required. Section 506.1 is amended to read as follows: When access to or within a structure or area is determined to be unduly difficult by the Fire Code Official because of secured openings (doors or gates), or due to the presence of hazardous materials or fire protection systems a key box shall be required to be installed at an accessible location. The key box shall be an approved type and contain those keys necessary to gain access.

15.14.280 – Section 507.5 Fire Hydrant Systems. Section 507.5 is amended to read as follows: Fire hydrant systems shall comply with Sections 507.5.1 through 507.5.6 and Appendix C as amended.

15.14.290 – Section 507.5.1 Where Required. Section 507.5.1 is amended to read as follows: Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 250 feet from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and fire mains shall be provided where required by the Fire Code Official.

15.14.300 – Section 507.5.1 Exception Deletion. Section 507.5.1 (Exception) is deleted.

15.14.310 – Section 507.5.1.1 Hydrant for fire department connection. Section 507.5.1.1 is amended to read as follows: Buildings equipped with a water-based fire protection system installed in accordance with Section 903 through 905 shall have a fire hydrant within fifty (50) feet of a fire department connection (FDC), or as approved by the Fire Code Official. (Also see Section 912.2)

15.14.320 – Section 507.5.7 Fire Hydrant Street Marker. Section 507.5.7 is added to read as follows: Fire hydrant locations shall be visually indicated in accordance with the City of Cloverdale standards or as approved by the Fire Code Official, as may be amended from time to time. Any hydrant marker damaged or removed during the

course of street construction or repair shall be immediately replaced by the contractor, developer or person responsible for removal or damage.

15.14.330 – Section 510.1 Emergency Responder Radio Coverage in Buildings. Section 510.1 is amended to read as follows: All buildings shall have approved radio coverage for emergency responders within the building. The system shall comply with this section and the Fire Department Standard for Emergency Responder Radio Coverage Systems.

15.14.340 – Section 510.1 Exception 1 Deletion. Section 510.1 (Exception 1) is deleted.

15.14.350 – Section 510.3 Section Deletion. Section 510.3 is deleted.

15.14.360 – Section 605.11 Solar Photovoltaic Systems. Section 605.11 is amended to read as follows: Photovoltaic power systems shall be installed in accordance with the requirements of the California Building Code as amended, California Residential Building Code as amended, California Electrical Code, California Fire Code as amended and City of Cloverdale Fire Department Standard for installation of Photovoltaic Power Systems.

15.14.370 – Section 901.7.7 Problematic and Unreliable Fire Alarms. Section 901.7.7 is added to read as follows: The Fire Code Official may determine a fire alarm to be unreliable upon receipt of more than four (4) false alarms within a twelve-month period. Upon making such a finding, the Fire Code Official may order the following:

(a) For any nuisance alarm where the system is not restored, the Fire Code Official may require the system owner to provide standby personnel or take such other measures, as the Fire Code Official deems appropriate. Persons or activities required by the Fire Code Official shall remain in place until a fire department approved fire alarm maintenance firm certifies in writing to the Fire Code Official that the alarm system has been restored to a reliable condition. The Fire Code Official may require such tests as he deems necessary to demonstrate the adequacy of the system.

(b) Upon the fifth (5th) and sixth (6th) nuisance alarms from the alarm system within a twelve (12) month period, the system owner shall pay a mitigation fee to the fire department of $150.00, plus the cost of fire engine response, for each occurrence.

(c) Upon the seventh (7th) and eighth (8th) nuisance alarms from the alarm system within a twelve (12) month period, the system owner shall pay a mitigation fee to the fire department of $300.00, plus the cost of fire engine response.

(d) Upon the ninth (9th) and following nuisance alarms from the alarm system within a twelve (12) month period, the system owner shall pay a mitigation fee to the fire department of $500.00, plus the cost of fire engine response, for each occurrence.

15.14.380 – Section 902.1 Definitions. Section 902.1 is amended to add the following:
Alteration of Floor Area
Substantial Addition
Substantial Addition, Group R-3
Substantial Improvement (See California Building Code, Chapter 2)
Substantial Remodel

15.14.390 – Section 903.2 Where Required. Section 903.2 is amended to read as follows: Approved automatic sprinkler systems in new buildings and structures shall be provided in the locations as described in sections 903.2.1 through 903.2.19. Approved automatic sprinkler systems in existing buildings and structures shall be provided in locations described in Section 903.6. Additional local requirements are described in Section 903.2.20 and may supersede the following requirements. The most restrictive requirement shall apply.

Exceptions:

1. Detached Group U occupancies 1000 sq. ft. or less.

2. Agricultural buildings and private riding arenas as approved by the fire or building code official.
3. Detached pool houses up to 1000 sq. ft. in floor area within 50 feet of the pool and limited to a single bathroom.
4. Detached non-combustible motor vehicle fuel dispensing canopies classified as a Group M occupancy.
5. Detached Car Ports of non-combustible construction with no habitable space above.

15.14.400 – Section 903.2.1 Group A. Section 903.2.1 is amended to read as follows: An automatic sprinkler system shall be provided throughout buildings containing a Group A occupancy.

15.14.405 – Section 903.2.1.1 through 903.2.1.5 Section Deletion. Sections 903.2.1.1 through 903.2.1.5 are deleted.

15.14.410 – Section 903.2.1.6 Assembly Occupancies on Roofs. Section 903.2.1.6 is amended to read as follows: Where an occupied roof has assembly occupancy with an occupant load exceeding 100 for Group A-2 and 300 for other Group A occupancies, an automatic sprinkler system shall be provided throughout the building in accordance with Section 903.3.14.1 or 903.3.1.2.

15.14.415 – Section 903.2.1.7 Section Deletion. Section 903.2.1.7 is deleted.

15.14.420 – Section 903.2.2 Ambulatory Care Facilities. Section 903.2.2 is amended to read as follows: An automatic sprinkler system shall be installed throughout buildings containing an ambulatory care facility.

15.14.425 – Section 903.2.3 Group E. Section 903.2.3 is amended to read as follows: An automatic sprinkler system shall be installed throughout buildings containing Group E occupancy. For public school state-funded construction projects see Section 903.2.19.

15.14.430 – Section 903.2.4 Group F. An automatic sprinkler system shall be provided throughout buildings containing a Group F occupancy.

15.14.435 – Section 903.2.4.1 Section Deletion. Section 903.2.4.1 is deleted.

15.14.440 – Section 903.2.5.3 Pyroxylin Plastics. Section 903.2.5.3 is amended to read as follows: An automatic sprinkler system shall be provided throughout buildings where cellulose nitrate film or pyroxylin plastics are manufactured, stored or handled in quantities exceeding 100 pounds (45 kg).

15.14.445 – Section 903.2.6.1 Group I-2. Section 903.2.6.1 is deleted.

15.14.450 – Section 903.2.6.2 Group I-3. Section 903.2.6.2 is amended to read as follows: Every building where inmates or persons are in custody or restrained shall be protected by an automatic sprinkler system conforming to NFPA 13. The main sprinkler control valve or valves and all other control valves in the system shall be locked in the open position and electronically supervised so that at least an audible and visible alarm will sound at a constantly attended location when valves are closed. The sprinkler branch piping serving cells may be embedded in the concrete construction.

15.14.455 – Section 903.2.7 Group M. Section 903.2.7 is amended to read as follows: An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy where gross floor area exceeds 500 square feet (464 m^2)

15.14.460 – Section 903.2.8.1 Group R-3. Section 903.2.8.1 is amended to read as follows: An automatic sprinkler system installed in accordance with Section 903.3.1.3 shall be provided throughout all newly constructed one – and two family dwellings regardless of square footage in accordance with the City of Cloverdale California Residential Building Code Sections 15.06.040, 15.06.060, and 15.06.070. An automatic sprinkler system shall be installed in all mobile homes, manufactured homes and multi-family manufactured homes with two or more dwelling units in accordance with Title 25 of the California Code of Regulations.

15.14.465 – Section 903.2.9 Group S. Section 903.2.9 is amended to read as follows: An automatic sprinkler system shall be provided throughout all buildings containing a Group S occupancy.

15.14.470 – Sections 903.2.9.1 through 903.2.9.2 Section Deletion. Sections 903.2.9.1 through 903.2.9.2 are deleted.

15.14.475 – Section 903.2.10 Group S2 Enclosed Parking Garages. Section 903.2.10 is deleted in its entirety and replaced with the following: Group B. An automatic sprinkler system shall be provided throughout buildings containing a Group B occupancy where the gross floor area exceeds 500 square feet (464 m^2).

15.14.480 – Section 903.2.10.1 Commercial Parking Garages. Section 903.2.10.1 is deleted.

15.14.485 – Section 903.2.11 Specific Buildings Areas and Hazards. Section 903.2.11 is amended to read as follows: In all occupancies other than detached Group U occupancies not greater than 1,000 square feet (928m^2), an automatic sprinkler system shall be installed for building design or hazards in the locations set forth in Sections 903.2.11 through 903.2.11.8.

15.14.490 – Section 903.2.11.3 Exceptions. Section 903.2.11.3 Exceptions #1 and #2 are deleted.

15.14.495 – Section 903.2.11.7 Undetermined Use Design. Section 903.2.11.7 is added to read as follows: Automatic sprinkler systems installed in buildings or structures of undetermined use shall be designed and installed to have a minimum density of .33 gallons per minute per square foot over a minimum design area of 3,000 square feet (2,784m^2). Where a subsequent occupancy change requires a system with greater capacity, it shall be the building owner's responsibility to upgrade the system to the required density.

15.14.500 – Section 903.2.11.8 High-piled Storage. Section 903.2.11.8 is added to read as follows: An automatic sprinkler system shall be provided throughout as required in Chapter 32 in all buildings where storage is in high-pile or rack storage arrays.

15.14.505 – Section 903.2.20 Local Fire Sprinkler System Requirements. Section 903.2.20 is added to read as follows: Section 903.2.20 Local Fire Sprinkler System Requirements shall be in accordance with Sections 903.2.20.1 through 903.2.20.8.

15.14.510 – Section 903.2.20.1 System Requirements. Section 903.2.20.1 is added to read as follows: An automatic sprinkler system shall be installed and maintained in all newly constructed buildings.

Exceptions:

1. Detached Group U occupancies 1,000 sq. ft. or less. Agricultural buildings and private riding arenas as approved by the fire or building code official.
2. Detached pool houses up to 1,000 sq. ft. in floor area within 50 feet of the pool and limited to a single bathroom.
3. Detached non-combustible motor vehicle fuel dispensing canopies classified as a Group M occupancy and conforming with CBC Section 406.7.
4. Detached Car Ports of non-combustible construction with no habitable space above.
5. Detached Group B or M occupancies 500 sq. ft. or less.

15.14.515 – Section 903.2.20.2 Additions–Residential. Section 903.2.20.2 is added to read as follows: Additions to existing R3 occupancy residential buildings that meet the definition of Substantial Addition, Group R-3 shall meet the requirements for new construction. All additions to all Group R occupancy residential buildings with an existing approved automatic sprinkler system shall be required to extend the sprinkler system into the addition.

Additions to existing Group R-1 occupancies that result in additional guest rooms or guest units shall meet the requirements for a newly constructed building.

15.14.520 – Section 903.2.20.3 Additions–Commercial. Section 903.2.20.3 is added to read as follows: Additions to existing commercial buildings that meet the definition of Substantial Addition shall meet the requirements for a newly constructed building. All additions to commercial buildings with an existing approved automatic sprinkler system shall be required to extend the sprinklers into the addition.

Additions to existing Group R-1 occupancies that result in additional guest rooms or guest units shall meet the requirements for a newly constructed building.

15.14.525 – Section 903.2.20.4 Remodels, Alterations, or Repairs. Section 903.2.20.4 is added to read as follows: For remodels, alterations or repairs to an existing building involving demolition, removal or repair which meets the definition of a Substantial Remodel, the building shall meet the automatic fire sprinkler requirements for a newly constructed building.

Exceptions:

1. Alterations or additions made solely for the purpose of complying with the Americans with Disabilities Act.
2. Whenever there are practical difficulties involved, the Fire Code Official shall have the authority to grant modifications in individual cases provided the modifications do not lessen the health, life, and fire safety requirements as permitted in Section 104.8 of the Fire Code.
3. Additions or repairs solely for the purpose of seismic retrofit.

15.14.530 – Section 903.2.20.5 Changes in Occupancy. Section 903.2.20.5 is added to read as follows: Where any change of occupancy occurs where the proposed new occupancy classification is more hazardous based on fire and life safety risks as determined by the Fire Code Official, including, but not limited to, the conversion of residential buildings to condominiums, the building shall meet the requirements for a newly constructed building.

15.14.535 – Section 903.2.20.6 Elevation of Existing Buildings. Section 903.2.20.6 is added to read as follows: An automatic fire extinguishing system shall be installed throughout all existing buildings when the building is elevated to: three or more stories, or more than 35 feet in height, from grade to the exposed roof.

Exceptions: An automatic fire-extinguishing system need not be provided when the area above 35 feet is provided for aesthetic purposes only and is a non-habitable space.

15.14.540 – Section 903.2.20.7 Residential Sprinkler Pressure Relief. Section 903.2.20.7 is added to read as follows: Residential fire sprinkler systems must have an NFPA 13D approved pressure relief valve when static pressures are greater than 80 psi.

15.14.545 – Section 903.2.20.8 Residential Freeze Protection. Section 903.2.20.8 is added to read as follows: Residential fire sprinkler systems shall have adequate freeze protection to address outside temperatures below 40 degrees Fahrenheit. This can be achieved by insulating coverings or other reliable means of maintaining a minimum temperature of 40 degrees Fahrenheit.

15.14.550 – Section 903.3 Installation Requirements. Section 903.3 is amended to read as follows: Sprinkler systems shall be installed in accordance with NFPA 13, NFPA 13R, if approved by the Fire Code Official, and NFPA 13D.

15.14.555 – Section 903.3.1 Standards. Section 903.3.1 is amended to read as follows: Fire sprinkler systems installed in buildings of an undetermined use shall be designed and installed to have a design density of .33 gallons per minute per square foot over a minimum design area of 3,000 square feet. Where a subsequent occupancy change requires a system with greater capacity, it shall be the building owner's responsibility to upgrade the system to the required density.

15.14.560 – Section 903.3.7 Fire Department Connections. Section 903.3.7 is amended to read as follows: The location of the fire department connections (FDC's) shall be approved by the Fire Code Official. Approved locking caps shall be provided on all newly installed FDC's and on any existing FDC's found to be vandalized.

15.14.565 – Section 903.4 Sprinkler System Supervision and Alarms. Section 903.4 is amended to read as follows: Except for Group R, Division 3 Occupancies, all valves controlling the water supply for automatic sprinkler systems, and associated pumps, tanks, water levels and water flow switches shall be electronically supervised.

15.14.570 – Section 903.4.1 Monitoring. Section 903.4.1 is amended to read as follows: Alarm, supervisory and trouble signals shall be distinctly different and shall be automatically transmitted to an approved central station, remote supervising station, or proprietary supervising station as defined in NFPA 72, or when approved by the Fire Code Official, shall sound an audible alarm at a constantly attended location.

15.14.575 – Section 903.4.2 Alarms. Section 903.4.2 is amended to read as follows: One exterior approved audible and visual device, located on the exterior of the building in an approved location, shall be connected to each automatic sprinkler system. Such sprinkler water-flow alarm devices shall be activated by water flow equivalent to the flow of a single sprinkler of the smallest orifice size installed in the system. Where a fire alarm system is installed, actuation of the automatic sprinkler system shall actuate the building fire alarm system.

15.14.580 – Section 903.6 Where Required in Existing Buildings and Structures. An automatic sprinkler system shall be provided throughout existing buildings and structures where required in Sections 903.6.1 through 903.6.3.

15.14.585 – Section 903.6.1 Substantial Remodel. Section 903.6.1 is added to read as follows: An automatic sprinkler system shall be provided throughout all buildings that undergo a substantial remodel or substantial improvement.

Exceptions:

1. Detached Group U occupancies 1000 sq. ft. or less.
2. Agricultural buildings and private riding arenas as approved by the fire or building code official.
3. Detached pool houses up to 1000 sq. ft. in floor area within 50 feet of the pool and limited to a single bathroom.
4. Detached non-combustible motor vehicle fuel dispensing canopies classified as a Group M occupancy.
5. Detached Car Ports of non-combustible construction with no habitable space above.
6. Alterations or additions made solely for the purpose of complying with the Americans with Disabilities Act (ADA) or as contained in CBC exception #4 of Section 11B-204.2.
7. Partial removal of wall or floor finishes necessary for repair due to flooding.
8. Whenever there are practical difficulties involved the Fire Code Official shall have the authority to grant modifications in individual cases provided the modifications do not lessen the health, life and fire safety requirements as permitted in Section 104.8.

15.14.590 – Section 903.6.2 Substantial Addition. Section 903.6.2 is added to read as follows: An automatic sprinkler system shall be provided throughout all buildings that undergo a substantial addition.

15.14.595 – Section 903.6.3 Substantial Alteration. Section 903.6.3 is added to read as follows: An automatic sprinkler system shall be provided throughout all buildings that undergo any combination of substantial remodel, addition or both that equals fifty percent (50%) of the existing gross floor area.

Exceptions:

1. Detached Group U occupancies 1000 sq. ft. or less.
2. Agricultural buildings and private riding arenas as approved by the fire or building code official.
3. Detached pool houses up to 1000 sq. ft. in floor area within 50 feet of the pool and limited to a single bathroom.
4. Detached non-combustible motor vehicle fuel dispensing canopies classified as a Group M occupancy.
5. Detached Car Ports of non-combustible construction with no habitable space above.

6. Alterations or additions made solely for the purpose of complying with the Americans with Disabilities Act (ADA) or as contained in CBC exception #4 of Section 11B-204.2.
7. Partial removal of wall or floor finishes necessary for repair due to flooding.
8. Whenever there are practical difficulties involved the Fire Code Official shall have the authority to grant modifications in individual cases provided the modifications do not lessen the health, life and fire safety requirements as permitted in Section 104.8.

15.14.600 – Section 904.12 Commercial Cooking Systems. Section 904.12 is amended to read as follows: Commercial cooking equipment that produces grease laden vapors shall be provided with a Type I Hood, in accordance with the California Mechanical Code, NFPA 96, and an automatic fire extinguishing system that is listed and labeled for its intended use as follows:

1. Wet chemical extinguishing system, complying with UL 300.
2. Carbon dioxide extinguishing system.
3. Automatic fire sprinkler systems.

All existing dry chemical and wet chemical extinguishing systems shall comply with UL 300.

Exceptions:

Public school kitchens, without deep-fat fryers, shall be upgraded to a UL 300 compliant system during state-funded modernization projects that are under the jurisdiction of the Division of the State Architect.

All systems shall be installed in accordance with the California Mechanical Code, NFPA 96, appropriate adopted standards, their listing and the manufactures, installation instructions.

Exception:

Factory-built commercial cooking recirculating systems that are tested, listed, labeled and installed in accordance with UL 710B and the California Mechanical Code and NFPA 96.

15.14.605 – Section 905.3.1 Standpipe Systems Building Height. Section 905.3.1 is amended to read as follows: Standpipes shall be installed in buildings three stories or more in height, with approved outlets on each floor above or below grade and the roof. Said outlets may be connected to the building's fire sprinkler system.

15.14.610 – Section 905.9 Valve Supervision. Section 905.9 (Exception 2) is deleted.

15.14.615 – Section 907.2.8.1 Group R-1 Fire Alarm Systems. Section 907.2.8.1 (Exception 2.2) is amended to read as follows: Exception 2.2 Notification devices installed in the common areas serving the residential units shall operate upon sprinkler water flow or manual station activation.

15.14.620 – Section 912.2 Location. Section 912.2 is amended to read as follows: With respect to hydrants, driveways, buildings and landscaping, fire department connections shall be so located that fire apparatus and hose connected to supply the system will not obstruct access to the buildings for other fire apparatus. The location of the fire department connections shall be within 50 feet of a fire hydrant or approved by the Fire Code Official. (Also see Section 507.5.1.1).

15.14.625 – Section 1103.1 Required Construction. Section 1103.1 is amended to read as follows: Existing buildings shall comply with not less than the minimum provisions specified in Table 1103.1 and as further enumerated in Sections 1103.2, 1103.6, 1103.7, 1103.8 through 1103.8.5.3, 1103.9, and 1103.10. The provisions of this chapter shall not be constructed to allow the elimination of fire protection systems or a reduction in the level of fire safety provided in buildings constructed in accordance with previously adopted codes.

Exceptions:

1. Where a change in fire-resistance rating has been approved in accordance with Section 803.6 of the California Existing Building Code.
2. Group U occupancies.

15.14.630 – Section 1103.2 Emergency Responder Radio coverage in Existing Buildings. Section 1103.2 Item #1 is deleted.

15.14.635 – Sections 1103.3 through 1103.5.4 Section Deletion. Sections 1103.3 through 1103.5.4 are deleted.

15.14.640 – Section 1104 Means of Egress for Existing Buildings. Section 1104 is deleted in its entirety.

15.14.645 – Section 1105 Construction Requirements for Existing Group I-2. Section 1105 is deleted in its entirety.

15.14.650 – Section 3102.1 Definitions. Section 3102.1 is amended to read as follows: Tents, umbrella structures, temporary stage canopies and membrane structures shall comply with this chapter. The provisions of Section 3103 are applicable only to temporary tents, umbrella structures, and membrane structures. The provisions of Section 3104 are applicable to temporary and permanent tents, umbrella structures, and membrane structures. Other temporary structures shall comply with the California Building Code. These building standards govern the use of tents, umbrella structures, awing's or other fabric enclosures, including membrane (air-supported and air-inflated) structures and places of assemblage, in or under which 10 or more persons may gather for any lawful purpose.

Exceptions:

1. Tents, umbrella structures, awnings or other fabric enclosures used to cover or enclose private swimming pools and similar facilities on the premises of private one- and two-family dwellings.
2. Tents used to conduct committal services on the grounds of a cemetery.
3. Tents, umbrella structures, awing's or other fabric enclosures erected and used within a sound stage, or other similar structural enclosure which is equipped with an overhead automatic sprinkler system.
4. Tensioned membrane roof materials supported by ridged frames or installed on a mast and cable system provided such structures conform to the requirements of one of the types of construction as described in these regulations.
5. Fabric structures which are part of mobile homes, recreational vehicles, or commercial coaches governed by the provisions of Division 13, Part 2, Health and Safety Code (Department of Housing and Community Development).

15.14.655 – Section 3314.3 Where required. Section 3314.3 is added to read as follows: In buildings of combustible construction required to have automatic sprinkler system by Section 903, automatic sprinkler system shall be installed prior to construction exceeding 40 feet (12,192 mm) in height above the lowest level of fire department vehicle access. Such automatic sprinkler system shall be extended as construction progresses to within one floor of the highest point of construction having secured decking or flooring.

15.14.660 – Section 3314.5 Detailed requirements. Section 3314.3 is added to read as follows: Automatic sprinkler systems shall be installed in accordance with the provisions of Section 903.

15.14.665 – Section 4902.1 Definitions. Section 4902.1 is amended to read as follows: Wildland-Urban Interface Fire Area is a geographical area located within any Moderate, High or Very High Fire Severity Zone in accordance with Public Resource Code Sections 4201–4204 and Government Code Sections 51175–51189, or in a Moderate or High Fire Severity Zone as identified in the Cloverdale General Plan.

15.14.670 – Section 4906.2 Application. Section 4906.2 is amended to read as follows: Buildings and structures located in the following areas shall maintain the required hazardous vegetation and fuel management:

1. All unincorporated lands designated by the State Board of Forestry and Fire Protection as State Responsibility Area (SRA) including:

1.1 Moderate Fire Hazard Severity Zones.

1.2 High Fire Severity Zones.

1.3 Very-High Fire Severity Zones.

2. Land designated as Very-high Fire Hazard Severity Zone by cities and other local agencies.
3. Land designated as Wildland-Urban Interface Fire Areas by cities and other local agencies.

15.14.675 – Section 4907 Defensible Space. Section 4907 is amended to read as follows: Defensible space will be maintained around all building and structures in State Responsibility Area (SRA) as required in Public Resources Code 4290 and "SRA Fire Safe Regulations" California Code of Regulations Title 14, Division 1.5, Chapter 7, Subchapter 2, Section 1270. Buildings and structures withi0.n the Very High Fire Severity Zone of a Local Responsibility Area (LRA) shall maintain a defensible space as outlined in Government Code 51175–51189 and any local ordinance of the authority having jurisdiction. Buildings and structures within the Wildland-Urban Interface Fire Area of a Local Responsibility Area (LRA) shall maintain defensible space as outlined in the Government Code Sections 51175 – 51189 and local standards of the authority having jurisdiction.

15.14.680 – Section 5001.5.3 Electronic Reporting. Section 5001.5.3 is added to read as follows: All Hazardous Material Management Plans (HMMP) and Hazardous Material Inventory Statements (HMIS) shall be submitted electronically as approved by the Fire Code Official.

15.14.685 – Section 5003.3.1 Unauthorized Discharges. Section 5003.3.1 is amended to read as follows: Any suspected or actual hazardous material, as defined by this code, including any suspected or actual carcinogen, which escapes into the environment through an unauthorized release shall be reported to the Fire Code Official immediately upon discovery, regardless of whether the release occurs on or off the site of the permitted facility and the following procedures required in accordance with Sections 5003.3.1.1 through 5003.3.1.4, shall be followed.

15.14.690 – Section 5806.2 Geographic limits where fireworks display are prohibited Section 5806.2 Geographic limits were fireworks displays are prohibited is added to read as follows: Prohibited in any area as established by applicable land-use and zoning standards.

15.14.695 – Section 5608.3 Prohibition of Fireworks. Section 5608.3 is added to read as follows:

A. Definitions. The following words have the following meanings in this section:

"Dangerous Fireworks" means dangerous fireworks as defined in Health and Safety Code sections 12505 and 12561 and the relevant sections of Title 19 of the California Code of Regulations, Subchapter 6, which are hereby incorporated by reference, as those sections may be amended from time to time.

"Enforcement Officer" means any person designated by the City Manager, including, without limitation, any fire district official or other designated public agency official authorized to enforce this section.

"Fireworks Stand/Booth" means any building, counter, or other structure of a temporary nature used in the sale, offering for sale, or display for sale of safe and sane fireworks.

"Nonprofit organization" means, for the purposes of this section, any nonprofit association, charity or corporation organized primarily for veterans, patriotic, welfare, civic betterment, educational, youth development or charitable purposes pursuant to Internal Revenue Code Sections 501 (c) 3, 4, 6, 7, 8, 10, 19, 23, or 26, Section 501 (d), Section 501 (e); or that has been issued a tax-exempt certificate as required under the Revenue and Taxation Code of the State of California; or a group that is an integral part of a recognized national organization having such tax-exempt status; or a nonprofit organization affiliated with and officially recognized by an elementary, junior high and/or high school and/or school district that serves, in whole or in part, the residents of the City or a public and/or private community college, college and/or university that is located within the boundaries of the City.

"Permit" means the authorization issued by qualified City officials allowing the sale of safe and sane fireworks in accordance with this section.

"Permittee" means a qualified applicant as defined in this section that has been issued a permit that is valid and has not been revoked in accordance with this section.

"Person" means a natural person or a legal entity that is also an owner, tenant, lessee and/or other person with any right to possession or control of the property where a violation of this section occurred.

"Principal and permanent meeting place" means a permanent structure, playing field, geographic area or service population that resides in or is located within the City.

"Public display of fireworks" means an entertainment feature where the public is admitted or permitted to view the display or discharge of fireworks by a licensed pyro-technician.

"Qualified applicant" means any group or organization that has met all of the following criteria for a continuous period of not less than one full year preceding submittal of an application for a permit required by this section and that continues to meet the criteria for the duration of any permit issued by the City pursuant to this section:

i. The organization must be a nonprofit organization as defined in this section;

ii. The organization must have its principal and permanent meeting place within the City;

iii. The organization must be one that provides direct and regular community services and benefits to the residents of the City;

iv. The organization must have a minimum bona fide membership of at least twenty (20) members who either reside in the City, are employed in the City, or are owners or operators of a business or other establishment located in the City;

v. Neither the organization nor any of its officers and/or officials have been found by any court or City administrative process to be in violation of any civil or criminal local, state or federal law relating to fireworks within twenty-four calendar months prior to the organization's submittal of an application for a permit to sell; and

vi. The organization has not had a permit to sell fireworks revoked within twenty-four months prior to the organization's submittal of an application for a permit.

"Responsible person" means a person who causes a violation of this section to occur or allows a violation to exist or continue, by his or her action or failure to act, or whose agent, employee or independent contractor causes a violation to occur, or allows a violation to exist or continue. There is a rebuttable presumption that the record owner of a residential parcel, as shown on county's latest equalized property taxes assessment rolls, and a lessee of a residential parcel has notice of any violation existing on said property. For purposes of this section, there may be more than one responsible person for a violation. Any person, irrespective of age, found in violation of any provision of this section may be issued a citation in accordance with the provisions of this section. Every parent, guardian or other person, having the legal care, custody or control of any person under the age of 18 years may be issued a citation in accordance with the provisions of this section, in addition to any citation that may be issued to the offending minor.

"Safe and Sane Fireworks," also known as "State approved fireworks," shall mean safe and sane fireworks as defined in Health and Safety Code sections 12529 and 12562 and the relevant sections of Title 19, Code of Regulations Subchapter 6, which are hereby incorporated by reference, as those sections may be amended from time to time.

B. Fireworks. Except as hereinafter provided, it shall be unlawful for any person, firm, corporation, association, organization or entity to possess, store, sell, use, or explode any dangerous fireworks or explode any rocket, firecracker, Roman candle, squib, torpedo, torpedo cane, wire core sparkler, wooden core sparkler, black cartridge, or other combustible device or explosive substance, or any kind of fireworks or dangerous fireworks by whatsoever name known within the City; provided, however, that the City may adopt reasonable rules and regulations for the granting of permits for supervised public displays of fireworks by a public agency, fair association, amusement park or other organization or for the use of fireworks by artisans in pursuit of their trade. Every such use or display shall be handled by a competent operator approved by the City, and shall be of such

character and so located, discharged or fired so as not to be hazardous to property or endanger any person in the opinion of the City.

Exception: Safe and Sane Fireworks: It shall not be unlawful to possess or sell within the City safe and sane fireworks as defined herein under the conditions and at the times and locations set forth in this section.

This section shall not apply to persons, businesses or entities licensed by the State Fire Marshal as a wholesaler and/or import/export concern to legally possess or sell fireworks, including those prohibited by this section, within the City for the primary purpose of sale and distribution outside the City.

Notwithstanding any contrary provision of this code, the City Council may in any given fireworks sales year prohibit the sale and discharge of safe and sane fireworks upon determining that conditions exist in the City, that may include, but are not limited to, fire weather events, fuel moisture, drought, limitations on available firefighting forces and/or other condition, that the City Council finds creates an extreme danger to the public health and safety and/or life and property of the residents, businesses and visitors of the City. In its sole discretion, the City Council may consult with the Cloverdale Fire Protection District prior to prohibiting the sale and discharge of safe and sane fireworks in any given fireworks sales year.

C. Fireworks—Conditions On Sales And Use.

1. Prohibition on Sale and Use of Fireworks. It is unlawful for any person, firm, corporation, association, or organization to sell or offer for sale any fireworks within the City, except as expressly permitted by this section. It is unlawful for any person, firm, corporation, association, organization or entity to use any fireworks within the City except as expressly permitted by this section.

2. Time of Sale. Subject to the provisions of the State Fireworks Law (California Health and Safety Code, Division 11, Part 2, Chapters 1-7, Health and Safety Code Sections 12500-12801), as amended from time to time, and the provisions of this code, state approved fireworks, as defined in Section 12504 of the California Health and Safety Code, may be sold within the City between the hours of 10:00 a.m. and 9:00 p.m. on July 1st, July 2nd, July 3rd and July 4th.

3. Permit Required. No person, firm, corporation, association, or organization shall sell safe and sane fireworks within the City unless they are a permittee. All permit applications shall be received by the City no later than the last day of May each year. No person, firm, corporation, association or other organization, other than the permittee or its authorized representatives shall operate the booth for which the permit is issued or share or otherwise participate in the profits of the operation of such booth.

4. Permit Application. Each qualified applicant for a safe and sane fireworks sales permit shall file a written application with the City showing the following information:

a. Name and address of the qualified applicant.

b. Location where the qualified applicant proposes to sell fireworks.

c. Places of storage for fireworks.

d. Evidence that the qualified applicant meets the criteria specified in this section.

All applications for permits to sell safe and sane fireworks shall be in writing to the City on forms supplied by the City. In addition to the information required above, applications shall set forth any other information that may be required by the City.

Applications shall be accompanied by a certification executed by an authorized representative of the applicant that, if a permit is issued to the applicant, the applicant shall, at the time of receipt of such of permit, deliver to the City a certificate evidencing an occurrence-based policy of insurance naming the “City of Cloverdale and its officials, officers, employees, agents and volunteers” as additional insured’s thereunder, with the following

minimum limits: $1,000,000 public liability and property damage; and general aggregate coverage of $2,000,000. No policy will be acceptable that contains a provision allowing a deductible amount. A copy of the requisite State Retail Sales Permit from the Office of the California State Fire Marshal must also be attached.

Every application for a permit to sell safe and sane fireworks shall state the zoning of the real property on which the fireworks stand is to be located, which zoning classification shall be obtained from the City planning department.

The City shall notify permit applicants by June 15 of permit approval or disapproval. All organizations whose permits have been approved shall have up to and including June 20th of that year to pick up their permits.

Every application for a permit shall be accompanied by a non-refundable application fee established by resolution of the City Council. This application fee shall be in addition to any fee or tax imposed by this section.

Every application shall set forth the proposed location of the fireworks stand, the name, address and telephone number of one or more responsible adults who will be in charge of and responsible for the fireworks booth during the period safe and sane fireworks are sold, displayed or stored at such location, and written permission from the owner of record (or lessor, if the property is subject to lease) upon which said proposed stand will be located.

5. Organization(s) Authorized to Sell. No permit to sell safe and sane fireworks shall be issued to any entities other than qualified applicants, as defined in this section.

6. Maximum Number of Permits to Sell. The maximum number of permits that may be issued and the maximum number of safe and sane fireworks stands that will be permitted pursuant to this section during any one calendar year shall not exceed one permit for each 4,000 residents of the City or fraction thereof, based on the latest official roster of the State of California Census Estimate.

If the number of qualified applicants exceeds the number of permits allowed under this section, the City Council shall select the qualified applicants to whom permits shall be issued by the following method:

a. Qualified applicants that were permittees during the preceding year shall have first priority for the available permits;

b. If the number of permits allowed for a year exceeds the number of the permittees from the preceding year that are applicants for that year, City staff shall forward a list of applicants who were not permittees the preceding year to the City Manager who shall, not later than on the 5th day of June, supervise an impartial drawing to determine an order of priority for each such application. Following the drawing, the City Manager shall forward to City staff a list of applications, numbered in order of priority for investigation and issuance of permits. Permits will be issued first to all qualified applicants that were permittees the preceding year, and then, in order of priority, to qualified applicants on the drawing list.

c. After the authorized number of permits has been determined and all the authorized permits issued, all remaining qualified applicants shall be combined into one group. From that group one applicant shall be drawn as the first alternate and one applicant shall be drawn as the second alternate. The alternates may be offered a permit if one of the permits granted that year is surrendered or revoked prior to June 20th. An alternate permit shall first be offered to the alternate. An alternate permit shall be offered to the second alternate if the first alternate receives a permit and another permit becomes available, or if an alternate permit is available and the alternate declines a permit or ceases to be a qualified applicant.

7. Total Number of Booths Permitted. Fireworks sales permits shall limit each qualified applicant to one booth. The purpose of limiting booths to one per qualified applicant is to allow a maximum number of entities, organizations, or groups to participate in fireworks sales.

8. Insurance Requirements as a Condition of Sale. Each applicant for a permit shall file with the City, prior to the issuance of any permit, a policy of occurrence-type public liability insurance and property damage with applicable coverage of at least $1,000,000 and general aggregate coverage of $2,000,000. No policy will be

acceptable that contains a provision allowing for a deductible amount. The City, its officials, officers, employees, agents, and volunteers shall be named as additional insured's on such insurance policy by a separate endorsement in a form acceptable to the City.

9. Determination of Eligibility by City—Right of Appeal. The City shall issue a permit to sell safe and sane fireworks unless:

a. The City finds, in writing, that the applicant does not meet the criteria for a qualified applicant as that term is defined in this section;

b. The City finds, in writing, that the applicant has failed to provide sufficient plans, information or other data necessary to permit a determination regarding compliance with the requirements of this section;

c. The City finds, in writing, that the applicant is not in compliance with any of the requirements of this section;

d. The City finds, in writing, that one or more of the bases for revocation specified in the provision entitled, "Revocation of Permit; Appeal," of this section applies;

e. The City determines that the number of qualified applicants exceeds the number of available permits under the section entitled, "Maximum Number of Permits to Sell." The City must advise, in writing, all qualified applicants of this determination no later than June 15th.

Any denial of a permit pursuant to this provision may be appealed pursuant to the procedures set forth in Section 15.14.735 of this Title.

10. Fireworks Booth—Restrictions on Sales.

a. All retail sales of State approved fireworks shall be permitted only within a temporary booth. Sales from any other building or structure are prohibited. A fireworks booth need not comply with the provisions of the City's Building Code; provided, however, that every fireworks booth shall be erected subject to inspection by City staff, who shall require that the fireworks booth be constructed in a manner that will reasonably ensure the safety of attendants and patrons.

b. No booth shall have a floor area in excess of 750 square feet. All booths in excess of 20 feet in length must have two exits. Larger booths must have an exit for every 20 feet of length located 20 feet apart.

c. No booth shall be located within 25 feet of combustible buildings and/or building openings (windows or doors) or within 50 feet of any flammable materials or within one hundred (100) feet of any gasoline pump or distribution point or a natural gas meter. Location of booths is subject to City approval.

d. All weeds and combustible materials shall be cleared in and around each booth for a distance of at least 25 feet in all directions.

e. "No Smoking" signs shall be prominently posted on all fireworks booths. Smoking is prohibited within any fireworks booth, and no person shall smoke within twenty-five (25) feet of any fireworks booth.

f. No person shall light, cause to be lighted or permit to be lighted any fireworks or combustible material within fifty (50) feet of any fireworks booth. No fuel-powered generator or similar equipment shall be allowed within fifty (50) feet of any fireworks booth.

g. No electrical devices or open flames are permitted within any fireworks booth, except that lighting shall be permitted if it is covered by a plastic shield.

h. Each fireworks booth shall be provided with a minimum of one model 2AB10BC fire extinguisher and one 5-gallon pressure water fire extinguisher, in good working order and easily accessible, for use in case of fire.

i. No person shall knowingly sell fireworks to any person under eighteen (18) years of age. Proof that the fireworks booth permittee demanded, was shown, and acted in reliance upon, bona fide evidence of age and identity in any sale of fireworks regulated by this section shall be a defense to any proceedings for suspension or revocation of the permittee's State approved fireworks permit or a criminal proceeding instituted by the City against the permittee for violations of this section. For purposes of this provision, "bona fide evidence of age and identity of purchaser" shall mean a document issued by a federal, state, county or municipal government that contains a photograph and date of birth of the purchaser including, but not limited to, a valid California Driver's License or an Identification Card issued to a member of the Armed Forces. Signs shall be posted in conspicuous places on and in the booth indicating "No Fireworks Sales to Persons Under the Age of 18—Photo I.D. Required.

j. Each fireworks booth must post its City permit to sell safe and sane fireworks, its temporary sales tax permit from the California State Board of Equalization, its State Fire Marshal Retail Sales Permit and proof of the required insurance in a prominent place inside the fireworks booth.

k. Approved banners or other barricades to prohibit parking within 20 feet of the booth shall be provided.

l. Signs must be posted on each booth stating "No fireworks permitted in the unincorporated areas of Sonoma County."

m. No person under eighteen (18) years of age shall sell or participate in the sale of safe and sane fireworks at a fireworks booth. No person under eighteen (18) years of age shall be permitted inside the booth during hours of operation. Each booth must have an adult in attendance and in charge of operations whenever the booth contains, or is engaged in the sale of, fireworks. The permittee is solely responsible for ensuring the presence of said adult. For the purpose of this section, the term "adult" shall mean any person so defined under California law.

n. No person other than the permittee shall operate the booth for which the permit is issued or share or otherwise participate in the profits of the operation of such booth.

o. No persons other than the individuals who are members of the permittee or the adult family members of such members shall sell or otherwise participate in the sale of safe and sane fireworks at such booth.

p. No person shall be paid any consideration by the permittee for selling or otherwise participating in the sale of safe and sane fireworks at such booth; provided, however, that compensation may be paid for licensed security personnel during sale or non-sale hours and to the party authorizing the location of the booth on its property.

q. All unsold stock of fireworks shall be removed from the booth and located in an approved area immediately after close of business on each and every day of operation.

r. All litter resulting from the operation of the fireworks booth shall be removed on a daily basis.

s. No person shall sleep or remain in any fireworks booth after close of business each day or at any time when the booth is closed for business.

t. All unsold stock of fireworks in the possession of the permittee after 10:00 p.m. on the 5th day of July shall be returned to the wholesaler/distributor and removed from the City within ten (10) days. All safe and sane fireworks booths shall be closed, the booth removed from the temporary location, and all litter shall be removed from the premises by noon on July 15th.

11. Temporary Sales Tax Permit. Permittees are required to obtain a temporary sales tax permit from the California State Board of Equalization.

12. Limitations on Places and Hours of Discharge.

a. It shall be unlawful for any person to discharge any safe and sane fireworks in the City except between the hours of 11:00 a.m. to midnight on July 4th. Pyrotechnic displays authorized in accordance with this section may be exempted from these restrictions subject to applicable provisions of the California Health and Safety Code. City officials may, in their sole discretion, consult with the Cloverdale Fire Protection District regarding proposed places and hours of discharge.

b. It shall be unlawful for any person to ignite, discharge, project or otherwise fire or use, any safe and sane fireworks, or permit the ignition, discharge or projection thereof, upon or over or onto the property of another without the property owner's consent, or to ignite, discharge, project or otherwise fire or make use of any safe and sane fireworks within ten (10) feet of any residence, dwelling or other structure used as a place of habitation by human beings.

c. The use of safe and sane fireworks in the City shall be limited to private property except as otherwise provided herein. No person shall ignite or discharge any safe and sane fireworks on private open areas such as parks, parking lots or vacant property, without the property owner's or his or her designated agent's permission. No person shall ignite or discharge any safe and sane fireworks on public or semi-public open areas such as parks, parking lots or vacant property, excluding public streets and sidewalks, except as authorized in writing by the City and, if applicable, the private property owner or his or her designated agent.

d. Any person who discharges safe and sane fireworks on public or private property shall be responsible for the removal of all spent fireworks debris and litter or rubbish associated with the discharge of fireworks, and for disposition thereof in an appropriate trash receptacle. Spent fireworks debris shall be allowed to cool for at least 30 minutes or immersed in water before discarding in a trash receptacle.

e. No safe and sane fireworks shall be discharged in the Fire Hazard Severity Zones (FHSZ) of the City, as established and approved by the City with the assistance of the California Department of Forestry and Fire Protection and within the boundaries set forth on the FHSZ map kept on file in the City Engineer's office. All fireworks booths shall post a notice of such fireworks ban and a map designating the FHSZ restrictions, in the form provided by the City. Booth operators shall advise persons purchasing State approved fireworks to review the notice and map and advise them of the fireworks restrictions in the FHSZ.

f. It shall be unlawful for any person having the care, custody or control of a minor (under 18 years of age) to permit such minor to discharge, explode, fire or set off any dangerous fireworks at any time, or to permit such minor to discharge or set off any safe and sane fireworks unless such minor does so under the direct supervision of a person over eighteen (18) years of age and during the hours and on the day permitted by this section.

13. Qualified Applicant Reporting Requirement. On or before November 1st of each sales year permittees must submit to the City Manager a financial statement by the treasurer or financial officer of the permittee setting forth the total gross receipts from the fireworks stand operated by the permittee; all expenses incurred and paid in connection with the purchase of fireworks and the sale thereof; and to whom and for what purpose the net proceeds were or will be disbursed, along with the most recent report filed by the qualified applicant with the State Board of Equalization. The filing of the statement required by this section with the City shall be a condition precedent to the granting of any subsequent permit, and a permittee that fails to file such statement shall not be considered a qualified applicant in the year immediately following its failure to file.

14. Revocation of Permit; Appeal. Any permit issued under this section may be revoked by the City in case of any violation of this section or any terms or conditions of the permit. The City Council may revoke said permit(s) and/or prohibit fireworks sales at any time it deems necessary to protect the health, safety and welfare of the citizens of the City. Any appeal of a permit revocation shall be subject to the following time limitations:

a. If the revocation occurs between June 22 and July 4, the City shall inform the permittee that the permittee may seek review of the City's decision by the City Manager, or the City Manager's designee, on the next business day. At the earliest opportunity on the next business day after the revocation, City staff shall provide the City Manager with written notice that a fireworks permit has been revoked, including the name of the permittee and a brief statement of the grounds for revocation. The City Manager, or the City Manager's designee, shall meet with the permittee on that day, upon the permittee's request, to review the City's decision. The decision of the City Manager shall be final. If the revocation occurs before or after the specified period, the appeal procedures of paragraph (b) below and section 15.14.610 of this chapter shall apply.

b. If a revocation occurs before or after the dates specified in paragraph a, above, such revocation shall not take effect for ten (10) days, during which time the permittee may seek review of the City's decision by submitting a written request for review to the City pursuant to the procedures set forth in section 15.14.610 of this chapter. City staff shall provide the City Manager with written notice that a fireworks permit has been revoked, including the name of the permittee and a brief statement of the grounds for revocation. The decision of the City Manager shall be final.

Any permittee whose permit has been revoked, pursuant to paragraph (a) or (b) above, may be barred from receiving a permit under this section for up to five (5) years from the date of revocation.

D. Seizure Of Fireworks. The City may seize, take, remove or cause to be removed, at the expense of the permittee or licensed fireworks wholesaler, whichever is applicable, all stock of fireworks offered or exposed for sale, stored or held in violation of this section when such violation creates an imminent threat to public health or safety, subject to applicable law.

E. Storage Of Fireworks—Generally. Except as otherwise herein provided, the storage and use of fireworks, (except State-approved fireworks purchased for individual or family use) inside buildings is prohibited.

F. Storage Of Safe And Sane Fireworks—Retail. The storage of safe and sane fireworks by permittees conducting retail sales shall be in a non-combustible container or magazine as approved by the City. The location of said storage shall be within the City limits and be approved by the City.

G. Prohibition Against Modification And Discharge Of Safe And Sane Fireworks. No person shall modify, tamper with, disassemble, rearrange and/or combine the contents or original packaging of any State approved firework, nor in any way remove the original packaging labels.

H. Prohibition Against Possession, Use, Display Or Discharge Of Modified Safe And Sane Fireworks. No person shall possess, use, display, discharge or explode any safe and sane fireworks that have been tampered with, disassembled and/or rearranged, nor shall any person possess, use, display, discharge, explode or combine the contents of multiple safe and sane fireworks, or change the originally intended purpose of Safe and Sane Fireworks.

I. Fireworks Wholesaler Public Education Plan. Each fireworks distributor/wholesaler who is supplying one or more of the Cloverdale nonprofit organizations who are permittees under this section, shall annually submit a Public Education Plan to the City by no later than 5:00 pm on June 15. Said Public Education Plan should outline the public safety and education efforts for that year that have been initiated, supported and/or delivered by each fireworks distributor/wholesaler within the City. Said public education plan should include, but is not limited to, samples of all the materials and the extent of distribution of all of the safety and education materials discussed in that wholesaler's/distributor's plan.

J. Deadlines For Applications And Other Filings. If a deadline set forth in this section, including, but not limited to, the time for submitting an application, paying an administrative fine, or filing a notice of appeal, falls on a day when City offices are closed, such deadline shall automatically be extended to the close of business on the next day City offices are open.

<u>15.14.700 – Section 5704.2.9.6.1 Locations Where Above Ground Tanks Are Prohibited.</u> Section 5704.2.9.6.1 is amended to read as follows: Storage of Class I and Class II liquids in above ground tanks outside of

buildings is prohibited within the limits established as being all areas of the City except general industrial and agricultural districts as designated in the Cloverdale zoning ordinance.

15.14.705 – Section 5706.2.4.4 Locations Where Above Ground Tanks Are Prohibited. Section 5706.2.4.4 is amended to read as follows: Storage of Class I and Class II liquids in above ground tanks outside the buildings is prohibited within the limits established as being all areas of the City except general industrial and agricultural districts as designated in the Cloverdale zoning ordinance.

15.14.710 – Section 5806.2 Limitations. Section 5806.2 is amended to read as follows: Storage of flammable cryogenic fluids in stationary containers outside of buildings is prohibited within the limits established as being all areas of the City except general industrial and agricultural districts as designated in the Cloverdale zoning ordinance.

15.14.715 – Section 6104.2 Maximum Capacity Within Established Limits. Section 6104.2 is amended to read as follows: Within the limits established by law restricting the storage of liquefied petroleum gas for the protection of heavily populated or congested areas, are established as all areas of the City except for industrial districts as designated in the Cloverdale zoning ordinance. The aggregate capacity of any one installation outside of established limits shall not exceed a water capacity of 1,000 gallons.

15.14.720 – Chapter 80 Referenced Standards NFPA 13D-16 - NFPA 13D. Amended Sections as follows: NFPA 13D Amended Sections as follows is added and amended as follows:

Revise Section 5.1.1.2 to read as follows:

NFPA.13D.5.1.1.2. A supply of at least three sprinklers shall be maintained on the premises so that any sprinklers that have operated or been damaged in any way can be promptly replaced.

Add Sections 5.1.1.2.1 as follows:

NFPA.13D.5.1.1.2.1. The sprinklers shall correspond to the types and temperature ratings of the sprinklers in the property. The stock sprinklers shall include not less than one sprinkler of all types and ratings installed.

Add Sections 5.1.1.2.2 as follows:

NFPA.13D.5.1.1.2.2. The sprinklers shall be kept in a mounted and accessible cabinet located where the temperature to which they are subjected will at no time exceed the maximum ceiling temperatures specified in Table 5.1.1.6.1 for each of the sprinklers within the cabinet.

Add Sections 5.1.1.2.4 as follows:

NFPA.13D.5.1.1.2.4. One sprinkler wrench as specified by the sprinkler manufacture shall be provided in the cabinet for each type of sprinkler installed to be used for the removal and installation of sprinklers in the system.

Revise Section 7.6 to read as follows:

Section 18-44.80. NFPA.13D.7.6 A local waterflow alarm shall be provided on all sprinkler systems.

Add Section 8.1.3.1.2.1 to read as follows:

Section 18-44.80. NFPA.13D.8.1.2.1 Garages are permitted to be protected by residential sprinklers.

Revise Section 8.3.4 to read as follows:

NFPA.13D.8.3.4 Sprinklers shall not be required in detached garages, open attached porches, detached carports, and similar structures unless otherwise required by the California Building or Fire Codes.

Add Section 8.3.5.2 to read as follows:

NFPA.13D.8.3.5.2 At least one quick-response intermediate temperature residential sprinkler shall be installed within 5 feet and above attic access openings.

Revise Section 11.2.1.1 to read as follows:

NFPA.13D.11.2.1.1 Where a fire department pumper connection is not provided, the system shall be hydrostatically tested at not less than 200 psi without evidence of leakage.

15.14.725 – Chapter 80 Referenced Standards NFPA 13R-16 - NFPA 13R. Amended Sections as follows: NFPA 13R Amended Sections as follows is added as follows:

Add Section 8.3.5.2 to read as follows:
NFPA.13R.6.6.6.1 At least one quick-response intermediate temperature residential sprinkler shall be installed within 5 feet and above attic access openings.

15.14.730 – Chapter 80 Referenced Standards NFPA 72-16 - NFPA 72, Amended Sections as follows: NFPA 72 Amended Sections as follows is added as follows:

Add Section 14.7 to read as follows:

NFPA.72.14.7 Labels and Tags

NFPA.72.14.7.1 Labels or tags shall be used on fire alarm systems and shall be placed on the outside of the fire alarm control unit.

NFPA.72.14.7.2 Tags shall be of the hanging or self-adhesive type used on fire alarm systems.

NFPA.72.14.7.3 The following information shall be printed on the labels and tags approved by the fire code official:

1. The words "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICAL"
2. Concern Name/Company Name
3. Concern Physical Address
4. Concern Phone Number
5. License Number (State of California Contractor State License Board License)
6. Date of service or testing and maintenance
7. Space or line for signature of person performing or supervising the servicing shall be placed on the tag or label on a fire alarm system except when servicing or testing and maintenance is performed.

NFPA.72.14.7.4 When service or testing and maintenance are performed, the initial date of service or testing and maintenance, the printed name and signature of the person performing or supervising the service shall be placed on the tag or label.

NFPA.72.14.7.5 No person shall remove a tag or label from or place a tag or label on a fire alarm system except when servicing or testing and maintenance are performed.

NFPA.72.14.7.6 No person shall deface, modify, or alter any tag or label attached to or required to be attached to any fire alarm system.

NFPA.72.14.7.7 The label or tag conforming to this section shall be securely attached to each fire alarm system at the time of servicing or testing and maintenance.

NFPA.72.14.7.8 The label or tag approved by the fire code official shall be affixed to a system only after all deficiencies have been corrected.

NFPA.72.14.7.9 Adhesive labels and tags shall be manufactured in accordance with ANSI/UL 969, Standard for

Marking and Labeling Systems, 4th edition, 1995, which is hereby incorporated by reference.

15.14.735 – Section A101 – Appendix A Appeals of Fireworks Booth Sales Permits. Section A101 of Appendix A, Board of Appeals, is deleted and replaced with the following: Fireworks Booth Sales Permits. The following appeals procedure shall apply exclusively to safe and sane fireworks sales permits under this section. Any person aggrieved by a decision of the City to disapprove an application, refuse to grant a permit, place conditions on a permit, or revoke a fireworks booth sales permit shall have a right to appeal the decision to the City Manager, or his/her designee. Except as provided in section 15.14.735, such appeal shall be taken by filing a written notice of appeal with the City Clerk within ten days of the date of the decision. The appeal shall set forth the grounds for the appeal and the name and address of the person requesting the appeal. A failure to file a timely and complete appeal shall render the decision final and conclusive. The City Manager shall, within ten days of the filing of the appeal, set a time and place for a hearing on the appeal. The appeal shall be set no less than five days after the filing of the appeal and no more than sixty days after the filing of the appeal. The City Manager's determination following the hearing shall be in writing and shall contain a statement of the facts upon which the determination is based. The City Manager's determination shall be sent first-class U.S. Mail, postage prepaid to the person requesting the appeal, not later than ten days following the date of such determination. The determination of the City Manager shall be final and conclusive.

15.14.740 – Section B105.1 – Appendix B One and Two Family Dwellings. Section B105.1 of Appendix B is amended to read as follows: The minimum fire-flow requirements for one and two family dwellings having a fire-flow calculation area, which does not exceed 3,600 square feet, shall be 1,500 gallons per minute. Fire flow and flow duration for dwellings having a fire flow calculation area in excess of 3,600 square feet shall not be less than that specified in Table B105.1.

15.14.745 – Section B105.2 – Appendix B Buildings Other than One and Two Family Dwellings. Section B105.2 of Appendix B is amended to read as follows: The minimum fire flow and flow duration for buildings other than one- and two-family dwellings shall be as specified in Table B105.2.

Exception: A reduction in required fire flow of up to 50 percent, as approved, is allowed when the building is provided with an approved automatic sprinkler system installed in accordance with other sections of this code. The resulting fire flow shall not be less than 1,500 gallons per minute for the prescribed duration as specified in Table B105.2.

15.14.750 – Appendix Table B105.1(1) – Appendix B Required fire flow for one and two family dwellings, Group R3 and R4 buildings and townhouses. Appendix B Table B105.1(1) is amended to read as follows:

TABLE 18-44. B105.1(1)
REQUIRED FIRE-FLOW FOR ONE- AND TWO-FAMILY DWELLINGS, GROUP R-3 AND R-4 BUILDINGS AND TOWNHOUSES

FIRE-FLOW CALCULATION AREA (square feet)	AUTOMATIC SPRINKLER SYSTEM (Design Standard)	MINIMUM FIRE-FLOW (gallons per minute)	FLOW DURATION (hours)
0-3,600	No automatic sprinkler system	1,500	2
3,601 and greater	No automatic sprinkler system	Value in Table B105.1(2)	Duration in Table B105.1(2) at The required fire-flow rate
0-3,600	Section 903.3.1.3 of the *California Fire Code* or Section 313.3 of the *California Residential Code*	1,500	2
3,601 and greater	Section 903.3.1.3 of the *California Fire Code* or Section 313.3 of the *California Residential Code*	½ value in Table B105.1(2)[a]	Duration in Table B105.1(2) at The required fire-flow rate

For SI: 1 square foot = 0.0929 m2, 1 gallon per minute = 3.785 L/m.
a. The reduced fire-flow shall be not less than 1,500 gallons per minute.

15.14.755 – Appendix Table B105.2 – Appendix B Required fire flow for buildings other than one and two family dwellings, Group R3 and R4 buildings and townhouses. Appendix B Table B105.2 is amended to read as follows:

TABLE 18-44. B105.2
REQUIRED FIRE-FLOW FOR BUILDINGS OTHER THAN ONE- AND TWO-FAMILY DWELLINGS, GROUP R-3 AND R-4 BUILDINGS AND TOWNHOUSES

AUTOMATIC SPRINKLER SYSTEM (Design Standard)	MINIMUM FIRE-FLOW (gallons per minute)	FLOW DURATION (hours)

No automatic sprinkler system	Value in Table B105.1(2)	Duration in Table B105.1(2)
Section 903.3.1.1 of the *California Fire Code*	50% of the value in Table B105.1(2)[a]	Duration in Table B105.1(2) at the reduced flow rate
Section 903.3.1.2 of the *California Fire Code*	50% of the value in Table B105.1(2)[a]	Duration in Table B105.1(2) at the reduced flow rate

For SI: 1 gallon per minute = 3.785 L/m.

a. The reduced fire-flow shall be not less than 1,500 gallons per minute.

15.14.760 - Section C103.1 - Hydrant Spacing. Section C103.1 of Appendix C is amended to read as follows: Fire apparatus access roads and public streets providing required access to buildings in accordance with Section 503 of the California Fire Code shall be provided with one or more fire hydrants, as determined by Section C102.1. Where more than on fire hydrant is required, the distance between required fire hydrants shall be in accordance with the City of Cloverdale standards or as approved by the Fire Code Official

15.14.765 - Section C103.2 - Average Spacing. Section C103.2 of Appendix C is deleted

15.14.770 - Section C103.3 - Maximum Spacing. Section C103.3 of Appendix C is deleted

15.14.775 – Table C102.1 & C105.1– Appendix C Footnote Additions. Table C102.1 of Appendix C, footnotes "h" and "i" are added to read as follows:

Table C102.1 Footnote h:

For commercial, industrial and multifamily residential buildings, average spacing shall be no greater than 300 feet.

Table C105.1 Footnote i:

Fire hydrants shall be located within 50 feet of the FDC, or as approved by the Fire Code Official.

15.14.780 – Section D103.1 – Appendix D Access Road Width with A Hydrant. Section D103.1 of Appendix D is deleted.

15.14.785 – Section D103.2 - Appendix D Grade. Section D103.2 of Appendix D is amended to read as follows: Fire apparatus access roads shall be in accordance with the City of Cloverdale standards for public streets or as approved by the Fire Code Official.

15.14.790 – Section D103.3 Appendix D Turning Radius. Section D103.3 of Appendix D is amended to read as follows: The inside turning radius of a fire apparatus access road shall be not less than 40 feet unless otherwise approved by the Fire Code Official.

15.14.795 – Section D103.4 Appendix D Dead End. Section D103.4 of Appendix D is amended to read as follows: Dead-end fire apparatus access roads in excess of 150 feet (45720 mm) shall be provided with width and turnaround provisions in accordance with the City of Cloverdale Standards for public streets or as approved by the Fire Code Official.

15.14.800 – Table D103.4 Appendix D Deleted. Appendix D Table D103.4 is deleted.

15.14.805 – Section D103.6 Appendix D Signs. Section D103.6 of Appendix D is amended to read as follows: Where required by the Fire Code Official, fire apparatus access roads shall be marked with permanent NO PARKING-FIRE LANE signs that meet California Vehicle Code.

15.14.810 – Section D103.6.1 Appendix D Roads 20 to 26 feet in width. Section D103.6.1 of Appendix D is deleted.

15.14.815 – Section D103.6.2 Appendix D Roads more than 26 feet in width. Section D103.6.1 of Appendix D is deleted.

15.14.820 – Section D104.2 Appendix D Buildings Exceeding 62,000 square feet in Area (Exception). Section D104.2 of Appendix D Exception is deleted.

15.14.825 – Section D106.1 Appendix D Projects having more than 100 Dwelling Units (Exception). Section D106.1 of Appendix D is amended to delete the exception and read as follows: **D106.1 Projects having more than 50 dwelling units.** Multiple-family residential projects having more than 50 dwelling units shall be provided with two separate and approved fire apparatus access roads.

15.14.830 – Section D106.2 Appendix D Projects having more than 200 dwelling units. Section D106.2 of Appendix D is deleted.

15.14.835 – Section D107.1 Appendix D – One or Two Family Residential Developments. Section D107.1 is amended to read as follows: Developments of one or two family dwellings with more than 50 dwelling units shall be provided with two separate and approved fire apparatus access roads.

15.14.840 – Section D107.1 Appendix D Exceptions Deletion. Exceptions 1 and 2 to Section D107.1 of Appendix D are deleted.

Chapter 15.16

CALIFORNIA EXISTING BUILDING CODE

Sections:

15.16.10	Adoption and Citation
15.16.020	Section 1.8.4.2 Fees Chapter One Division I and Section 108.2 Schedule of Permit Fees, Section 108.4.1 Investigation Fees Chapter One Division II
15.16.030	Section 202 Code Official Definition
15.16.040	Section 302.6 Maintenance

15.16.10 – Adoption and Citation. The California Existing Building Code, 2016 edition, including tables, as set forth in Part 10 of Title 24 of the California Code of Regulations is hereby adopted by reference in its entirety by the City, except that for purposes of citation, said code shall be renumbered by adding "15.16" before the sections of the California Existing Building Code.

15.16.020 – Section 1.8.4.2 Fees of Chapter One Division I and Sections 108.2 Schedule of permit fees, Section 108.4.1 Investigation Fees of Chapter One Division II. Sections 1.8.4.2 Fees of Chapter One Division I and Sections 108.2 Schedule of permit fees and Section 108.4.1 Investigation Fees of Chapter One Division II are amended to read as follows: Permit fees, plan review fees and investigation fees shall be assessed as provided in Cloverdale Municipal Code chapter 15.02.

15.16.030 – Section 202 Definition – Section 202 Code Official definition is amended to read as follows: The officer or other designated authority charged with the administration and enforcement of this code shall be the Building Official.

15.16.040 – Section 302.6 Maintenance – Section 302.6 is added to read as follows: Buildings and structures, and parts thereof, shall be maintained in a safe and sanitary condition. Devices or safeguards which are required by this code shall be maintained in conformance with the code edition under which installed. The owner or the owner's designated agent shall be responsible for the maintenance of buildings and structures. To determine compliance with this subsection, the Building Official shall have the authority to require a building or structure to be re-inspected. The requirements of this chapter shall not provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures.

Chapter 15.17

CALIFORNIA GREEN BUILDING STANDARDS CODE

Sections:

15.17.010 Adoption and Citation
15.17.020 Adoption of Residential CalGreen Tier 1 Voluntary Measures as Mandatory – Appendix A4, Section A4.601.1 - Scope
15.17.030 Adoption of Non-Residential CalGreen Tier 1 Voluntary Measures as Mandatory – Appendix A5, Section A5.601.1 – Scope
15.17.040 Section 202 – Definition of "plants - invasive plants"
15.17.050 Section 202 – Definition of "recycled water"
15.17.060 Section 202 – Definition of "water feature"

15.17.010 – Adoption and Citation. The California Green Building Standards Code, 2016 edition, including tables and appendices "A4" and "A5", as set forth in Part 11 of Title 24 of the California Code of Regulations is hereby adopted by reference in its entirety by the City, as amended herein, except that for purposes of citation, said code shall be renumbered by adding "15.17" before the sections of the California Green Building Standards Code.

15.17.020 – Adoption of Residential CalGreen Tier 1 Voluntary Measures as Mandatory – Appendix A4, Section A4.601.1-Scope. Appendix A4, Section A4.601.1 Scope is amended to read as follows: The measures contained in this appendix are adopted as MANDATORY and shall only apply to all newly constructed, low-rise residential buildings. Division A4.2 - Energy Efficiency is deleted in its entirety.

15.17.030 – Adoption of Non-Residential CalGreen Tier 1 Voluntary Measures as Mandatory – Appendix A5, Section A5.601.1–Scope. Appendix A5, Section A5.601.1 Scope is amended to read as follows: The measures contained in this appendix are adopted as MANDATORY and shall only apply to all newly constructed non-residential buildings. Division A5.2 – Energy Efficiency is deleted in its entirety."

15.17.040 – Section 202 – Definition of "plants - invasive plants." The definition of "PLANTS - Invasive plants" set forth in Section 202 is amended to read as follows: PLANTS - **Invasive plants**. Invasive plants means species of plants not historically found in California and/or that spread outside cultivated areas and can damage environmental or economic resources as determined by the California Invasive Plant Council (www.cal-ipc.org).

15.17.050 – Section 202 – Definition of "recycled water." The definition of "RECYCLED WATER" set forth in Section 202 is amended to read as follows: RECYCLED WATER. Tertiary treated water, which results from the treatment of wastewater, and which conforms to the definition of disinfected tertiary recycled water in accordance with state law. Recycled water is suitable for nonpotable direct beneficial uses such as landscape irrigation and water features.

15.17.060 – Section 202 – Definition of "water feature". The following definition of "WATER FEATURE" is hereby added to Section 202 to read as follows: WATER FEATURE. A design element where open water performs an aesthetic or recreational function. Water features include ponds, lakes, waterfalls, fountains, and artificial streams (where water is artificially supplied). Water feature does not include spas and swimming pools.

Chapter 15.18

CALIFORNIA REFERENCE STANDARDS CODE

Sections:

15.18.10 Adoption and Citation

15.18.10 – Adoption and Citation. The California Reference Standards Code, 2016 edition, including tables, as set forth in Part 12 of Title 24 of the California Code of Regulations is hereby adopted by reference in its entirety by the City, except that for purposes of citation, said code shall be renumbered by adding "15.18" before the sections of the California Reference Standards Code.

Chapter 15.35

VIOLATION–PENALTY

Sections:
15.35.010 Violation–Penalty

15.35.010 – Violation–Penalty. Section 15.35.010 of the Cloverdale Municipal Code is hereby added to read as follows:

A. Every person who violates any provision of this chapter, including any provision of the Fire Code as amended, shall be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars and/or by imprisonment for up to six months. A person is guilty of a separate offense for each day during which he/she commits, or continues or permits a violation of said Code, or each time he/she disobeys a valid order of a firefighter or enforcement officer.

B. In addition to any other enforcement remedies available to the City under any applicable state or federal statute, or pursuant to any other lawful power the City may possess, any violation of this title may be prosecuted or enforced as a nuisance. The City may also prosecute or enforce violations of this title as a criminal offense or by civil court action, prosecuted by the City attorney in the name of the City or in the name of the people of the State of California, by seeking the appointment of a receiver, or in any other manner provided by law.

Section 5. Compliance with the California Environmental Quality Act: The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 6. Severability: If any section provision, of this Ordinance or the application thereof to any person or circumstances is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause or phrase hereof not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

Section 7. Effective Date and Publication: This ordinance of the City of Cloverdale shall be effective thirty (30) days after the date of passage but shall not go into effect until January 1, 2017. Before the expiration of fifteen (15) days after its passage, this ordinance, or a summary thereof as provided in California Government Code Section 36933, shall be published at least once in a newspaper of general circulation, published and circulated in the City of Cloverdale, along with the names of the members of the City Council voting for and against its passage.

This ordinance no. _____ was duly introduced and legally adopted by the City Council of the City of Cloverdale at its regular meeting held on the ____ day of _____, 2016, by the following vote:

Call vote:
AYES:
NOES:
ABSENT:
ABSTAINING:

APPROVED: ATTESTED:

_____ _____

MaryAnn Brigham, Mayor Linda Moore, Deputy City Clerk

A certified copy of the full text of the adopted ordinance has been posted at the office of the City Clerk and is available for public inspection.

Dated:

Linda Moore, Deputy City Clerk

CITY OF CLOVERDALE

CITY OF CLOVERDALE CITY COUNCIL
NOTICE OF PUBLIC HEARING
ADOPTION OF THE 2016 CALIFORNIA BUILDING STANDARDS CODES
AND THE 2016 CALIFORNIA FIRE CODE BY REFERENCE

NOTICE IS HEREBY GIVEN THAT the City Council of the City of Cloverdale will hold a public hearing on Tuesday, November 8, 2016 at 6:30 p.m. or as soon thereafter as the matter may be heard in the Cloverdale Performing Arts Center, 209 North Cloverdale Blvd., Cloverdale, California, for the purpose of considering the following:

First reading, reading by title only, and waiving further reading of, an ordinance amending Title 15, "Buildings and Construction" of the Cloverdale Municipal Code, adopting by reference the 2016 Building Codes, Title 24, also known as the California Building Standards Code, as adopted by the California Building Standards Commission, which includes adoption of the International Existing Building Code, the California Green Building standards code (CALGreen), the California Energy Code, California Historical Building Code, California Referenced Standards Code, the California Building Code and the California Residential Code, 2016 editions as promulgated and published by the International Code Council, with certain appendices and standards, the California Plumbing Code and the California Mechanical Code, 2016 editions, with appendices mandated by the State of California and standards promulgated and published by the International Association of Plumbing and Mechanical Officials; California Electrical Code, 2016 edition, with appendices mandated by the state of California and standards, as published by the International Code Council, and the 2016 California Fire Code as promulgated and published by the National Fire Protection Association.

FURTHER NOTICE IS GIVEN that the City Council will conduct a public hearing on Tuesday, December 13, 2016 at 6:30 P.M. or as soon thereafter as the matter may be heard in the Cloverdale Performing Arts Center, 209 North Cloverdale Blvd., Cloverdale, California to consider adopting the ordinance described above which, upon second reading, if approved, will adopt by reference those codes as amended by Title 24, with certain additional amendments that are reasonably necessary because of local climatic, topographical, and geological conditions, and including a penalty provision declaring violations thereof to be a misdemeanor. The local amendments include building code changes to coincide with the California Fire Code requirements.

A copy of the ordinance and the 2016 Building Codes that are being adopted by reference are available for review at the City Clerk's Office, 124 N. Cloverdale Blvd., Cloverdale, California. Any questions relating to the ordinance may be directed to the Community Development Department at (707) 894-1723. A staff report for the ordinance will be available at least 72 hours in advance of the meeting and will be posted on the City website (www.cloverdale.net).

All interested persons are invited to send written comments to the above address no later than the hearing date and/or be present to comment orally on the project, or by email to the Community Development Director at dkelley@ci.cloverdale.ca.us. If you challenge this item in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the public hearing.

CITY OF CLOVERDALE

City Council/Successor Agency Agenda Item Summary

Agenda Item:	12
Meeting Date:	November 8, 2016

Agenda Section	**Staff Contact**
Consent	Paul Cayler, City Manager

Agenda Item Title

Discussion and Possible Action to Contract with Taylor Code Consulting, Inc. for Part Time Code Enforcement and Compliance Services.

Summary

The purpose of this agenda item is propose a project to improve code enforcement in the City of Cloverdale. The City Council has express concern over the City's current code enforcement program. The general direction with reduced City resources the past seven years has been a complaint driven code enforcement model. In Fiscal Year 2016-2017, the City Council established Goal No. Three:

> "Review current code enforcement processes to determine effectiveness and that policies follow Council direction. Under the leadership of the Police Department the program should include a multipronged approach with other community resources such as: Fire District and community volunteers assisting residents with physical or financial need. Implement, as necessary, changes to the Code Enforcement program to become more effective and proactive regarding blighted properties that pose a threat to health and safety."

City staff has been formulating how to achieve the Council's goal. Staffs' conclusion is that a part-time consultant would be the best option to perform code enforcement. The consensus among City senior staff is that an ideal profile for a part-time code enforcement official would be a retired individual with a law enforcement background that is experienced in civil and criminal code compliance. The ideal profile includes a skill set to work with challenging subjects. The senior staff put out through respective professional networks that the City of Cloverdale is seeking such an individual with the aforementioned profile.

In response, Mr. Trent Taylor approached the City with a proposal to perform code enforcement services as a part-time contractor. Mr. Taylor's background and experience is a good match for the City's needs. He is a retired Police Captain from the Ukiah Police Department with 30 years of experience. Please find Mr. Taylor's proposal for code enforcement services attached.

The City staff's concept is that Mr. Taylor work under the direction of the Planning Department in close coordination with the Police Department and the Fire District. The initial vision is that a schedule of about 20 hours per month of Mr. Taylor's time will be satisfactory to initiate the project. The enforcement emphasis will be broader to take on specific types of code enforcement in a systematic method, rather than the complaint driven model. For example, vehicles and trailers parked in front yards is a common complaint. The concept is that Mr. Taylor working with the Police Department would identify numerous troubled properties with vehicles parked in the front yard. Then, contact all property owners at the same time for resolution of all the cases. This approach would include site visits and personal contact to resolve issues at the lowest level. In the difficult cases, Mr. Taylor is well experienced in the administrative procedures to perform abatements and lien properties if required.

As an independent contractor, Mr. Taylor will be responsible for the methods and means to perform the work under the general direction of the City. He will provide his own equipment and use his personal vehicle. Mr. Taylor's hourly rate equals $90 per hour.

The objective of this agenda item is to introduce and discuss this possible project with the City Council to determine if it meets with the Council's favor to proceed. If the proposed project is satisfactory, then the City Manager will execute a professional service agreement at the proposed compensation limits of not to exceed $25,000. Mr. Taylor is scheduled to be present at the Council meeting to introduce himself and present his background.

Options

1) Authorize the City Manager to proceed and execute a professional service agreement for a part-time code enforcement consultant; or 2) Continue to seek other options for an improved code enforcement project.

Budget/Financial Impact

Based on the proposed hourly rate ($90 per hour) at 20 hours per month, it is estimated that the annual professional consultant compensation equals $21,600. This agreement amount is within the City Manager's authorization to execute a professional service agreement. This project is unbudgeted. Code enforcement activity should generate revenue from fines and administrative reimbursement, however the amount of revenue is unknown since this is a new project.

Subcommittee Recommendation

None. Due to scheduling, this matter was not able to go to a committee for a "first touch" review before presentation to the City Council.

Recommended Council Action

The City Manager recommends that the City Council discuss the proposed code enforcement project to contract with Taylor Code Consulting, Inc. and authorize the City Manager to execute a professional services agreement.

Attachments:

1) Proposal from Taylor Code Consulting, Inc.

cc:

DRAFT
PROPOSAL TO CONTRACT FOR CODE ENFORCEMENT SERVICES TO THE CITY CLOVERDALE

October 25, 2016

To: Paul Caylor, Cloverdale City Manager

From: Taylor Code Consulting Inc.
Trent Taylor
P.O. Box 565
Redwood Valley, CA 95470
Phone: (707)272-1365
Email: trentay@yahoo.com

The Proposed Contractor, Trent Taylor DBA Taylor Code Consulting Inc., possesses unique qualifications necessary to provide Code Enforcement, Compliance Monitoring, Nuisance Abatement and any other necessary regulatory enforcement and regulatory development in order to assist the City of Cloverdale in all areas of Code Enforcement and Nuisance Abatement by streamlining programs, creating efficiencies and developing case management strategies for code compliance, nuisance abatement, and abandoned vehicle abatement.

Qualifications to Provide Services:

30 years of work experience in Municipal Government as a Law Enforcement Professional for the City of Ukiah Police Department. Honorably Retired as a Captain/Division Commander as of December 2015. The following is a list of my experience that uniquely qualifies me to perform the proposed services as defined in the attached "Definition of Services" (exhibit A):

- **General Law Enforcement with long term emphasis in Civil and Criminal Code Compliance investigation, enforcement and record keeping. Until retirement I was the designated Code Compliance Manager for the City of Ukiah.**

- **Advanced Investigator, Trainer and Manager of investigations. Extensive experience in legal research, policy and procedure development and implementation and regulatory ordinance development and implementation.**

- **Long term experience in Risk Management and Human Resources. Was the agency Risk Manager and was in charge Human Resources and Hiring for the agency for the last 8 years before retirement.**

- **Experienced in Government and Private Sector Contract Development and Management.**

- **Extensive practical experience in development and management of Public Safety Communications, Radio and Phone Communications Infrastructure, Network Infrastructure procurement and Database Management.**

- **Advanced experience in Government Record Keeping, Report Writing, Report Review, Management Staff Reporting and Public Presentation. Subject matter expert in records retention, State and Federal law related to the public records act and rights to public records. I was the Agency Records Manager and Custodian of all Records until retirement.**

- **Strong Communication skills and extensive network of contacts across all levels of Government in Mendocino County and Northern California. Proven expert at resource networking related to regulatory compliance and enforcement, both civil and criminal.**

- **Extensive practical experience investigating and prosecuting financial crimes, environmental crimes, consumer fraud, civil and criminal code compliance and civil cost recovery.**

- **Extensive experience in municipal and private sector budget development and management.**

- **10 years as an instructor for Mendocino College teaching Introduction to Administration of Justice and Police Report Writing. Developed the entire curriculum for both courses.**

- **Community involvement as a Volunteer Board Member for the Ford Street Project, Inc., Board of Directors (past President of the Board and Executive Member of the Board for over a decade). Former member of the County Homeless Services Planning Group and Ford Street Project Shelter Advisory Committee. Worked extensively in this capacity in employment contracting, agency governance, agency contracting and MOU development.**

- **Until retirement was a member of the current Mendocino County Abandoned Vehicle Service Authority. Worked with Mendocino County Code Enforcement staff to draft and implement the current Joint Powers Agreement for the AVA Service Authority and drafted the first regulatory approval for the City of Ukiah in order to obtain State approval to form the Service Authority that was used as example for the other municipal agencies in the County to do the same. Worked**

collaboratively with the County to create the current reporting mechanism for tracking AVA activity for all agencies in the County. 30 years practical experience in vehicle abatement and managed the abandoned vehicle abatement program for the City of Ukiah for the last 10 years.

- **Assisted in the Development of the City of Ukiah Code Compliance position in the Planning and Community Development Department (position was ultimately eliminated due to the recession of 2008). Provided training and guidance on a regular basis to the position as it developed. Provided training related to record keeping for this operation. Ultimately took over the operation and the work load when the position was eliminated.**

- **Extensive experience working with the City of Ukiah Planning and Community Development Department, collaborating and providing documented analysis for of new projects. Worked directly with project applicants and planning staff on developing conditions for use permits and site development permits. Participated regularly on project review and made presentations to the Planning Commission with and emphasis in Crime Prevention by Design, project impacts on Government Services and Conditional Use Permit Compliance. Was responsible for all alcohol licensing in the City of Ukiah.**

- **Extensive work with the Fire Marshall and City of Ukiah Building Official in dealing with fire and building code violations, construction permitting violations ("red tagging"), compliance inspections and regulatory noticing.**

- **Experienced in Civil Legal remedies and the Court Injunctive processes to gain compliance for all forms of Civil and Criminal Code Compliance issues.**

- **Currently contracting with the County of Mendocino, Planning and Building Services Department as a Code Compliance Consultant working on all aspects of Code Compliance and Enforcement Program Development and Case Management (Contracted since February 2016 and contract recently renewed for FY 16'-17').**

- **Education and Certifications include - Associate Degree in Administration of Justice and over 120 accredited college units, California P.O.S.T Certificates – Basic, Intermediate, Advanced and Management.**

ATTACHMENTS:
EXHIBIT A – Scope of Work **EXIBIT B – Terms & Conditions**

EXHIBIT A

PROPOSED SCOPE OF WORK

Contractor shall provide the following services to the City of Cloverdale:

- **Municipal Code Enforcement & Compliance Monitoring**
- **Nuisance code compliance and enforcement**
- **Code Analysis, Research and Reporting, both verbally and in writing**
- **Identify best practices in code compliance and enforcement to further the prioritization of these activities by the City**
- **Code Enforcement procedure and policy development; including record keeping and records retention; program development; initiative development and implementation**
- **Strategic planning for compliance, enforcement and case management including intra-agency and inter-agency collaboration.**
- **Any other activities within the purview of the contractor's areas of expertise that would assist the City to improve the quality of life in and protect the safety of the community.**

EXHIBIT B

TERMS & CONDITIONS

1. **Beginning on the first day of month after the execution of a contractual agreement and the first day of each subsequent month for the term of the agreement, the Contractor will invoice the City of Cloverdale for hours worked in delivering the defined services in the agreement as approved by the City Manager and/or his designees.**

2. **The City of Cloverdale agrees to pay the contractor by the 15th day of each month for all hours worked, approved and timely invoiced by the contractor for the previous month at a rate of <u>$90 per hour.</u>**

3. **The Contractor will bear any and all other costs associated with providing services related to the contract including, but not limited to, equipment, supplies and transportation.**

4. **The contractor proposes to provide the Scope of Work in and for the City of Cloverdale for a minimum of 5 hours per week (20 hours per month).**

5. **This proposed scope of work constitutes a City/Consultant relationship. The Consultant will not be considered a City employee and therefore will not be eligible for benefits. The City will utilize the Consultant on a flat rate, hourly basis for work performed. The City will report as required to CalPERS and will cooperate with the Consultant to properly contract with the City as a retired CalPERS annuitant to the extent that this contractual work is legally allowable without jeopardizing with Consultant's CalPERS retired status.**

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CITY OF CLOVERDALE

City Council Agenda Item Summary

Agenda Item:	13
Meeting Date:	November 8, 2016

Agenda Section	**Staff Contact**
New Business	Paul Cayler, City Manager Stephen Cramer, Chief of Police

Agenda Item Title

Direction Regarding the Recruitment of an Additional Full-Time Police Dispatcher

Summary

For the past few years, the Cloverdale Police Department has operated with five (5) full-time dispatchers. Although a sixth full-time dispatcher has been needed, that position has not been filled due to budgetary constraints. Having only five (5) dispatchers has resulted in some difficulties with coverage. Due to various leaves of absence by dispatchers, there has been a need for many dispatchers to work an excessive number of overtime hours. From April through October of this year, dispatchers will have worked a combined total of 990.25 hours of overtime, in addition to their regular 40-hours per week. When this happens, management is always concerned regarding potential issues with cost, and with the morale and well-being of the employees.

In order to fill the sixth full-time dispatcher position, the City Council will need to amend the City's 2016-2017 budget accounting for such cost. Staff is currently working on the budget amendment, however, in order to start of the process, the City Manager is requesting authorization to begin recruitment for an additional full-time dispatcher. Under the recommended motion, the City Manager would only begin the recruitment; no offer of employment for the additional dispatcher position would be made until the Council approves the required budget amendment at a future meeting.

Staff will present a full analysis of the fiscal impact of the additional position at a Council meeting in the near future. At that future meeting, staff will request that the Council consider authorizing a sixth full-time dispatcher position and make a related amendment to the City's FY 2016-2017 budget.

Options

1. Adopt the recommended motion authorizing the City Manager to begin recruiting an additional police dispatcher.
2. Provide alternative direction to City Staff.

Budget/Financial Impact

None. Approval of this motion will have no fiscal impact; it merely authorizes the City Manager to begin recruitment of an additional dispatcher. Staff will provide an analysis of the fiscal impact of hiring a sixth full-time dispatcher at a future meeting where the Council will be asked to consider authorizing the additional position.

Recommended Council Action

Move to authorize the City Manager to begin the recruitment process for an additional police dispatcher, provided that the City Manager may not extend an offer of employment to fill any additional dispatcher position unless authorized to do so by the City Council.

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CITY OF CLOVERDALE

City Council/Successor Agency Agenda Item Summary

Agenda Item:	14
Meeting Date:	November 8, 2016

Agenda Section	Staff Contact
New Business	David Kelley, Assistant City Manager / Comm. Dev. Director

Consideration of Resolution No. 087-2016 Designating the City of Cloverdale's Priority Project and authorizing submittal of an application to the Sonoma County Community Development Commission for fiscal year 2017-2018 Community Development Block Grant ("CDBG") funding for the City Park ADA Improvement Project.

Background

The County of Sonoma receives an annual entitlement from the Department of Housing and Urban Development (HUD) for the Community Development Block Grant (CDBG) program, HOME Investment Partnership Act (HOME) program and Emergency Solutions Grant (ESG) program. The primary purpose of these HUD programs is to improve the quality of living for lower-income residents whose incomes are less than 80 percent of the area median income as established by HUD. The funding allocation to Sonoma County from HUD for fiscal year 2017-2018 is estimated to be at similar levels as the previous fiscal year including approximately $1.65 Million in CDBG funding, $144,000 for the ESG program and $780,000 for the HOME program.

The City of Cloverdale participates in the Sonoma County Community Development Commission (CDC) HUD entitlement programs in conjunction with Sonoma County and six other local cities as part of a Joint Powers Agreement (JPA). The CDBG funding guidelines allocate 30.5% (approximately $500,000) of the $1.5-2.0 Million total in CDBG funds to seven cities including Cloverdale on a competitive basis for non-public service (i.e. infrastructure) projects. Applications for HOME, FESG and CDBG funds for public service activities are submitted directly to the Sonoma County Community Development Commission (CDC).

CDBG Projects that have been funded in the recent past in Cloverdale include Americans with Disabilities Act (ADA) pedestrian and sidewalk improvements on S. Cloverdale Boulevard between Citrus Fair Drive and South Franklin Street as well as an economic development program to provide partial funding for the continuation of the micro-enterprise business development that was previously provided by CAFÉ. Current CDBG grant project are identified in Table 1 below:

Table 1 – Current CDBG funded projects

Fiscal Year	Project	Funding Amount
2014-15	S. Cloverdale Blvd ADA Improvements	$48,353
2015-16	S. Cloverdale Blvd ADA Improvements (Citrus Fair to S. Franklin)	$120,000
2016-17	S. Cloverdale Blvd ADA Improvements (Healdsburg Ave to Tarman Dr.)	$116,000

Summary

The purpose of this agenda item is to request that the City council designate a priority project for Community Development Block Grant (CDBG) funding for fiscal year 2017-18. The City Council has previously identified the need for capital improvements at City Park. City staff has identified the need for various ADA improvements at City Park including ADA improvements in the existing restrooms at the park that can be funded with CDBG funding. One of the specific objectives for Non-Housing Community Development in Sonoma County CDC's Funding Policies is to, "Construct, renovate or install access modifications to reduce or eliminate architectural barriers to meet the special needs of persons with disabilities and the elderly in accordance with the ADA in public facilities, including but not limited to public parks, restrooms, youth

centers, senior centers, fire stations, libraries and community recreation facilities." The City Park ADA Improvement project will meet the goals and objectives of the HUD approved Sonoma County Consolidated Plan for federal CDBG, HOME and ESG funding and is considered a completive project for funding.

Options

1. Approve the resolution designating the City Park ADA Improvement project as the City Council priority project and recommend authorizing submittal of a CDBG grant application to the Sonoma County CDC for fiscal year 2017-18;
2. Designate an alternative project for CDBG funding and direct staff to prepare a funding application for submittal to the CDC; or
3. Provide other direction to staff.

Budget/Financial Impact

Staff time is involved in preparing and administering the CDBG grant; however, CDBG funding does not require local matching funds. Additional local funding could be required in the future if the project cost exceeds the amount of CDBG funding.

Recommended Council Action

Approve the resolution designating the City Park ADA Improvement project as the City Council priority project and recommend authorizing submittal of a CDBG grant application to the Sonoma County Community Development Commission for fiscal year 2017-18.

Attachments:

1. Draft Resolution No. 087-2016

cc:

CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 087-2016

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE DESIGNATING THE CITY OF CLOVERDALE'S PRIORITY PROJECT AND AUTHORIZING SUBMITTAL OF APPLICATION TO THE SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION FOR FISCAL YEAR 2017-18 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING FOR THE CITY PARK ADA IMPROVEMENT PROJECT

WHEREAS, the Community Development Commission (CDC) administers the Community Development Block Grant (CDBG) program grant funds received from the United States Secretary of Housing and Urban Development (HUD) under Title I of the Housing and Community Development Act of 1974, objectives of which include improving communities by providing decent housing and a suitable living environment, and expanding economic development opportunities, principally for persons of low and moderate income; and

WHEREAS, the City of Cloverdale participates in the CDBG program administered by the CDC pursuant to a Joint Powers Agreement (JPA); and

WHEREAS, by participating in the JPA, the City of Cloverdale can apply for a share of the annual block grant funding that is provide to Sonoma County by HUD instead of having to compete individually on the State level; and

WHEREAS, each year the City Council is asked to submit housing and non-housing projects to the Sonoma County Community Development Commission for consideration in priority order; and

WHEREAS, the City acknowledges that residents of the City may submit an application for the Countywide Housing Rehabilitation program which will be considered, on a first come, first served basis, for funding from the general Countywide Housing Rehabilitation Program funds or from funds derived from City reprogrammed funds earmarked specifically for use within the boundaries of the incorporated areas participating in the Urban County, subject to funding availability; and

WHEREAS, the City Council authorizes the City Manager to evaluate and establish the CDBG program priorities in the early part of 2017.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Cloverdale does hereby endorse and support submittal of fiscal year 2017-18 CDBG grant application of $90,000 for Americans with Disabilities Act (ADA) improvements at the Cloverdale City Park.

BE IT FURTHER RESOLVED, that the City Council of the City of Cloverdale hereby authorizes the City Manager or her designee to execute all necessary agreements with the CDC including environmental review for implementation of said Project pursuant to the National Environmental Policy Act.

IT IS HEREBY RESOLVED that the foregoing Resolution No. 087-2016 was duly introduced and legally adopted by the City Council of the City of Cloverdale at its meeting held on this 8th day of November 2016 by the following roll call vote: (Ayes-X; Noes-X).

Ayes:
Noes:
Absent:
Abstain:

Approved	Attested
_____	_____
Mary Ann Brigham, Mayor	Linda Moore, Deputy City Clerk

CITY OF CLOVERDALE

City Council Agenda Item Summary

Agenda Item:	15
Meeting Date:	November 8, 2016

Agenda Section	**Staff Contact**
New Business	David Kelley, Assistant City Manager / Comm. Dev. Director

Agenda Item Title

Resolution of the City Council of the City of Cloverdale opposing the approval of cannabis dispensaries by the County of Sonoma outside of Cloverdale's City Limits within the City of Cloverdale's LAFCO approved Sphere of Influence.

Background

The Medical Cannabis Regulation and Safety Act ("MCRSA"), consisting of Assembly Bill 243 (Wood), Assembly Bill 266 (Bonta) and Senate Bill 643 (McGuire), was signed into law by Governor Brown on October 9, 2015. The MCRSA established regulations for medical cannabis cultivation, manufacturing, and transportation, as well as created local and state-level licensing systems in California. The County of Sonoma ("County") is currently proposing to amend the County Zoning Code to regulate cannabis uses consistent with the MCRSA, including cultivation, nurseries, dispensaries, laboratories, manufacturing, distribution, and transportation. The County's proposed medical cannabis ordinance ("County Ordinance") would allow certain cannabis uses in agricultural, industrial, commercial, resource and residential zones within the unincorporated area of Sonoma County including within the City of Cloverdale's Sphere of Influence ("SOI"). The proposed County Ordinance includes optional "inclusion" and "exclusion" zoning districts which would allow flexibility for the County Planning Commission and Board of Supervisors to either restrict or allow certain cannabis uses in distinct communities.

Summary

According to the Key Issues section of the County Staff Report on the proposed County Ordinance, "The addition of cannabis as a new land use increases pressure on an already tight housing and commercial real estate market. Major considerations include the environmental effects of the unregulated industry on our environmental resources, sensitive habitats, public safety and security issues (of particular concern in residential areas), water availability, wastewater disposal, access and fire hazards in remote areas, the public health and safety impacts (especially as they relate to the normalization of cannabis use and access by children), and the long term potential for increases in land values and conversion of land uses that may impact other sectors of the economy." In order to address the above listed issues, the proposed County Ordinance contains Section. 26-88-126**, "**Medical Cannabis Dispensary Uses," which provides location and operational standards for any medical cannabis dispensary within the unincorporated county to promote the health, safety, and general welfare of its residents and businesses. However, while the proposed location and operational standards may address County impacts, the County's approval of a dispensary outside of Cloverdale's City Limits within the City of Cloverdale's LAFCO approved SOI has the potential to generate City specific environmental, social, financial, and safety impacts.

City staff is currently preparing a draft cannabis ordinance for Council consideration allowing and regulating certain types of medical cannabis businesses, including dispensaries within the City. Like other jurisdictions that allow cannabis dispensaries, staff is considering permit fees and regulations that would ensure that potential impacts to the City and its residents are addressed.

Staff is confident that impacts associated with cannabis can be addressed through proper regulations and required fees/taxes, however, under the current proposed County Ordinance, the City will not be given the opportunity to ensure that such impacts on the City are mitigated by dispensaries situated in the City's SOI. Given the proximity to the City, the County should not allow any dispensaries within the City's SOI without first ensuring that all potential impacts to the City are addressed.

Due to the potential impacts associated with County approval of a dispensary within the SOI of the City, City staff recommends that the City Council consider adopting a resolution that opposes the approval of dispensaries outside of Cloverdale's City Limits within the City of Cloverdale's LAFCO approved SOI. A draft resolution is attached. The Resolution further recommends to the County Board of Supervisors that the proposed County Ordinance be revised to reflect that dispensaries are not permitted to be situated in the unincorporated area of Sonoma County outside of Cloverdale City Limits within the LAFCO adopted SOI of the City unless the dispensary fully mitigates potential environmental, social, financial, and safety impacts to the satisfaction of the City through a mitigation agreement or other means.

Options

1. Take no action;
2. Adopt resolution of the City Council of the City of Cloverdale opposing the approval of cannabis dispensaries by the County of Sonoma outside of Cloverdale's City Limits within the City of Cloverdale's LAFCO approved Sphere of Influence; or
3. Direct staff to bring back a revised resolution that articulates the City Council's position on the County's Ordinance and/or location of cannabis dispensaries.

Budget/Financial Impact

No immediate budget or financial impact is expected as a result of adoption of the resolution. Future budget/financial impacts are too uncertain to determine at this time.

Recommended Council Action

Adopt resolution of the City Council of the City of Cloverdale opposing the approval of cannabis dispensaries by the County of Sonoma outside of Cloverdale's City Limits within the City of Cloverdale's LAFCO approved Spher of Influence.

Attachments

1. Resolution No. 088-2016, of the City Council of the City of Cloverdale opposing the approval of cannabis dispensaries by the County of Sonoma outside of Cloverdale's City Limits within the City of Cloverdale's LAFCO approved Sphere of Influence.

2725537.1

CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 088-2016

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE OPPOSING THE APPROVAL OF CANNABIS DISPENSARIES OUTSIDE OF CLOVERDALE'S CITY LIMITS WITHIN THE CITY OF CLOVERDALE'S LAFCO APPROVED SPHERE OF INFLUENCE

WHEREAS, the Medical Cannabis Regulation and Safety Act ("MCRSA"), consisting of Assembly Bill 243 (Wood), Assembly Bill 266 (Bonta) and Senate Bill 643 (McGuire), was signed into law by Governor Brown on October 9, 2015. The MCRSA established regulations for medical cannabis cultivation, manufacturing, and transportation, as well as created local and state-level licensing systems in California; and

WHEREAS, the County of Sonoma ("County") is currently proposing to amend the County Zoning Code to regulate cannabis uses consistent with the MCRSA, including cultivation, nurseries, dispensaries, laboratories, manufacturing, distribution, and transportation; and

WHEREAS, the County's proposed medical cannabis ordinance ("County Ordinance") would allow both personal and commercial cultivation of medical cannabis in certain County land use zones and consistent with certain limitations; and

WHEREAS, the proposed County Ordinance would allow certain cannabis uses in agricultural, industrial, commercial, resource and residential zones within the unincorporated area of Sonoma County; and

WHEREAS, the proposed County Ordinance includes optional "inclusion" and "exclusion" zoning districts which would allow flexibility for the County Planning Commission and Board of Supervisors to either restrict or allow certain cannabis uses in distinct communities; and

WHEREAS, the Board of Supervisors previously adopted Ordinance No. 5715 on March 20, 2007 establishing land use regulations for medical cannabis dispensaries, codified in the Sonoma County Code as Section 26-88-126; and

WHERAS, there are currently five permitted dispensaries within the County and two in the application process. One of the dispensaries in the application process is proposed to be located within the LAFCO approved Sphere of Influence ("SOI") of the City of Cloverdale ("City"). This would be outside of the City's city limits ("City Limits"), however, still within its SOI; and

WHEREAS, the proposed County Ordinance contains Section. 26-88-126**, "**Medical Cannabis Dispensary Uses," which provides location and operational standards for any medical cannabis dispensary within the unincorporated county; and

WHEREAS, the City Council of the City of Cloverdale is concerned about the potential environmental, social, financial, and safety impacts associated with a dispensary situated outside of City Limits and within the SOI of the City; and

WHEREAS, City staff is currently preparing a draft cannabis ordinance for Council consideration allowing and regulating certain types of medical cannabis businesses, including dispensaries. Like other jurisdictions that allow cannabis dispensaries, staff is considering permit fees and regulations that would ensure that potential impacts to the City and its residents are addressed; and

WHEREAS, under the current proposed County Ordinance, the City will not be given the opportunity to ensure that potential impacts on the City are mitigated by dispensaries situated in the City's SOI. Given the proximity to the City, the County should not allow any dispensaries within the City's SOI without first ensuring that all potential impacts to the City are addressed.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Cloverdale opposes the approval of any County Use Permit, building permit or business license for any proposed dispensary situated in the unincorporated area of Sonoma County outside of Cloverdale City Limits and within the LAFCO adopted SOI of the City; and

BE IT FURTHER RESOLVED, that the City Council of the City of Cloverdale hereby recommends to the Board of Supervisors of Sonoma County that the proposed County Ordinance be revised to reflect that dispensaries are not permitted to be situated in the unincorporated area of Sonoma County outside of Cloverdale City Limits within the LAFCO adopted SOI of the City unless the dispensary fully mitigates potential environmental, social, financial, and safety impacts to the satisfaction of the City through a mitigation agreement or other means.

IT IS HEREBY RESOLVED that the foregoing Resolution No. 088-2016 was duly introduced and legally adopted by the City Council of the City of Cloverdale at its meeting held on this 8th day of November 2016 by the following roll call vote: (Ayes-0; Noes-0).

Ayes:
Noes:
Absent:
Abstain:

Approved	Attested
_____	_____
Mary Ann Brigham, Mayor	Linda Moore, Deputy City Clerk

2725508.1