



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

TUESDAY, MARCH 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).

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: None

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.

1. **Minutes of Previous Meeting- January 12, 2016 - Moore**
2. **Resolution on the Future of the Sonoma County Waste Management Agency, including One Year Extension of Joint Powers Authority Agreement - Cayler**
3. **Action to Authorize the City Manager to Fill Budgeted Positions in the Cloverdale Police Department including a Sergeant and Police Officer - Cayler**
4. **Action to Approve a Resolution of the City Council of the City of Cloverdale Approving a Memorandum of Understanding with the Cloverdale Classified Service Employees Association and Authorizing the City Manager to Execute the Memorandum of Understanding - Cayler**

COMMUNICATIONS:

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

5. **Letter received from Federal Aviation Administration**
6. **Letter received from State Water Resources Control Board**

PUBLIC HEARINGS:

7. **Ordinance Repealing and Replacing Cloverdale Municipal Code Chapter 5.24 Relating to Massage Therapy and Massage Establishments - Cramer**

NEW BUSINESS:

8. **Appeal of the February 2, 2016 Planning Commission decision approving a Modification to an existing Conditional Use Permit (CUP MOD 001-2016) to expand the hours of operation for the Cloverdale Senior Multipurpose Center to 10 pm on some Friday and Saturday evenings, to allow up to 12 special events per year and to allow up to 12 special educational courses per year in addition to the normal operations of the Center at 311 N. Main Street - Miranda**

Recommendation: Staff recommends the City Council take option 1 to deny the appeal and adopt the attached Resolution (Attachment 8) which upholds the Planning Commission approval of the Modification to the existing Conditional Use Permit to expand the hours of operation for the Cloverdale Senior Multipurpose Center to 10 pm on some Friday and Saturday evenings, to allow up to 12 special events per year and to allow up to 12 special educational courses per year in addition to the normal operations of the Center at 311 N. Main Street, subject to the recommended conditions of approval.

9. Presentation and Discussion of Draft Ordinance Amending Cloverdale Municipal Code Chapter 8.08 Related to Smoking in Public Places - Cramer

SUBCOMMITTEE ACTION ITEMS: None

SUBCOMMITTEE REPORTS: (VERBAL REPORTS: 15 minutes)

- Airport (Chair, Councilmember Cox and Vice Mayor Wolter) - Next Meeting: April 12, 2016, 8:00 am
- Finance, Administration & Police (Chair, Mayor Brigham and Vice Mayor Wolter) - Next Meeting: April 27, 2016, 2:00 pm.
- Planning & Community Development (Chair, Vice Mayor Wolter and Mayor Brigham) - Next Meeting: April 19, 2016, 4:00 pm.
- Public Works (Chair, Councilmember Russell and Councilmember Cox) - Next Meeting: March 29, 2016, 10:30 am.
- Joint City/Fire District (Chair, Councilmember Palla and Mayor Brigham) - Next Meeting: June 13, 2016, 5:30 pm.
- Joint City/School District (Chair, Councilmember Palla and Councilmember Cox) – Next Meeting: March 21, 2016, 5:00 pm.

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

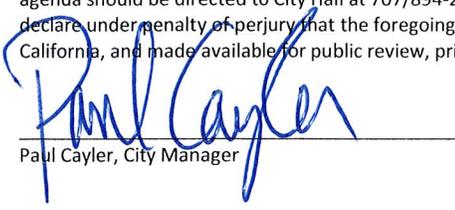
LEGISLATIVE REPORT: None.

CITY MANAGER/CITY ATTORNEY REPORT: None.

COUNCIL DIRECTION ON FUTURE AGENDA ITEMS:

ADJOURNMENT: Adjourn to a regular meeting of the City Council and Cloverdale Community Development Successor Agency, Tuesday, March 22, 2016, for Closed Session at 5:30 p.m. (at the City Hall Conference Room 124 N. Cloverdale Blvd., Cloverdale, CA 95425) for Public Business Session at 6:30 p.m. (at the Cloverdale Performing Arts Center 209 N. Cloverdale Blvd., Cloverdale, CA 95425).

The City does not transcribe its proceedings. Anyone who desires a verbatim record of this meeting should arrange for attendance by a court reporter or for other acceptable means of recordation. Such arrangements will be at the sole expense of the individual requesting the recordation. Questions about this agenda should be directed to City Hall at 707/894-2521. State of California, County of Sonoma, City of Cloverdale. CERTIFICATION I, Paul Cayler, do hereby declare under penalty of perjury that the foregoing agenda was posted on the outdoor bulletin board at the City Hall, 124 N. Cloverdale Blvd., Cloverdale, California, and made available for public review, prior to or on this 3rd day of March, 2016, at or before 5:00 p.m.


Paul Cayler, City Manager



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

TUESDAY, JANUARY 12, 2016

CLOSED SESSION 5:30 p.m.

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

PUBLIC BUSINESS SESSION: 6:30 p.m.

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

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

OPENING:

- Call to Order: Mayor Brigham called the meeting to order at 6:30
- Roll Call: Councilmember Palla, Vice Mayor Wolter, Councilmember Cox, Councilmember Russell, Mayor Brigham
- Report out of Closed Session: No reportable action
- Conflict of Interest Declaration: None
- Agenda Review – Regular Session (Changes and/or Deletions): None

PUBLIC COMMENTS:

La Reva Myles, Cloverdale, complimented Chief Cramer on his State of the Union Cloverdale Address, stating that she was impressed with the 27 pages, which describes 50 new projects that he has implemented in his first 100 days as Chief. She thanked Chief Cramer and City Manager Cayler.

Jimmy Halliday, Cloverdale, discussed the need to create a tree ordinance for the City of Cloverdale.

Shawn Bovee, City of Cloverdale, asked to add a discussion of the skate park to a future agenda or for the opportunity to meet individually with a Councilmember to discuss the skate park. Mayor Brigham responded that she would be happy to meet with him.

PROCLAMATIONS / PRESENTATIONS:

1. Presentation of Plaque to Councilmember Cox

Mayor Brigham presented a plaque of appreciation to Councilmember Cox for his service as the Mayor of Cloverdale, acknowledging and thanking him for all of his work. Councilmember Cox stated that he enjoyed his term as Mayor immensely. He thanked the Council and all who attended the meetings and participated in the democratic process. Councilmember Palla thanked Councilmember Cox, acknowledging his dedication and all of the time and energy that he put into serving as Mayor and attending events. The other Council members agreed.

CONSENT CALENDAR:

- 2. Minutes of Previous Meeting November 10, 2015**
- 3. Minutes of Previous Meeting December 1, 2015**
- 4. Claim Against the City – Silvia and Federico Contreras**

5. **Approval of Write-Off of Uncollectible Account Receivable for Nuisance Abatement at 10 Orange Drive**
6. **Approval of biennially review and update to the City of Cloverdale Conflict-of-Interest Code**

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

COMMUNICATIONS: None.

PUBLIC HEARINGS:

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

City Manager Cayler discussed the process to prepare and bring the ordinance forward for approval and stressed the importance of having the ordinance in place by March 1, 2016.

Chief Cramer discussed the details of the marijuana ordinance recapping the timelines. He talked about the two previous workshops and some of the questions and feedback received. The Chief explained the amendments that were made to the draft ordinance due to the feedback. He also provided a definition of a qualified patient and primary caregiver. He discussed the Medical Marijuana Regulation and Safety Act that went into effect in October of 2015.

Discussion ensued regarding the details of the marijuana ordinance with Chief Cramer and City Attorney Sanchez providing answers and clarification. Changes were recommended to the ordinance, which included changing the limit of eight ounces that could be delivered per parcel to read, per qualified patient or caregiver, instead to accommodate multi-family units.

City Attorney Sanchez explained the two ordinances before the Council, stating that first one is a zoning code amendment, which holds the regulations related to marijuana cultivation; the second ordinance amends the current Chapter 9.36 in the Municipal Code to cross reference the zoning code. He expressed the need for both to go into effect at the same time for consistency purposes. Attorney Sanchez reiterated the importance of acting before the March 1st deadline to ensure retaining local control. He discussed the details and definitions in marijuana cultivation ordinance.

Mayor Brigham open the Public Hearing

PUBLIC COMMENTS:

Jeanne Cox, Cloverdale, asked about the term *manifest* used in Section 8 regarding the delivery of marijuana; she asked who would be issuing these manifests and for what purpose? Chief Cramer responded explaining the shipping manifest definition cross references the State Business and Professions Code for inventory control and ensures that what is in the vehicle is what is actually being delivered to the patient.

Patrick King, Cloverdale, owner of Soil King Garden Center, thanked everyone for their effort to develop the ordinance with special acknowledgment to Chief Cramer. He voiced the importance of regulating pesticides being sprayed in a house and extolled the benefits of organic growing. Mr. King asked if it would be acceptable for a patient to grow 20 plants in a 100-foot indoor grow and still grow three plants outdoors. The Chief responded that he is confident that they would not split hairs and since the individual would be under the 30 allowable plants, the person would be entitled to have both.

La Reva Myles, Cloverdale, referenced the medical marijuana program enacted by the California Legislature in 2003, which establishes the term qualified patient as a person whose physician has recommended the use of marijuana to treat a serious illness or any other illness for which marijuana provides relief. She went on to ask if the definition of physician or medical provider was going to change, noting that in the past doctors issued cards but were not necessarily the patient's primary physician. Chief Cramer responded that the new State law that has been enacted specifically states that only the patient's primary physician will be allowed to prescribe medical marijuana.

Shawn Bovee, Cloverdale, stated he was the one Planning Commissioner that did not approve the resolution regarding the ordinance for a lot of reasons. He recognized the Chief and the Council for all the work on the ordinance; however, he could not accept the grey areas that still exist. He stated that he had issue with not being able to grow the marijuana in a greenhouse. Mr. Bovee stated that he does understand the importance of moving forward for the purpose of maintaining local control.

Julia Carrera, representative for the Small Farmers' Association and third party inspector of medical marijuana gardens complimented everyone on their good work. She stated that the Small Farmers' Association's mission is to ensure that small farmers, including cannabis farmers have an integral role in the medical marijuana market.

Clay Skelton, Cloverdale, stated that growing 30 plants in a ten square foot area would be impossible. He commented that the 30 plants would also yield more than the allowable three pounds and thus be illegal. Mr. Skelton expressed disapproval of the possibility of a neighbor growing 30 plants. He commented this could impact the value of his home.

Omar Figueroa, Sebastopol, commended the Chief and City Staff for breaking new ground by licensing a marijuana delivery services. He voiced dissatisfaction about banning all commercial grows stating that commercial medical marijuana grows will be needed to supply the dispensaries.

Mayor Brigham closed the Public Hearing

Councilmember Palla asked for clarification regarding possible criminal penalties for illegal grows, questioning whether violations would be a misdemeanor, felony or an infraction. City Attorney Sanchez responded that prior to going to criminal penalties under this ordinance the Police Department has the option to warn and use administrative remedies and Civil Action. Chief Cramer added that the ordinance was set up as an abatement process to give the small illegal grows the opportunity to get into compliance. He further stated that those not coming into compliance with the Health & Safety Code, Misdemeanor and Felony Sections, would be handled on a case by case basis.

Vice Mayor Wolter requested that Clay Skelton's earlier comments be addressed. He also asked for clarification regarding the delivery service amount allowable, questing if two patients lived in one apartment, could they receive two deliveries. City Attorney Sanchez discussed language options for the ordinance suggesting Mr. King's idea of eight ounces per address. Regarding Mr. Skelton's concerns, Chief Cramer responded that 30 plants do not necessarily mean more than three pounds; it depends on if there is more than three pounds after the plants are harvested. As for the concerns about neighbors, the Chief stated that people are legally entitled to grow medical marijuana but invariably there will be people who don't want marijuana growing next door, adding that is why the fully detached, enclosed structure requirement was developed to minimize the odor and consequences that could occur with a marijuana grow. The Chief stressed the importance of meeting and balancing everyone's needs.

Mayor Brigham stated that it makes sense to her that a delivery would be per qualified patient or caregiver, giving the example of an older couple living together and both needing medical marijuana. She suggested the deliveries be based on per patient basis rather than per address. Councilmember Palla responded that there appears to be no restriction on the amount of deliveries per week so this could still accommodate multiple

patients. Chief Cramer reported that eight ounces is the maximum allowed per person per the State law. Councilmember Russell agreed that multiple patients at the same address should be considered to ensure all patient needs are met.

City Attorney Sanchez asked the Council for feedback regarding the 600-foot setback requirement from schools. He stated that this requirement was present in legislation regarding the outdoor structure grows but noted there was no language addressing this setback for the small three plant grows. Mayor Brigham stated she did not want to add this requirement to the three plant grows and the rest of the Council agreed.

Action: Motion was made by Councilmember Cox and seconded by Councilmember Russell to introduce the ordinance by title only, Ordinance 701-2016 of the City Council of Cloverdale Amending Cloverdale Municipal Code Title 18 (Zoning Ordinance), Chapter 18.09, to add "Article III. Marijuana," Section 18.09.300, "Medical Marijuana," Prohibiting Commercial Marijuana (Cannabis) Activities and Regulating the Cultivation of Medical Marijuana by Qualified Patients and Primary Caregivers and the Delivery of Medical Marijuana within the City. The motion passed by roll call vote (5-ayes – Councilmember Palla, Councilmember Cox, Councilmember Russell, Vice Mayor Wolter, Mayor Brigham; 0-noes).

Action: Motion was made by Councilmember Palla and seconded by Vice Mayor Wolter to introduce the ordinance by title only, Ordinance 702-2016, of the City Council of Cloverdale Amending Chapter 9.36, "Marijuana," of the Cloverdale Municipal Code, Section 9.36.020, "Definitions," and Section 9.36, "Outdoor Cultivation of Marijuana Prohibited," to Reference the Cloverdale Zoning Ordinance for Definitions and Regulations related to the Cultivation of Marijuana. The motion passed by roll call vote (5-ayes – Councilmember Palla, Councilmember Cox, Councilmember Russell, Vice Mayor Wolter, Mayor Brigham; 0-noes).

NEW BUSINESS:

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

City Manager Cayler discussed the history of this requested agreement, explaining that Council authorized a grant agreement with the Federal Aviation Administration, which would provide 90 percent of the cost for the preparation for the Cloverdale Municipal Airport's Taxiway Reconstruction Project but delayed approving the professional services agreement. He stated that at the November 10, 2015, Council meeting the Council continued this item to the December 9, 2015, meeting in order to discuss and consider the future of the Cloverdale Airport. Mr. Cayler reported that this item was again continued to the January 12, 2016, meeting to give representatives of Lulima Development an opportunity to make a developers deposit to negotiate a memorandum of understanding with the City regarding a potential application to the Federal Aviation Administration for the closure of the Cloverdale Municipal Airport. He stated that to date, no developer's deposit has been received; therefore, he recommended that the City Council take action to adopt the proposed resolution authorizing the execution of a Professional Services Agreement with C&S Companies for the Preparation of the Airport Taxiway Reconstruction Project. Mr. Cayler referenced the report received from an inspection conducted on July 29th by the California Department of Transportation Aeronautics Administration, which stated the asphalt surfaces were raveling with longitudinal and alligator cracking and should be addressed promptly to prevent further deterioration and reduce the likelihood of damage to propellers and windscreens.

Vice Mayor Wolter stated that he went to the airport and walked the taxiway today and he wished the streets of Cloverdale looked that good. He said that he saw some cracks but no alligator cracking. He remarked that the runway needs some attention but he does not think the taxiway is that bad. Vice Mayor Wolter stated he has some concerns moving forward with the agreement.

Mike Morrissey, the Cloverdale Airport Manager, urged the Council to approve the Taxiway Reconstruction Project. He stated that an airplane on a taxiway is much different than a car on a road, stressing the importance of keeping the taxiway in good condition because airplanes are very susceptible to any kind of hazard. He

reported there are cracks running both direction with weeds popping up, which cause bigger cracks and releases gravel. He stated that the gravel can damage propellers and windscreens. He further stated that the FAA considers all airport surfaces very important and a priority, noting that the typical lifespan for well maintained asphalt is ten years and the asphalt at Cloverdale Airport is well beyond that timeframe. He commented that the City needs to mitigate the degradation of the taxiway instead of waiting and missing this grant opportunity, which could leave the City paying for the entire project down the road.

PUBLIC COMMENTS:

Mark Tuma, Cloverdale, commented that the City had a five-year capital improvement project set up with the FAA and since the FAA puts priority on safety items, the runway was completed first. He stated that the City Manager is asking for approval of an engineering study to repave the taxiway, which will probably happen in 2017. He discussed the FAA grant, the project, and timeline for the completion of this project. Mr. Tuma commented that this would be a boost to the community with the City utilizing federal money. He reiterated that airplanes are not like cars; they do not have suspension like cars and if a plane goes too fast on the current taxiway, it could easily hit a propeller and greatly damage the plane, which will likely mean a lawsuit for the City.

Clay Skelton, Cloverdale, stated he is a pilot who has donated time to spray weed killer at the airport and strongly agreed with Mr. Tuma about the danger of a prop hitting the taxiway.

Jimmy Halliday, Cloverdale, NorCal Skydiving, stated that his company spent \$42,000 in fuel at the airport in the past year and over \$2,000 a month in rent. He commented that he wishes aviation was like the automotive world, sharing that maintenance on an aircraft cannot be put off or run on the same schedule as a car. He emphasized that planes must be maintained, adding that every time you see a car pulled over waiting for a tow truck would be the equivalent of a plane falling out of the sky. He voiced that there are much different parameters for aviation than for automotive and stressed the importance of having a clean well maintained taxiway.

Steve Nurse, Cloverdale, stated he has a friend, who also happens to be a pilot who uses the Cloverdale airport frequently and he stated that he did not see anything wrong with the Cloverdale airport. Mr. Nurse also discussed European planes that land on grass airfields. He expressed concerns about the money the City might spend on this grant since there is no cap.

Marshall Kelly, Cloverdale, stated that he does not argue that the airport needs regular scheduled maintenance, but he questions the price parameters for this project. He remarked that he would like to see an independent study from another engineer for this project. He discussed the expenses that could be incurred and the possible development project that may close the airport.

Susan Nurse, Cloverdale, questioned whether the City should take on another airport obligation right now, adding that taking FAA grants is not free money. She suggested not moving forward with this project. Ms. Nurse questioned if the repair of the taxiway could take place for less money and without using the grant. She also asked if the City received competitive bids.

Mark Tuma, Cloverdale, responded that the FAA inspected the taxiway and the Caltrans Division of Aviation, who permits the airport, also inspected the airport. He stated the bidding for C&S was done competitively and were within the FAA estimated guidelines for the project.

Airport Manager, Mike Morrissey, clarified that this project is not just for surface repair, noting that the runway and taxiway must support a plane weighing up to 12,500 pounds; therefore, an engineering firm needs to be involved.

The Council discussed the project and repercussions of not proceeding with the project, as well as developing a business plan for the airport.

Action: Motion was made by Councilmember Cox and seconded by Councilmember Russell to approve Resolution 002-2016 authorizing the City Manager to execute a Professional Services Agreement with C&S Companies for the Preparation of the Airport Taxiway Reconstruction Project. The motion passed by roll call vote (4-ayes – Councilmember Palla, Councilmember Cox, Councilmember Russell, Mayor Brigham; 1-no-Vice Mayor Wolter).

9. Authorize the City Manager to Execute Profession Services Agreement with Collaborative Design Architects, Inc. for Master Planning Service at the “Thyme Square” Property

City Manager Cayler presented this item. He shared that the Thyme Square property is undeveloped, City-owned land, which was purchased with funding from the former redevelopment agency, low and moderate housing set aside funding. Mr. Cayler reminded Council that during the fiscal year 2015-2016 goal setting process, the City Council's number one goal was to begin development of Thyme Square and Cherry Creek properties. Mr. Cayler reported that a proposal for planning of the property was sought from Collaborative Design Architects, Inc. Jim Burns, the Principal of Collaborative Design will provide three conceptual designs for the development of the parcel, which may include the health center and police department facility, in addition to possible low income housing and retail use. Mr. Cayler remarked that a conceptual plan needs to be developed to determine how the parcel will be divided before involving the City Attorney to determine the best way to move the property from City control to a developer's control to build the project. He stated the goal is to get an overall vision for the preferred uses of the property, but he cautioned the community and the Council to be aware that there are a lot of potential uses for the property and we might be over optimistic about how many uses can actually fit on the property. City Manager Cayler recommended that the City Council adopt the resolution authorizing the City Manager to execute a professional services agreement with Collaborative Design Architects, and recommended that funding for the services agreement come from the inclusionary housing budget.

Councilmember Russell stated she is happy to see some activity on this project and she feels the combination of the Health Center and a police facility is desperately needed and housing use would be brilliant.

Councilmember Cox concurred stating that he is excited about the Thyme project moving forward and the three possible scenarios.

Vice Mayor Wolter agreed, stating that his number one commitment on the project is for a new public safety building, commenting that the police officers were promised a new police station years ago. He also voiced approval for the low to moderate income housing.

Councilmember Palla stated that he agreed whole heartedly that the Healthcare Center and police station are high priorities; however, he questioned the housing component. He acknowledged the need for low to moderate income housing but felt that retail businesses as we enter into the downtown could be a critical component. He suggested the architect look at retail with upstairs residential units so we can have both. He also suggested a small portion of the property could be used for a skate park and recommended the architect consider this option.

Mayor Brigham commented that her top priorities for the project would be to include the Alexander Valley Healthcare and a police station.

PUBLIC COMMENTS:

Mark Tuma, Cloverdale, requested the Council to consider putting the police station on Asti Road where it was previously approved to be located.

La Reva Myles, Cloverdale, questioned the process to establish this project and requested details regarding the funding. She commented that mixed retail and moderate to low income housing seemed an appropriate use of the land.

Action: Motion was made by Councilmember Cox and seconded by Councilmember Palla to introduce Resolution No. 003-2016 authorizing the City Manager to execute a Professional Services Agreement with Collaborative Design Architects, Inc., to perform Master Planning for the Thyme Square property.

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

City Manager Cayler presented this item, stating that he distributed subcommittee preference forms at the December 9, 2015, Council Meeting for the City Council reorganization of 2016. He reported that he had received and compiled the Council's preferences and was now making recommendations for subcommittee, joint committee and regional board/committee appointments. He stated that his recommendation should be viewed as a starting point for the City Council's discussion, and that the final determination of appointments is at the direction of the Council. The recommended appointments were discussed with Councilmembers making some suggested changes. City Manager Cayler stated that he would make suggested changes and present a resolution with appointments at the next Council meeting scheduled for January 26, 2016.

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

City Attorney Sanchez presented this item with City Manager Cayler excusing himself from the dais. Attorney Sanchez discussed the proposed extension and modification to Mr. Cayler's At-Will Employment Agreement.

PUBLIC COMMENTS:

La Reva Myles, Cloverdale, commented that everyone in City government is receiving a cost of living raise except City Council. She stated she would like increases in salary to be looked at the same as other projects within the City to determine if there are sufficient funds. Councilmember Palla responded to Ms. Myles stating that the projected salaries have been looked at and determined to be doable.

Action: Motion was made by Councilmember Palla and seconded by Councilmember Cox to introduce by title only Resolution 004-2016 of the City Council of the City of Cloverdale approving a second amendment to the At-Will Employment Agreement with Paul D. Cayler as City Manager of the City of Cloverdale. The motion passed by roll call vote (5-ayes – Councilmember Palla, Councilmember Cox, Councilmember Russell, Vice Mayor Wolter, Mayor Brigham; 0-noes).

City Manager Cayler re-entered the meeting.

SUBCOMMITTEE ITEMS:

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

City Contract Engineer Vanessa Apodaca, provided background information on a proposed Professional Services Agreement with RMC Water and Environment. She explained that the City does not have the staff time or experience to renew the NPDES permit in a timely manner, adding that the application process is a very involved and lengthy process. Consequently the City needs to contract to have the permit renewed prior to the November 1, 2016 deadline. She stated that deferring this work could result in missing the application deadline and leave the City at risk of the current permit expiring before a new one is completed, resulting in potential fines from the Regional Water Board. Ms. Apodaca commented that RMC has assisted the City with the application in the past; thus is uniquely qualified. She informed Council that the proposal includes preparation of the NPDES permit application, permit reissuance negotiations with the Regional Water Board and project management and coordination. City Manager Cayler announced to the Council that this is an information only, first touch item, at this time due to the Council's two touch rule.

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

Ms. Apodaca explained that this item is also being brought before the Council as a first touch, informational item. She shared that at last report, the City's waste water ponds were at 80% capacity for biosolids and the City does not have facilities to process or dispose of the accumulated biosolids. Ms. Apodaca stated that Brelje & Race Consulting Civil Engineers has local experience with similar biosolids removal projects and is familiar with the technical aspects necessary to encourage competitive bidding and to control disposal costs. She informed Council that in response to the City's request, Brelje & Race submitted a proposal for biosolids assessment services to determine the quantity of the accumulated solids and to test for various contaminants that could influence reuse and disposal options. She added that the proposal also included preparation of bid documents and providing construction management services necessary to have the accumulated biosolids removed from the pond, dewatered, and hauled away to an appropriate reuse or disposal site.

Councilmember Palla asked if this is the same pond that had this work completed in 2012 and if so, will this process be needed every three to four years. Ms. Apodaca confirmed that it is the same pond, adding that it is her understanding that the pond reached capacity more quickly due to heavy loading by industrial users. She stated that implantations have been put in place to reduce that loading; hence, the hope is not to have to deal with this as soon. City Manager Cayler discussed the industrial users and the pretreatment systems that have recently been put into use, which are reported working well.

SUBCOMMITTEE REPORTS: (VERBAL REPORTS: 15 minutes)

- Airport - Next Meeting: February 2, 2016, 8:00 am
- Finance, Administration & Police - Next Meeting: January 28, 2016, 2:00 pm.
- Planning & Community Development – Met on December 15th and received a presentation on the Thyme Square property and the three conceptual designs. Councilmember Wolter voiced concerns about the conceptual design number two, which leaves out the Police Station. Next Meeting: February 16, 2016, 4:00 pm.
- Public Works - Next Meeting: January 26, 2016, 10:30 am.
- Joint City/Fire District - Next Meeting: February 26, 2016, 5:30 pm.
- Joint City/School District– Next Meeting: January 25, 2016, 5:00 pm.

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

Councilmember Russell shared information from Sonoma County Transit and Regional Climate Protection regarding the State road user charge pilot program, expressing concern about the new user tax. She also shared information from Pepperwood Preserve regarding projections for climate change.

Councilmember Cox shared that he presented a plaque to Bert Bernstein on December 30th, which was his last day prior to retiring as the Cloverdale city bus driver.

Councilmember Palla stated he received several complaints regarding the 1090 South Cloverdale Blvd. property, which is currently under construction and has a long line of vehicles parked along the fence. He shared that the occupant has been put on notice to remove the inoperable vehicles and he wanted to publicly thank Supervisor Gore and his staff for their assistance with this situation. He also shared lighting and safety concerns at the school crossing was discussed at the last Facilities' Needs Committee meeting with the School District and expressed the desire to follow up to ensure the lighting situation is corrected. City Manager Cayler responded that one of the changes that Chief Cramer has implemented is to routinely audit the street light. He discussed steps taken though the City, PG&E and Caltrans to repair lighting.

LEGISLATIVE REPORT: None.

CITY MANAGER/CITY ATTORNEY REPORT:

City Manager Cayler stated that the City has been in the process of scheduling a Strategic Planning Meeting with Sue Haun and has selected the date of February 3rd. He also discussed the upcoming Goal Setting Workshop.

COUNCIL DIRECTION ON FUTURE AGENDA ITEMS:

Vice Mayor Wolter shared that he will be out of town on vacation from January 14th to February 1st. He requested to review the Planning Commission and vacancies at a future Council meeting. Discussion ensued ending with Vice Mayor Wolter requesting to direct the topic to the Planning & Community Development Subcommittee. Councilmember Palla also requested to agendize the Cherry Creek property for discussion.

ADJOURNMENT: Mayor Brigham adjourned the meeting at 10:25 p.m. to a regular meeting of the City Council and Cloverdale Community Development Successor Agency, Tuesday, January 26, 2016, for Closed Session at 5:30 p.m. (at the City Hall Conference Room 124 N. Cloverdale Blvd., Cloverdale, CA95425) and Public Business Session at 6:30 p.m. (at the Cloverdale Performing Arts Center 209 N. Cloverdale Blvd., Cloverdale, CA 95425).



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

Agenda Item: 2 Meeting Date: March 8, 2016

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

Resolution on the Future of the Sonoma County Waste Management Agency, including One Year Extension of Joint Powers Authority Agreement

Summary

Cloverdale is one of ten members of the Sonoma County Waste Management Agency (SCWMA), which is a Joint Powers Authority (JPA) tasked primarily with directing waste diversion efforts county-wide. The members are the 9 incorporated municipalities and the County of Sonoma. The SCWMA was established in 1992, and the original JPA Agreement set a term limit of 25 years. The Agreement will expire in February 2017. The SCWMA Board of Directors and its member jurisdictions has engaged in a series of discussions regarding the future of the agency, and whether to extend the JPA expiration one year until February 11, 2018. The Cloverdale City Council discussed the future of the SCWMA at the regular Council meeting of February 23, 2016. After the Council discussed the SCWMA JPA extension, the Council gave direction by consensus for a formal resolution to be developed supporting the one year extension, and that said resolution be placed on the next regular meeting consent calendar for adoption.

Options

1) Reject one year extension resolution; or 2) Approve one year extension resolution.

Budget/Financial Impact

None.

Subcommittee Recommendation

None.

Recommended Council Action

The City Manager recommends that the City Council adopt the attached resolution whereby authorizing the City Manager upon approval as to form by the City Attorney to execute an amendment to the Sonoma County Waste Management Agency Joint Powers Agreement for a one year extension.

Attachments:

1) Proposed Resolution No. 020-2016

**CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 020-2016**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE AUTHORIZING THE CITY MANAGER TO
EXTEND THE TERM OF THE AGREEMENT BETWEEN THE CITIES OF SONOMA COUNTY AND SONOMA COUNTY
FOR A JOINT POWERS AGENCY TO DEAL WITH WASTE MANAGEMENT ISSUES BY ONE YEAR**

WHEREAS, the City of Cloverdale (the "City") is a party to that certain Agreement Between the Cities of Sonoma County and Sonoma County for a Joint Powers Agency to Deal With Waste Management Issues, as amended on January 24, 1996 by the First Amendment to the Agreement, and on March 27, 2014 by the Second Amendment to the Agreement (known collectively as the "Agreement"); and

WHEREAS, the Agreement created the Sonoma County Waste Management Agency (the "Agency") as a separate public entity in accordance with the requirements of Government Code section 6500 et seq., to provide service to the Sonoma County region on four primary programs; (1) household hazardous waste; (2) wood waste; (3) yard waste that otherwise would go to a landfill; and (4) education about the Agency's programs (known collectively as the "Agency Programs"); and

WHEREAS, the Agency further serves as a Regional Agency designated by the California Department of Resources Recycling and Recovery in compliance with Public Resources Code Section 40975 for purposes of implementing, monitoring and reporting programs to meet the goals established by the Integrated Waste Management Act of 1989 on behalf of the member Cities and County (a "Regional Agency"); and

WHEREAS, the Agreement has a term of twenty-five (25) years, which term expires on February 11, 2017, which term may be extended from year to year by mutual agreement of the member Cities and County; and

WHEREAS, the expiration of the Agreement would result in the dissolution of the Agency; and

WHEREAS, the Agency Board of Directors is engaged in discussion regarding the future of the Agency and Agency Programs, including whether to recommend to the member Cities and County to enter into a new or amended joint exercise of powers agreement to continue Agency Programs and its service as a Regional Agency, or to address Agency Programs in another manner, including transitioning Agency Programs to one or more other government entities and potentially establishing a new agency to serve as a Regional Agency for the member Cities and County; and

WHEREAS, the City supports a regional approach to Agency Programs, but recognizes that the member Cities and County may require additional time beyond the expiration of the term of the Agreement to negotiate the terms of a new joint exercise of powers agreement or agree upon an government entity or entities to take over responsibility for the Agency Programs; and

WHEREAS, in the event such additional time is needed to determine the future of the Agency, the City is willing to extend the term of the Agreement for one (1) year from the current date of expiration; and

WHEREAS, the Agency has indicated that in the event all of the member Cities and County have not agreed upon and designated one or more successor government entities to assume responsibility for all of the Agency Programs and serve as a Regional Agency for the member Cities and County, or elected to withdraw from the Agency, on or before July 1, 2016, the Agency will require an additional year to either develop a plan for the continuation of Agency Programs, or efficiently transition the Agency's operations to other government entities and/or the member Cities and County.

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Cloverdale that in the event that the City and the other member Cities and County have not all agreed upon and designated one or more successor government entities to assume responsibility for the Agency Programs and to serve as a Regional Agency for the member Cities and County, or elected to withdraw from the Agency, on or before July 1, 2016, the City agrees to extend the term of the Agreement by one (1) year from its current expiration date. Upon such extension, the new expiration date for the Agreement shall be February 11, 2018.

BE IT FURTHER RESOLVED that the City Manager upon approval as to form by the City Attorney is hereby authorized and directed to execute and deliver any and all documents necessary to carry out such extension in accordance with this Resolution.

It is hereby certified that the foregoing Resolution No. _____ 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 March, 2016, by the following voice vote: (5-ayes, 0-noes)

AYES IN FAVOR:

NOES:

ABSENT:

ABSTAIN:

Approved:

Attested:

Mary Ann Brigham, Mayor

Linda Moore, Deputy City Clerk



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

Agenda Item: 3
Meeting Date: March 8, 2016

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

Action to Authorize the City Manager to Fill Budgeted Positions in the Cloverdale Police Department including a Sergeant and Police Officer

Summary

The Cloverdale City Council adopted a Fiscal Year 2015-2016 Budget that included funding and filling sworn law enforcement officer positions in the Police Department for half a year. Those positions included a Sergeant and a Police Officer. The Council directed that the Police Department positions not be filled until a review of the Mid-Year Budget report. At the City Council meeting on February 22, 2016, the Council reviewed the Mid-Year Budget Report, which included the City’s General Fund position. By consensus the City Council directed the City Manager to return a formal consent calendar item approving filling budgeted yet unfilled Police Department positions. Presently, two Sergeant positions are funded and filled, and the additional Sergeant position will be the third sergeant. This will return the Police Department to command level staffing levels that existed in 2014. There are presently nine sworn Police Officer positions funded and filled in the Police Department. The additional Police Officer position requested to be filled will be the tenth Police Officer position, which will return the department to staffing levels that existed prior to the Great Recession. It was an objective of the City Council to begin rebuilding Police Department staffing by funding and filling the tenth Police Officer position in the Fiscal Year 2015-2016 Budget. By filling the third Sergeant and tenth Police Officer positions, the Cloverdale Police Department will be at 14 funded and filled sworn law enforcement officers, including the Chief of Police.

Options

1) Reject authorization to fill positions; or 2) Approve authorization to fill positions.

Budget/Financial Impact

The annual budget impact for the two positions is as follows:

Entry level police officer (including benefits) \$134,123.

“C” Step sergeant (including benefits) \$169,617.

Subcommittee Recommendation

None.

Recommended Council Action

The City Manager recommends that the City Council adopt by minute order the following statement:

“The City Manager is authorized to fill additional funded positions in the Cloverdale Police Department including one Sergeant and one Police Officer position, which will make a total 14 funded and filled sworn law enforcement officer positions including the Chief of Police.”

Attachments: None.



City Council/Successor Agency
Agenda Item Summary

Agenda Item: 4
Meeting Date: March 8, 2016

Table with 2 columns: Agenda Section (Consent) and Staff Contact (Paul Cayler, City Manager)

Agenda Item Title
Action to Approve a Resolution 021-2016 of the City Council of the City of Cloverdale Approving a Memorandum of Understanding with the Cloverdale Classified Service Employees Association and Authorizing the City Manager to Execute the Memorandum of Understanding

Summary

The Cloverdale Classified Service Employees Association (CSEA) consists of a represented group of 11 employees. The CSEA and the City of Cloverdale negotiated a two year memorandum of understanding (MOU). The MOU was subsequently amended in 2013 and 2014 to address certain terms and to extend the agreement until June 30, 2015. Under the direction of the City Council, City of Cloverdale labor representatives met and conferred in good faith with the CSEA, and have tentatively agreed on amendments to the MOU. A summary of the tentative agreements is attached, along with the draft superseding MOU. The following are brief, common language descriptions of those tentative agreements:

- 1. Two percent (2%) Cost of Living Adjustments (COLAs) effective July 1st of 2015 and 2016.
2. Incorporation of the Side Letter of Agreement from 2013 which memorialized changes stemming from the Public Employees' Pension Reform Act (PEPRA).
3. Incorporation of the Side Letter of Agreement from 2014 increasing the footwear and work apparel allowance to \$400 per fiscal year.
4. Incorporation of the Side Letter of Agreement from 2014 increasing the Community Service Officer uniform allowance to \$1,075 per year.
5. Increasing the ability to sell back accrued vacation time to 60 hours per fiscal year subject to sell back will not reduce employee leave balance to less than 40 hours. The City Manager may grant exceptions in unique situations.
6. Employee may accumulate a maximum of 2,080 hours of sick leave.
7. The CSEA and the City agree to discuss job description and pay equity issues during the term of the MOU.
8. Effective July 1, 2015, an addition longevity pay step of 2% is established at 23.5 years of service with a total longevity pay of 8% at 23.5 years.
9. Recognition of the addition of the Engineering Technician classification to the CSEA bargaining unit.
10. Two year term to June 30, 2017.

The proposed agreements reflect the City Council's goal to negotiate two year MOUs with employee bargaining units, which recognize employee sacrifices through a limited salary and benefits adjustment. It should be noted that the City of Cloverdale has successful concluded agreements with the other bargaining units according a similar terms and COLA's.

Options

Reject all or individual elements of the proposed Memorandum of Understanding. The City Manager does not recommend this option, given the parties agree that they have met in good faith and both the City Council and CSEA membership have received regular updates and provided direction on the proposed amendments to the MOU.

Budget/Financial Impact

The fiscal impact for Fiscal Year 2015/16 is projected to be \$18,635.01, of which \$5,097.88 will be allocated to the General Fund. In fiscal year 2016/17, the fiscal impact is projected to be \$19,007.71 of which \$5,199.84 will be allocated to the General Fund and will be addressed as part of the annual budget development process for the fiscal year 2015-next spring. The remaining fiscal impact will be allocated to various enterprise funds.

Subcommittee Recommendation

None.

Recommended Council Action

Adopt the attached resolution No. 021-2016 thus authorizing the City Manager to execute the amended and superseding memorandum of understanding between the Cloverdale Classified Service Employees' Association and the City of Cloverdale.

Attachments:

1. Resolution 021-2016
2. Summary of tentative agreement.
3. Memorandum of Understanding (with changes highlighted).

cc:

CLOVERDALE CLASSIFIED SERVICE EMPLOYEE ASSOCIATION

2016 CONTRACT NEGOTIATIONS

Two Year Tentative Agreement

Offered: January 21, 2016 (Letter from Richard A. Reed, Reed and Associates, Labor Consultant)

Subjects: Summary of Tentative Agreement

1. ARTICLE 2. Recognition (from side letter)

The City recognizes the addition of the Engineering Technician classification to the CSEA bargaining unit and the elimination of the Department Secretary classification from the CSEA bargaining unit.

2. Section 6.1.2

Cost of Living Adjustments:

The salary range of employees listed in Attachment A. There will be a cost of living adjustment as follows:

- 1) 2% effective July 1, 2015
- 2) 2% effective July 1, 2016

3. Section 6.2.1 Longevity Pay Plan:

Effective July 1, 2015, The City agrees to adding an additional step at 23.5 years of service. The amount of the step will be 2%. The total longevity pay will be 8% (eight percent) at 23.5 years.

4. Section 6.3.1.1 Public Works Department Employees: (from side letter)

Allowance Amounts: The City agrees to reimburse for actual expenses, up to a maximum of four hundred dollars (\$400) each fiscal year, for the acquisition of acceptable safety shoes or boots, or work apparel as defined in Section 6.3.5.

Section 6.3.2 Police Department Employees: (from side letter)

The City agrees to provide the Community Services Officer in the Police Department an annual uniform allowance of one thousand seventy-five dollars (\$1,075) per year.

Section 6.3.4 Reimbursement for Uniforms and Uniform Equipment: (from side letter)

The City agrees to reimburse employees for uniforms or other necessary work apparel, including but not limited to work footwear, that are damaged or stolen during duty hours or while stored at a City facility, providing that the employee made a reasonable effort to safeguard the uniform and/or uniform equipment or work apparel.

Section 6.3.5 Definition of "Work Apparel": (from side letter)

For purposes of this section, "work apparel" is defined as clothing necessary for work environments including pants, shirts, outerwear, underwear, socks, hats and footwear.

5. Section 6.4.1 PERS Plan: (from side letter)

6.4.3 All "new members," as defined in California Government Code Section 7522.04(f), shall receive the 2.0% at 62 pension benefit formula, as specified in Government Code Section 7522.20(a).

6.4.3.1 Effective July 1, 2013, a new member subject to the 2.0% at 62 formula shall contribute 50% of the total "normal cost" as defined in Government Code Section 7522.04(g).

Nothing in this Agreement shall be interpreted as preventing the City and the Association from agreeing in the future to increased employee contributions; or to an available reduced benefit formula for future hires.

6. Section 6.6.2, Vacation Sell-Back:
The City agrees that all employees may, upon recommendation of the Department Head or his/her designee and upon discretionary approval of the City Manager or his/her designee, sell back up to sixty (60) hours of vacation time to the City once per fiscal year, subject to the provision that no sell back will reduce an employee's leave balance to less than forty (40) hours. The City Manager or his/her designee may grant an exception in unique situations.

7. Section 6.9.2 Maximum Sick Leave Hours:
The City agrees that each employee may accumulate a maximum of two thousand and eighty (2,080) hours of sick leave.

8. Section 6.17 Job Descriptions:
The Association and City agree to discuss job description and pay equity issues during the term of the MOU, with a starting date no later than July 1, 2016.

9. Section 10.2 Term:
The term of this Memorandum of Understanding shall be from July 1, 2015 through June 30, 2017.

**MEMORANDUM OF UNDERSTANDING
Between**

**CLOVERDALE CLASSIFIED SERVICE EMPLOYEES ASSOCIATION
And
THE CITY OF CLOVERDALE**

(July 1, 2015 through June 30, 2017)

The City of Cloverdale (City) and representatives of the Cloverdale Classified Service Employees Association (CCSEA) acknowledge and affirm that they have met and conferred in good faith, exchanged proposals and counter proposals, and in all respects fulfilled their obligations under law to meet and confer in good faith.

This Memorandum of Understanding (MOU) is the product of the above-described meeting and conferring process. Representatives of the City agree to present this MOU to the City Council for determination, and representatives of the CCSEA agree to present this MOU to their membership for acceptance and approval.

ARTICLE 1. DEFINITIONS

1.1 Employer

The term "City" referred to herein shall be the City of Cloverdale.

1.2 Association

The term "Association" referred to herein shall be the Cloverdale Classified Service Employees Association.

1.3 Employee

The term "Employee" or "Employees" referred to herein shall be all full-time employees of the City of Cloverdale listed in Article 2 of this MOU.

ARTICLE 2. RECOGNITION

The City hereby recognizes the Association as the sole and exclusive bargaining agent of the classes listed below:

- Assistant Planner
- Associate Planner
- Community Services Officer
- **Engineering Technician**
- Park & Landscape Maintenance Assistant
- Park & Landscape Maintenance Lead Worker
- Park Maintenance Worker I/II
- Planning Technician
- Senior Wastewater Treatment Plant Operator
- Senior Water Treatment Plant Operator
- Transit Van Operator
- Utility Maintenance Crew Leader
- Utility Maintenance Worker I
- Utility Maintenance Worker II
- Wastewater Treatment Plant Operator I
- Wastewater Treatment Plant Operator II
- Wastewater Treatment Plant Operator-In-Training
- Water Treatment Plant Operator I
- Water Treatment Plant Operator II
- Water Treatment Plant Operator-In-Training

ARTICLE 3. HIRING PROVISIONS

3.1 Non-Discrimination

No employee shall be discriminated against by the City, or by the Association, by reason of race, color, religion, sex, age, sexual orientation, marital status, disability, national origin or other status protected by the Fair Employment and Housing Act (Government Code § 12940).

3.2 Employment

The City shall not discharge or otherwise discriminate against any employee by reason of Association activities not interfering with the proper performance of his/her work.

ARTICLE 4. CITY RIGHTS

The rights of the City include, but are not limited to, the exclusive right to determine the mission of its constituent departments, commissions and boards; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; determine the methods, means and personnel by which government operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

City recognizes its responsibility to join the Association in the meet and confer process as required by law.

ARTICLE 5. EMPLOYEE RIGHTS

5.1 General

Employees shall have the right to form and to participate in the activities of the employee organizations of their own choosing for the purpose of representation of all matters of employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment. Employees of the City also have the right to represent themselves individually in their employment relations with the City. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against by the City or by an employee organization because of his/her exercise of these rights.

5.2 MOU Compliance with Meyers-Milias Brown Act

Representatives of the City and the Association have met and conferred pursuant to the provisions of the Meyers-Milias-Brown Act for the purpose of reaching agreement concerning all matters within the scope of representation of employees during the term of this MOU.

ARTICLE 6. WAGES, HOURS AND WORKING CONDITIONS

6.1 Salaries

6.1.1: The salary range for each classification shall be set forth in Exhibit A to this MOU.

6.1.2 *Cost of Living Adjustments:*

1) 2% retroactive to July 1, 2015

2) 2% effective July 1, 2016

6.2 Longevity Pay

6.2.1 Longevity Pay Plan: Employees shall be eligible for longevity pay in accordance with the following schedule:

Length of Service (in Years)	Longevity Pay (Percent of Base)
Completion of eight and one-half (8-1/2)	2%
Completion of thirteen and one-half (13-1/2) years	4%
Completion of eighteen and one-half (18-1/2)	6%
Completion of twenty-three and one-half (23-1/2) or more years	8%

6.2.2 Length of Service Defined: For purposes of this section, "length of service" is defined as continuous, uninterrupted service with the City, except during periods of involuntary lay-off (See Personnel Rules & Regulations, Rule 12, Section 7 "Reinstatement of Benefits"). Longevity pay percentages are not cumulative (example: an employee with fifteen (15) years of service is entitled to only four percent (4%) of base salary as longevity pay not 2% plus 4% equaling 6%).

6.2.3 Extended Longevity Pay: Employees shall be eligible for extended longevity pay. City shall pay into individual employee ICMA accounts in accordance with the following schedule:

Length of Service	Extended Longevity Pay (Percent of Base Salary)
Ten (10) Years of Service	1.5%
Fifteen (15) Years of Service	2%

For purposes of this section, "length of service" is defined as continuous, uninterrupted services with the City; longevity pay percentages are not cumulative. Payment shall commence on the first payday following the employee's hiring anniversary and shall include a pro-rata amount for any period of time between the hire anniversary and the first payday.

Employees hired after June 30, 2011 are not eligible for extended longevity pay.

6.3 Clothing and Equipment

6.3.1 Public Works Department Employees:

6.3.1.1 The City shall provide uniforms to employees in the Public Works Department who work in classifications required to wear industrial style uniforms and approved safety boots. Each employee will be provided five (5) shirts and five (5) pants annually, as the base uniform benefit. Employees may select alternate outer wear, such as mechanic style coveralls, bib style overalls, etc. However, the cost of this alternate allocation may not exceed the annual allowance for base uniform benefit costs. (Example: if the City pays

\$XX for five (5) shirts and five (5) pants on average for a Public Works employee in a given fiscal year, the City will pay up to that same amount for the alternate outer wear in that fiscal period).

In addition to the basic uniform provision above, the City agrees to reimburse for actual expenses, up to a maximum of **four hundred dollars (\$400)** each fiscal year, for the acquisition of acceptable safety shoes or boots, **or work apparel as defined in Section 6.3.5**. Minimum safety standards will be established by mutual consent between the Association and the Department Head and/or the Personnel Officer.

6.3.1.2 The City will provide four (4) cell phones for use by employees assigned to stand-by duty. One cell phone each will be provided to the Operations, Parks & Landscape Maintenance, Wastewater Treatment, and Water Treatment divisions. In addition, the City will provide a cell phone for use by the employee assigned to drive the Cloverdale Transit bus, pending approval by Sonoma County Transit.

6.3.2 Police Department Employees: The Community Services Officer in the Police Department shall receive an annual uniform allowance of **one thousand seventy-five dollars (\$1,075) per year**. Said allowance shall be paid on a quarterly basis after the completion of each quarter. As such, the allowance shall be paid as part of the first regular pay check issued in October, January, April and July.

The City will provide necessary uniform components to newly hired employees during the course of the year, to a standard set by the Chief of Police or his/her designee. Any newly hired employee will not receive a uniform allowance until service has been completed for four quarters.

6.3.3 Other Employees: Employees not identified above shall not be eligible for a clothing allowance.

6.3.4 Reimbursement for Uniforms and Uniform Equipment: The City agrees to reimburse employees for uniforms **or other necessary work apparel, including but not limited to work footwear**, that are damaged or stolen during duty hours or while stored at a City facility, providing that the employee made a reasonable effort to safeguard the uniform and/or uniform equipment or **work apparel**. Reimbursement shall be based upon the residual value of the item, based upon its current cost.

6.3.5 Definition of "Work Apparel": For purposes of this section, "work apparel" is defined as **clothing necessary for work environments including pants, shirts, outerwear, underwear, socks, hats and footwear**.

6.4 Public Employees' Retirement System (PERS)

6.4.1 PERS Plan: The City shall provide retirement benefits under the Public Employees' Retirement System (PERS) plan commonly known as the **2% @ 55 Retirement Plan**. The City will also provide "the highest 12 consecutive month" benefit. The City shall provide the **1959 Survivor Benefit Level IV**. Employees hired prior to January 1, 2013, or

individuals that are hired on or after that date that are not defined as “new members” pursuant to Government Code Section 7522.04(f), shall be subject to this formula.

6.4.2 Employee Contribution to PERS:

6.4.2.1 Effective the first full pay period in October 2011, employees shall pay one-third (1/3) of the cost (.837%) of the after-added benefits of their PERS Plan in existence as of July 1, 2011.

6.4.2.2 Effective the first full pay period in October 2012, employees shall pay a total of two-thirds (2/3) of the cost (1.67%) of the after-added benefits of their PERS Plan in existence as of July 1, 2011.

6.4.2.3 Employees hired after June 30, 2011 shall pay one hundred percent (100%) of the after-added benefits of their PERS Plan (2.51%).

6.4.3 Employees hired on or after January 1, 2013, pursuant to the California State Legislature’s passage of the Public Employees’ Pension Reform Act (PEPRA) in 2012, who are defined as “new members” in California Government Code Section 7522.04(f), shall receive the 2% at 62 pension benefit formula, as specified in Government Code Section 7522.20(a).

6.4.3.1 Effective July 1, 2013, new members subject to the 2% at 62 formula shall contribute 50% of the total “normal cost” as defined in Government Code Section 7522.04(g).

Nothing in this Agreement shall be interpreted as preventing the City and the Association from agreeing in the future to increased employee contributions; or to an available reduced benefit formula for future hires.

6.5 Retirement Medical Benefit

City will contribute 50% of the employee-only premium for health insurance upon retirement, provided the employee has been employed with the City of Cloverdale for eighteen years or longer and reached the age of 50 years. City will not contribute to the retiree health premiums of employees hired after June 30, 2011.

6.6 Vacation

Vacation time will be accrued according to the following schedule:

Length of Service	Vacation Accumulation (Hours per Year)
0 — 24 Months	104 Hours
25 — 60 Months	120 Hours
61 — 120 Months	144 Hours
121 — 180 Months	168 Hours
181 or more Months	264 Hours

6.6.1 *Vacation Accumulation:* Each employee shall be permitted to accumulate a maximum of three hundred four (304) hours of vacation time. For good cause and upon the recommendation of the Department Head or his/her designee, and with the approval of the City Manager or his/her designee, an employee may accrue up to an additional eighty (80) hours of vacation.

6.6.2 *Vacation Sell-Back:* Employees may, on an annual basis (once per fiscal year) upon recommendation of the Department Head or his/her designee and upon discretionary approval of the City Manager or his/her designee, sell back up to 60 hours of vacation time, subject to the provision that no sell back will reduce an employee's leave balance to less than forty (40) hours. The City Manager or his/her designee may grant an exception in unique situations. ~~(Delete: The limitation on the sell-back amount shall sunset on June 30, 2013, or upon negotiation of a successor MOU, whichever is later).~~

6.7 Work Day/Work Week

6.7.1 *Work Week:* The City agrees that the normal workweek for all represented members of the Association shall be 40 hours.

6.8 Overtime

6.8.1 *Overtime:* Employees may work overtime with the prior approval of the Department Head or his/her designee. Overtime will be paid at one-and-one-half (1.5) times the employee's regular rate for all hours in a paid status in excess of forty (40) hours in a workweek. Overtime shall be accumulated to the nearest one-quarter (.25) hour.

6.8.2 *Compensatory (Comp) Time:* With the prior approval of the Department Head or his/her designee, overtime may be earned as compensatory time at the rate of one-and-one-half (1.5) times the employee's straight time per overtime hour worked, up to a maximum of eighty (80) hours. When used, comp time hours shall not be considered hours in a paid status for the purpose of computing overtime.

6.8.3 *Standby:* Any employee who is required to standby shall receive one (1) hour for each eight (8) hours for which s/he is required to stand by. Standby time shall be paid at the rate of one-and-one-half (1.5) times the employee's regular rate. With the prior approval of the Department Head or his/her designee, standby time may be earned as compensatory time at the rate of one-and-one-half (1.5) times the employee's regular rate.

6.8.4 *Call-Out:* Employees shall be paid two (2) hours, in addition to total time worked, when the employee is called out during non-regular duty hours; provided, however, that once an employee has been called out, s/he shall not receive additional call-out hours' credit for any subsequent call-out within three (3) hours of the beginning of the previous call-out.

6.9 Sick Leave

6.9.1 *Accrual Rate:* Employees shall accrue sick leave at the rate of eight (8) hours for each month of service.

6.9.2 Maximum Hours: Each employee may accumulate a maximum of **two thousand and eighty (2,080) hours of sick leave.**

6.9.3 Compensation for Unused Sick Leave: Upon separation or retirement, the City will compensate employees for thirty-five percent (35%) of accrued but unused sick leave, up to, but not in **excess of two thousand (2,000) hours.**

The compensation shall be calculated based on the employee's hourly rate at time of separation. To the extent provided by PERS regulations, any unused sick leave upon retirement may be converted to years of service for PERS purposes.

6.9.4 Fitness for Duty: City shall have the right to direct employees to a medical evaluation to verify fitness for duty after four (4) consecutive days of employee absence.

6.9.5 Sick Leave Incentive: Employee use of sick leave within a calendar year may qualify for conversion of unused sick leave to annual leave based upon the following utilization schedule.

Usage of Sick Leave (Hours per Year)	Conversion of Existing Balance to Annual Leave (in Hours)
0 —10 Hours	Up to 40 Hours
More than 10 but less than 20 Hours	Up to 16 Hours
20 or more Hours	No Conversion

6.10 Educational Incentive

6.10.1 Certifications: Employees may qualify for seventy-five dollars (\$75) per month for completion of a course of extensive, job-related study or training of at least four (4) semesters in length, if the certification is not required by the State of California and/or the employee's job description. Approval by the Department Head or his/her designee is required in writing prior to beginning the course of study in order to be eligible for payment, and approval shall be in the discretion of the City. An employee shall not be eligible to receive more than one hundred fifty dollars (\$150) per month under this paragraph, i.e., certification for two (2) pre-approved courses of study. Employees shall not be reimbursed for the costs associated with study or training other than for *renewal* of State required certifications for the applicable classification.

6.10.2 Academic Degrees: The City shall pay the following incentive pays for academic degrees:

If the job description for the employee's classification does not require an A.A. degree, s/he will be paid four percent (4.0%) of base salary for receiving or possessing an A.A. Degree. If the job description for his/her classification requires an A.A. degree but does not require a B.A. degree, the employee will be paid two percent (2.0%) of base salary for a B.A. Degree. If the job description for the employee's classification does not require either an A.A. Degree or a B.A. Degree, s/he will be paid six percent (6.0%) of base salary for receiving or possessing a B.A. Degree. No other incentive pay for academic degrees will be provided.

The City shall receive a copy of any diploma for which an employee claims entitlement to an incentive pay under this section.

6.10.3 *Schooling Costs:* Employees shall receive reimbursement for job-related schooling costs, as directed and approved by the Department Head or his/her designee. Any books and tuition will be reimbursed upon submission of receipts.

6.10.4 *Mileage Reimbursement:* Employees who are assigned to attend special seminars, training or study will receive mileage reimbursement at the IRS-approved rate if the employee uses his or her own vehicle for transportation. This mileage allowance is applicable to college courses voluntarily taken by an employee.

6.10.5 *Class B Driver's License:* The City agrees to give a two percent (2%) increase to employees of the Public Works Department who possess and are required by their job assignment to hold and utilize a Class B Driver's license; provided, however, that any employee receiving this benefit at the effective date of this MOU shall continue to receive said benefit so long as s/he continues to hold a valid Class B Driver's license. Those employees shall be solely responsible for DOT compliance requirements for annual physicals, re-certifications and/or any subsequent remedial training requirements. Costs associated with these requirements shall be reimbursable by the City. The City and the Association agree that these requirements may be completed during normal working hours.

6.10.6 *Wellness Incentive:* The City will offer a Wellness Incentive Program to employees. Employees will be eligible to receive one hundred fifty dollars (\$150) per year on a reimbursement basis for participation in an organized physical fitness program or health related class. Eligibility for reimbursement will be determined by the prior approval of the program activity by the City Manager or his/her designee. Reimbursement shall be paid in conjunction with payroll processing in accordance with Internal Revenue Service guidelines.

6.10.7 *Bi-Lingual Proficiency:* The City shall provide one hundred fifty dollars (\$150) per month to employees who achieve or are certified as proficient in a language other than English, when the City Manager determines an operational business need for this second language exists. The City Manager may establish limits on the number of employees eligible and may cancel payment if business needs are otherwise economically fulfilled. The decision of the City Manager shall be final and not subject to the grievance procedure. Proficiency will be determined by appropriate testing methods established by the Personnel Officer.

6.11 Bereavement Leave

Any employee who is absent from work by reason of the death of a member of the employee's immediate family may be allowed a leave of absence with full pay not to exceed three (3) work days per incident. However, when it is reasonable and necessary and good cause is shown, and upon approval of the Department Head or his/her designee, three (3) additional work days may be granted to such leave. In order to receive compensation while absent on bereavement leave, the employee shall notify his/her immediate supervisor or Department Head prior to the time set for beginning of his/her regular duties. Immediate family shall include the spouse, domestic partner, child (including legally adopted child), parent, grandparent, grandchild, step-parent, stepchild, sibling, step-sibling, uncle, aunt, nephew, niece, father-in-law, mother-in-law, sister-in-

law, brother-in-law, son-in-law, or daughter-in-law of the eligible employee. Requests for bereavement leave for persons not listed above may be granted at the discretion of the City Manager or his/her designee.

6.12 Holidays

The following Holidays shall be observed each year:

	Holiday	Recognition
1	New Year's Day	January 1
2	Martin Luther King's Birthday	3 rd Monday in January
3	President's Day	3 rd Monday in February
4	Good Friday	Noon until closing*
5	Memorial Day	Last Monday in May
6	Independence Day	July 4
7	Labor Day	1 st Monday in September
8	Veteran's Day	November 11
9	Thanksgiving Day	As designated
10	Friday after Thanksgiving	As designated
11	Christmas Day	December 25

* If employee's regular work shift is 7:00 a.m. — 4:00 p.m., the holiday begins at 11:00 a.m.

In addition to the above-described holidays, employees have four (4) floating holidays per year in exchange for previously approved holidays:

	<u>Memo Only</u>
Lincoln's Birthday	February 12
Admissions Day	September 9
Columbus Day	Second Monday in October
Floating Holiday	Employee's Discretion

Floating holidays shall accrue to employees on the dates corresponding to the actual holidays, and reflected on the City's leave accounting system on the next regular payroll following the close of the payroll period during which the holiday falls.

Association and the City recognize these holidays as permanent and official, but mutually agree that their designation as floating holidays provides for improved public service and community goodwill in that City services will be available more days of the year, while maintaining the Association's previously bargained benefit.

The floating holidays may be used at the employee's discretion, with the prior approval of the employee's supervisor or Department Head, or his/her designee. Such request for use and related approval shall be in conformance with the City's regular policies governing the use of any and all leave. Once floating holidays are earned and accrued, employees may request that floating holiday time in any banked amount be converted to a dollar value and paid out on a regular payroll. In no event shall employees be allowed to carry more than eighty (80) hours of

floating holiday time on the City's leave accounting system; therefore, balances above this limit shall be paid on the employee's next regular payroll.

6.13 Insurance

6.13.1 Health and Welfare: The City shall pay all health and welfare insurance coverage as provided for in the Redwood Empire Municipal Insurance Fund (REMIF)-sponsored Health Plan. The employee may select the above-mentioned plan or other coverage as offered through the City. If any plan other than the REMIF plan is selected by the employee, the employee is responsible for any amount of premium difference. In addition, the City will provide group vision care, dental care and life insurance in the amount of five thousand dollars (\$5,000) per full time employee. Effective the first full pay period in October 2011, employees shall pay five percent (5%) of the cost of their medical insurance premium.

6.13.2 Life Insurance: In addition to the life insurance coverage cited in section 6.13.1, the City agrees to maintain term life insurance policies for each employee in the amount of the employee's annual salary. The City agrees to pay the premium for said insurance. City shall determine the insurance benefit plan that provides the above life insurance policy limits. Changes to existing policyholder accounts shall be at the sole discretion of the City.

6.13.3 Long Term Disability Insurance: City shall make available to employees a Long Term Disability (LTD) Insurance Plan. The terms, conditions, and coverage of the plan shall be determined by the City. The City agrees to pay one-half (1/2) of the cost of the LTD Plan for employees.

6.14 Direct Deposit

The City will provide direct deposit of employee's paychecks to banks or other financial institutions, provided the City can provide such service at a reasonable cost.

6.15 Hours of Work

6.15.1 Work Hours Defined: The normal workday shall be from 8:00 a.m. to 5:00 p.m., with one hour for lunch.

The City and the Association agree that Public Works employees shall report to work at 7:00 a.m. and cease work at 4:00 p.m. daily, Monday through Friday. Employees shall have one hour daily for lunch.

The City and Association agree that at least one qualified Public Works employee shall be available to work a normal 8-5 workday, not less than once each month in order to accomplish water service shut-offs. The assignment may be rotated among qualified employees at City's discretion.

Notwithstanding the normal working hours noted above, the City, in its sole discretion, may alter the work schedule to accommodate special events, emergencies, disasters and/or other circumstances reasonably beyond the department's immediate control.

Despite the aforementioned agreed upon schedule, the City reserves its rights as defined in Article 4 of this agreement to create additional shifts, alternate schedules, and/or modified work assignments, as business requirements may dictate. The City acknowledges its responsibility to join the Association in the meet and confer process as required, should this alternate assignment or additional shift creation become necessary.

6.15.2 Request for Alternate Work Hours: Notwithstanding the working hours noted above, an alternate work schedule (9/80 or 4/10) may be approved by the City Manager. An employee requesting such an alternate schedule must submit a plan to the Department Head or his/her designee, describing in detail the specific schedule and the anticipated impact on the City's operations. The decision of the City Manager shall be final and not subject to the grievance procedure.

6.16 Out of Classification Pay

An employee temporarily working out of classification (in a position in a higher range) for a period of not less than a single pay period (i.e., two weeks) and not more than a maximum of six (6) months will be entitled to a five percent (5.0%) increase in base wage pay for that period. Out of classification pay has no impact on an employee's eligibility for additional pay to which s/he may be entitled.

6.17 Job Descriptions

The parties agree to meet and discuss concerns the Association has with pay equity and classification descriptions for certain classifications during the term of this Agreement. Those discussions will commence by no later than July 1, 2016.

ARTICLE 7. DISCIPLINARY ACTION

7.1 Disciplinary Procedure

7.1.1 Types of Action: Disciplinary action consists of oral reprimand, written reprimand, suspension, demotion, reduction in pay, and discharge. Discipline will not be imposed except upon a showing of cause.

7.1.2 Grounds for Discipline: Grounds or causes for discipline shall include, but not be limited to, the following:

- (a) Violation of administrative policies and procedures;
- (b) Failure to properly perform assigned duties;
- (c) Theft of City property;
- (d) Insubordination;
- (e) Conviction of a felony or conviction of a misdemeanor relating to the employee's fitness to perform assigned duties;
- (f) Unauthorized absence from employment;
- (g) Tardiness;
- (h) Failure to maintain satisfactory working relationships with other employees or the public;

- (i) Reporting for work, or being at work, under the influence of or in possession of alcohol or non-prescribed controlled substances;
- (j) Improper use of City funds;
- (k) Unauthorized use of City property;
- (l) Failure to properly care for City property;
- (m) Misstatement of material fact;
- (n) Failure to maintain any employment qualification;
- (o) Failure to comply with safety standards;
- (p) Other failure of good behavior either during or outside of employment such that the employee's conduct causes discredit to the City;
- (q) Violation of any City personnel rule, MOU provision or departmental policy.

7.1.3 Disciplining Authority: Any Department Head may institute discipline in the form of oral reprimand, written reprimand, or suspension for less than one day against any employee in his/her department. The City Manager, or Department Head with the approval of the City Manager, may institute discipline in the form of suspensions more than one day or demotion. The City Manager may discharge employees for cause. All discipline shall be in accordance with the procedures outlined in these rules.

7.1.4 Notice of Discipline: No advance notice shall be required for a written reprimand. An employee who wishes to respond to a written reprimand must do so in writing within thirty (30) calendar days from receipt of discipline. The response should be made or submitted to the Department Head with a copy to the Personnel Officer. A copy of the employee's written response will be placed in his/her personnel file.

Prior to the suspension, demotion, reduction in pay or discharge of a regular employee for disciplinary purposes, the procedure set forth in this rule shall be followed.

Prior to recommending the imposition of any disciplinary action, the Department Head shall notify the employee, in writing, of the following:

- (a) The nature of the proposed disciplinary action and its proposed effective date;
- (b) The reason for the proposed disciplinary action;
- (c) Any specific charges against the employee;
- (d) The employee's right to receive copies of the written documents and materials upon which the proposed disciplinary action is based; and
- (e) The employee's right to respond to the charge, either orally or in writing.

The employee shall be given ten (10) working days from the date of receipt in which to respond in writing or verbally to the designated authority. The response will be considered before disciplinary action is made. Failure to respond within this period of time will result in a waiver of the employee's right to respond. One extension of five (5) additional days will be given upon a showing of good cause.

7.1.5 Representation: If an employee requests or is required to meet with a Department Head or supervisor and such meeting involves the possible imposition of disciplinary action against the employee, the employee, upon request, shall be entitled to have a representative present at such meeting.

7.1.6 Emergency Suspension: When the Department Head or City Manager determines that an employee's conduct threatens or has caused injury to persons or property, the City Manager or Department Head may impose a suspension with pay against the employee, effective immediately, until a pre-disciplinary conference is conducted pursuant to the personnel rules. The imposition of an emergency suspension against an employee does not preclude the City Manager or Department Head from proposing a more severe disciplinary action against such employee receiving an emergency suspension. Within three (3) working days of such emergency suspension, the City Manager or Department Head shall notify the employee in writing of the nature of any proposed disciplinary action, the reason for the disciplinary action, any specific charge against the employee, the employee's right to receive copies of the documents and materials upon which the disciplinary action is based and the employee's right to respond to the charge, either orally or in writing. The City Manager or Department Head, unless otherwise requested by the employee, shall conduct a disciplinary conference in not less than ten (10) days after the effective date of the emergency suspension.

7.2 Appeal Procedure

7.2.1 Request for Disciplinary Hearing: Employees shall have the right to appeal the imposition of the disciplinary action by requesting a hearing before an advisory arbitrator. Any such request shall be writing, signed by the employee or representative and presented to the Personnel Officer within ten (10) days after the effective date of the imposition of the disciplinary action. Further, said request shall identify the subject matter of the appeal, the grounds for the appeal and the relief desired by the employee. If the employee fails to request a disciplinary hearing within the prescribed time, the employee shall have waived the right to a hearing and all rights to further appeal of the disciplinary action.

7.2.2 Scheduling of Disciplinary Hearing: The Personnel Officer shall schedule any disciplinary hearing within a reasonable time after the filing of the employee's request, considering the availability of the advisory arbitrator and the convenience of the employee and the witnesses.

7.2.3 Advisory Arbitrator: The advisory arbitrator shall be provided by the State of California Mediation and Conciliation Service or similar, mutually agreed upon agency.

7.2.4 Expedited Arbitration: Unless otherwise agreed to by both parties, expedited arbitration shall be used and shall include:

- (a) A request that the arbitrator selected render a decision within sixty (60) calendar days of the conclusion of the hearing.
- (b) No court reporter unless mutually agreed to by all parties.
- (c) No post hearing briefs unless mutually agreed to by all parties.

7.2.5 Costs: The fees and expenses of the arbitrator and the court reporter, if required, shall be shared equally by the parties.

7.2.6 Decision: The decision of the arbitrator shall be advisory only and constitutes the final step within the City's administrative process.

ARTICLE 8. GRIEVANCE PROCEDURES

8.1 Purpose of Grievance Procedures

The grievance procedure shall be used to resolve any dispute which involves the interpretation or application of any City personnel rule, provision of this MOU or departmental policy. The grievance procedure shall not be used for:

- (a) The resolution of any complaint concerning any disciplinary action.
- (b) The resolution of any complaint relating to any concerted refusal to work.

8.2 Informal Discussion of Grievance

When an employee has a complaint, the employee shall first informally discuss the matter with the employee's immediate supervisor within fifteen (15) calendar days from the date of the incident or decision generating the grievance. If, after a discussion with the immediate supervisor, the complaint has not been satisfactorily resolved, the employee shall have the right to discuss the complaint informally with the supervisor's immediate supervisor. If, after such a discussion the complaint has not been satisfactorily resolved, the employee shall have the right to file a formal grievance.

8.3 Formal Grievance Procedure

- (a) An employee shall have the right to present a formal grievance, in writing within five (5) working days after the informal discussion of the grievance with the immediate supervisor or the immediate supervisor's supervisor. All formal grievances shall state the reasons for the grievance; the City personnel rule, MOU provision or departmental policy at issue; and the employee's suggested solution.
- (b) The formal grievance shall be presented to the Department Head or his/her designee. S/he shall discuss the grievance with the employee and/or the employee's representative. Within ten (10) working days after receipt of the formal grievance, the Department Head or his/her designee shall render a written decision regarding its merits. The grievance shall be considered resolved and no further review of the subject matter of the grievance shall be permitted under this rule if the employee does not seek further review of the grievance within five (5) working days after receipt of the decision of the Department Head. Failure of the Department Head to render written decision on the grievance within ten (10) working days constitutes a decision denying the grievance.
- (c) If the Department Head's decision does not satisfactorily resolve the grievance, the employee may present the formal grievance to the Personnel Officer. The Personnel Officer shall discuss the grievance with the employee and/or the employee's representative. Within fifteen (15) days after meeting with the employee and the employee's representative, the Personnel Officer shall render a written decision regarding the grievance.
- (d) If the Personnel Officer's decision does not satisfactorily resolve the grievance, or if the Personnel Officer fails to respond in writing as provided in Step (c) above, the employee shall have the right to refer the grievance to binding arbitration. Such referral shall be made in writing to the Personnel Officer within ten (10) working days of receipts of his/her decision.
- (e) At any time, the parties may mutually agree to an extension of the above deadlines.

8.4 Binding Arbitration

The binding arbitration procedure shall be as follows:

- (a) The arbitrator shall be chosen jointly by the parties from a strike list provided by the California State Mediation and Conciliation Service (CA-SMCS).
- (b) Unless otherwise agreed to by both parties, expedited arbitration shall be used and shall include:
 - i. A mutual request that the arbitrator selected render a decision within sixty (60) calendar days from the conclusion of the hearing.
 - ii. No court reporter unless mutually agreed to by the parties.
 - iii. No post hearing briefs unless mutually agreed to by the parties.

The fees and expenses of the arbitrator and the court reporter, if required, shall be shared equally by both parties.

8.5 Arbitrator's Decision

The decision of the Arbitrator shall be final and binding.

8.6 Reprisals Prohibited

The City shall not institute any reprisals against any employee or any representative resulting from the use of the grievance procedure.

8.7 Grievance Preparation Time

An employee submitting a grievance and the employee's representative may use a reasonable amount of time during working hours to prepare for and present the grievance.

ARTICLE 9. PRIOR MOUS, RULES, REGULATIONS, ORDINANCES AND PRACTICES

All care and diligence was used in the preparation of this comprehensive MOU. With all parties having an opportunity for input and research, it is mutually agreed that this comprehensive MOU shall supersede all previous MOU's.

ARTICLE 10. CONTENT, TERMS AND RECOMMENDATIONS

10.1 Severability

If any article or section of this MOU should be invalid, unlawful, or unenforceable by reason of any existing or subsequent enacted legislation or by judicial authority, all other articles and sections of this Memorandum shall remain in full force and effect for the duration of this MOU. The City and the Association agree to meet within thirty (30) days for the purpose of renegotiating said article or section.

10.2 Term

The term of this MOU shall be from **July 1, 2015 through June 30, 2017.**

Parties Agree to Recommend MOU

The undersigned members of the Association and representatives of the City, having met and conferred in good faith, have reached agreement on the items contained herein and have mutually agreed to recommend to the Cloverdale City Council and the general membership of the Association that the terms of this agreement be adopted.

Paul Cayler **Date**
City Manager

Darren Hernandez **Date**
President, CCSEA

Meyers Nave **Date**

Richard A. Reed **Date**
Labor Consultant

SAMPLE

**CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 021-2016**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE
APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CLOVERDALE CLASSIFIED
SERVICE EMPLOYEES ASSOCIATION AND THE CITY OF CLOVERDALE AUTHORIZING THE CITY
MANAGER TO EXECUTE THE MEMORANDUM OF UNDERSTANDING**

WHEREAS, Cloverdale Municipal Code (CMC) 2.48.030(c) directs the preparation, maintenance, and revision of a position classification plan; and

WHEREAS, CMC 2.48.030(d) directs the preparation, administration, and revision of a plan of compensation correlated with the classification plan; and

WHEREAS, from time to time it is necessary to update these plans to update existing classifications or create new ones to accurately reflect the job duties required by the City; and

WHEREAS, in order to attract and maintain a strong, professional workforce it is important to compensate employees in a competitive way and in a way that appropriately recognizes their responsibilities; and

WHEREAS, the City of Cloverdale and Cloverdale Classified Service Employees Association agree they have met and conferred in good faith and have tentatively agreed upon amendments to salaries and benefits; and

WHEREAS, the previous Memorandum of Understanding (MOU), and all subsequent side letters of agreement, were for a term ending June 30, 2015.

NOW THEREFORE BE IT RESOLVED, the City of Cloverdale does hereby agree to amend and supersede the MOU and all side letters of agreement with Cloverdale Classified Service Employees Association as tentatively agreed in the attached draft MOU; and

BE IT FURTHER RESOLVED, that the City Manager is authorized to execute the amended and superseding MOU on behalf of the City Council; and

BE IT FURTHER RESOLVED, new salary ranges shall be effective with the pay period ending March 13, 2016, and any retroactive compensation shall be paid in a lump sum with the regular payroll for the pay period ending March 13, 2016 in conjunction with payroll processing procedures and in accordance with Internal Revenue Service guidelines.

It is hereby certified that the foregoing Resolution No. 021-2016 was duly introduced and adopted by the City Council of the City of Cloverdale at its regular meeting held on the 8th day of March, 2016 by the following vote:

AYES IN FAVOR:

NOES:

ABSENT:

ABSTAIN:

Approved:

Attested:

Maryann Brigham, Mayor

Linda Moore, Deputy City Clerk

MEMORANDUM OF UNDERSTANDING

Between

CLOVERDALE CLASSIFIED SERVICE EMPLOYEES ASSOCIATION

And

THE CITY OF CLOVERDALE

(July 1, 2015 through June 30, 2017)

The City of Cloverdale (City) and representatives of the Cloverdale Classified Service Employees Association (CCSEA) acknowledge and affirm that they have met and conferred in good faith, exchanged proposals and counter proposals, and in all respects fulfilled their obligations under law to meet and confer in good faith.

This Memorandum of Understanding (MOU) is the product of the above-described meeting and conferring process. Representatives of the City agree to present this MOU to the City Council for determination, and representatives of the CCSEA agree to present this MOU to their membership for acceptance and approval.

ARTICLE 1. DEFINITIONS

1.1 Employer

The term "City" referred to herein shall be the City of Cloverdale.

1.2 Association

The term "Association" referred to herein shall be the Cloverdale Classified Service Employees Association.

1.3 Employee

The term "Employee" or "Employees" referred to herein shall be all full-time employees of the City of Cloverdale listed in Article 2 of this MOU.

ARTICLE 2. RECOGNITION

The City hereby recognizes the Association as the sole and exclusive bargaining agent of the classes listed below:

- **Assistant Planner**
- **Associate Planner**
- **Community Services Officer**
- **Engineering Technician**
- **Park & Landscape Maintenance Assistant**
- **Park & Landscape Maintenance Lead Worker**
- **Park Maintenance Worker I/II**
- **Planning Technician**
- **Senior Wastewater Treatment Plant Operator**
- **Senior Water Treatment Plant Operator**
- **Transit Van Operator**
- **Utility Maintenance Crew Leader**
- **Utility Maintenance Worker I**
- **Utility Maintenance Worker II**
- **Wastewater Treatment Plant Operator I**
- **Wastewater Treatment Plant Operator II**
- **Wastewater Treatment Plant Operator-In-Training**
- **Water Treatment Plant Operator I**
- **Water Treatment Plant Operator II**
- **Water Treatment Plant Operator-In-Training**

ARTICLE 3. HIRING PROVISIONS

3.1 Non-Discrimination

No employee shall be discriminated against by the City, or by the Association, by reason of race, color, religion, sex, age, sexual orientation, marital status, disability, national origin or other status protected by the Fair Employment and Housing Act (Government Code § 12940).

3.2 Employment

The City shall not discharge or otherwise discriminate against any employee by reason of Association activities not interfering with the proper performance of his/her work.

ARTICLE 4. CITY RIGHTS

The rights of the City include, but are not limited to, the exclusive right to determine the mission of its constituent departments, commissions and boards; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; determine the methods, means and personnel by which government operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

City recognizes its responsibility to join the Association in the meet and confer process as required by law.

ARTICLE 5. EMPLOYEE RIGHTS

5.1 General

Employees shall have the right to form and to participate in the activities of the employee organizations of their own choosing for the purpose of representation of all matters of employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment. Employees of the City also have the right to represent themselves individually in their employment relations with the City. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against by the City or by an employee organization because of his/her exercise of these rights.

5.2 MOU Compliance with Meyers-Milias Brown Act

Representatives of the City and the Association have met and conferred pursuant to the provisions of the Meyers-Milias-Brown Act for the purpose of reaching agreement concerning all matters within the scope of representation of employees during the term of this MOU.

ARTICLE 6. WAGES, HOURS AND WORKING CONDITIONS

6.1 Salaries

6.1.1: The salary range for each classification shall be set forth in Exhibit A to this MOU.

6.1.2 *Cost of Living Adjustments:*

1) 2% retroactive to July 1, 2015

2) 2% effective July 1, 2016

6.2 Longevity Pay

6.2.1 Longevity Pay Plan: Employees shall be eligible for longevity pay in accordance with the following schedule:

Length of Service (in Years)	Longevity Pay (Percent of Base)
Completion of eight and one-half (8-1/2)	2%
Completion of thirteen and one-half (13-1/2) years	4%
Completion of eighteen and one-half (18-1/2)	6%
Completion of twenty-three and one-half (23-1/2) or more years	8%

6.2.2 Length of Service Defined: For purposes of this section, "length of service" is defined as continuous, uninterrupted service with the City, except during periods of involuntary lay-off (See Personnel Rules & Regulations, Rule 12, Section 7 "Reinstatement of Benefits"). Longevity pay percentages are not cumulative (example: an employee with fifteen (15) years of service is entitled to only four percent (4%) of base salary as longevity pay not 2% plus 4% equaling 6%).

6.2.3 Extended Longevity Pay: Employees shall be eligible for extended longevity pay. City shall pay into individual employee ICMA accounts in accordance with the following schedule:

Length of Service	Extended Longevity Pay (Percent of Base Salary)
Ten (10) Years of Service	1.5%
Fifteen (15) Years of Service	2%

For purposes of this section, "length of service" is defined as continuous, uninterrupted services with the City; longevity pay percentages are not cumulative. Payment shall commence on the first payday following the employee's hiring anniversary and shall include a pro-rata amount for any period of time between the hire anniversary and the first payday.

Employees hired after June 30, 2011 are not eligible for extended longevity pay.

6.3 Clothing and Equipment

6.3.1 Public Works Department Employees:

6.3.1.1 The City shall provide uniforms to employees in the Public Works Department who work in classifications required to wear industrial style uniforms and approved safety boots. Each employee will be provided five (5) shirts and five (5) pants annually, as the base uniform benefit. Employees may select alternate outer wear, such as mechanic style coveralls, bib style

overalls, etc. However, the cost of this alternate allocation may not exceed the annual allowance for base uniform benefit costs. (Example: if the City pays \$XX for five (5) shirts and five (5) pants on average for a Public Works employee in a given fiscal year, the City will pay up to that same amount for the alternate outer wear in that fiscal period).

In addition to the basic uniform provision above, the City agrees to reimburse for actual expenses, up to a maximum of four hundred dollars (\$400) each fiscal year, for the acquisition of acceptable safety shoes or boots, or work apparel as defined in Section 6.3.5. Minimum safety standards will be established by mutual consent between the Association and the Department Head and/or the Personnel Officer.

6.3.1.2 The City will provide four (4) cell phones for use by employees assigned to stand-by duty. One cell phone each will be provided to the Operations, Parks & Landscape Maintenance, Wastewater Treatment, and Water Treatment divisions. In addition, the City will provide a cell phone for use by the employee assigned to drive the Cloverdale Transit bus, pending approval by Sonoma County Transit.

6.3.2 *Police Department Employees:* The Community Services Officer in the Police

Department shall receive an annual uniform allowance of one thousand seventy-five dollars (\$1,075) per year. Said allowance shall be paid on a quarterly basis after the completion of each quarter. As such, the allowance shall be paid as part of the first regular pay check issued in October, January, April and July.

The City will provide necessary uniform components to newly hired employees during the course of the year, to a standard set by the Chief of Police or his/her designee. Any newly hired employee will not receive a uniform allowance until service has been completed for four quarters.

6.3.3 *Other Employees:* Employees not identified above shall not be eligible for a clothing allowance.

6.3.4 *Reimbursement for Uniforms and Uniform Equipment:* The City agrees to reimburse employees for uniforms or other necessary work apparel, including but not limited to work footwear, that are damaged or stolen during duty hours or while stored at a City facility, providing that the employee made a reasonable effort to safeguard the uniform and/or uniform equipment or work apparel. Reimbursement shall be based upon the residual value of the item, based upon its current cost.

6.3.5 *Definition of "Work Apparel":* For purposes of this section, "work apparel" is defined as clothing necessary for work environments including pants, shirts, outerwear, underwear, socks, hats and footwear.

6.4 Public Employees' Retirement System (PERS)

6.4.1 *PERS Plan:* The City shall provide retirement benefits under the Public Employees' Retirement System (PERS) plan commonly known as the 2% @ 55 Retirement Plan.

The City will also provide "the highest 12 consecutive month" benefit. The City shall provide the 1959 Survivor Benefit Level IV. Employees hired prior to January 1, 2013, or individuals that are hired on or after that date that are not defined as "new members" pursuant to Government Code Section 7522.04(f), shall be subject to this formula.

6.4.2 Employee Contribution to PERS:

6.4.2.1 Effective the first full pay period in October 2011, employees shall pay one-third (1/3) of the cost (.837%) of the after-added benefits of their PERS Plan in existence as of July 1, 2011.

6.4.2.2 Effective the first full pay period in October 2012, employees shall pay a total of two-thirds (2/3) of the cost (1.67%) of the after-added benefits of their PERS Plan in existence as of July 1, 2011.

6.4.2.3 Employees hired after June 30, 2011 shall pay one hundred percent (100%) of the after-added benefits of their PERS Plan (2.51%).

6.4.3 Employees hired on or after January 1, 2013, pursuant to the California State Legislature's passage of the Public Employees' Pension Reform Act (PEPRA) in 2012, who are defined as "new members" in California Government Code Section 7522.04(f), shall receive the 2% at 62 pension benefit formula, as specified in Government Code Section 7522.20(a).

6.4.3.1 Effective July 1, 2013, new members subject to the 2% at 62 formula shall contribute 50% of the "normal cost" as defined in Government Code Section 7522.04(g).

Nothing in this Agreement shall be interpreted as preventing the City and the Association from agreeing in the future to increased employee contributions; or to an available reduced benefit formula for future hires.

6.5 Retirement Medical Benefit

City will contribute 50% of the employee-only premium for health insurance upon retirement, provided the employee has been employed with the City of Cloverdale for eighteen years or longer and reached the age of 50 years. City will not contribute to the retiree health premiums of employees hired after June 30, 2011.

6.6 Vacation

Vacation time will be accrued according to the following schedule:

Length of Service	Vacation Accumulation (Hours per Year)
0 — 24 Months	104 Hours
25 — 60 Months	120 Hours

61 — 120 Months	144 Hours
121 — 180 Months	168 Hours
181 or more Months	264 Hours

6.6.1 *Vacation Accumulation:* Each employee shall be permitted to accumulate a maximum of three hundred four (304) hours of vacation time. For good cause and upon the recommendation of the Department Head or his/her designee, and with the approval of the City Manager or his/her designee, an employee may accrue up to an additional eighty (80) hours of vacation.

6.6.2 *Vacation Sell-Back:* Employees may, on an annual basis (once per fiscal year) upon recommendation of the Department Head or his/her designee and upon discretionary approval of the City Manager or his/her designee, sell back up to 60 hours of vacation time, subject to the provision that no sell back will reduce an employee's leave balance to less than forty (40) hours. The City Manager or his/her designee may grant an exception in unique situations.

6.7 Work Day/Work Week

6.7.1 *Work Week:* The City agrees that the normal workweek for all represented members of the Association shall be 40 hours.

6.8 Overtime

6.8.1 *Overtime:* Employees may work overtime with the prior approval of the Department Head or his/her designee. Overtime will be paid at one-and-one-half (1.5) times the employee's regular rate for all hours in a paid status in excess of forty (40) hours in a workweek. Overtime shall be accumulated to the nearest one-quarter (.25) hour.

6.8.2 *Compensatory (Comp) Time:* With the prior approval of the Department Head or his/her designee, overtime may be earned as compensatory time at the rate of one-and-one-half (1.5) times the employee's straight time per overtime hour worked, up to a maximum of eighty (80) hours. When used, comp time hours shall not be considered hours in a paid status for the purpose of computing overtime.

6.8.3 *Standby:* Any employee who is required to standby shall receive one (1) hour for each eight (8) hours for which s/he is required to stand by. Standby time shall be paid at the rate of one-and-one-half (1.5) times the employee's regular rate. With the prior approval of the Department Head or his/her designee, standby time may be earned as compensatory time at the rate of one-and-one-half (1.5) times the employee's regular rate.

6.8.4 *Call-Out:* Employees shall be paid two (2) hours, in addition to total time worked, when the employee is called out during non-regular duty hours; provided, however, that once an employee has been called out, s/he shall not receive additional call-out hours' credit for any subsequent call-out within three (3) hours of the beginning of the previous call-out.

6.9 Sick Leave

6.9.1 Accrual Rate: Employees shall accrue sick leave at the rate of eight (8) hours for each month of service.

6.9.2 Maximum Hours: Each employee may accumulate a maximum of two thousand and eighty (2,080) hours of sick leave.

6.9.3 Compensation for Unused Sick Leave: Upon separation or retirement, the City will compensate employees for thirty-five percent (35%) of accrued but unused sick leave, up to, but not in excess of two thousand (2,000) hours.

The compensation shall be calculated based on the employee's hourly rate at time of separation. To the extent provided by PERS regulations, any unused sick leave upon retirement may be converted to years of service for PERS purposes.

6.9.4 Fitness for Duty: City shall have the right to direct employees to a medical evaluation to verify fitness for duty after four (4) consecutive days of employee absence.

6.9.5 Sick Leave Incentive: Employee use of sick leave within a calendar year may qualify for conversion of unused sick leave to annual leave based upon the following utilization schedule.

Usage of Sick Leave (Hours per Year)	Conversion of Existing Balance to Annual Leave (in Hours)
0 —10 Hours	Up to 40 Hours
More than 10 but less than 20 Hours	Up to 16 Hours
20 or more Hours	No Conversion

6.10 Educational Incentive

6.10.1 Certifications: Employees may qualify for seventy-five dollars (\$75) per month for completion of a course of extensive, job-related study or training of at least four (4) semesters in length, if the certification is not required by the State of California and/or the employee's job description. Approval by the Department Head or his/her designee is required in writing prior to beginning the course of study in order to be eligible for payment, and approval shall be in the discretion of the City. An employee shall not be eligible to receive more than one hundred fifty dollars (\$150) per month under this paragraph, i.e., certification for two (2) pre-approved courses of study. Employees shall not be reimbursed for the costs associated with study or training other than for *renewal* of State required certifications for the applicable classification.

6.10.2 Academic Degrees: The City shall pay the following incentive pays for academic degrees:

If the job description for the employee's classification does not require an A.A. degree, s/he will be paid four percent (4.0%) of base salary for receiving or possessing an A.A. Degree. If the job description for his/her classification requires an A.A. degree but does not require a B.A. degree, the employee will be paid two percent (2.0%) of base salary for a B.A. Degree. If the job description for the employee's classification does not require either an A.A. Degree or a B.A. Degree, s/he will be paid six percent (6.0%) of base salary for receiving or possessing a B.A. Degree. No other incentive pay for academic degrees will be provided.

The City shall receive a copy of any diploma for which an employee claims entitlement to an incentive pay under this section.

6.10.3 Schooling Costs: Employees shall receive reimbursement for job-related schooling costs, as directed and approved by the Department Head or his/her designee. Any books and tuition will be reimbursed upon submission of receipts.

6.10.4 Mileage Reimbursement: Employees who are assigned to attend special seminars, training or study will receive mileage reimbursement at the IRS-approved rate if the employee uses his or her own vehicle for transportation. This mileage allowance is applicable to college courses voluntarily taken by an employee.

6.10.5 Class B Driver's License: The City agrees to give a two percent (2%) increase to employees of the Public Works Department who possess and are required by their job assignment to hold and utilize a Class B Driver's license; provided, however, that any employee receiving this benefit at the effective date of this MOU shall continue to receive said benefit so long as s/he continues to hold a valid Class B Driver's license. Those employees shall be solely responsible for DOT compliance requirements for annual physicals, re-certifications and/or any subsequent remedial training requirements. Costs associated with these requirements shall be reimbursable by the City. The City and the Association agree that these requirements may be completed during normal working hours.

6.10.6 Wellness Incentive: The City will offer a Wellness Incentive Program to employees. Employees will be eligible to receive one hundred fifty dollars (\$150) per year on a reimbursement basis for participation in an organized physical fitness program or health related class. Eligibility for reimbursement will be determined by the prior approval of the program activity by the City Manager or his/her designee. Reimbursement shall be paid in conjunction with payroll processing in accordance with Internal Revenue Service guidelines.

6.10.7 Bi-Lingual Proficiency: The City shall provide one hundred fifty dollars (\$150) per month to employees who achieve or are certified as proficient in a language other than English, when the City Manager determines an operational business need for this second language exists. The City Manager may establish limits on the number of employees eligible and may cancel payment if business needs are otherwise economically fulfilled. The decision of the City Manager shall be final and not subject to the grievance procedure. Proficiency will be determined by appropriate testing methods established by the Personnel Officer.

6.11 Bereavement Leave

Any employee who is absent from work by reason of the death of a member of the employee's immediate family may be allowed a leave of absence with full pay not to exceed three (3) work days per incident. However, when it is reasonable and necessary and good cause is shown, and upon approval of the Department Head or his/her designee, three (3) additional work days may be granted to such leave. In order to receive compensation while absent on bereavement leave, the employee shall notify his/her immediate supervisor or Department Head prior to the time set for beginning of his/her regular duties. Immediate family shall include the spouse, domestic partner, child (including legally adopted child), parent, grandparent, grandchild, step-parent, stepchild, sibling, step-sibling, uncle, aunt, nephew, niece, father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, or daughter-in-law of the eligible employee. Requests for bereavement leave for persons not listed above may be granted at the discretion of the City Manager or his/her designee.

6.12 Holidays

The following Holidays shall be observed each year:

	Holiday	Recognition
1	New Year's Day	January 1
2	Martin Luther King's Birthday	3 rd Monday in January
3	President's Day	3 rd Monday in February
4	Good Friday	Noon until closing*
5	Memorial Day	Last Monday in May
6	Independence Day	July 4
7	Labor Day	1 st Monday in September
8	Veteran's Day	November 11
9	Thanksgiving Day	As designated
10	Friday after Thanksgiving	As designated
11	Christmas Day	December 25

* If employee's regular work shift is 7:00 a.m. — 4:00 p.m., the holiday begins at 11:00 a.m.

In addition to the above-described holidays, employees have four (4) floating holidays per year in exchange for previously approved holidays:

	<u>Memo Only</u>
Lincoln's Birthday	February 12
Admissions Day	September 9
Columbus Day	Second Monday in October
Floating Holiday	Employee's Discretion

Floating holidays shall accrue to employees on the dates corresponding to the actual holidays, and reflected on the City's leave accounting system on the next regular payroll following the close of the payroll period during which the holiday falls.

Association and the City recognize these holidays as permanent and official, but mutually agree that their designation as floating holidays provides for improved public service and community goodwill in that City services will be available more days of the year, while maintaining the Association's previously bargained benefit.

The floating holidays may be used at the employee's discretion, with the prior approval of the employee's supervisor or Department Head, or his/her designee. Such request for use and related approval shall be in conformance with the City's regular policies governing the use of any and all leave. Once floating holidays are earned and accrued, employees may request that floating holiday time in any banked amount be converted to a dollar value and paid out on a regular payroll. In no event shall employees be allowed to carry more than eighty (80) hours of floating holiday time on the City's leave accounting system; therefore, balances above this limit shall be paid on the employee's next regular payroll.

6.13 Insurance

6.13.1 *Health and Welfare:* The City shall pay all health and welfare insurance coverage as provided for in the Redwood Empire Municipal Insurance Fund (REMIF)-sponsored Health Plan. The employee may select the above-mentioned plan or other coverage as offered through the City. If any plan other than the REMIF plan is selected by the employee, the employee is responsible for any amount of premium difference. In addition, the City will provide group vision care, dental care and life insurance in the amount of five thousand dollars (\$5,000) per full time employee. Effective the first full pay period in October 2011, employees shall pay five percent (5%) of the cost of their medical insurance premium.

6.13.2 *Life Insurance:* In addition to the life insurance coverage cited in section 6.13.1, the City agrees to maintain term life insurance policies for each employee in the amount of the employee's annual salary. The City agrees to pay the premium for said insurance. City shall determine the insurance benefit plan that provides the above life insurance policy limits. Changes to existing policyholder accounts shall be at the sole discretion of the City.

6.13.3 *Long Term Disability Insurance:* City shall make available to employees a Long Term Disability (LTD) Insurance Plan. The terms, conditions, and coverage of the plan shall be determined by the City. The City agrees to pay one-half (1/2) of the cost of the LTD Plan for employees.

6.14 Direct Deposit

The City will provide direct deposit of employee's paychecks to banks or other financial institutions, provided the City can provide such service at a reasonable cost.

6.15 Hours of Work

6.15.1 *Work Hours Defined:* The normal workday shall be from 8:00 a.m. to 5:00 p.m., with one hour for lunch.

The City and the Association agree that Public Works employees shall report to work at 7:00 a.m. and cease work at 4:00 p.m. daily, Monday through Friday. Employees shall have one hour daily for lunch.

The City and Association agree that at least one qualified Public Works employee shall be available to work a normal 8-5 workday, not less than once each month in order to accomplish water service shut-offs. The assignment may be rotated among qualified employees at City's discretion.

Notwithstanding the normal working hours noted above, the City, in its sole discretion, may alter the work schedule to accommodate special events, emergencies, disasters and/or other circumstances reasonably beyond the department's immediate control.

Despite the aforementioned agreed upon schedule, the City reserves its rights as defined in Article 4 of this agreement to create additional shifts, alternate schedules, and/or modified work assignments, as business requirements may dictate. The City

acknowledges its responsibility to join the Association in the meet and confer process as required, should this alternate assignment or additional shift creation become necessary.

6.15.2 Request for Alternate Work Hours: Notwithstanding the working hours noted above, an alternate work schedule (9/80 or 4/10) may be approved by the City Manager. An employee requesting such an alternate schedule must submit a plan to the Department Head or his/her designee, describing in detail the specific schedule and the anticipated impact on the City's operations. The decision of the City Manager shall be final and not subject to the grievance procedure.

6.16 Out of Classification Pay

An employee temporarily working out of classification (in a position in a higher range) for a period of not less than a single pay period (i.e., two weeks) and not more than a maximum of six (6) months will be entitled to a five percent (5.0%) increase in base wage pay for that period. Out of classification pay has no impact on an employee's eligibility for additional pay to which s/he may be entitled.

6.17 Job Descriptions

The parties agree to meet and discuss concerns the Association has with pay equity and classification descriptions for certain classifications during the term of this Agreement. Those discussions will commence by no later than July 1, 2016.

ARTICLE 7. DISCIPLINARY ACTION

7.1 Disciplinary Procedure

7.1.1 Types of Action: Disciplinary action consists of oral reprimand, written reprimand, suspension, demotion, reduction in pay, and discharge. Discipline will not be imposed except upon a showing of cause.

7.1.2 Grounds for Discipline: Grounds or causes for discipline shall include, but not be limited to, the following:

- (a) Violation of administrative policies and procedures;
- (b) Failure to properly perform assigned duties;
- (c) Theft of City property;
- (d) Insubordination;
- (e) Conviction of a felony or conviction of a misdemeanor relating to the employee's fitness to perform assigned duties;
- (f) Unauthorized absence from employment;
- (g) Tardiness;
- (h) Failure to maintain satisfactory working relationships with other employees or the public;
- (i) Reporting for work, or being at work, under the influence of or in possession of alcohol or non-prescribed controlled substances;
- (j) Improper use of City funds;
- (k) Unauthorized use of City property;

- (l) Failure to properly care for City property;
- (m) Misstatement of material fact;
- (n) Failure to maintain any employment qualification;
- (o) Failure to comply with safety standards;
- (p) Other failure of good behavior either during or outside of employment such that the employee's conduct causes discredit to the City;
- (q) Violation of any City personnel rule, MOU provision or departmental policy.

7.1.3 *Disciplining Authority:* Any Department Head may institute discipline in the form of oral reprimand, written reprimand, or suspension for less than one day against any employee in his/her department. The City Manager, or Department Head with the approval of the City Manager, may institute discipline in the form of suspensions more than one day or demotion. The City Manager may discharge employees for cause. All discipline shall be in accordance with the procedures outlined in these rules.

7.1.4 *Notice of Discipline:* No advance notice shall be required for a written reprimand. An employee who wishes to respond to a written reprimand must do so in writing within thirty (30) calendar days from receipt of discipline. The response should be made or submitted to the Department Head with a copy to the Personnel Officer. A copy of the employee's written response will be placed in his/her personnel file.

Prior to the suspension, demotion, reduction in pay or discharge of a regular employee for disciplinary purposes, the procedure set forth in this rule shall be followed.

Prior to recommending the imposition of any disciplinary action, the Department Head shall notify the employee, in writing, of the following:

- (a) The nature of the proposed disciplinary action and its proposed effective date;
- (b) The reason for the proposed disciplinary action;
- (c) Any specific charges against the employee;
- (d) The employee's right to receive copies of the written documents and materials upon which the proposed disciplinary action is based; and
- (e) The employee's right to respond to the charge, either orally or in writing.

The employee shall be given ten (10) working days from the date of receipt in which to respond in writing or verbally to the designated authority. The response will be considered before disciplinary action is made. Failure to respond within this period of time will result in a waiver of the employee's right to respond. One extension of five (5) additional days will be given upon a showing of good cause.

7.1.5 *Representation:* If an employee requests or is required to meet with a Department Head or supervisor and such meeting involves the possible imposition of disciplinary action against the employee, the employee, upon request, shall be entitled to have a representative present at such meeting.

7.1.6 *Emergency Suspension:* When the Department Head or City Manager determines that an employee's conduct threatens or has caused injury to persons or property, the City Manager or Department Head may impose a suspension with pay against the employee, effective immediately, until a pre-disciplinary conference is conducted pursuant to the personnel rules. The imposition of an emergency suspension against an employee does not preclude the City Manager or Department Head from proposing a more severe disciplinary action against such employee receiving an emergency

suspension. Within three (3) working days of such emergency suspension, the City Manager or Department Head shall notify the employee in writing of the nature of any proposed disciplinary action, the reason for the disciplinary action, any specific charge against the employee, the employee's right to receive copies of the documents and materials upon which the disciplinary action is based and the employee's right to respond to the charge, either orally or in writing. The City Manager or Department Head, unless otherwise requested by the employee, shall conduct a disciplinary conference in not less than ten (10) days after the effective date of the emergency suspension.

7.2 Appeal Procedure

7.2.1 Request for Disciplinary Hearing: Employees shall have the right to appeal the imposition of the disciplinary action by requesting a hearing before an advisory arbitrator. Any such request shall be writing, signed by the employee or representative and presented to the Personnel Officer within ten (10) days after the effective date of the imposition of the disciplinary action. Further, said request shall identify the subject matter of the appeal, the grounds for the appeal and the relief desired by the employee. If the employee fails to request a disciplinary hearing within the prescribed time, the employee shall have waived the right to a hearing and all rights to further appeal of the disciplinary action.

7.2.2 Scheduling of Disciplinary Hearing: The Personnel Officer shall schedule any disciplinary hearing within a reasonable time after the filing of the employee's request, considering the availability of the advisory arbitrator and the convenience of the employee and the witnesses.

7.2.3 Advisory Arbitrator: The advisory arbitrator shall be provided by the State of California Mediation and Conciliation Service or similar, mutually agreed upon agency.

7.2.4 Expedited Arbitration: Unless otherwise agreed to by both parties, expedited arbitration shall be used and shall include:

- (a) A request that the arbitrator selected render a decision within sixty (60) calendar days of the conclusion of the hearing.
- (b) No court reporter unless mutually agreed to by all parties.
- (c) No post hearing briefs unless mutually agreed to by all parties.

7.2.5 Costs: The fees and expenses of the arbitrator and the court reporter, if required, shall be shared equally by the parties.

7.2.6 Decision: The decision of the arbitrator shall be advisory only and constitutes the final step within the City's administrative process.

ARTICLE 8. GRIEVANCE PROCEDURES

8.1 Purpose of Grievance Procedures

The grievance procedure shall be used to resolve any dispute which involves the interpretation

or application of any City personnel rule, provision of this MOU or departmental policy. The grievance procedure shall not be used for:

- (a) The resolution of any complaint concerning any disciplinary action.
- (b) The resolution of any complaint relating to any concerted refusal to work.

8.2 Informal Discussion of Grievance

When an employee has a complaint, the employee shall first informally discuss the matter with the employee's immediate supervisor within fifteen (15) calendar days from the date of the incident or decision generating the grievance. If, after a discussion with the immediate supervisor, the complaint has not been satisfactorily resolved, the employee shall have the right to discuss the complaint informally with the supervisor's immediate supervisor. If, after such a discussion the complaint has not been satisfactorily resolved, the employee shall have the right to file a formal grievance.

8.3 Formal Grievance Procedure

- (a) An employee shall have the right to present a formal grievance, in writing within five (5) working days after the informal discussion of the grievance with the immediate supervisor or the immediate supervisor's supervisor. All formal grievances shall state the reasons for the grievance; the City personnel rule, MOU provision or departmental policy at issue; and the employee's suggested solution.
- (b) The formal grievance shall be presented to the Department Head or his/her designee. S/he shall discuss the grievance with the employee and/or the employee's representative. Within ten (10) working days after receipt of the formal grievance, the Department Head or his/her designee shall render a written decision regarding its merits. The grievance shall be considered resolved and no further review of the subject matter of the grievance shall be permitted under this rule if the employee does not seek further review of the grievance within five (5) working days after receipt of the decision of the Department Head. Failure of the Department Head to render written decision on the grievance within ten (10) working days constitutes a decision denying the grievance.
- (c) If the Department Head's decision does not satisfactorily resolve the grievance, the employee may present the formal grievance to the Personnel Officer. The Personnel Officer shall discuss the grievance with the employee and/or the employee's representative. Within fifteen (15) days after meeting with the employee and the employee's representative, the Personnel Officer shall render a written decision regarding the grievance.
- (d) If the Personnel Officer's decision does not satisfactorily resolve the grievance, or if the Personnel Officer fails to respond in writing as provided in Step (c) above, the employee shall have the right to refer the grievance to binding arbitration. Such referral shall be made in writing to the Personnel Officer within ten (10) working days of receipt of his/her decision.
- (e) At any time, the parties may mutually agree to an extension of the above deadlines.

8.4 Binding Arbitration

The binding arbitration procedure shall be as follows:

- (a) The arbitrator shall be chosen jointly by the parties from a strike list provided by the California State Mediation and Conciliation Service (CA-SMCS).

- (b) Unless otherwise agreed to by both parties, expedited arbitration shall be used and shall include:
- i. A mutual request that the arbitrator selected render a decision within sixty (60) calendar days from the conclusion of the hearing.
 - ii. No court reporter unless mutually agreed to by the parties.
 - iii. No post hearing briefs unless mutually agreed to by the parties.

The fees and expenses of the arbitrator and the court reporter, if required, shall be shared equally by both parties.

8.5 Arbitrator's Decision

The decision of the Arbitrator shall be final and binding.

8.6 Reprisals Prohibited

The City shall not institute any reprisals against any employee or any representative resulting from the use of the grievance procedure.

8.7 Grievance Preparation Time

An employee submitting a grievance and the employee's representative may use a reasonable amount of time during working hours to prepare for and present the grievance.

ARTICLE 9. PRIOR MOUS, RULES, REGULATIONS, ORDINANCES AND PRACTICES

All care and diligence was used in the preparation of this comprehensive MOU. With all parties having an opportunity for input and research, it is mutually agreed that this comprehensive MOU shall supersede all previous MOU's.

ARTICLE 10. CONTENT, TERMS AND RECOMMENDATIONS

10.1 Severability

If any article or section of this MOU should be invalid, unlawful, or unenforceable by reason of any existing or subsequent enacted legislation or by judicial authority, all other articles and sections of this Memorandum shall remain in full force and effect for the duration of this MOU. The City and the Association agree to meet within thirty (30) days for the purpose of renegotiating said article or section.

10.2 Term

The term of this MOU shall be from July 1, 2015 through June 30, 2017.

Parties Agree to Recommend MOU

The undersigned members of the Association and representatives of the City, having met and conferred in good faith, have reached agreement on the items contained herein and have mutually

agreed to recommend to the Cloverdale City Council and the general membership of the Association that the terms of this agreement be adopted.

Paul Cayler **Date**
City Manager

Darren Hernandez **Date**
President, CCSEA

Jose Sanchez **Date**
City Attorney

Richard A. Reed **Date**
Labor Consultant

ATTACHMENT A - MOU 7/2015 - 6/2017

City of Cloverdale
 Classified Service Association
 Salary Ranges Effective First Full pay Period of July 2015

TITLE	Pay Cycle	SALARIES				
		Step 1	Step 2	Step 3	Step 4	Step 5
ASSISTANT PLANNER	Hourly	26.5903	27.9197	29.3157	30.7815	32.3205
	Monthly	4,608.98	4,839.42	5,081.40	5,335.46	5,602.23
	Annual	55,307.79	58,073.05	60,976.74	64,025.48	67,226.73
ASSOCIATE PLANNER	Hourly	36.8659	38.7092	40.6446	42.6769	44.8108
	Monthly	6,390.09	6,709.59	7,045.07	7,397.33	7,767.20
	Annual	76,681.03	80,515.09	84,540.82	88,767.91	93,206.38
COMMUNITY SERVICES OFFICER	Hourly	23.4854	24.6596	25.8926	27.1872	28.5466
	Monthly	4,070.80	4,274.33	4,488.05	4,712.44	4,948.07
	Annual	48,849.60	51,291.96	53,866.61	56,549.29	59,376.85
ENGINEERING TECHNICIAN	Hourly	25.5440	26.8212	28.1623	29.5704	31.0490
	Monthly	4,427.63	4,649.01	4,881.47	5,125.54	5,381.83
	Annual	53,131.51	55,788.08	58,577.58	61,506.49	64,581.91
PARK & LANDSCAPE MAINTENANCE ASSISTANT	Hourly	26.5198	27.8458	29.2381	30.7000	32.2350
	Monthly	4,596.76	4,826.61	5,067.94	5,321.33	5,587.40
	Annual	55,161.15	57,919.31	60,815.30	63,855.96	67,048.76
PARKS & MAINTENANCE LEAD WORKER	Hourly	30.5799	32.1089	33.7144	35.4001	37.1701
	Monthly	5,300.52	5,565.54	5,843.82	6,136.02	6,442.82
	Annual	63,606.26	66,786.46	70,125.90	73,632.29	77,313.84
PLANNING TECHNICIAN	Hourly	25.5439	26.8212	28.1623	29.5704	31.0489
	Monthly	4,427.62	4,649.01	4,881.47	5,125.54	5,381.81
	Annual	53,131.39	55,788.08	58,577.58	61,506.49	64,581.67
SENIOR WASTEWATER TREATMENT PLANT OPERATOR	Hourly	30.6715	32.2051	33.8154	35.5061	37.2814
	Monthly	5,316.39	5,582.22	5,861.33	6,154.39	6,462.11
	Annual	63,796.72	66,986.58	70,335.94	73,852.73	77,545.30
SENIOR WATER TREATMENT PLANT OPERATOR	Hourly	36.2093	38.0198	39.9208	41.9168	44.0126
	Monthly	6,276.27	6,590.10	6,919.60	7,265.58	7,628.85
	Annual	75,315.29	79,081.17	83,035.18	87,186.99	91,546.14
TRANSIT VAN OPERATOR	Hourly	21.8249	22.9162	24.0620	25.2651	26.5284
	Monthly	3,782.99	3,972.15	4,170.75	4,379.28	4,598.25
	Annual	45,395.83	47,665.74	50,048.99	52,551.34	55,179.02
UTILITY MAINTENANCE CREW LEADER	Hourly	29.1237	30.5798	32.1088	33.7143	35.4000
	Monthly	5,048.10	5,300.50	5,565.52	5,843.80	6,136.00
	Annual	60,577.23	63,606.02	66,786.21	70,125.65	73,632.05
UTILITY MAINTENANCE WORKER I (Public Works)	Hourly	21.8249	22.9162	24.0620	25.2651	26.5284
	Monthly	3,782.99	3,972.15	4,170.75	4,379.28	4,598.25
	Annual	45,395.83	47,665.74	50,048.99	52,551.34	55,179.02
UTILITY MAINTENANCE WORKER II (Public Works)	Hourly	26.5198	27.8458	29.2381	30.7000	32.2350
	Monthly	4,596.76	4,826.61	5,067.94	5,321.33	5,587.40
	Annual	55,161.15	57,919.31	60,815.30	63,855.96	67,048.76
WASTEWATER TREATMENT PLANT OPERATOR I	Hourly	25.6241	26.9053	28.2506	29.6631	31.0875
	Monthly	4,441.52	4,663.59	4,896.78	5,141.61	5,388.50
	Annual	53,298.22	55,963.12	58,761.30	61,699.27	64,661.96
WASTEWATER TREATMENT PLANT OPERATOR II	RANGE NOT CURRENTLY ESTABLISHED					
WATER TREATMENT PLANT OPERATOR-IN-TRAINING	Hourly	25.1748	26.4336	27.7553	29.1431	30.6003
	Monthly	4,363.63	4,581.83	4,810.92	5,051.48	5,304.05
	Annual	52,363.58	54,981.96	57,731.06	60,617.74	63,648.61
WATER TREATMENT PLANT OPERATOR I	RANGE NOT CURRENTLY ESTABLISHED					
WATER TREATMENT PLANT OPERATOR II	Hourly	33.5990	35.2789	37.0429	38.8951	40.8398
	Monthly	5,823.82	6,115.01	6,420.78	6,741.81	7,078.89
	Annual	69,885.87	73,380.15	77,049.33	80,901.75	84,946.70

ATTACHMENT A - MOU 7/2015 - 6/2017

City of Cloverdale
 Classified Service Association
 Salary Ranges Effective First Full pay Period of July 2016

TITLE	Pay Cycle	SALARIES				
		Step 1	Step 2	Step 3	Step 4	Step 5
ASSISTANT PLANNER	Hourly	27.1221	28.4781	29.9021	31.3971	32.9670
	Monthly	4,701.16	4,936.21	5,183.02	5,442.17	5,714.27
	Annual	56,413.94	59,234.51	62,196.28	65,305.99	68,571.27
ASSOCIATE PLANNER	Hourly	37.6032	39.4834	41.4575	43.5304	45.7070
	Monthly	6,517.89	6,843.78	7,185.97	7,545.27	7,922.64
	Annual	78,214.65	82,125.39	86,231.64	90,543.27	95,070.50
COMMUNITY SERVICES OFFICER	Hourly	23.9551	25.1528	26.4105	27.7309	29.1175
	Monthly	4,152.22	4,359.82	4,577.81	4,806.69	5,047.03
	Annual	49,826.59	52,317.80	54,933.74	57,680.28	60,564.39
ENGINEERING TECHNICIAN	Hourly	26.0549	27.3576	28.7255	30.1618	31.6700
	Monthly	4,516.18	4,741.99	4,979.09	5,228.05	5,489.46
	Annual	54,194.14	56,903.85	59,749.13	62,736.62	65,873.55
PARK & LANDSCAPE MAINTENANCE ASSISTANT	Hourly	27.0502	28.4027	29.8229	31.3140	32.8797
	Monthly	4,688.70	4,923.14	5,169.30	5,427.76	5,699.14
	Annual	56,264.37	59,077.70	62,031.60	65,133.08	68,389.74
PARKS & MAINTENANCE LEAD WORKER	Hourly	31.1915	32.7511	34.3887	36.1081	37.9135
	Monthly	5,406.53	5,676.85	5,960.70	6,268.74	6,571.68
	Annual	64,878.39	68,122.19	71,528.42	75,104.94	78,860.11
PLANNING TECHNICIAN	Hourly	26.0548	27.3576	28.7255	30.1618	31.6699
	Monthly	4,516.17	4,741.99	4,979.09	5,228.05	5,489.44
	Annual	54,194.02	56,903.85	59,749.13	62,736.62	65,873.30
SENIOR WASTEWATER TREATMENT PLANT OPERATOR	Hourly	31.2849	32.8492	34.4917	36.2162	38.0270
	Monthly	5,422.72	5,693.86	5,978.55	6,277.48	6,591.35
	Annual	65,072.65	68,326.31	71,742.65	75,329.79	79,096.20
SENIOR WATER TREATMENT PLANT OPERATOR	Hourly	36.9335	38.7802	40.7192	42.7552	44.8928
	Monthly	6,401.80	6,721.90	7,057.99	7,410.89	7,781.42
	Annual	76,821.60	80,662.79	84,695.88	88,930.73	93,377.07
TRANSIT VAN OPERATOR	Hourly	22.2614	23.3745	24.5433	25.7704	27.0589
	Monthly	3,858.65	4,051.59	4,254.16	4,466.86	4,690.22
	Annual	46,303.75	48,619.06	51,049.97	53,602.37	56,282.60
UTILITY MAINTENANCE CREW LEADER	Hourly	29.7061	31.1914	32.7509	34.3885	36.1080
	Monthly	5,149.06	5,406.51	5,676.83	5,960.68	6,258.72
	Annual	61,788.77	64,878.14	68,121.94	71,528.17	75,104.69
UTILITY MAINTENANCE WORKER I (Public Works)	Hourly	22.2614	23.3745	24.5433	25.7704	27.0589
	Monthly	3,858.65	4,051.59	4,254.16	4,466.86	4,690.22
	Annual	46,303.75	48,619.06	51,049.97	53,602.37	56,282.60
UTILITY MAINTENANCE WORKER II (Public Works)	Hourly	27.0502	28.4027	29.8229	31.3140	32.8797
	Monthly	4,688.70	4,923.14	5,169.30	5,427.76	5,699.14
	Annual	56,264.37	59,077.70	62,031.60	65,133.08	68,389.74
WASTEWATER TREATMENT PLANT OPERATOR I	Hourly	26.1366	27.4435	28.8156	30.2564	31.7092
	Monthly	4,530.35	4,756.86	4,994.71	5,244.44	5,496.27
	Annual	54,364.19	57,082.38	59,936.53	62,933.25	65,955.20
WASTEWATER TREATMENT PLANT OPERATOR II	RANGE NOT CURRENTLY ESTABLISHED					
WATER TREATMENT PLANT OPERATOR-IN-TRAINING	Hourly	25.6783	26.9623	28.3104	29.7260	31.2123
	Monthly	4,450.90	4,673.47	4,907.14	5,152.51	5,410.13
	Annual	53,410.85	56,081.60	58,885.68	61,830.10	64,921.58
WATER TREATMENT PLANT OPERATOR I	RANGE NOT CURRENTLY ESTABLISHED					
WATER TREATMENT PLANT OPERATOR II	Hourly	34.2710	35.9845	37.7838	39.6730	41.6566
	Monthly	5,940.30	6,237.31	6,549.19	6,876.65	7,220.47
	Annual	71,283.59	74,847.75	78,590.32	82,519.78	86,645.64



U.S. Department
of Transportation
**Federal Aviation
Administration**

Western-Pacific Region
Airports Division

San Francisco Airports District Office
1000 Marina Boulevard, Suite 220
Brisbane, CA 94005-1835

February 22, 2016

CITY OF CLOVERDALE
RECEIVED

FEB 25 2016

Mr. Paul Cayler
City Manager
124 North Cloverdale Blvd.
Cloverdale, 95425

Dear Mr. Cayler,

RE: Federal Aviation Administration (FAA) Comments;
Proposed closure of Cloverdale Municipal Airport (O60)

The FAA San Francisco Airports District Office (SFO-ADO) was recently made aware of local developer, Laulima Development LLC, efforts and Cloverdale City Council 3-2 vote to close the Cloverdale Municipal Airport. In our telephone conversation on February 10, 2016, you referenced a recent press release and the resultant reduced likelihood that the City of Cloverdale would continue to pursue closure of the airport.

The SFO-ADO categorically does not support closure of this airport facility. The Cloverdale Municipal Airport is in the *National Plan of Integrated Airport Systems* (NPIAS). This NPIAS Public-Use airport facility is intended to serve the needs of the general aviation users. Per the *FAA National Based Aircraft Inventory Program*, there are currently 17 validated based aircraft at this facility. All NPIAS facilities should be permanent with assurance that they will remain open for aeronautical use over the long term. Further, NPIAS airports should be supported with compatible land uses within the surrounding communities, maintaining a balance between the needs of civil aviation, the environment and the requirements of residents.

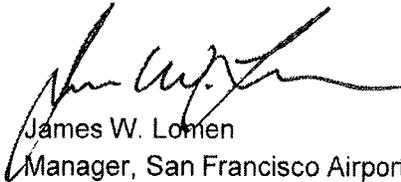
Please be advised, the Cloverdale Municipal Airport is subject to a current compliance obligation resulting from city acceptance of *Airport Improvement Program* (AIP) grants. FAA has issued **\$1,963,626** in Federal AIP funds to the City of Cloverdale. Accordingly, the following Grant Assurances apply:

- Grant Assurance 4. Good Title
- Grant Assurance 5. Preserving Rights and Powers
- Grant Assurance 6. Consistency with Local Plans
- Grant Assurance 21. Compatible Land Use
- Grant Assurance 25. Airport Revenues
- Grant Assurance 29. Airport Layout Plan/Exhibit A
- Grant Assurance 31. Disposal of Land

The FAA-Approved ALP on file, for the Cloverdale Municipal Airport, is dated 02/21/2008. Any property defined by an Airport Layout Plan (ALP) or listed in the Exhibit "A" Airport Property Map is considered to be dedicated or obligated property for airport purposes. Accordingly, any proposed utilization of dedicated airport property will require prior FAA Compliance Specialist review and FAA approval. Further, any proposed changes in land use, release of airport property, or land swaps will require ADO coordination and FAA approval.

We recommend that the City of Cloverdale work closely with the SFO-ADO to ensure that the Cloverdale Municipal Airport remain open, as this NPIAS airport facility is considered vital to aviation users in the region.

Sincerely,



James W. Lomen
Manager, San Francisco Airports District Office

Enclosure: Grant Assurances

cc: Robert Y. Lee, FAA Compliance Specialist
CALTRANS Aeronautics Division,
ATO Planning and Integration



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board
Division of Drinking Water

January 5, 2016

CITY OF CLOVERDALE
RECEIVED

David Campbell
Six Acres Water Company
P.O. Box 460
Cloverdale, CA 95425

JAN 07 2016

Dear Mr. Campbell:

Effective June 24, 2015, Senate Bill 88 (Statutes 2015, Chapter 27) added Sections 116680 – 116684 to California Health & Safety Code, addressing consolidation of public water systems.

Based on the inspection of November 24, 2015 conducted by the State Water Resources Control Board – Division of Drinking Water (Division), the Six Acres Water Company (System) has numerous deficiencies. The System's only source is a shallow well without a surface seal. A sample taken at the time of the inspection was positive for total coliform. Other deficiencies have been described in a letter dated December 23, 2015, which is enclosed. It is our understanding that the System's service area is 1) contiguous with the boundaries of the City of Cloverdale (City), 2) within the Urban Service Area Boundary of the Sonoma County General Plan, 3) within the Sphere of Influence of the City, and 4) within the City's Urban Growth Boundary.

The State Water Resources Control Board (State Water Board) strongly encourages the System and the City to work out voluntary consolidation of their public water systems. However, if a timely voluntary consolidation is not achieved, the State Water Board may determine to exercise its authority pursuant to Health & Safety Code Section 116682, subdivision (a) to achieve consolidation of System with the City's public water system.

The State Water Board acknowledges that consolidation is a complex process and stands ready to assist you so that you are successful in delivering safe, affordable and accessible drinking water to your community in a cost-effective manner. The State Water Board will provide technical assistance and work with the City and the System to develop an appropriate and necessary financing package. Technical assistance will be available from the State Water Board's Division of Drinking Water (DDW) and Division of Financial Assistance (DFA).

If you have questions regarding this letter, please contact Marianne Watada at (707) 576-2076. For funding related questions, please contact George Faggella at (916) 449-5652.

Sincerely,


Janice M. Thomas, P.E., Senior Sanitary Engineer
Division of Drinking Water
STATE WATER RESOURCES CONTROL BOARD

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

Enclosure: Inspection letter dated December 23, 2015

cc: Felix Hernandez
Six Acres Water Company
P.O. Box 460
Cloverdale, CA 95425

Paul Cayler, City Manager
City Of Cloverdale,
124 North Cloverdale Boulevard
Cloverdale, CA 95425

Mark Bramfitt, Executive Officer,
Sonoma LAFCO
575 Administration Drive, Room 104 A
Santa Rosa, CA 95403

Agenda Section Public Hearing	Staff Contact Stephen Cramer, Police Chief
Agenda Item Title Ordinance Repealing and Replacing Cloverdale Municipal Code Chapter 5.24 Relating to Massage Therapy and Massage Establishments	

SUMMARY:

Staff is recommending that the City Council introduce and waive first reading of proposed ordinance repealing and replacing Cloverdale Municipal Code Chapter 5.24 relating to massage therapy and massage establishments in the City of Cloverdale. The City's current massage ordinance has not been updated since its adoption in 1975. The law has changed since 1975, requiring the update.

BACKGROUND:

On September 27, 2008, Senate Bill 731 ("SB 731"), entitled the "Massage Therapy Act," was signed into law. SB 731 attempted to address the concerns and frustration amongst massage professionals relating to the various regulations for massage practitioners and establishments throughout the State and to provide uniform regulations for the massage industry. Prior to the enactment of the Massage Therapy Act, local governments in California had broad authority to regulate massage practitioners and establishments within their jurisdictions. Additionally, cities and counties were able to regulate establishments through zoning ordinances to limit the location of massage establishments to certain zoning districts and/or to require a conditional use permit to operate. SB 731 created a program of voluntary certification for massage practitioners by a State supported non-profit organization, the California Massage Therapy Council (the "CAMTC"). SB 731 also imposed a variety of restrictions on cities and counties, including a mandate that local zoning regulations could not distinguish between massage establishments and other personal and professional services. SB 731 had a sunset provision of January 1, 2015.

On September 18, 2014, Governor Brown signed Assembly Bill 1147 ("AB 1147"), with an effective date of January 1, 2015. AB 1147 extended the Massage Therapy Act and made significant changes to the structure of the CAMTC and to Business and Professions Code sections 460, 4600-4621, and Government Code section 51034. AB 1147 also allowed cities and counties to return to regulating massage establishments through zoning regulations. Specifically, Assembly Bill 1147 allows cities and counties to:

- Pass ordinances that require that all people who perform massage to be CAMTC certified;
- Regulate land uses for the purpose of managing massage establishments in their communities;
- Require that all massage establishments obtain a license, permit, certificate or other authorization in order to operate lawfully in the jurisdiction; and

- Adopt or enforce a local ordinance governing zoning, business licensing, or reasonable health and safety requirements for all massage establishments (limited by GC 51034).

Although AB 1147 did return some regulating power to local government, AB 1147 generally restricted cities and counties from regulating the practice of massage, and specifically prohibited cities and counties from regulating, among other things, defining or regulating any massage establishment as adult entertainment and requiring client draping that goes beyond the covering of genitalia and female breasts.

DISCUSSION:

The City of Cloverdale's existing massage ordinance has not been revised since its adoption in 1975. Since that time, the City has seen an increase in massage businesses and currently has 29 files relating to massage. Of these 29 massage business, the following has been identified:

- 19 do not hold a valid Cloverdale Police Department Massage Permit (this requirement currently violates AB 1147 if the therapist has the CAMTC certificate);
- 19 do not have a valid City of Cloverdale business license; and
- 13 have the CAMTC certificates; however only 8 are currently valid.

Additionally, there are several massage therapists who list home addresses on their permits and/or the CAMTC licenses but do not have a Cloverdale Home Occupation Permit/License, there is no current list of independent massage therapy contractors from the local spas and none of the files have copies of current business licenses or the CAMTC certificates. Furthermore, 9 massage therapists were issued permits that have no expiration date because prior Police Chiefs have granted lifetime permits. As a result, there is no accurate way to track therapists under such a permit mechanism. All of these files show varying degrees of compliance with the Municipal Code, and each business has a different permitting standard.

Staff has prepared an ordinance that attempts to provide a streamlined permitting process for individuals and establishments providing massage services in the City to correct the aforementioned deficiencies.

The current ordinance is also out of compliance with State law. Several sections of the Cloverdale Municipal Code (5.24.110, 5.24.020, 5.24.050, 5.24.070, and 5.24.130) directly contradict the language of AB 1147. Additionally, the current ordinance is not consistent with other sections of the Cloverdale Municipal Code in addition to the current structure of the City departments.

The proposed ordinance will seek to bring Cloverdale's Municipal Code into compliance with State law and generally update the definitions and terminology of the ordinance.

General Permit/Licensing Requirements of Proposed Ordinance

The proposed ordinance will require, among other things that any person that performs or engages in the practice of massage possess either the CAMTC certificate or a Certified Massage Therapist Certificate that shall be issued by the Chief of Police. The proposed ordinance will also require that a massage establishment (fixed place of business), possess a Certified Massage Establishment Certificate that shall also be issued by the Chief of Police. Any person who applies for a Certified Massage Establishment or

Therapist Certificate is subject to fingerprinting and a background check. In addition to the certificates, every person or business entity must also obtain a business license pursuant to Chapter 5.04 of the Cloverdale Municipal Code and if a massage therapist wishes to operate a massage business from his or her home, a home occupation permit pursuant to Chapter 18.03 is also required.

Health and Safety/Operating Requirements of Proposed Ordinance

The proposed ordinance will also seek to prevent and discourage the misuse of massage therapy as a front for prostitution, human trafficking and other illicit activities. The goal is to protect the interests of the public health, safety, and welfare of the community by providing certain minimum health and safety, building, sanitation and operation standards for massage therapists and businesses. Additionally, it will be the intent of the proposed ordinance to protect the interests of the public health, safety, and welfare of the community by requiring certain minimum educational qualifications for the massage therapists. Some of the proposed health and safety and operating regulations provide the following:

- Requires clean linens and equipment;
- Prohibits massage for sexual gratification;
- Prohibits sexually suggestive advertisement;
- Massage establishments must comply with all applicable building and fire code requirements of the City;
- Massages can only be given between 7 a.m. and 10 p.m.;
- The CAMTC Certificates or Certified Massage Therapist Certificate must be displayed in a reception area or location where massage will be performed; and
- Massage establishments cannot be used as a residence.

Minimum Educational Requirements of Proposed Ordinance

The proposed ordinance will require that anyone who applies for a Certified Massage Therapy Certificate meet minimum educational standards by possessing at least two of the following:

1. An original copy of a diploma, certificate or academic transcript that demonstrates completion of 300 hours of in-class instruction from a recognized school; or
2. Satisfactory passage of the National Certification Exam for Therapeutic Massage or 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 100 hours of massage training or education;
 - b. Possession of practitioner's liability insurance coverage in the minimum amount of \$1,000,000 per event;

- c. Adherence to a code of ethics; and
 - d. Renewal of membership at a minimum of once every 2 years.
4. The Applicant has a long-standing (over 20 years) history of conducting massages in the City without any complaints or Municipal Code violations.

A massage therapist who has obtained the CAMTC certificate is not required to obtain a Certified Massage Therapy Certificate because that person has already met the educational standards set forth by the CAMTC and passed a background check.

No Zoning Regulations in Proposed Ordinance

Although AB 1147 allows cities to regulate massage establishments through zoning regulations, staff has determined that such regulation is not currently necessary or beneficial to the City. The City does not currently have an over-concentration of massage establishments in any one area of the City.

Council Discussions

The update to the massage ordinance was discussed at the February 26, 2016 Council meeting. At that meeting, Council discussed an update to the ordinance and requested outreach to the affected massage therapists and establishments be conducted. To that end, personal letters were mailed to each of the local massage therapists and massage therapy establishments.

Budget/Financial Impact

The City Police Department will expend considerable staff time in the administration of the Certified Massage Therapist and Establishment Certificates, investigations of complaints, conducting inspections and enforcing violations. The Police Department will be able to recover some of the costs through fees for the administrative costs of the Certificates. Additionally, there may be some cost recovery through fines that are charged as a result of violations of the Municipal Code.

Subcommittee Recommendation

This agenda item was presented to the Finance/Police Subcommittee on January 28, 2016.

Recommended Council Action

Motion introducing and waiving the first reading of Ordinance repealing and replacing Cloverdale Municipal Code Chapter 5.24 relating to massage therapy and massage establishments

Attachments:

- 1. Proposed Massage Ordinance
- 2. Power Point Presentation

cc:

2616442.1

ORDINANCE NO. _____
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.

SECTION 2. New Chapter 5.24 “Massage Therapy and Massage Establishments” of Title 5, “Business Taxes, Licenses and Regulations” is adopted to read as follows:

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 Certified Massage Therapy Certificate or a Certified Massage Establishment Certificate. Only an owner(s) may apply for a Certified Massage Establishment Certificate.

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. "Certified Massage Establishment Certificate," or "Certificate holder" means the City-issued certificate required by this Chapter to operate a massage establishment. Only an owner(s) may apply for a Certified Massage Establishment Certificate.

F. "Certified Massage Therapy Certificate," or "Certificate holder" means the City-issued certificate required by this Chapter to operate as a massage therapist.

G. "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.

H. "City" shall mean the City of Cloverdale.

I. "Client" shall mean the customer or patron who pays for or receives massage services.

J. "Compensation" means the payment, loan, advance, donation, contribution, deposit, exchange or gift of money or anything of value.

K. "Disqualifying offense" shall mean any offense which disqualifies an Applicant from obtaining a Certificate 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 Certificate 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.

L. "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).

M. "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.

N. "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.

O. "Inspector" shall mean the person or persons designated by the permit authority to conduct any inspections required or permitted under this Chapter.

P. "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.

Q. "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.

R. "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 Certified Massage Therapist 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.

S. “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.

T. “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.

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;
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. Persons operating or employed at athletic clubs or fitness facilities, where such facility is designed and equipped for indoor sports, exercise, or physical education, and where massage services are provided to members of such facilities.

E. 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.

F. 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.

G. 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, Rolfing or the Bowen Technique and/or somatic practitioners who use no physical touch of any kind at any time in their practice.

H. 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. 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 Certified Massage Therapist Certificate pursuant to Section 5.24.100

B. 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 Certified Massage Therapist Certificate.

C. It shall be unlawful for any massage establishment to operate without possessing a current, valid, unsuspended and unrevoked Certified Massage Establishment Certificate 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 for any person 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 5.04.03 of the Cloverdale Municipal Code.

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.

5.24.080. Certified Massage Establishment Certificate.

A. Valid Certificate 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, Certified Massage Establishment Certificate.

B. Single Certificate for Each Location. Only one (1) Certified Massage Establishment Certificate 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 Certificate. If there are multiple owners, the Chief of Police, or his or her designee, will issue the Certificate to one of the owners.

C. Certificate Not Issued if Disqualifying Offenses Committed. A Certified Massage Establishment Certificate 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. Certified Massage Establishment Certificate-Application.

A. Application. Any Applicant wishing to obtain a Certified Massage Establishment Certificate, 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 Certificate, 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 Certified Massage Therapist Certificate;

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 Certificate, 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;

13. A written statement that neither the Applicant nor any persons to be directly or indirectly interested in the Certificate, if granted, have knowingly made any false, misleading, or fraudulent statement of facts in the application for the Certificate 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 Certificate as specified by Federal, State or local law.

B. Application Fee. An application for a Certified Massage Establishment Certificate 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 Certified Massage Establishment Certificate 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 Certified Massage Establishment Certificate 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 Certified Massage Establishment Certificate 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 Certified Massage Establishment Certificate 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 Certificate. Each holder of a Certified Massage Establishment Certificate shall display that Certificate 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 Certified Massage Establishment Certificate 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 Certified Massage Establishment Certificate 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 Certified Massage Establishment Certificate 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 Certified Massage Establishment Certificate to reflect such change. An application for an amendment to a Certified Massage Establishment Certificate 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 Certified Massage Establishment Certificate 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 Certified Massage Establishment Certificate 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 Certificate 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 Certificate 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 Certificate 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 Certificate 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 Certified Massage Establishment Certificate was obtained with fraudulent or deceitful information; or

f. The Certificate Holder has continued to operate or conduct massages after the Certified Massage Establishment Certificate was suspended; or

g. Massage treatments are or have been performed on the premises of the massage establishment, with or without the Certificate holder's actual knowledge, by any person who does not possess a CAMTC certificate or a Certified Massage Therapists Certificate; 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 Certificate 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 Certificate Holder.

j. The Certificate holder has committed a disqualifying offense pursuant to Section 5.24.020(K).

2. Upon revocation of a Certified Massage Establishment Certificate, the Certificate 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 Certified Massage Establishment Certificate, shall serve the Certificate 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 Certified Massage Establishment Certificate should be revoked or suspended.

3. The Chief of Police, or his or her designee, shall serve the Certificate 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 Certificate 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. Certified Massage Therapist Certificate.

A. Valid Certificate 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, Certified Massage Therapy Certificate.

B. Certificate Not Issued if Disqualifying Offenses Committed. A Certified Massage Therapy Certificate 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. Certified Massage Therapist Certificate-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 Certified Massage Therapy Certificate 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 National Certification Exam for Therapeutic Massage or 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. Certified Massage Therapist Certificate-Application.

A. Application. Any Applicant wishing to obtain a Certified Massage Therapist Certificate, 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 INS 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 Certificate 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 Certified Massage Therapist Certificate such an intent to operate as such.

C. Application Fee. An application for a Certified Massage Therapist Certificate 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 Certified Massage Therapist Certificate 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 Certified Massage Therapist Certificate 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 Certified Massage Therapist Certificate 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 Certified Massage Therapist Certificate 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 Certificate. Each holder of a Certified Massage Therapist Certificate shall display that Certificate 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 Certified Massage Therapist Certificate 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 Certified Massage Therapist Certificate 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 Certified Massage Therapist Certificate 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 Certified Massage Therapist Certificate to reflect such change. An application for an amendment to a Certified Massage Therapist Certificate 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

Certified Massage Therapist Certificate has been issued by the Chief of Police, or his or her designee. A Certified Massage Therapist Certificate 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 Certified Massage Therapist Certificate, 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 Certificate holder, or any person employed or retained by the Certificate holder, has been found to have violated any provision of this Chapter; or

b. The Certificate holder, or any person employed or retained by the Certificate 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 Certificate holder, or any person employed or retained by the Certificate 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 Certificate holder, or any person employed or retained by the Certificate 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 Certified Massage Therapist Certificate was obtained with fraudulent or deceitful information; or

f. The Certificate holder has continued to operate or conduct massages after the Certified Massage Therapist Certificate was suspended; or

g. Massage treatments are or have been performed, by any person who does not possess a CAMTC certificate or a Certified Massage Therapists Certificate; or

h. The Certificate 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 Certificate 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 Certificate Holder.

j. The Certificate holder has committed a disqualifying offense pursuant to Section 5.24.020(K).

2. Upon revocation of a Certified Massage Therapist Certificate, the Certificate 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 Certified Massage Therapist Certificate, shall serve the Certificate 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 Certified Massage Therapist Certificate should be revoked or suspended.

3. The Chief of Police, or his or her designee, shall serve the Certificate 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 Certificate 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 Certified Massage Therapist or Establishment Certificate in conjunction with a valid City Business License and any other City permits that may be necessary.

B. Out-call massage shall not be performed unless authorized in writing by a physician, surgeon, chiropractor or osteopath duly licensed to practice in the State of California.

C. Out-call massage and on-site massage shall only be conducted between the hours of 7:00 a.m. and 10:00 p.m.

D. 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 or if 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 be 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 or if 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 Certified Massage Therapist Certificate 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 Certified Massage Therapist Certificate 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 Certified Massage Therapist Certificate.

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 certified 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.

5.24.130. 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 to ensure that each violation noted by the City inspector has been corrected.

5.24.160. 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.

5.24.170. 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 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 enjoinder thereof, in any manner provided by law, and shall take such other steps and shall apply to such court(s) as may have jurisdiction to grant such relief as will abate or remove such businesses and restrain and enjoin any person from operating, conducting or maintaining a massage establishment or business contrary to the provisions of this Chapter. All remedies provided for in this Chapter are cumulative.

5.24.180. 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.

5.24.190. 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.

5.24.200. 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.

5.24.210. 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.

5.24.220. 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 go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 7. Publication.

A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least ten (10) days prior to the Council meeting at which it is adopted. This Ordinance shall be in full force and effect thirty (30) days after its final passage, and the summary of this Ordinance shall be published within fifteen (15) days after the adoption, together with the names of the Councilmembers voting for or against same, in the Cloverdale Reveille, a newspaper of general circulation published and circulated in the City of Cloverdale, County of Sonoma, State of California. Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this Ordinance along with the names of those Councilmembers voting for and against the Ordinance.

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Cloverdale held on the _____, by Councilmember, who moved its introduction and passage to print, which motion being duly seconded by Councilmember _____, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

APPROVED:

MAYOR

2608239.1

PROOF OF PUBLICATION

(2015.5 C.C.P.)

STATE OF CALIFORNIA

County of Sonoma

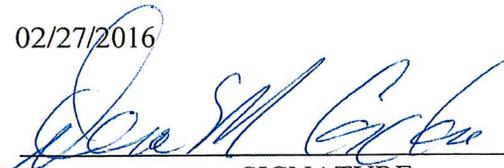
I am a citizen of the United States and a resident of the county aforesaid: I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer of The Press Democrat, a newspaper of general circulation, printed and published DAILY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

The Press Democrat - Legal Notices
2/27 1x - 02/27/2016

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

Dated at Santa Rosa, California, on

02/27/2016


SIGNATURE

This space for County Clerk's Filing Stamp


CITY OF CLOVERDALE

**NOTICE OF PUBLIC HEARING
CITY OF CLOVERDALE CITY COUNCIL**

Notice is hereby given that the City Council of the City of Cloverdale will hold a public hearing on Tuesday, March 8, 2016 at or after 6:30 p.m. at the Cloverdale Performing Arts Center, 209 North Cloverdale Blvd., Cloverdale, California, for the purpose of considering the adoption of the following Ordinance:

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.

The City Council will be considering the above Ordinance in response to the 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 in 1975. The Massage Therapy Act, signed into law on September 27, 2008, provided for the formation of a nonprofit "Massage Therapy Organization" to oversee a State-sanctioned program of certification for massage therapy practitioners. The "California Massage Therapy Council" (CAMTC) 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. On January 1, 2015, the State of California significantly revised existing laws regulating certified massage professionals and gave cities and counties some regulatory authority over massage establishments. 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 a revision to Municipal Code Chapter 5.24 will also bring the City's local ordinance into compliance with uniform statewide regulations enacted by State laws.

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

Linda Moore
Deputy City Clerk

2732887 - Pub. Feb. 27, 2016 1ti

Proo



Massage Therapy Ordinance

Repeal & Replace - First Reading 3/8/16
Updating an Outdated Ordinance to

Comply with Current State Law





Massage Therapy



1 How Did We Get Here?

2 Outdated Ordinance (1975)

3 California Massage Therapy Council

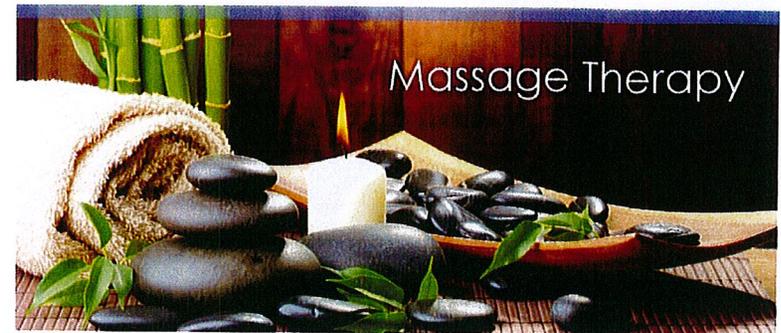
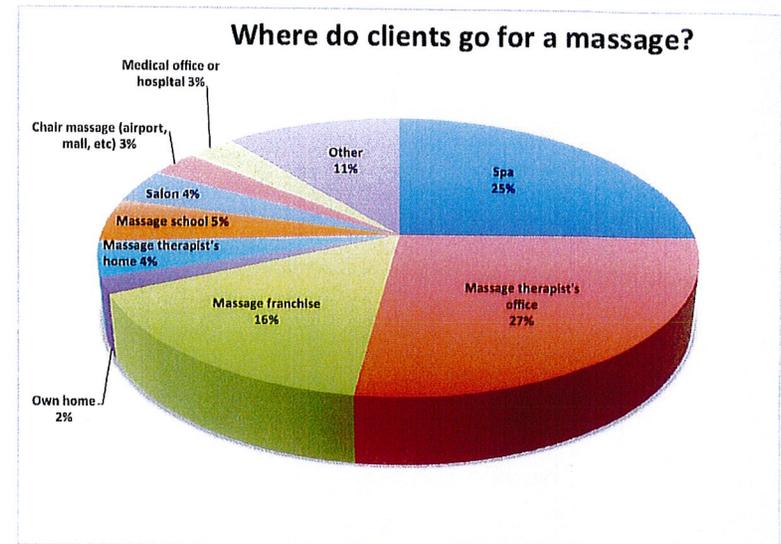
4 Proposed Draft Ordinance Highlights

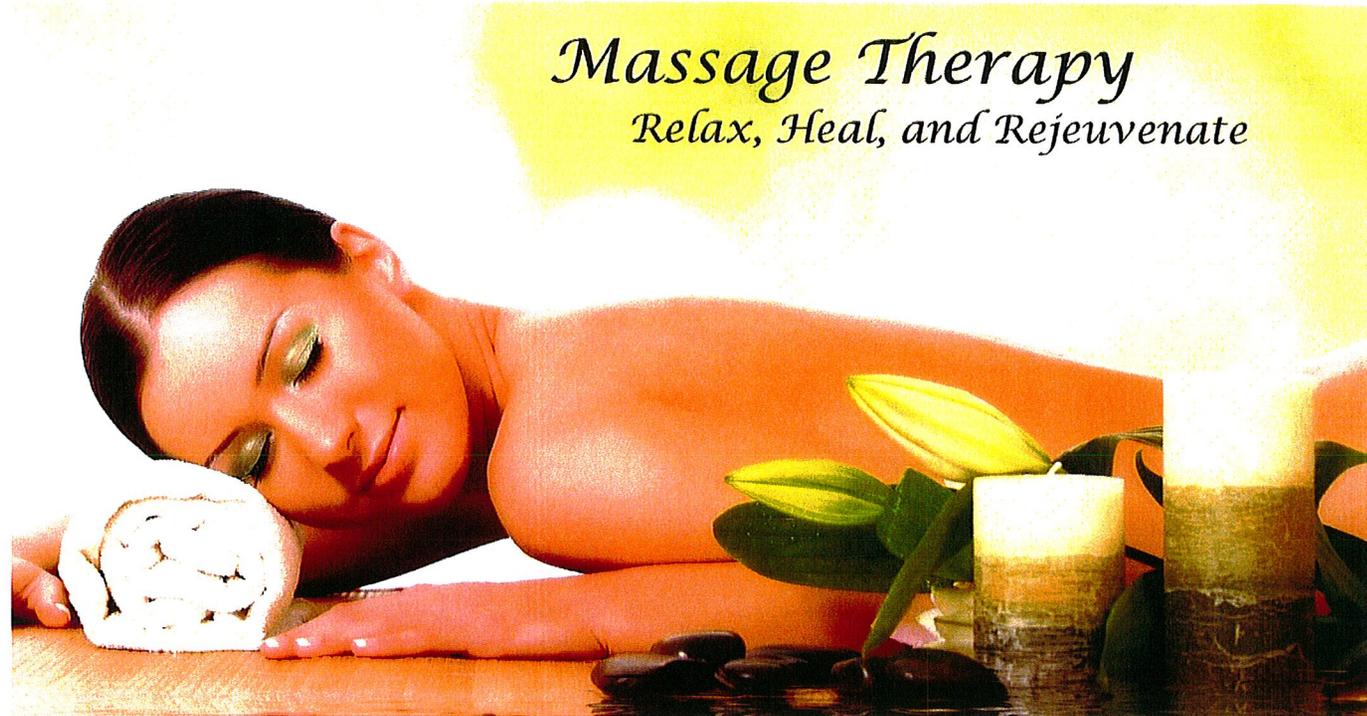
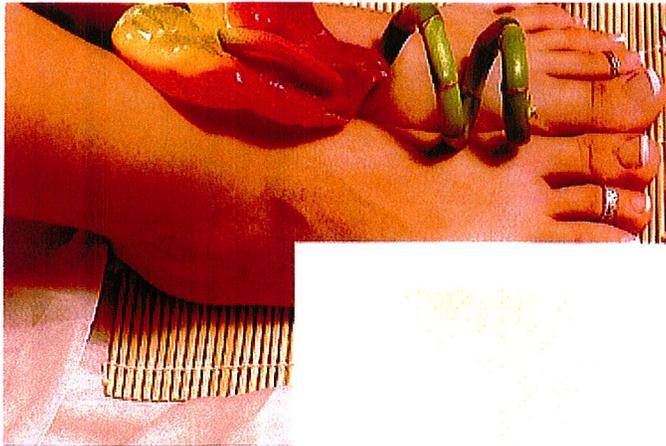
*To keep the body in good health is a duty, otherwise we shall not be able to keep our mind strong and clear...
Buddha*



How Did We Get Here?

- ❖ I received a welcome letter from CAMTC
- ❖ I began researching our internal massage therapist files
- ❖ I was *stunned* by the disorganization & missing information!





Massage Therapy

Relax, Heal, and Rejuvenate

Introductory Presentation at 2/23 Council Meeting

We discussed the current state of our internal massage therapy files, the outdated 1975 'Massage Parlor' Ordinance, the current massage therapy laws, and highlights of our proposed repeal & replace "Massage Therapy" Ordinance



Direction from City Council at Last Meeting

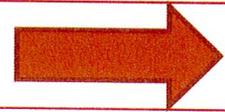
Councilman Palla requested I reach out to the local massage therapists and massage establishments to (a) provide information on the proposed ordinance, and (b) to obtain collaborative feedback:

- ❖ I prepared & drafted (32) separate personal letters to each massage therapist & massage establishment inviting them to meet with me and inviting them to attend tonight's Council meeting to participate in the dialogue;
- ❖ I published Public Notices in the Press Democrat (Saturday 2/27) and the Cloverdale Reveille (Thursday 3/3)

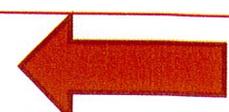




Current Massage Therapy Files Not in Compliance

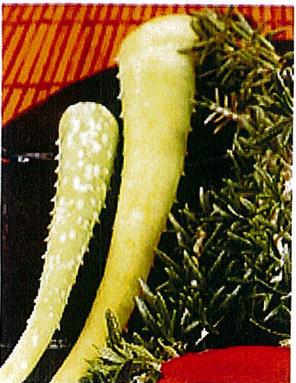


UPDATED!!!



We have twenty-nine (29) internal massage therapist files & they are in complete disarray. We have an additional three (3) with no file. Of these 32:

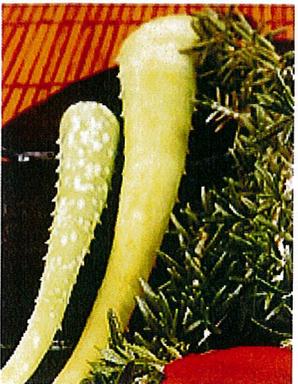
- ❖ Nineteen (19) do not hold a valid Cloverdale Police Department Massage Permit (*currently violates state law with CAMTC certificate*);
- ❖ Nineteen (19) do not have valid City of Cloverdale business licenses;
- ❖ Sixteen (16) have California Massage Therapy Council (“CAMTC”) certificates (*although only eleven [11] are currently valid*);
- ❖ Nine (9) therapists have moved out of the area, leaving 23.





Current Massage Therapy Establishments in Cloverdale

- ❖ Main Street Spa
- ❖ R Salon
- ❖ John's Healing Hands Massage (no business license or home occupation permit)
- ❖ Tranquility Massage & Spa
- ❖ Traditional Healing Arts (no business license)
- ❖ Rest and Refresh Massage (no business license)
- ❖ Massage For a Greater Good (no business license)
- ❖ Authentic You Massage (no business license)
- ❖ Some have Facebook pages! We have **NO** files on any of the massage therapy establishments





Current Massage Therapy Files Not in Compliance

- ❖ There are several massage therapists who list home addresses on their permits and/or CAMTC licenses but do not have a Cloverdale Home Occupation permit/license;
- ❖ No current list of independent massage therapy contractors from the local spas;
- ❖ None of the files have copies of current business licenses or CAMTC Certificates





Prior Administrations Allowed Lifetime Permits

- ❖ Nine (9) massage therapists were issued permits that have no expiration date - prior police chiefs granted *lifetime* permits;
- ❖ No accurate way to track therapists under this permit mechanism.

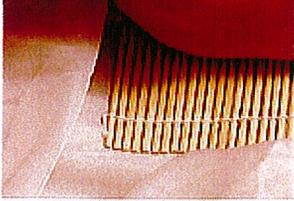




Case in Point: Massage Therapy Operation

One particular massage therapy operation (#30) has been in existence for approximately eighteen (18) years, with a downtown storefront operation. The owner/massage therapist has a valid business license but (1) no CPD file, (2) no permit from the police department, and (3) no CAMTC Certificate. Her entire documentation consists of her massage school diploma from the 1980's





Case in Point: Massage Therapy Operation

- ❖ The City of Cloverdale business license fees section has no specific line-item for massage therapy. Massage therapy business licenses fall under “general services” with a \$56.25 annual business license fee (5.04.100 CMC);
- ❖ Currently, massage therapists and/or massage establishments are required to pay a \$250 permit fee to the police department. This fee covers a two-year period. Violates state law (as to individuals with CAMTC certification).



Current Massage Therapy Ordinance from 1975

***OUR ORDINANCE IS OUTDATED
& OUT OF COMPLIANCE WITH
STATE LAW***

***IT'S TIME TO REPEAL &
REPLACE***

40 YEARS
1975
2015





From “Massage Parlors” to “Massage Therapy”

- ❖ Police Chief is the ultimate arbiter
- ❖ Expands definitions
- ❖ Brings ordinance into compliance with current laws;
- ❖ Regulates massage therapists in an organized manner

Massage Therapy Schools
and Certification Requirements
in California

CAMTC MISSION

California Massage Therapy
Council's mission is to protect
the public by certifying qualified
massage professionals in
California.





Massage Establishment Permit (1975)

Pertinent 5.24 CMC requirements:

- ❖ Permit issued by Chief of Police
- ❖ Filing fee required
- ❖ Investigative fee required (background/fingerprints)
- ❖ Applications reviewed by Public Works & Planning-written recommendations within ten days
- ❖ City Health Officer-health history (x-rays for tuberculosis; communicable diseases)
- ❖ Hearing required upon receipt of application

Most of these outdated requirements are no longer valid under current law

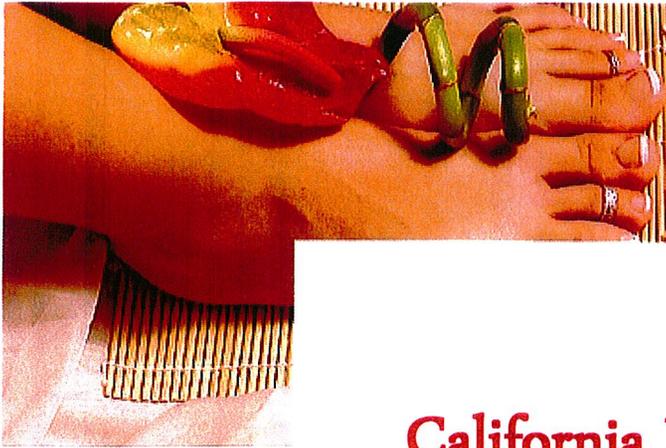




Other Significant Issues (1975)

- ❖ We don't have a 'City Health Officer';
- ❖ No 'investigative fee' designated in fee schedule;
- ❖ Current city business license fee does not & fee insufficient (\$56.25)
- ❖ No requirement to obtain a Home Occupation Permit;
- ❖ Violation only allows for criminal prosecution, no abatement option;
- ❖ No health & safety requirements





California Massage Therapy History

The Massage Therapy Act (California Business and Professions Code sections 460, 4600-4621, and Government Code section 51034) establishes statewide standards for voluntary certification of massage professionals that meet the requirements in the law and provides direction to cities and counties on the regulation of massage professionals and businesses.





California Massage Therapy Council

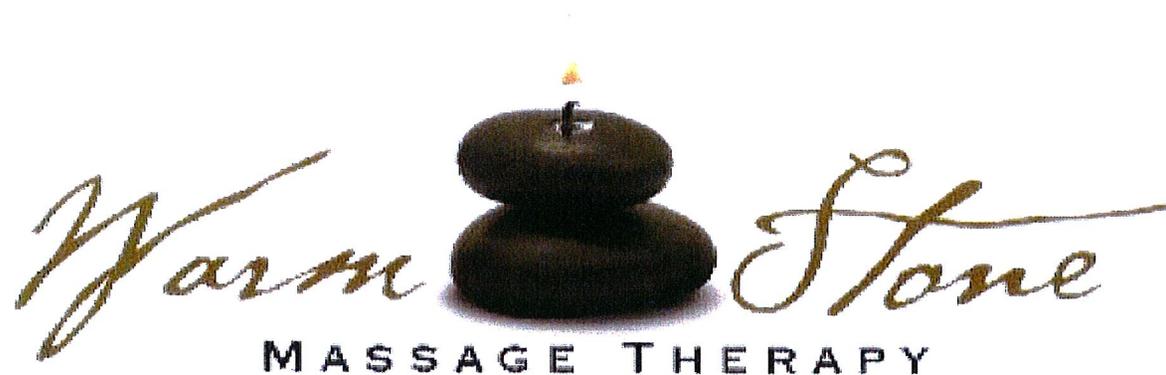
The bill that initially authorized the California Massage Therapy Council (CAMTC) was signed into law on September 27, 2008 by Governor Schwarzenegger and became effective January 1, 2009. It provided for the creation of a private non-profit corporation, CAMTC, to provide voluntary statewide certification to eligible massage professionals no sooner than September 1, 2009. In 2014, CAMTC was re-authorized by AB 1147, which is effective January 1, 2015, and has significantly changed the law.

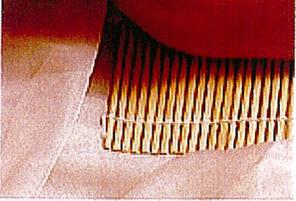




California Massage Therapy Council

Under AB 1147, since January 1, 2015, cities are free to regulate massage businesses as long as the regulation of those businesses do not violate the provisions of Business & Professions Code sections 460, 4600-4621, Government Code section 51034, and the other general legal requirements applicable to cities' authority to regulate businesses.





California Massage Therapy Council-Legislative Intent

- Broad control over land use be vested in local government for the purpose of managing massage establishments, but that the requirements & practice of the massage therapy profession remain a matter of statewide concern, regulation, and oversight
- Local governments may impose & enforce only “reasonable & necessary” fees & regulations



California Massage Therapy Council

- Cities may, by local ordinance, require that all massage establishments obtain a license, permit, certificate, or other authorization in order to operate lawfully in their jurisdiction





New Restrictions under AB 1147

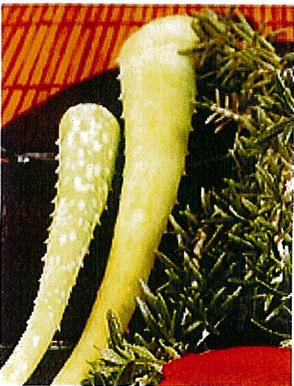
Cities are specifically prohibited from requiring a CAMTC certified individual to pass a background check, provide proof of education or complete additional education, require a permit for an individual (not a business) to provide massage for compensation, require individual registration, require an authorization & charge a fee to an individual in order to verify CAMTC certification, or require any other authorization to provide massage for compensation.





Proposed Draft Ordinance Highlights

- ❖ Enhanced, comprehensive definitions
- ❖ Exemptions (doctors, athletic trainers, massage students, etc.)
- ❖ Out-call Massage and On-Site Massage Restrictions
- ❖ CAMTC Certificate Required or Certified Massage Therapist Certificate
- ❖ Certified Massage Establishment Certificate required for Business Establishments
- ❖ Updated Health & Safety Requirements for *ALL* massage establishments/therapists
- ❖ Massage Establishment Inspections
- ❖ Business License & Home Occupation Permit Required
- ❖ Allows for either criminal prosecution or administrative remedies (City's intent is for compliance through abatement)





Proposed Draft Ordinance Highlights

Specifically provides three different avenues to obtain proper massage therapy permit:

- ❖ Certified Massage Establishment Certificate
- ❖ Valid CAMTC Certificate
- ❖ Certified Massage Therapist Certificate





Massage Therapy Establishments:

Massage Therapy Establishments are required to:

- ❖ Obtain a City Certified Massage Establishment Certificate (yearly)
- ❖ Pay an application fee
- ❖ Obtain a City business license
- ❖ Provide notice to property owner

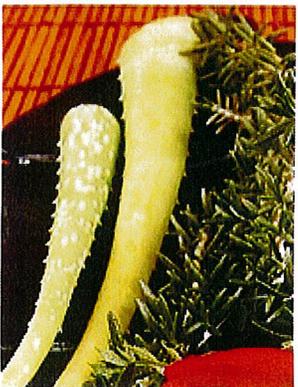


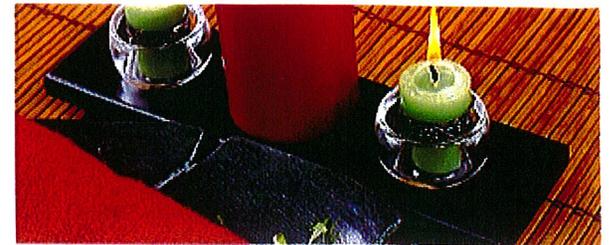


Individual Massage Therapists With CAMTC Certificates

Individual therapists *with* CAMTC Certificates are required to:

- ❖ Comply with all CAMTC rules and regulations
- ❖ Obtain a City business license (if a solo practitioner or an independent contractor)
- ❖ Obtain a City Home Occupation Permit (if applicable)





Individual Massage Therapists Without CAMTC

Certificates



Individual massage therapists *without* CAMTC Certificates are required to:

- ❖ Submit an Application for Massage Therapist Certificate to the Chief of Police
- ❖ Submit to background check, including fingerprinting
- ❖ Provide notice to property owner
- ❖ Obtain City business license
- ❖ Obtain City Home Occupancy license (if applicable)





NEXT STEPS TOWARD ADOPTION

Path toward 'Repeal & Replace'

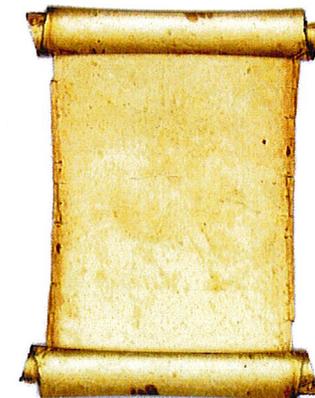
Council Comments & Direction

First Reading ~ March 22nd

Second Reading ~ April 5th

Adopt Ordinance

Repeal & Replace
Council Direction
Public Input





Thank You!

Stephen Wayne Coates





City Council/Successor Agency
Agenda Item Summary

Agenda Item: 8
Meeting Date: March 8, 2016

Table with 2 columns: Agenda Section (New Business) and Staff Contact (Rafael Miranda, Associate Planner)

Agenda Item Title

Appeal of the February 2, 2016 Planning Commission decision approving a Modification to an existing Conditional Use Permit (CUP MOD 001-2016) to expand the hours of operation for the Cloverdale Senior Multipurpose Center to 10 pm on some Friday and Saturday evenings, to allow up to 12 special events per year and to allow up to 12 special educational courses per year in addition to the normal operations of the Center at 311 N. Main Street.

Summary

On February 2, 2016, the City of Cloverdale Planning Commission approved a Modification to an existing Conditional Use Permit (CUP) to expand the hours of operation for the Cloverdale Senior Multipurpose Center to 10 pm on some Friday and Saturday evenings, to allow up to 12 special events per year and to allow up to 12 special educational courses per year in addition to the normal operations of the Center. On February 16, 2016, an appeal of the Planning Commission's approval was filed by neighboring residents Michael and Debra Handy located at 307 N. Main Street (Attachment 1).

Background

An application for a Modification to an existing CUP was submitted to the City of Cloverdale by the Senior Center on January 11, 2016. The Planning Commission held a public hearing on February 2, 2016, considered the request, and approved a modification of the existing CUP subject to additional findings and conditions. A copy of the February 2, 2016 Planning Commission Staff Report, Planning Commission Resolution No. 005-2016 and draft meeting minutes are attached as Attachment No. 2, 3 and 4.

Purpose of Conditional Use Permits

According to Section 18.03.110.A of the Zoning Ordinance, the CUP process is intended to allow uses that are generally consistent with the purpose of the Zoning Ordinance in which they are proposed, but require special consideration because of their special impacts, to ensure that the use can be designed, located and operated in a manner that will not interfere with the use and enjoyment of surrounding properties. The review shall consider location, design, configuration and special impacts with respect to applicable policies, standards and criteria to determine whether adverse impacts can be sufficiently minimized through specific conditions and requirements so as to permit the use on a particular site.

The appeal of the Senior Center's modified CUP before the City Council revolves around the project's impact to the neighborhood including parking, traffic, infrastructure damage and the overall use of the property.

Discussion

Grounds for appeal: On February 16, 2016, the neighbors at 307 N. Main Street filed an appeal of the Planning Commission's approval of a modified CUP, which covered several grounds of appeal. To facilitate the City Council's review, staff has summarized the grounds of appeal as listed below in italics followed by staff's response to the appeal.

Ground 1: The Center itself is not in line with a residential neighborhood.

Staff Response: The use of the property located at 311 N. Main Street was identified in the 1991 Cloverdale Downtown Specific Plan as a suitable location for the Senior Center due to its proximity to the downtown. Consequently, on February 3, 1999 the Planning Commission adopted Resolution No. 4-99, approving a Design Review and Conditional Use Permit for the construction and establishment of the Cloverdale Senior Center.

Condition of Approval number 13 from Planning Commission Resolution No. 4-99 (Attachment 5), as well as

Section 18.03.110.F.2 of the Zoning Ordinance allows the Planning Commission to periodically review any Conditional Use Permit to ensure that it is being operated in a manner consistent with conditions of approval or in a manner that is not detrimental to the public health, safety, or welfare, or that unreasonably interferes with the use and enjoyment of properties in the vicinity. Up until the filing of the Appeal, Community Development Staff had not received complaints about the use or operation of the Senior Center.

On February 2, 2016, the Planning Commission considered an application submitted by the Senior Center requesting a Modification to the existing Conditional Use Permit, in accordance with Section 18.03.110.F.1 (Revisions / Modifications Requested by Applicant). The Planning Commission was not requested to conduct a review of the existing Conditional Use Permit, therefore the existing Conditional Use Permit and overall use of the building and property were not being reconsidered or reviewed at that time.

Ground 2: *Several other venues in the City exist that are not located in, or adjacent to, residential areas and single-family structures.*

Staff Response: The submitted written statement (Attachment 6) provided by the applicant states that some of the requested special events would include senior center member's anniversaries, funeral receptions, retirement parties and non-profit dinners, requiring the use of kitchen facilities. The number of other facilities within the City that are open to the public and available for rent which could accommodate special events and have kitchen facilities is very limited. Such venues include, but are not limited to, the Ivy Church, Citrus Fair and Veterans Hall.

Although the Ivy Church is not located in a residential Zoning District, adjoining properties to the south as well as those across the street to the east are zoned residential and are developed with residential uses.

Similarly, the Veterans Hall is not located in a residential Zoning District but all adjoining properties to the west, as well as those across the street to the north are zoned residential and are developed with residential uses.

While the Citrus Fair is predominantly surrounded by non-residential uses, a residential zoning district is located just to the north and the amenities of this facility are not as modern as those at the Senior Center.

Furthermore, unlike the existing Senior Center building, all of these other facilities are not owned by the City and utilizing them for special events or educational courses would present additional costs as well as the potential for scheduling conflicts and competition for space. Based on this information, and together with the fact that the property at 311 N. Main Street was purchased by the City in 1993 and subsequently developed by the City with the existing Senior Center building and related site improvements, it is staff's opinion that the City should continue to use the quasi-public building for what it was originally intended and constructed for, which is for use by the Senior Center and its members.

Ground 3: *Although noise has not been an issue in the past, having the facility open until 10 pm could lend itself to problems.*

Staff Response: Condition of Approval number 7 from Planning Commission Resolution No. 005-2016 (Attachment 2) prohibits the use of microphones outdoors, as well as outdoor amplified music or sound.

Condition of Approval 5g from Planning Commission Resolution No. 4-99 (see Attachment 5) prohibits activities of the Senior Center from generating noise levels that exceed 45 decibels for adjacent residential living spaces.

The Cloverdale Senior Center does not allow alcohol consumption on-site, and as the proposed special events would be associated with members of the Senior Center itself, noisy crowds are not anticipated. Together with staff's observation that noise resulting from activities at the Senior Center has not impacted adjacent neighbors in the past, the Conditions of Approval from Planning Commission Resolution No.'s 4-99 and 005-2016 help to ensure that potential impacts related to noise are less than significant.

Ground 4: *Noise and traffic resulting from all vehicles leaving at once at the conclusion of one of these events at 10 o'clock in the evening is not in line with a residential neighborhood.*

Staff Response: As stated in the staff response above, Conditions of Approval from the Planning Commission Resolution No.'s 44-99 and 005-2016 ensure that impacts related to noise are minimized and remain at less than significant levels. However if noise impacts were to become significant, a process is provided wherein

the CUP could be brought back to the Planning Commission for review, modification or revocation.

Although a project specific traffic study is not available for the intersection of Third Street and North Main Street, Table 4.5-3 in the 2008 General Plan Update Environmental Impact Report (GPUEIR) listed the existing Level of Service (LOS) for peak hour conditions for the intersection of Third Street and North Cloverdale Boulevard, located immediately around the corner from the Senior Center. As Cloverdale Boulevard is generally a busier street than Main Street, the traffic volumes and LOS would be expected to be higher on Cloverdale Boulevard than on Main Street. Table 4.5-3 of the GPUEIR provides a LOS B for the Cloverdale Boulevard and Third Street intersection during peak PM hours. This intersection is the closest intersection to the project site that was analyzed in the Traffic Study for the GPUEIR. A LOS B, which is associated with a delay of approximately 10 to 15 seconds and drivers may have to wait for one or two vehicles to clear the intersection before proceeding, is considered an acceptable LOS for a four-way stop controlled intersection.

With 10 pm being an hour where traffic is considerably less than peak hour conditions, the volume of traffic that would result from people leaving the Senior Center after a special event at 10 pm is not anticipated to cause the Level of Service to be reduced below LOS B. As a LOS B is considered an acceptable Level of Service for a four-way stop controlled intersection, the traffic resulting from vehicles leaving the Senior Center at 10 pm at night is not significant.

Ground 5: *The garbage truck that services the dumpsters off the alley behind the Center has damaged the concrete apron for the driveway leading to the alley and if the facility is allowed to expand their operations this issue could become very problematic.*

Staff Response: While the garbage truck is likely the heaviest vehicle to use the driveway approach to the alley, it is not the only vehicle that utilizes that driveway. Comcast, AT&T and PG&E also utilize the alley for maintenance of their respective utilities, as do private citizens.

According to the Public Works Department, the City's policy is to address sidewalk damage when it becomes an impediment to a disabled person utilizing the path-of-travel. Typically this means that the sidewalk (not the driveway approach) has been vertically offset by ½ inch or more. This policy conforms with current ADA guidelines. A site visit was performed by City staff and the damage in question is located in the eastern corner of the driveway approach on East Third, not in the accessible path-of-travel of the sidewalk. At the moment, the damage does not represent an impediment to a disabled person nor is it a significant safety concern. The Public Works Department has noted the damage but considers it an aesthetic issue at this time. Should conditions change and the damage extended into the accessible path-of-travel, then the Public Works Department would schedule repairs as needed. Furthermore, should other issues arise in the future, residents can complete a "Service Request" form for any issue that may present a safety concern on public property. The City investigates all Service Requests and schedules repairs as needed.

Ground 6: *This may be a good time to consider a viable alternative for this facility, as it would be more appropriate to have a "multi-use" center/senior center located somewhere else with more parking and that is not zoned residential.*

Staff Response: As stated in further detail in the Staff Response to Ground 1 above, the Planning Commission was not being asked to review the existing Conditional Use Permit, therefore the existing Conditional Use Permit and overall use of the building and property are not being reconsidered or reviewed at this time.

Ground 7: *The City building that houses the Senior Center could not be called in character with the neighborhood.*

Staff Response: As stated in further detail in the Staff Response to Ground 1 above, the Planning Commission approved a Design Review and Conditional Use Permit in 1999 for the existing Senior Center building and related site improvements. On February 2, 2016, the Planning Commission was not being asked to review the Design of the building, therefore the existing Design Review and Conditional Use Permit and overall use of the building and property are not being reconsidered or reviewed at this time.

Conclusion

After reviewing all the elements of this particular application, staff determined that the project is consistent with the General Plan and Zoning Ordinance because it does not involve new construction and the site was developed in accordance to the Zoning Ordinance standards at the time, including off-street parking

requirements. Furthermore, the project would broaden the spectrum of educational opportunities within the City as well as furthering the use of an existing public facilities building.

CEQA

The project qualifies for a Class 1 (Section 15301 – Existing Facilities) CEQA exemption because the Cloverdale Senior Multipurpose Center building and parking lot are existing and are not being expanded in any way. Furthermore, the addition of the special events and educational classes are similar to functions that the Center currently provides, and is therefore considered to be a negligible or no expansion of an existing use.

Options

The options presented to the City Council are:

- 1) Deny the appeal and uphold the Planning Commission approval of the Modification to the existing Conditional Use Permit; or
- 2) Deny the appeal and uphold the Planning Commission approval of the Modification to the existing Conditional Use Permit with added or modified Conditions of Approval; or
- 3) Approve the appeal and reverse the Planning Commission approval of the Modification to the existing Conditional Use Permit.

Budget/Financial Impact

There is no fiscal impact associated with the project.

Correspondence

Correspondence received prior to distribution of the staff report is provided in Attachment 7.

Subcommittee Recommendation

None.

Recommended Council Action

Staff recommends the City Council take option 1 to deny the appeal and adopt the attached Resolution No. 019-2016 (Attachment 8) which upholds the Planning Commission approval of the Modification to the existing Conditional Use Permit to expand the hours of operation for the Cloverdale Senior Multipurpose Center to 10 pm on some Friday and Saturday evenings, to allow up to 12 special events per year and to allow up to 12 special educational courses per year in addition to the normal operations of the Center at 311 N. Main Street, subject to the recommended conditions of approval.

Attachments:

1. Appeal letter date stamped received February 16, 2016.
2. February 2, 2016 Planning Commission staff report.
3. Planning Commission Resolution No. 005-2016.
4. Draft February 2, 2016 Planning Commission minutes.
5. Planning Commission Resolution 4-99
6. Applicant's written statement date stamped received January 12, 2016
7. Correspondence
 - a. Brooke Greene, 202 Triplett Drive
8. Draft Resolution upholding the Planning Commission approval

FEB 16 2016

February 10, 2016

Cloverdale Planning Commission

Re: Senior Center 311 North Main Street

We are appealing the City of Cloverdale's Planning Commission's approval of the Cloverdale's Senior Center's request for modification of its current use permit; Feb. 2, 2016. While we have had a pleasant and supportive relation with the Senior Center, we are opposed to the modifications of the existing use of the Center. Special events and other proceedings do currently take place at the Senior Center via approval by the City. At this time I do not believe it is in the best interest of community to change this policy. The original charter for the Center is and was not in line with a residential neighborhood. The current City Zoning map shows the area as "Residential". While defined by City Code allowing "Public/quasi-public uses", I question the extended use of the facility when several other venues in City that are not located in, or adjacent to residential areas and single family structures exist. These venues may be more desirable for the type and hours that are being requested by the Senior Center.

Currently, traffic is heavy for a residential area because of the Senior Center, apartment buildings and commercial enterprises that are now in and adjacent to the area. On street parking is now at capacity because of the previous mentioned reasons. To add additional traffic and more vehicles parking in the area will only exacerbate the issue. The City took measures some time ago to limit traffic and parking on Cloverdale Boulevard. Should we not be afforded the same consideration? While noise has not been a concern since we have lived in the area, having any facility open until 10 PM could lend itself to problems. At the rated capacity for the building set at just over 90 persons, I believe it is reasonable to expect up to 40 to 50 vehicles parked at or on the street adjacent to the Center. If at ten pm these vehicles make an exodus from the Center, I believe that the noise and traffic would not be in line with a residential neighborhood.

The clientele and management of the Center for the large part have been very congenial and considerate of the neighbors. There have been minor issues, such as animal feces being left by the owners in our yard, smoking under the oak trees during the dry season, trash and debris being left in the street and in our yard after events that have occurred. The garbage truck that services the dumpsters behind the Center has cracked the concrete apron leading into the alley and has run over and sunken the water meter vault adjacent to the alley access / egress. We have absorbed and reported these issues up until this point. By expanding the use of the facility these issues may become very problematic.

To revisit the issue of having a City use facility in a residential neighborhood at all I think is a good idea. As Cloverdale changes, becomes larger and more heavily populated, the use of City Facilities will increase by default. This may be the opportune time to consider a viable alternative to this facility. The 20 year moratorium that Caltrans placed upon the land being used for other than civic use has expired. The City is taking under advisement the revamping, rebuilding and adding new large civic and private facilities in and around the City. Would it not be more appropriate to have a "Multi-Use" Center / Senior Center located within such a facility with more parking, easier access and in an area that is not zoned residential? Several options for the current lot are open to the City. An open space, selling the lot to a developer or speculator to build a residential structure would be in character with the neighborhood. The City has within its plans stated that it is working on keeping structures "within the general Character of the neighborhood", I may be mistaken but the current Facility is surrounded by single

residential structures and a vacant lot. The vacant lot directly behind the facility has had an R-2 type building, (a single family structure and a "granny unit"), planned for some time. All these buildings are somewhat historic in nature. The City Building that houses the Senior Center could not be called in character with the neighborhood or in my opinion attractive.

While the City Planning Commission has approved the request for modification we are requesting that the Commission reconsider its approval. Further we request that the City Council move to rescind the request and look to consider alternatives for the future.

If any further need for clarification or questions should arise, please feel free to contact us at any time.

Thank You,
Michael & Debra Handy



307 North Main Street
Cloverdale, Ca 95425-3335
Phone # 707-303-6180

Copy: Toby Daly
Laurie Martin
Devon Perkins
Ron & Christel Longo
Kami Montano



AGENDA ITEM No. 2

City of Cloverdale
Planning Commission
Staff Report

Meeting Date:	February 2, 2016
Applicant:	Cloverdale Senior Multipurpose Center
Property Owner:	City of Cloverdale
Project Location:	311 N. Main Street (APN 001-162-005)
Zoning Designation:	Two-Family Residential (R-2)
General Plan Designation:	Medium Density Residential (MDR)
Project Description:	Modification to an existing Conditional Use Permit (CUP MOD 001-2016) to expand the hours of operation for the Cloverdale Senior Multipurpose Center to 10 pm on some Friday and Saturday evenings, to allow up to 12 special events per year and to allow up to 12 special educational courses per year in addition to the normal operations of the Center.
Environmental Assessment:	Categorically Exempt: Section 15301, CEQA Guidelines – Existing Facilities

A. Staff Recommendation

That the Planning Commission consider the application and by Resolution approve the requested Modification to an existing Conditional Use Permit (CUP MOD 001-2016), subject to the recommended conditions of approval.

B. Background

Existing Conditions

The site is developed with the Cloverdale Senior Multipurpose Center building, landscaping and related site improvements at 311 N. Main Street. The site contains a parking lot developed with 13 parking spaces including one (1) handicap parking spaces. The parking lot takes access from N. Main Street. Secondary access to the rear of the property and building is provided via the alley that runs between E. Fourth Street and E. Third Street. A loading zone and additional parking for two vehicles is available at the rear of the building off of the alley way.

Adjacent uses are as follows:

North: Single-Family Residence
South: Single-Family Residence
East: Single-Family Residences/Vintage Towers Bed and Breakfast
West: Multi-Family Residences

Entitlement History

In 1993, the City purchased the property at 311 N. Main Street for the purpose of establishing a Senior Center.

On February 3, 1999, the Planning Commission approved a Conditional Use Permit, Design Review and Negative Declaration for the construction and operation of a 4,500-square-foot

Senior Multipurpose Center on the 16,200-square-foot property. One of the conditions of approval for the project limited the hours of operation to 7:00 a.m. through 7:00 p.m., Monday through Friday, and 8:00 a.m. through 5:00 p.m. on Saturday.

In February of 2006, the Planning Commission approved a Modification to the Conditional Use Permit revising the weekday hours of operation to allow for evening meetings (including but not limited to Planning Commission and City Council meetings). In April 2006, the Senior Multipurpose Center was formally designated as the temporary location to hold regular and special Planning Commission meetings until completion of the Cloverdale Performing Arts Center. At the time, when large audiences were anticipated, the City continued to use other venues such as the Citrus Fair for Planning Commission meetings.

C. Project Description

The Cloverdale Senior Multipurpose Center wishes to modify the Conditional Use Permit originally approved by the Planning Commission on February 3, 1999. The modification would expand the hours of operation for the Center to 10 pm on some Friday and Saturday evenings, to allow up to 12 special events per year and to allow up to 12 special educational courses per year. The maximum number of people anticipated to attend any of these events or courses is 75 people.

The special events would be single day events that start and finish on the same day. Examples of a special event include an anniversary celebration, funeral reception, retirement party, local non-profit meeting or dinner space. These events would be in addition to the normal operations of the Center which include up to four dinners a year put on by the Cloverdale Senior Multipurpose Center itself.

Some of the special educational courses would be single day courses and some would take place one day a week for six-eight weeks. Courses would be offered through the Santa Rosa Junior College Older Adults Program and the Sonoma State University Osher Lifelong Learning Institute. These courses would be offered in addition to the normal operations of the Center which include regularly scheduled classes such as yoga, line dancing, sign language, computers and art currently held Monday through Friday during normal business hours of 9:00 am to 3:30 pm.

D. Analysis

Public Notice

The Notice of Public Hearing was published in the Cloverdale Reveille and properly posted on January 21, 2016. Notice of the public hearing was also mailed to property owners within 300' of the proposed project on January 21, 2016.

Environmental Review

The project qualifies for a Class 1 (Section 15301 – Existing Facilities) CEQA exemption because the Cloverdale Senior Multipurpose Center building and parking lot are existing and are not being expanded in any way. Furthermore, the addition of the special events and educational classes are similar to functions that the Center currently provides, and is therefore considered to be a negligible or no expansion of an existing use.

General Plan

The site is designated Medium Density Residential (MDR) on the City's General Plan Land Use Map. The General Plan Land Use Element contains goals, policies and implementation measures which encourage the use of public facilities and development of educational programs.

Goal LU 5 encourages the Cloverdale Unified School District and other educational institutions to identify and provide sites and facilities for a full spectrum of educational opportunities within the City.

Implementation LU 5-1.e encourages educational institutions to open or establish Cloverdale campuses, including college and junior college campuses or satellite programs, private educational and trade schools at all levels, and in-city offices for campuses or programs in the County areas near Cloverdale, including co-located resources meeting a variety of educational needs at shared locations.

Policy LU 6-2 seeks to provide for adequate public facilities and services to meet the needs of the community.

The proposed project is consistent with the goals, policies and implementations measures of the General Plan and the MDR land use designation as it will provide educational courses and continues the use of an existing public facilities building.

Zoning

The site is zoned Two-Family Residential (R-2) on the City's Zoning Map. Public and quasi-public uses, such as churches, clubs, public schools, private schools, vocational schools, public utilities and public buildings are uses that are permitted subject to approval of a Conditional Use Permit in the R-2 Zoning District. The R-2 district around the downtown is intended to conserve the livability and walkability of older residential areas.

Zoning adjacent to the site is as follows:

North:	Two-Family Residential (R-2)
South:	Two-Family Residential (R-2)
East:	Two-Family Residential (R-2)
West:	Two-Family Residential (R-2)

According to Chapter 18.14 (Zoning Ordinance Definitions) of the Zoning Ordinance, the Cloverdale Senior Multipurpose Center is considered a public/quasi-public use for public and private gatherings, and where educational classes are offered for the community. Public/quasi-public uses are permitted in the R-2 Zoning District subject to Conditional Use Permit approval, which the Planning Commission did on February 3, 1999.

As the project does not involve new construction and the site was developed in accordance to the Zoning Ordinance standards at the time, including off-street parking requirements, the project meets the development standards of, and is consistent with, the R-2 Zoning District.

Parking

At the time of the original approval for the Cloverdale Senior Multipurpose Center, concerns were raised regarding potential traffic and parking impacts to the neighborhood that could potentially arise. As a result, the 16, 200 square-foot property was developed with the building located towards the rear to accommodate a parking lot off of N. Main Street with as much off-street parking as possible. The property was developed with 13-off-street parking spaces, including one handicapped parking space, directly accessed via the driveway onto N. Main Street. An alley connecting East Fourth Street with East Third Street runs along the back of the

property providing access to a loading area and two additional off-street parking spaces for a total of 15 off-street parking spaces.

Additionally, the Center was required to enter into a parking agreement that requires the Center to promote walking, carpooling, public transportation and other alternative forms of transportation to and from the Center. The Center still actively promotes these alternatives to driving, and as many of the patrons of the Center are elderly and only drive in the daytime or not at all, many already carpool or use the Cloverdale Shuttle.

A bus stop is located directly in front of the Center on N. Main Street, and although it was not used previously, with the recent changes to the Cloverdale Shuttle's route that took effect January 1, 2016, the Shuttle now makes regular stops in front of the Center. The new Cloverdale Shuttle route and pick up/drop off locations are the result of recent meetings between the Cloverdale City Manager and the Sonoma Transit Authority, as well as outreach made by the Transit Authority to the Kings Valley Senior Living Center and the Cloverdale Senior Multipurpose Center.

Should the City receive any parking complaints from neighbors, Zoning Ordinance Section 18.03.110.F allows the Planning Commission to periodically review any Conditional Use Permit to ensure that it is being operated in a manner consistent with conditions of approval and does not unreasonably interfere with the use and enjoyment of properties in the vicinity. If, after review, the Planning Commission deems there is sufficient evidence to warrant a full examination, a public hearing date shall be set. At the public hearing, the Planning Commission may modify or revoke the permit pursuant to the provisions of Section 18.03.030 (Revocation or Modification of Permits, Licenses or Approvals).

Conditional Approval

A Modification to the Conditional Use Permit was approved by the Planning Commission in February 2006 to modify the hours of operation and allow for evening meetings in order to accommodate the temporary use of the Center for Planning Commission and City Council meetings. The hours of operation were changed to no earlier than 7am, Monday through Friday, and from 8:00am to 5:00pm on Saturdays.

This proposed modification would

- expand the hours of operation for the Center to 10 pm on some Friday and Saturday evenings,
- allow up to 12 special events per year in addition to the four dinners per year that are currently put on by the Center itself, and
- allow up to 12 special educational courses per year hosted by SRJC and SSU in addition to classes offered by the Center itself, which are currently held Monday through Friday during the normal business hours of 9:00am to 3:30pm.

Zoning Ordinance Section 18.03.110.F.1 allows the applicant an opportunity to request modifications to an approved Conditional Use Permit. Examples of modifications that can be requested include, but are not limited to, changes in conditions of approval, expansions, intensification, location, or hours of operation. The requested modification is required to be processed in the same manner as the original Conditional Use Permit. As the Planning Commission approved the original Conditional Use Permit, the Planning Commission is therefore responsible for reviewing the requested Modification to the Conditional Use Permit.

The requested modification would benefit the City and the greater community at large because it would expand the range of educational opportunities and activities available to seniors, as well as provide another venue within the City for special events. Additionally, allowing the Multipurpose Center an opportunity to host these special events and educational classes is a potential revenue source for the Center.

Compatibility with Adjacent Uses

The surrounding neighborhood is comprised of a mix of older single-family residences, more recently constructed duplexes and multi-family residences, and a bed and breakfast inn. The building was designed to blend architecturally with the surrounding neighborhood and several mature oak trees were preserved and incorporated into the landscaping plan. The parking agreement appears to have resulted in a minimal amount of traffic impacts to the surrounding neighborhood over the years. Together with the new Cloverdale Shuttle route and stop in front of the Center and the fact that the Center still actively promotes the parking agreement, the introduction of the events and educational classes is not anticipated to contribute to any significant traffic or parking impacts on the surrounding neighborhood.

To address any potential noise issues, a condition of approval has been added which prohibits the use of outdoor amplified music or microphones.

E. Staff Recommendation

As the requested modification would benefit the City and the greater community at large by expanding the range of educational opportunities and activities available to seniors, staff recommends the Planning Commission adopt the attached resolution which approves a Modification to the existing Conditional Use Permit (CUP MOD 001-2016) to expand the hours of operation for the Cloverdale Senior Multipurpose Center to 10 pm on some Friday and Saturday evenings, to allow up to 12 special events per year and to allow up to 12 special educational courses per year in addition to the normal operations of the Center at 311 N. Main Street, subject to the recommended conditions of approval.

Attachments

1. Location Map/City Zoning Map
2. Site Photos
3. Draft Resolution

ATTACHMENT 2
Site Photos



View from N. Main Street showing bus stop, parking lot and front of building beyond



View from the rear alleyway showing additional off-street parking and loading area

**CITY OF CLOVERDALE
PLANNING COMMISSION
RESOLUTION NO. 005-2016**

A RESOLUTION OF THE CITY OF CLOVERDALE PLANNING COMMISSION APPROVING A MODIFICATION TO AN EXISTING CONDITIONAL USE PERMIT (CUP MOD 001-2016) TO EXPAND THE HOURS OF OPERATION FOR THE CLOVERDALE SENIOR MULTIPURPOSE CENTER TO 10 PM ON SOME FRIDAY AND SATURDAY EVENINGS, TO ALLOW UP TO 12 SPECIAL EVENTS PER YEAR AND TO ALLOW UP TO 12 SPECIAL EDUCATIONAL COURSES PER YEAR IN ADDITION TO THE NORMAL EVERYDAY OPERATIONS OF THE CENTER LOCATED AT 311 N. MAIN STREET (APN 001-162-005)

WHEREAS, an application for a Modification to an existing Conditional Use Permit was submitted by the Cloverdale Senior Center to expand the hours of operation for the Cloverdale Senior Multipurpose Center to 10 pm on some Friday and Saturday evenings, to allow up to 12 special events per year and to allow up to 12 special educational courses per year in addition to the normal operations of the Center at 311 N. Main Street; and

WHEREAS, the site is designated Medium Density Residential (MDR) on the City's adopted General Plan Land Use Map and located in the Two-Family Residential (R-2) Zoning District, and the proposal is consistent with the MDR land use designation and R-2 Zoning District, which permits public and quasi-public uses such as churches, clubs, lodges, public utilities and public buildings with the approval of a Conditional Use Permit; and

WHEREAS, the Planning Commission approved a Conditional Use Permit application for the Cloverdale Senior Center on February 3, 1999; and

WHEREAS, Zoning Ordinance Section 18.03.110.F.1 allows modifications to an approved Conditional Use Permit, such as, but not limited to, changes in conditions of approval, expansions, intensification, location, or hours of operation; 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 proposed Conditional Use Permit Modification application; and

WHEREAS, the Planning Commission held a public hearing on February 2, 2016, for the purpose of reviewing the application proposing a Modification to the Conditional Use Permit 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, the Planning Commission finds that this project is exempt from the California Environmental Quality Act (CEQA) under Section 15301, Existing Facilities, because the Cloverdale Senior Multipurpose Center building and parking lot are existing and are not being expanded in any way. Furthermore, the addition of the special events and educational classes are similar to functions that the Center currently provides, and is therefore considered to be a negligible or no expansion of an existing use. Based on the application materials, existing site improvements, location of the project, none of the exceptions in CEQA Guidelines section 15300.2 would limit the above referenced categorical exemption for the project; and

WHEREAS, the Planning Commission has determined that the findings required for the Modification to 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 permitted within the subject district pursuant to the provisions of this Section (18.03.110) and complies with all the applicable provisions of this ordinance, the goals, and objectives of the Cloverdale General Plan, and the development policies and standards of the City.

According to Chapter 18.14 (Zoning Ordinance Definitions) of the Zoning Ordinance, the Cloverdale Senior Multipurpose Center is considered a public/quasi-public use for public and private gatherings and where educational courses and classes are offered to the community. Public/quasi-public uses are permitted in the R-2 Zoning District subject to Conditional Use Permit approval. A Conditional Use Permit was approved by the Planning Commission on February 3, 1999 for the Cloverdale Senior Center. As the project does not involve new construction and the site was developed in accordance to the Zoning Ordinance standards at the time, including off-street parking requirements, the project meets the development standards of, and is consistent with, the R-2 Zoning District.

Furthermore, the modification furthers the goals, policies and implementation measures of the General Plan and MDR land use designation as it provides educational courses for the community and continues the use of an existing public facilities building.

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 Two-Family Residential (R-2) Zoning District as the surrounding neighborhood is comprised of a mix of residential structures with one bed and breakfast inn, and the building was designed to blend architecturally with the surrounding neighborhood. Several mature oak trees were preserved and incorporated into the landscaping plan which helps to buffer the use from the neighborhood. The Center's continuing efforts in enforcing the parking agreement helps to ensure that no impacts or a minimal amount of traffic impacts to the surrounding neighborhood are anticipated.

To address any potential noise issues, a condition of approval has been added which prohibits the use of outdoor amplified music or microphones. The project as designed and the conditions of approval ensure the proposed use is compatible with the Two-Family Residential (R-2) Zoning District.

3. The site is suitable for the type and intensity of use or development that is proposed.

The site is developed with the Cloverdale Senior Multipurpose Center building, parking lot and related site improvements. The site is zoned for and developed with an existing public building that was designed and is currently being used for similar public/quasi-public uses. Since opening, the City has not received complaints from adjoining neighbors.

4. There are adequate provisions for water, sanitation and public utilities and services to ensure public health and safety.

The site is developed with the Cloverdale Senior Multipurpose Center building, parking lot and related site improvements with existing services. Adequate provisions for water, sanitation and public utilities and services exist to ensure public health and safety.

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 use is located within an existing building that was designed for use by the Senior Center. The modification is not considered to be a significant expansion or intensification of the current use of the building as the Cloverdale Senior Multipurpose Center as similar events and educational classes are currently being put on by the Center. The Senior Center is compatible with surrounding residential uses and the R-2 Zoning District, and the hours of operation are not anticipated to interfere with the surrounding residences. The conditions of approval ensure the proposed use will not be detrimental to the public health, safety, or welfare or materially injurious to properties and improvements in the vicinity.

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 Planning Commission of the City of Cloverdale does hereby grant a Modification to the existing Conditional Use Permit to expand the hours of operation for the Cloverdale Senior Multipurpose Center to 10 pm on some Friday and Saturday evenings, to allow up to 12 special events per year and to allow up to 12 special educational courses per year in addition to the normal operations of the Center at 311 N. Main Street subject to the Conditions of Approval listed below:

**CONDITIONS OF APPROVAL
CLOVERDALE SENIOR MULTIPURPOSE CENTER CONDITIONAL USE PERMIT MODIFICATION
311 N. MAIN STREET**

Planning:

1. A Modification to the existing Conditional Use Permit approval is granted to allow an expansion of the hours of operation for the Cloverdale Senior Multipurpose Center to 10 pm on some Friday and Saturday evenings, to allow up to 12 special events per year and to allow up to 12 special educational courses per year in addition to the normal operations of the Center at 311 N. Main Street, Cloverdale, CA as summarized above and shown in the application materials submitted to the Community Development Department. The applicant shall adhere to the Conditional Use Permit Modification application materials (CUP MOD 001-2016) and the conditions of approval. Any deviation from the conditions of approval requires Community Development Department or Planning Commission approval.
2. This approval is subject to appeal within 10 consecutive days from the date of approval.
3. All conditions of this Modification to the existing 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.

4. 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.
5. This Modification to the existing Conditional Use Permit (CUP MOD 001-2016) 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.
6. 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 necessary for the project.
7. The use of outdoor amplified music or sound, or the use of a microphone outdoors shall be prohibited.
8. All previous conditions of approval shall continue to apply.

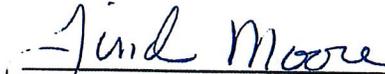
Resolution No. 005-2016 was duly adopted on this the 2nd day of February 2016, by the following roll call vote: (5-ayes, 0-noes)

AYES in favor of:	Domke, Halliday, Shanahan, Enge, Bovee
NOES:	None
ABSTAIN:	None
ABSENT:	None

Approved:


Mike Shanahan, Chair

Attested:


Linda Moore, City Clerk



**DRAFT MINUTES
MEETING OF THE PLANNING COMMISSION**

TUESDAY, FEBRUARY 2, 2016

**PUBLIC SESSION: 6:30 p.m.
CLOVERDALE PERFORMING ARTS CENTER, 209 N. CLOVERDALE BLVD., CLOVERDALE, CA 95425**

OPENING:

- Call To Order: Chair Shanahan called the meeting to order at 6:30 p.m.
- Pledge Of Allegiance
- Roll Call: Present - Commissioner Halliday, Vice Chair Domke, Commissioner Enge, Alternate Commissioner Bovee, and Chair Shanahan
- Agenda Review (changes/deletions) None
- Declaration of Conflicts of Interest None

PUBLIC COMMENT PERIOD:

Chair Shanahan opened and closed the public comment period, as there was none.

CONSENT CALENDAR:

1. **Minutes Review:** January 5, 2016
2. **Request for a 12 month time extension (TM EXT 003-2016) of a previously approved Tentative Subdivision Map for the 221 Live Oak Drive Subdivision of 4.43 acres into 12 single-family residential lots ranging in size from 10,099 square-feet to 25,861 square-feet**

Commissioner Halliday recused himself from item #1, as he was not present at the January 5 meeting.

Item #1 – Minutes for January 5, 2016, were approved by a roll call vote (4-ayes – Domke, Enge, Bovee, Shanahan; 0-noes; 1-recuse – Halliday).

Item #2 of the Consent Calendar was unanimously approved by a roll call vote (5-ayes – Domke, Enge, Bovee, Halliday, Shanahan; 0-noes).

NON-PUBLIC HEARING ITEMS:

None.

PUBLIC HEARING ITEMS:

3. Cloverdale Senior Multipurpose Center

Applicant: Cloverdale Senior Multipurpose Center
Project Location: 311 North Main Street, Cloverdale (APN 001-162-005)
Project Description: Modification to an existing Conditional Use Permit (CUP MOD 001-2016) to expand the hours of operation for the Cloverdale Senior Multipurpose Center to 10 pm on some Friday and Saturday evenings, to allow up to 12 special events per year and to allow up to 12 special educational courses per year in addition to the normal operations of the Center
Environmental Assessment: Categorically Exempt: Section 15301, CEQA Guidelines- Existing Facilities

Associate Planner Rafael Miranda presented the Staff Report for this item, stating this request is consistent with the General Plan and Zoning Ordinance, and recommended approval.

Chair Shanahan invited the Applicant to the podium to speak.

Bob Bialon, President of the Board of Directors at the Senior Center, stated this is seen by the Senior Center staff and board as a good benefit for both the Senior Center and the community and a way to reach out to the community from an educational and social standpoint. Mr. Bialon stated no negative comments were received when they reached out and spoke to the community and neighbors.

Chair Shanahan opened the public comment period for this item.

Mike Handy, Cloverdale, stated he is a next-door neighbor to the Senior Center and is opposed to the requested modification, as is another neighbor, who asked him to speak on her behalf. Mr. Handy gave a copy of his letter to the clerk (attached).

Toby Daly, Cloverdale, stated he lives across from the Senior Center and that it could be a problem if their hours were expanded.

Mark Thayer, Cloverdale, stated his support for the expanded hours and that he feels this will benefit all residents of Cloverdale.

Laurie Martin, Cloverdale, stated she lives across from the Senior Center and that there is inadequate parking for the Senior Center as it is. Ms. Martin stated people block her driveway and is concerned of the impact on the neighborhood.

Mr. Bialon stated the Board of Supervisors is very sensitive to parking issues and that the Senior Center will ask people to park elsewhere for special events, such as Cloverdale Boulevard, if this request is approved.

Laurie Martin, Cloverdale, stated that parking is a problem now and if people are not parking on the Boulevard now, she doesn't know why they would for a special event.

Interim City Planner Jerry Haag stated the Police Department could be called if vehicles are blocking driveways. Mr. Haag further stated the proposed additional use would be in the early evening hours when traffic is lighter and does not believe traffic would be worse than peak hour conditions.

Commissioner Enge stated her approval of facilitating communication to encourage parking on Cloverdale Boulevard and clarified that the approval of 12 events per year is what is being considered.

Commissioner Halliday asked how parking concerns will be addressed.

Mr. Bialon stated that when people propose an event at the Senior Center, the Senior Center will promote as much as possible the parking along Cloverdale Boulevard to relieve the congestion along Main Street. Mr. Bialon stated the blocking of driveways is abhorrent and supports the police being called should this occur.

Alternate Commissioner Bovee asked how many people would be anticipated at one of these events.

Mr. Bialon responded that 30-40 people could be anticipated for a special event such as a wedding or funeral and less than 20 for an educational event, with 10 being the usual number.

Vice Chair Domke asked Mr. Haag, in the event of complaints, could this issue come back before the Planning Commission for review of the Conditional Use Permit.

Interim City Planner Haag responded that this is a discretionary action that the City would be granting the Senior Center with conditions of approval that need to be abided by and, if they are not abiding by those conditions resulting in a major community impact on parking, traffic, noise, etc., a special meeting of the Planning Commission could be convened to review the Conditional Use Permit and appropriate action could be taken based on the findings.

Chair Shanahan asked if there are classes or events that cannot be accommodated because of the current hours of operation.

Mr. Bialon stated there were not and that their concern is for the additional hours for special events.

Laurie Martin, Cloverdale, stated she is concerned about property values and that parking problems are not being mitigated with the current hours of operations.

Chair Shanahan asked Ms. Martin if there is a problem when the pancake breakfasts are held, to which she stated there is a problem with the traffic being quite busy those days.

Vice Chair Domke stated the action being considered would not change those events and would extend the hours into the evening with much more quiet events. Ms. Martin responded that she would like those types of events limited.

Mr. Haag stated the City staff does not micromanage these events, to which Ms. Martin responded she is asking for parameters for what events would be allowed.

Mr. Bialon stated the special events are for the members of the Senior Center and will be required to be low-key events, so as to not cause problems for neighbors.

Bob Cox, Cloverdale, stated he is a former Planning Commissioner and a current member of the City Council and that both the City Council and the Planning Commission previously held their meetings at the Senior Center, which sometimes had 50 people in attendance, which did not impact neighbors at all.

Mike Handy, Cloverdale, stated the police have been called several times in the past year regarding members in commercial vehicles camping in front of their houses. Mr. Handy stated his opposition to this action and suggests the use of the Citrus Fair where there is plenty of free parking, the Grange Hall, or the community center at Clover Springs for these events.

Mark Thayer, Cloverdale, stated that he lives in Clover Springs where Clover Springs residents may rent the hall but there is no commercial kitchen. Mr. Thayer stated there is a kitchen but the residents cannot use it.

Chair Shanahan closed the public comment period.

Vice Chair Domke stated Applicant's sincerity and interest in working with the neighbors was heard. He further stated that the neighbors can contest an event if it is foreseen that there would be an exceptional amount of people. Mr. Domke added that there is room for dialogue as events are scheduled and suggested the Senior Center get event information to the neighbors.

Chair Shanahan stated that with the types of events discussed, he doesn't see a problem with the requested expansion of hours of operations for special events. Chair Shanahan requests the Senior Center to notify neighbors so they know what is scheduled in advance.

Chair Shanahan called for a motion for a resolution by title only.

Commissioner Halliday made the motion to recommend approval to the City Council, seconded by Commissioner Enge. The motion was passed unanimously (5-ayes, Halliday, Domke, Enge, Bovee, and Shanahan; 0-noes).

Interim City Planner Haag requested Staff to note that this is an action of the Planning Commission and it is final unless appealed to the City Council within ten calendar days. He further stated the modification to the Use Permit cannot be activated until the appeal period has elapsed.

OTHER BUSINESS:

4. Commission Nominations:

Nomination and Appointment of Planning Commission Chair for Calendar Year 2016 -

Nomination and Appointment of Planning Commission Vice-Chair for Calendar Year 2016

Nomination of Mike Shanahan for Planning Commission Chair for Calendar Year 2016 was made by Vice Chair Domke, and was seconded by Commissioner Halliday. The nomination passed (4-ayes – Domke, Halliday, Enge, Bovee; 0-noes; 1-abstain – Shanahan).

Nomination of Roy Domke for Planning Commission Vice Chair for Calendar Year 2016 was made by Commissioner Enge, and was seconded by Alternate Commissioner Bovee. The nomination passed (4-ayes – Halliday, Enge, Bovee, Shanahan; 0-noes; 1-abstain – Domke).

5. Goal Setting Process: Discussion regarding upcoming City goal setting and strategic planning

City Manager Paul Cayler stated the annual goal setting meeting would be held on Tuesday, March 1, at 5:00 p.m., at the Senior Center. Mr. Cayler stated there are goal statement forms available for the Planning Commission to complete if they have any particular actionable goals but only the Council votes. Mr. Cayler explained the process used to establish the top ten goals for the upcoming year.

Mr. Cayler thanked Jerry Haag, Interim City Planner, for filling in and stated he will be introducing the new Assistant City Manager/Community Development Director, David Kelley.

PLANNER'S REPORT/COMMUNICATIONS: The Planner's Report is a verbal report for informational purposes only.

PLANNING COMMISSION DIRECTION TO STAFF: Discussion ensued regarding future projects.

ADJOURNMENT: Chair Shanahan adjourned to the next meeting Tuesday, March 1, 2016, at 5:00 p.m., or alternate date as requested, at the Cloverdale Senior Center, 311 N. Main Street, Cloverdale, CA 95425.

PUBLIC COMMENT DOCUMENTS

February 2, 2016

Re: Senior Center 311 North Main Street

While we have had a pleasant and supportive relation with the Senior Center, we are opposed to the modifications of the existing use of the Center. The original charter for the Center was not in line with a residential neighborhood. The current City Zoning map shows the area as "Residential". While defined by City Code allowing "Public/quasi-public uses", I question the extended use of the facility when several other venues in City that are not located in, or adjacent to residential areas and single family structures exist. These venues may be more desirable for the type and hours that are being requested by the Senior Center.

Currently, traffic is heavy for a residential area because of the Senior Center, apartment buildings and commercial enterprises that are now in and adjacent to the area. On street parking is now at capacity because of the previous mentioned reasons. To add additional traffic and more vehicles parking in the area will only exacerbate the issue. The City took measures some time ago to limit traffic and parking on Cloverdale Boulevard. Should we not be afforded the same consideration? While noise has not been a concern since we have lived in the area, having any facility open until 10 PM could lend itself to problems. The clientele and management of the Center for the large part have been very congenial and considerate of the neighbors. There have been minor issues, such as animal feces being left by the owners in our yard, smoking under the oak trees during the dry season, trash and debris being left in the street and in our yard after events that have occurred. By expanding the use of the facility these issues may become very problematic.

Special events and other proceedings do currently take place at the Senior Center via approval by the City. At this time I do not believe it is in the best interest of community to change this policy.

If any further need for clarification or questions should arise, please feel free to contact us at any time.

Thank You,
Michael & Debra Handy



307 North Main Street
Cloverdale, Ca 95425-3335
Phone # 707-303-6180

CITY OF CLOVERDALE
PLANNING COMMISSION
RESOLUTION NO. 4-99

A RESOLUTION OF THE CITY OF CLOVERDALE PLANNING COMMISSION APPROVING
CONDITIONAL USE PERMIT AND DESIGN REVIEW APPLICATIONS FOR THE
CLOVERDALE SENIOR CENTER AT 311 NORTH MAIN STREET
~~(USP 4-98, DR 5-98)~~ — USP 2-99/DR 1-99

WHEREAS, the City of Cloverdale Community Development Agency has requested Conditional Use Permit and Design Review approval for constructing and operating a 4,500 square foot senior center on a 16,200 square foot parcel at 311 North Main Street, and

WHEREAS, An Initial Study has been conducted by the Cloverdale Planning Department, which has evaluated the potential for this project to cause an adverse effect - either individually or cumulatively - on wildlife resources. For this purpose, wildlife is defined as "all wild animals, birds, plants, fish, amphibians, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability", and

WHEREAS, the Planning Commission finds that the Negative Declaration prepared for the Cloverdale Senior Center on December 28, 1998, is adequate with the intent and purposes of the California Environmental Quality Act (CEQA) and directs that it be adopted, and

WHEREAS, the Planning Commission finds that the proposed Conditional Use Permit and Design Review applications, as mitigated and conditioned, are in conformance with the standards set forth in the General Plan of the City of Cloverdale and the City Zoning Ordinance, and

WHEREAS, the Planning Commission finds that the proposed use will not be incompatible with surrounding uses or result in undue hazards and nuisances provided that certain operational conditions are applied, and

NOW, THEREFORE BE IT RESOLVED that the Planning Commission of the City of Cloverdale does hereby approve the Conditional Use Permit and Design Review applications for the construction and operation of the Cloverdale Senior Center at 311 N. Main St., and

BE IT FURTHER RESOLVED that the findings and conditions set forth in Exhibit "A" as attached and referenced hereto, are made a part of the approving action and shall be binding to this Use Permit.

* * * * *

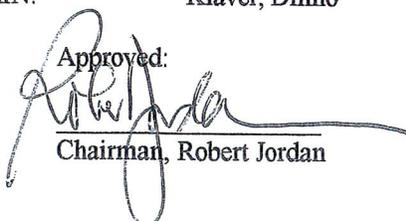
Resolution No. 4-99 was duly adopted on this 3RD day of February, 1999 by the following roll call vote: (3-0)

AYES in favor of: Commissioners Gutierrez, Romain and Chairman Jordan

NOES: None

ABSENT: Nixon

ABSTAIN: Klaver, Dinno

Approved:

Chairman, Robert Jordan

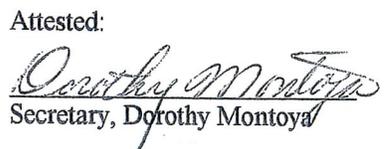
Attested:

Secretary, Dorothy Montoya

EXHIBIT "A"
FINAL FINDINGS AND CONDITIONS
CLOVERDALE SENIOR CENTER USE PERMIT/DESIGN REVIEW (USP 4-98/DR 5-98)

Findings

1. The City of Cloverdale Community Development Agency has submitted an application for Conditional Use Permit and Design Review approval for constructing a 4,500 square foot senior center on a 16,200 square foot parcel at 311 N. Main St.
2. The 1992 General Plan for the City designates the project site as Medium Density Residential. The construction and operation of the Cloverdale Senior Center, as detailed in the Staff Report, is consistent with this General Plan designation and the subsequent zoning of "Two-Family Residential (R-2)".
3. The 1991 Cloverdale Downtown Specific Plan identified the site as a suitable location for a senior center due to its proximity to the downtown.
4. Provided certain mitigation measures are met prior to operation, the Cloverdale Senior Center Use Permit would not be detrimental to the health, safety and general welfare of the people in the immediate area. The operation, as modified through the conditions of approval, does not exceed any set City standards relating to on-site noise, parking or land-use density.
5. Public workshops on the proposed Cloverdale Senior Center were held on July 10, 1998 and September 28, 1998, during which public participation and input into the design and function of the Senior Center was elicited.
6. The conceptual design and proposed use of the Cloverdale Senior Center was approved by the Planning Commission at a public hearing on November 4, 1998, and by the City Council at a public hearing held on November 19, 1998.
7. The Cloverdale Community Development Agency has requested that a Parking Agreement be executed for the Cloverdale Senior Center which would establish a parking standard of 1 space per 100 sq. ft. of public assembly area, for a total on-site parking requirement of 15 spaces. The City Council has indicated that the standard proposed in the Parking Agreement is allowable with the provision that the facility is used only as a senior center, that the public assembly portion of the building is limited to 1500 sq. ft., alternative forms of transit are encouraged, and nighttime activities are limited until such time as additional parking is procured. The Planning Commission recognizes that City Ordinance #456-91 allows for the use of "Parking Agreements" between the City and property or business owners within the downtown area to defer parking requirements under special circumstances in order to encourage uses designated by the Downtown Specific Plan.
8. An Initial Study has been conducted by the Cloverdale Planning Department, which has evaluated the potential for this project to cause an adverse effect - either individually or cumulatively - on wildlife resources. For this purpose, wildlife is defined as "all wild

animals, birds, plants, fish, amphibians, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability".

9. The Planning Commission finds that the Negative Declaration approved for the Cloverdale Senior Center is in accordance with the provisions of the California Environmental Quality Act (CEQA). It is the finding of the Planning Commission that the Negative Declaration addresses the impacts of the project through the mitigation measures contained within the documents.
10. There is no evidence that the Cloverdale Senior Center would have any adverse effect on wildlife resources.

Conditions

1. The applicant shall adhere to the design and specifications of the Cloverdale Senior Center Use Permit and Design Review approval as specified in the application (USP 4-98 and DR 5-98) and Staff Report (#1-99) for this project. Any deviation from the approved operation including to building location or design without prior approval of the Planning Commission may constitute grounds for revocation of this Use Permit and/or denial of Certificate of Occupancy.
2. The applicant shall comply with the Planning Department "Standard Design Conditions" in the design and operation of this project as attached and referenced hereto.
3. The applicant shall comply with all conditions listed in the attached "City Engineer Conditions of Approval".
4. The following items shall be submitted as part of the Building Permit Application package and be subject to the review and approval of the Planning Department:
 - A. Building and appurtenant structure exterior colors and materials. Paint chips of the proposed color scheme shall be submitted.
 - B. Final Landscape and Irrigation Plans.
 - C. Signage program including all graphics or lettering proposed and color scheme.
 - D. Exterior Lighting Plan including detail on light fixtures and illumination.
 - E. Utility meter, transformer, irrigation control unit location and screening.
 - F. Location and screening of solid waste containers.

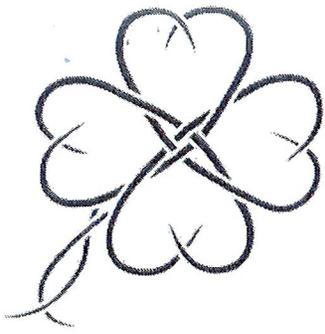
All of the aforementioned plans shall incorporate all of the design specifications and criteria as shown on the site plan approved by the Planning Commission on February 3, 1999. Any significant changes from the approved plans, which may be proposed at a later date, may only be made with the approval of the Planning Commission.

5. The project shall be subject to the following performance standards during its life of operation:
 - a. The Senior Center shall operate between the hours of 7:00 a.m. to 7:00 p.m., Monday

through Friday, and 8:00 a.m. to 5:00 p.m. on Saturday. The facility shall be used strictly for the activities and services provided by the Cloverdale Senior Center, and shall not be leased or used by other entities or individuals for special events.

- b. The Senior Center shall enter into a Parking Agreement with the City of Cloverdale prior to commencing operation of the Center. The Parking Agreement shall contain terms on limiting the uses of the facility, hours of operation and employees. The Parking Agreement shall be reviewed and approved by the City Council, and once signed by all parties, recorded against the title of the Senior center property (APN 001-162-005).
 - c. The City of Cloverdale and the Senior Center organization shall enter into an agreement that defines the operational and maintenance responsibilities for the Senior Center.
 - d. All woodburning devices shall conform to Northern Sonoma County Air Pollution Control District requirement.
 - e. Any landscaping located within the dripline of the oak trees shall be "oak friendly".
 - f. Refuse shall be stored in containers with tight-fitting lids and shall be properly disposed of on a regular basis.
 - g. The activities of the Senior Center shall not generate noise levels that exceed 45dB LDN/CNEL for adjacent residential living spaces.
6. Any signage proposed for the Senior Center shall be reviewed and approved by the Planning Commission prior to installation. Within sixty (60) days after erection of the signs, the Design Review Committee may require alteration of the illumination intensity of the signage, if the lighting of the sign is found to be excessively brilliant. For the purposes of this condition, consideration of the brilliance of said sign shall be based on the following factors:
- A. The size of the sign.
 - B. The percentage brightness of the white or light-colored portions of the sign.
 - C. The distance from the public right-of-way.
 - D. The proximity of surrounding signs.
 - E. The nature of the surrounding area.
7. In the event that archaeological or historic materials are encountered during earth disturbing activities, it is recommended that construction activities cease in the immediate vicinity until the materials are evaluated by a qualified archaeologist.
8. Construction activities shall avoid all mature trees designated to be saved and tree fencing shall be placed at the dripline of the mature oak trees onsite during the construction of the senior center.
-
9. Exterior lighting shall not produce glare or light spillage onto adjacent properties.
10. The project shall be subject to the recommendations contained with the Focused Traffic Assessment by W-Trans and the conditions of the City Engineer dated December 23, 1998, as follows:

- a. The intersection of Third Street/Main Street shall be converted to all-way stop controls to enhance pedestrian crossing safety.
 - b. All weather sidewalk surfaces in the vicinity of the senior center shall be considered "high priority" within the City's sidewalk priority program.
 - c. Pedestrian crossing signs (W54), marked with "Senior Crossing" below, should be placed at the approaches to the intersection of Main Street/Third Street and Cloverdale Boulevard/Third Street.
-
11. In any case where a use permit has not been used within one (1) year from the date of the granting thereof, or within such additional period as may be specified in the permit, such permit shall become automatically void and of no further effect, provided that, upon written request by the applicant prior to the expiration of the one year period, the permit approval may be extended for not more than one year by the authority which approved the original permit.
 12. All conditions of this 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.
 13. 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. The Use Permit shall be valid for the life of the facility described herein.



Cloverdale Senior Community Center

Social Interaction • Creative Expression • Intellectual Stimulation • Health & Fitness Education

Proposed changes to the City of Cloverdale Senior Center License Agreement

- **5.a.i. HOURS OF OPERATION: Friday and Saturday hours until 10 pm for special events**
 - The hours of operation the LICENSEE Programs are limited to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, and 8 a.m. to 5 p.m. on Saturday.
 - Currently classes such as yoga, Line Dancing, Computers, Art, Spanish and Sign Language, are offered Monday-Friday 9:00 am to 3:30 pm. There are also 3-4 evening fundraisers annually which last until 10:00 pm including clean up.

- **5. b. Allow Special Event Usage - limited to 12 events per year**
 - Each event would require Board approval regarding the following:
 - Maximum of 75 people, rental donation, type and hours of event.
 - Would require renter to provide additional insurance rider of \$1M and limit number of guests.
 - Carpooling recommendations would be made to avoid parking concerns.
 - Members' anniversaries, funeral receptions, retirements, etc.
 - Local non-profit meeting or dinner space. (Green Thumb Garden Club annual dinner, Sonoma County Mental Health semi-annual meeting).

- **5. b. Allow Educational Site Usage - limited to 12 events per year**
 - Each event would require Board approval regarding the following:
 - Maximum of 75 people, rental donation, type and hours of classes.
 - Would require renter to provide additional insurance rider of \$1M and limit number of guests.
 - Carpooling recommendations would be made to avoid parking concerns.

 - SSU Osher Lifelong Learning Institute:
 - Each course offered would count as 1 event. Some are one day courses. Other courses meet weekly for 6-8 weeks.
 - Days and hours of course offerings to be determined by Board of Directors on ongoing review of impact on the Center activities.

 - SRJC Older Adults Program
 - Semester long courses that meet weekly for 6-17 weeks.
 - Days and hours of course offerings to be determined by Board of Directors on ongoing review of impact on the Center activities.

City of Cloverdale
Community Development Department
Received

1-12-16

Rafael Miranda

From: Brooke Greene <brgreene2@comcast.net>
Sent: Tuesday, March 01, 2016 1:57 PM
To: Rafael Miranda
Subject: Cloverdale Senior Center

Dear Mr. Miranda,

As neighbor of the Senior Center since 1984, and a former Assistant Director (2006-2013), I would like to share my feelings about their proposed expansion of hours.

Prior to beginning construction of the facility, the City sent letters to all the homeowners in the neighborhood asking for our input and approval. Given the hours that the Center was scheduled to operate, my husband and I felt that the minor inconveniences would be outweighed by the benefits to Cloverdale's seniors that the Center would provide. I still feel this way, but as parking becomes more and more impacted in our neighborhood, I think increasing the hours is a big mistake.

I understand that the Center wants to generate income by renting the facility, but it seems unfair to expect the neighbors, who agreed to the original hours, to be even more inconvenienced. I spoke up at a City Council meeting to say that the feelings of the neighbors should be taken into consideration, and was assured they would be. I'm pretty disappointed that the Planning Commission voted to approve the increase in spite of the very reasonable concerns of property owners whose quality of life will be directly affected.

Sincerely,
Brooke Greene
202 Triplett Drive

**CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 019-2016**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE
DENYING AN APPEAL AND UPHOLDING THE FEBRUARY 2, 2016 DECISION OF THE PLANNING
COMMISSION TO APPROVE THE MODIFICATION TO THE EXISTING CONDITIONAL USE PERMIT TO
EXPAND THE HOURS OF OPERATION FOR THE CLOVERDALE SENIOR MULTIPURPOSE CENTER TO 10 PM
ON SOME FRIDAY AND SATURDAY EVENINGS, TO ALLOW UP TO 12 SPECIAL EVENTS PER YEAR AND TO
ALLOW UP TO 12 SPECIAL EDUCATIONAL COURSES PER YEAR IN ADDITION TO THE NORMAL
OPERATIONS OF THE CENTER AT 311 N. MAIN STREET**

WHEREAS, the Community Development Department received a request to rescind the February 2, 2016 decision by the Planning Commission to approve the Modification to the existing Conditional Use Permit to expand the hours of operation for the Cloverdale Senior Multipurpose Center to 10 pm on some Friday and Saturday evenings, to allow up to 12 special events per year and to allow up to 12 special educational courses per year in addition to the normal operations of the Center at 311 N. Main Street (APN 001-162-005), subject to the recommended conditions of approval; and

WHEREAS, the Planning Commission approved a Conditional Use Permit application for the Cloverdale Senior Center on February 3, 1999; and

WHEREAS, Zoning Ordinance Section 18.03.110.F.1 allows modifications to an approved Conditional Use Permit, such as, but not limited to, changes in conditions of approval, expansions, intensification, location, or hours of operation; and

WHEREAS, during a public hearing held on February 2, 2016 for the requested Modification to the existing Conditional Use Permit, wherein the applicant and members of the public were present to speak on the application, the Planning Commission, on a 5-0 vote, adopted Resolution No. 005-2016 which served to approve the requested Modification to the existing Conditional Use Permit; and

WHEREAS, Michael and Debra Handy filed an appeal application with the Community Development Department on February 16, 2016; and

WHEREAS, the City Council held a public hearing on March 8, 2016, for the purpose of reviewing the appeal of the February 2, 2016 decision by the Planning Commission to approve the Modification to the existing Conditional Use Permit and considered all written and verbal communication, including the staff report;

WHEREAS, the appellant, applicant and members of the public were present to speak on the application; and

WHEREAS, the City Council finds that this project is exempt from the California Environmental Quality Act (CEQA) under Section 15301, Existing Facilities, because the Cloverdale Senior Multipurpose Center building and parking lot are existing and are not being expanded in any way. Furthermore, the addition of the special events and educational classes are similar to functions that the Center currently provides, and is therefore considered to be a negligible or no expansion of an existing use. Based on the application materials, existing site improvements, location of the project, none of the exceptions in CEQA Guidelines section 15300.2 would limit the above referenced categorical exemption for the project; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLOVERDALE THAT the City Council, after reviewing the evidence in the record, does deny the appeal filed by Michael and Debra Handy to rescind the Modification to the existing Conditional Use Permit to expand the hours of operation for the Cloverdale Senior Multipurpose Center to 10 pm on some Friday and Saturday evenings, to allow up to 12 special events per year and to allow up to 12 special educational courses per

year in addition to the normal operations of the Center at 311 N. Main Street, and upholds the February 2, 2016 decision of the Planning Commission.

It is hereby certified that the foregoing Resolution No. 019-2016 was duly introduced and duly adopted by the City Council of the City of Cloverdale at its regular meeting held on the 8th day of March, 2016, by the following roll call vote: (Ayes- ; Noes-).

Ayes:

Noes:

Absent:

Recuse:

APPROVED:

ATTESTED:

MaryAnn Brigham, Mayor

Linda Moore, Deputy City Clerk

Agenda Section

New Business

Staff Contact

Stephen Cramer, Police Chief

Jose Sanchez, City Attorney

Agenda Item Title

Presentation and Discussion of Draft Ordinance Amending Cloverdale Municipal Code Chapter 8.08 Related to Smoking in Public Places.

SUMMARY:

The purpose of this agenda item is a presentation and discussion of a draft ordinance amending Cloverdale Municipal Code Chapter 8.08 related to smoking in public places in the City. The City’s current smoking ordinance has not been updated since 1989. Minor amendments are necessary to bring the ordinance in line with current laws. Additionally, staff is recommending that provisions be added to prohibit smoking at all public events in the City, such as festivals, concerts, farmers’ markets, and other indoor and outdoor public events where numerous people would be susceptible to the negative impacts of secondhand smoke.

Staff also seeks feedback on whether the City Council would like to consider banning smoking at additional locations, such as outdoor restaurant patios, recreation areas, parks, within areas on multi-family properties, within smoke shops, or on sidewalks within commercial areas.

BACKGROUND:

The City of Cloverdale’s existing smoking ordinance, located in Chapter 8.08 of the Cloverdale Municipal Code, has not been revised since 1989. The current ordinance is out of compliance with state law. Several sections of Chapter 8.08 allow for smoking in indoor locations (such as bars, waiting rooms, cafeterias, etc.) where State law now prohibits it. The Municipal Code also allows for businesses to seek a variance from the City, allowing for indoor smoking. Since 1998, California law has prohibited smoking in nearly all indoor workplaces and therefore businesses usually comply with this.

Staff is proposing amendments to the Municipal Code to create clear local regulations that align with State law and meet local needs. Based on numerous complaints from the public, staff is proposing amendments that would prohibit all smoking at public events in the City such as concerts, festivals, markets, parades, etc. The changes would allow for smoking in any public area not being used for the event, as long as it is at least 20 feet away from the event. The proposed changes also make minor amendments to bring the City in line with current trends, such as including electronic cigarettes within the definition of cigarettes and adding a definition for “smoke,” which includes tobacco and marijuana smoke.

The Planning and Community Development Subcommittee reviewed the proposed ordinance at its February 24th meeting and recommended it be presented to the full City Council. Staff now seeks feedback and direction from the Council on the proposed ordinance, as well as any Council direction related to additional amendments. More information on these options is below.

DISCUSSION:

Proposed Amendments to Smoking Ordinance:

The draft ordinance before the City Council for discussion proposes the following changes and additions to Chapter 8.08 of the Municipal Code (the “Smoking Ordinance”):

- 1) Minor amendments to bring ordinance more in line with current law and trends:
 - Amend “definitions” to include electronic cigs, vape pipes and hookah in cigarette/smoking devices; and add definition of “smoke” (this item was not included in the proposal reviewed by the Subcommittee)
 - Delete provisions related to certain allowable indoor smoking that is now illegal in California (bars, waiting rooms, employee cafeterias, etc.)
 - Remove variance section
- 2) Add a prohibition section regarding public events:
 - 8.08.035, “public events regulated”
 - shall apply to indoor and outdoor events
 - farmers markets
 - concerts
 - fairs, bazars
 - does not prevent people from smoking on streets/sidewalks near event (20 feet away or more) that aren’t being used for the event

If a majority of Council gives direction to staff on the above proposal or additional changes, staff will include them in a proposed ordinance. Possible additional changes include, but are not limited to:

- 1) Prohibiting smoking:
 - At certain areas on multi-family properties?
 - Common areas (outdoor and indoor)
 - Balconies
 - Inside units
 - Require lease language?
 - On outdoor restaurant/bar patios?
 - At recreation areas?
 - On sidewalks in commercial areas?
 - In tobacco shops?
- 2) Adding regulations for smoking and hookah lounges, such as:
 - Distance requirements from schools, parks, libraries, and other uses where children are often present
 - Strict ventilation requirements to limit negative impacts on neighboring properties and uses
 - Limit hours

Overview of the law:

Laws related to smoking, secondhand smoke, and tobacco in California are in numerous statutes, including the Labor Code, the Government Code, the Health and Safety Code, the Education Code, the Penal Code, and the United States Code.

It is illegal in California to smoke on school campuses, in government buildings, at daycare facilities, within 25 feet of playgrounds, within 20 feet of an entrance, exit or window of a public building, and in health facilities.

It is also illegal in California to smoke in any enclosed place of employment. There are exceptions to this rule, including: up to 65% of hotel/motel guest rooms; up to 25 or 50% (depending on the total square footage) of hotel/motel lobbies; meeting and banquet rooms in hotels, except when food is present; retail tobacco shops and private smoking lounges within a tobacco shop; employee break rooms meeting strict design standards; and small businesses with five or fewer employees, and when the smoking area is not accessible to minors, all employees have consented to allow smoking, and certain ventilation and exhaust standards are met.

Local Authority:

Cities have the authority to enact local regulations that are more stringent than state law on secondhand smoke. Local regulations on smoking are intended to address both the health impacts of the activity to nonsmokers and the undesired impacts (odor, irritants) of smoking. Such ordinances are within the authority of a city to pass laws to protect the public health and welfare, as well as a city's authority to regulate public nuisances. The United States Surgeon General has declared that there is no safe level of exposure to secondhand smoke. Numerous local cities have enacted more stringent smoking regulations in recent years. For example, smoking in outdoor dining areas of restaurants and bars is generally prohibited in Healdsburg, Santa Rosa, Cotati, Petaluma, Rohnert Park, and Windsor.

Electronic cigarettes:

Electronic cigarettes are devices that emit doses of vaporized nicotine or other substances that are inhaled by the user. Most use battery-powered heat to vaporize a liquid solution held in the mouthpiece of the device. Many cities have enacted regulations on electronic cigarettes, a growing trend in the tobacco business. Some examples of the more than 44 cities and counties that have passed prohibitions on electronic cigarettes include the cities of Los Angeles, Cotati, Healdsburg, Petaluma, Santa Rosa, Walnut Creek, Mountain View, Los Altos, Arcadia, Temecula, Santa Barbara, and Eureka.

Existing State law makes it illegal to sell or give electronic cigarettes to minors, but does not extend smoking prohibitions to electronic cigarettes. A recent national survey by the Centers for Disease Control and Prevention revealed that use of electronic cigarettes by middle and high school students is increasing. Many electronic cigarette cartridges come in flavors that may appeal to children and teens, such as cotton candy and bubble gum.

According to the California Medical Association, the safety of electronic cigarettes is currently unknown. The devices have yet to be submitted to the U.S. Food and Drug Administration for approval. A 2009 study by the U.S. Food and Drug Administration found that electronic cigarettes contain carcinogens and toxic chemicals (although at lower levels than those within cigarettes) to which users and bystanders could be exposed. In 2013, University of California researchers determined that many of the elements identified in electronic cigarette vapor are known to cause respiratory distress and disease. However, some smokers successfully use electronic cigarettes to help them quit or reduce their tobacco intake, and studies support this. Much of the uncertainty surrounding the effects of electronic cigarettes is due to inaccurate nicotine content labeling, variations in nicotine related impurities in cartridges among manufacturers, and the varying levels of metal and silicate particle concentrations in electronic cigarette particles.

The federal government has banned the use of electronic cigarettes on airplanes. Additionally, the U.S. Food and Drug Administration is developing regulations for electronic cigarettes, which could make them subject to requirements for ingredient listing, user fees, and manufacturing requirements.

Outdoor smoking regulations:

Many cities prohibit smoking in outdoor areas of restaurants, at city parks, and at all places of employment. According to a recent reports from the American Lung Association, 84 municipalities in California prohibit smoking in all outdoor dining areas, 113 restrict smoking at public events, and 45 restrict smoking on sidewalks in commercial areas.¹ Cities with total bans on smoking in outdoor dining areas include El Cerrito, Piedmont, Oakland, Union City, Berkeley, Malibu, Manhattan Beach, Pasadena, Santa Monica, Del Mar, Morro Bay, Healdsburg, and San Jose.

Multifamily smoking regulations:

Other cities have enacted strict regulations on smoking at multifamily residential properties, including banning smoking within individual units and patios, and at outdoor common areas such as pools and playgrounds. Some cities even require specific language on smoking within private lease agreements and make violators liable to other tenants and the landlord for violations. State law only prohibits smoking in indoor common areas of multifamily properties, such as hallways and laundry rooms (because these are considered “places of employment”).

Budget/Financial Impact

The financial impact of additional smoking regulations on the budget would be minimal.

Subcommittee Recommendation

This agenda item was presented to the Planning and Community Development Subcommittee on February 24, 2016. The Subcommittee recommended it be presented to the full City Council for discussion and direction to staff.

Recommended Council Action

The City Manager recommends that the City Council discuss the proposed amendments to the draft smoking ordinance and give staff feedback regarding finalizing a proposed ordinance.

Attachments:

1. Draft smoking ordinance
 2. Red-line version of CMC Chapter 8.08, showing proposed changes
 3. Power Point Presentation
-

cc:

2616742.1

¹ American Lung Association, *List of Municipalities that Restrict Smoking in Outdoor Dining Areas June 2015*; and *State of Tobacco Control 2014, 2015, and 2016*.

**CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. XXX-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 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

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: [www.soa.org/files/pdf/ETSReportFinalDraft\(Final%203\).pdf](http://www.soa.org/files/pdf/ETSReportFinalDraft(Final%203).pdf); see also US Department of Health and Human Services, (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

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

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 Contextual 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.

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.phpnet.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 breathe 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 _____, 2016, by the following vote:

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

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

ATTEST:

_____,
MaryAnn Brigham, Mayor

_____,
Paul Cayler, City Clerk

2616830.1

DRAFT

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.

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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 breathe smoke-free air, and to recognize that, when these needs conflict, the needs to breathe smoke-free air shall have priority. (Ord. 429-89 § 1, 1989)

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

Attachment 2

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,

Attachment 2

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. (Ord. 429-89 § 2, 1989)

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. (Ord. 429-89 § 4, 1989)

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,

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banks, attorneys' offices and other offices;

B. Within all restaurants ~~of fifty seats or more provided, however, that this prohibition does not prevent:~~

~~1. The designating of a contiguous area within the restaurant that contains no more than fifty percent of the seating capacity of the restaurant as a smoking area, or~~

~~2. The providing of separate rooms designated as smoking rooms, so long as said rooms do not contain more than fifty percent of the seating capacity of the restaurant;~~

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; ~~provided, however, that this prohibition does not prevent:~~

~~1. The establishment of separate waiting areas for smokers and nonsmokers, or~~

~~2. The establishment of at least fifty percent of a given waiting area as a nonsmoking area;~~

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; ~~provided, however, that this prohibition does not prevent the designation of smoking areas not to exceed fifty percent of the seating capacity and floor space;~~

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H. Retail food marketing establishments, including grocery stores and supermarkets, ~~except those areas of such establishments set aside for the serving of food and drink, restrooms and offices, and areas thereof not open to the public, which may be otherwise regulated by this chapter,~~

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. (Ord. 429-89 § 5, 1989)

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 Provision and maintenance of a separate and/or contiguous nonsmoking area of not less than fifty percent of the seating capacity and floor space in cafeterias, lunchrooms and employee lounges;~~

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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. (Ord. 429-89 § 6, 1989)

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 Bars;

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. (Ord. 429-89 § 7, 1989)

8.08.070 Posting requirements.

~~A.~~ "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

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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.

~~B. Every restaurant regulated by this chapter shall have posted at its entrance a sign clearly stating that a nonsmoking section is available, and where escorted seating is provided, every patron shall be asked as to his or her preference. (Ord. 429-89 § 8, 1989)~~

8.08.080 Reserved. Variances.

~~A. In order to prevent or lessen unnecessary hardship or practical difficulties in exceptional cases, any owner, manager, operator or employer of any establishment subject to this chapter may file a written application for a variance with the chief of police for subsequent action by the city council. The city council may grant such variance only when unusual hardship will result from the strict application of this chapter.~~

~~B. Establishments which have been granted a variance under this chapter shall have clearly and conspicuously posted at each of their entrances a sign with the statement: "WARNING: This establishment has been granted a variance to the Cloverdale Smoking Ordinance. Exposure to second-hand smoke may be hazardous to your health."~~

~~C. The word "WARNING" shall be in capital letters not less than one inch in height, and the entire sign shall be clearly legible. (Ord. 429-89 § 9, 1989)~~

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. (Ord. 429-89 § 3, 1989)

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. (Ord. 429-89 § 11, 1989)

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. (Ord. 429-89 § 12, 1989)

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:

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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. (Ord. 429-89 § 10, 1989)

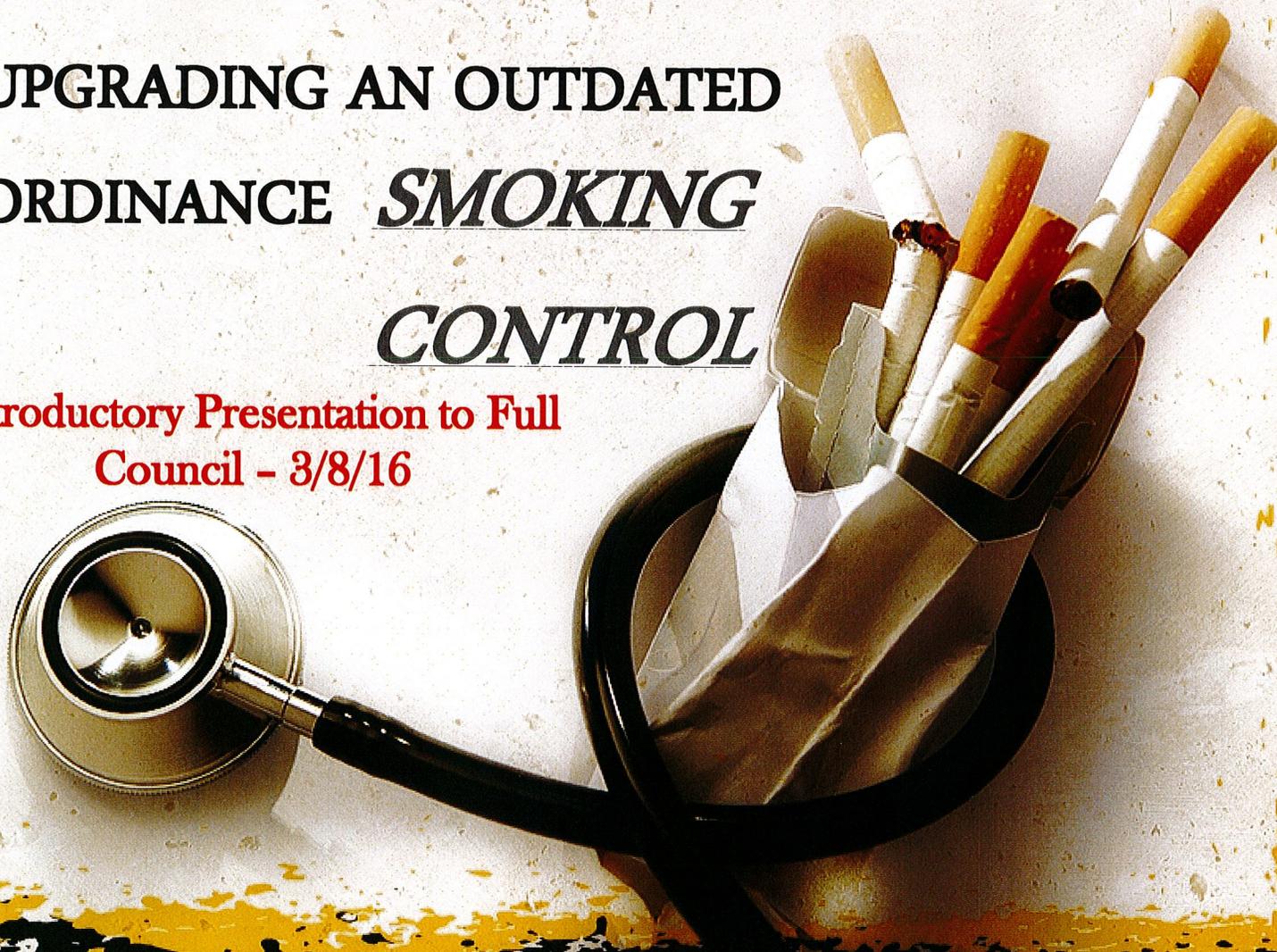
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DRAFT

Use of Tobacco in Public Places

UPGRADING AN OUTDATED ORDINANCE *SMOKING CONTROL*

Introductory Presentation to Full
Council - 3/8/16





STATE OF
TOBACCO
CONTROL 2016



- 1 How Did We Get Here?
- 2 Outdated Ordinance (1989)
- 3 American Lung Assn Report
- 4 Proposed Draft Ordinance Highlights





Planning

Meeting

On 2/25/16, I introduced the issues surrounding our outdated Smoking Control Ordinance from 1989, the recent negative American Lung Association report, and the concise proposed Ordinance language banning smoking at outdoor events

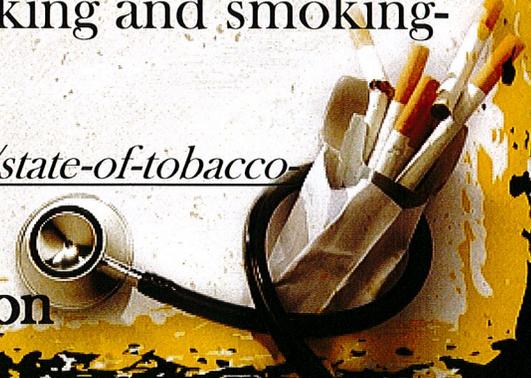


How Did We Get Here?

- ❖ The American Lung Association State of Tobacco Control 2016 national report tracks progress on key tobacco control policies at the state and federal levels as of January 2, 2016. The report assigns grades to every state in four key areas: tobacco prevention and control spending, smokefree air, tobacco tax and cessation coverage.
- ❖ American Lung Association has been issuing its State of Tobacco Control in California report since 2008 as a way of pressuring localities into adopting more stringent tobacco regulations and to reduce smoking and smoking-related deaths.

<http://www.lung.org/local-content/california/documents/state-of-tobacco-control/2016/2016-sotc-executive.pdf>

American Lung Association

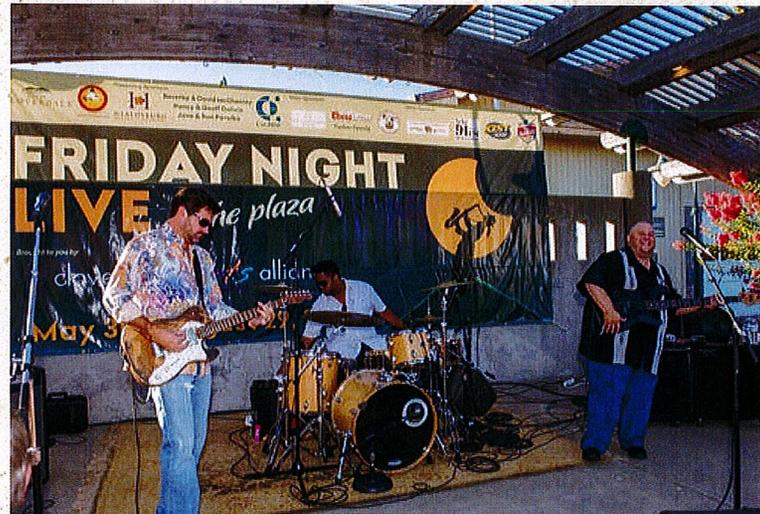


How Did We Get Here?

- ❖ No ordinance regulating smoking at public events
- ❖ Current ordinance outdated (1989)
- ❖ Multiple citizen complaints: tobacco/marijuana use in the Plaza during Friday Night Live events
- ❖ American Lung Association gave Cloverdale zero points and an “F” grade in their recent report

 AMERICAN LUNG ASSOCIATION®

Freedom
FROM SMOKING®

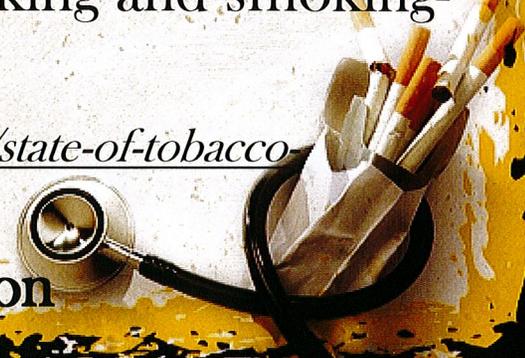


American Lung Association

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American Lung Association



Recent Press Democrat Article

“Sonoma County cities improve scores on American Lung Association’s tobacco report card”

- ❖ Santa Rosa, Cotati, & Sonoma raised their grades significantly from 2014;
- ❖ Santa Rosa & Cotati scored perfect A’s in the category of smoke-free housing, a year after both cities earned F’s on the same scale.

Press Democrat, 2/3/16



By Comparison - Santa Rosa

Santa Rosa leaders last summer enacted a sweeping ban on smoking in attached homes, as well as in city recreational properties and parks and outdoor service areas such as lines for ATMs, food vendors, movie theaters and bus stops.

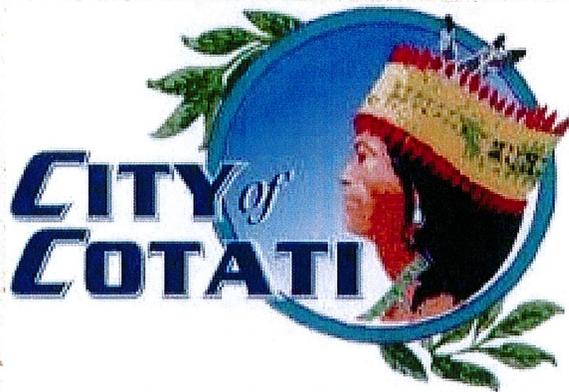


Press Democrat, 2/3/16



By Comparison - Cotati

- ❖ Cotati enacted more stringent tobacco-use policies last year, pushing the city's overall grade to a solid B, up from an F in previous years



Press Democrat, 2/3/16



By Comparison – Sonoma

Sonoma earned a high individual score from the A.L.A. after city leaders last year approved a measure that prohibits new businesses from selling cigarettes, cigars, chewing tobacco and other products, as well as implementing a ban on the sale of e-cigarettes, cheap cigars and most flavored tobacco in town.



Press Democrat, 2/3/16



By Comparison – Sonoma

- ❖ However, the city backed away from enacting more stringent restrictions in housing units, earning it a grade of D in that category and bringing down the city's overall score to a C.
- ❖ Sonoma's current regulations banning smoking in restaurants, workplaces and city-owned facilities were approved more than two decades ago at the ballot box. City officials were unsure whether those restrictions could be extended to apartment complexes, townhomes and outdoor spaces without a public vote.

Press Democrat, 2/3/16



Disturbing Quote

“Cloverdale, which was slapped with an F, has consistently received failing grades for not updating its tobacco control policies since the mid-1990s.”



Press Democrat, 2/3/16



State of Tobacco Control 2016 – California Local Grades

Cloverdale received zero points in each of the four categories:

- (1) Smokefree Outdoor Air;
- (2) Smokefree Housing;
- (3) Reducing Sales of Tobacco Products; and
- (4) Emerging Issues

American Lung Association

<http://www.lung.org/local-content/california/documents/state-of-tobacco-control/2016/counties/sonoma-countypdf.pdf>



American Lung Association



State of Tobacco Control 2016 – California Local Grades



SONOMA COUNTY

	Clowdsdale	Cotati	Healdsburg	Petaluma	Rohnert Park	Santa Rosa	Sebastopol	Sonoma	Windor	County Unincorporated
Overall Tobacco Control Grade	F	B	B	B	C	B	B	C	D	B
Total Points	0	7	8	8	6	8	8	6	3	8
Smokefree Outdoor Air	F	B	B	A	A	A	A	F	B	A
Dining	0	2	4	4	4	4	4	0	4	4
Entryways	0	4	4	4	4	4	4	0	4	4
Public Events	0	4	4	3	4	4	4	0	4	3
Recreation Areas	0	4	4	4	2	4	4	2	4	3
Service Areas	0	2	0	4	4	4	4	0	0	4
Sidewalks	0	1	0	0	0	1	0	0	0	0
Worksites	0	0	0	1	0	0	1	0	0	0
Total Points	0	17	16	20	18	21	21	2	16	18
Smokefree Housing	F	A	D	A	C	A	A	D	F	A
Nonsmoking Apartments	0	4	0	4	1	4	4	0	0	4
Nonsmoking Condominiums	0	4	0	4	1	4	4	0	0	4
Nonsmoking Common Areas	0	4	2	4	4	4	4	2	0	4
Nonsmoking Housing Authority	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Total Points	0	12	2	12	6	12	12	2	0	12
Reducing Sales of Tobacco Products	F	F	A	F	F	F	F	A	F	F
Tobacco Retailer Licensing	0	0	4	0	0	0	0	4	0	0
Total Points	0	0	4	0	0	0	0	4	0	0
Emerging Issues Bonus Points										
Emerging Products Definition - Secondhand Smoke	0	1	1	1	0	1	1	0	1	1
Emerging Products Definition - Licensing	0	0	1	0	0	0	0	1	0	0
Retailer Location Restrictions	0	0	0	0	1	0	0	1	1	0
Sampling of Tobacco Products	0	0	0	0	0	1	1	0	0	0
Sale of Tobacco Products in Pharmacies	0	0	1	0	0	0	0	0	0	0
Flavored Tobacco Products	0	0	0	0	0	0	0	1	0	0
Minimum Pack Size of Cigars	0	0	0	0	0	0	0	1	0	0
Total Points	0	1	3	1	1	2	2	4	2	1

Overall Tobacco Control Grade: A (11-12), B (8-10), C (5-7), D (2-4), F (0-1);
determined by grades and points from other three categories – A (4), B (3), C (2), D (1), F (0)
Smokefree Outdoor Air Grade: A (18+), B (13-17), C (8-12), D (3-7), F (0-2)

Smokefree Housing Grade: A (11+), B (8-10), C (5-7), D (2-4), F (0-1)
Reducing Sales of Tobacco Products Grade: A (4+), B (3), C (2), D (1), F (0)

<http://www.lung.org/local-content/california/documents/state-of-tobacco-control/2016/counties/sonoma-countypdf.pdf>



Appendix A – California Tobacco Control Policies by the Numbers

BREAKDOWN OF TOTAL NUMBER OF POLICIES OVER THE YEARS

	Smokefree Outdoor Air	Dining	Entryways	Public Events	Recreation Areas	Service Areas	Sidewalks	Workplaces	Smokefree Housing	Apartments	Condos	Common Areas	Housing Authority Units	Reducing Sales of Tobacco Products	Tobacco Retailer Licensing	Emerging Issues	SHS Definition	Licensing Definition	Retailer Location Restriction	Sampling of Tobacco Products	Sales in Pharmacies	Flavored Tobacco	Minimum Pack Size
2016	136	125	129	358	130	55	47		48	43	127	46		154	155	107	53	50	8	6	6		
2015	129	117	118	348	121	48	45		39	35	117	40		148	118	92	43	46	6	2	4		
2014	119	109	113	328	109	45	42		34	n/a	114	38		141	n/a	n/a	31	37	3	n/a	n/a		
2013	110	105	109	315	105	37	37		28	n/a	109	30		137	n/a	n/a	28	30	3	n/a	n/a		

BREAKDOWN OF OVERALL TOBACCO CONTROL GRADE

3% A grade for Overall Tobacco Control
17 cities/counties

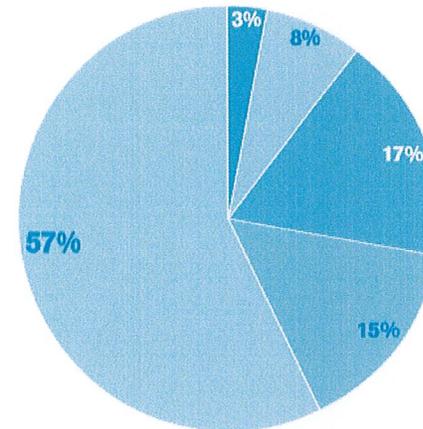
8% B grade for Overall Tobacco Control
40 cities/counties

17% C grade for Overall Tobacco Control
93 cities/counties

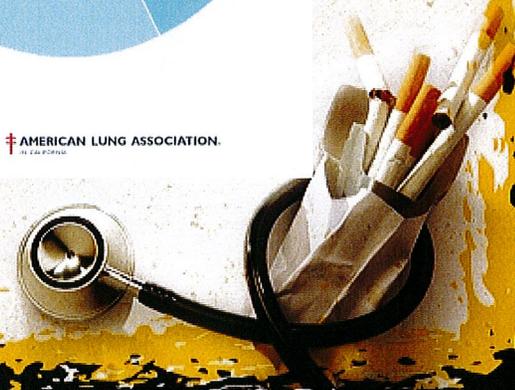
15% D grade for Overall Tobacco Control
80 cities/counties

57% F grade for Overall Tobacco Control
307 cities/counties

N/A 2 cities/counties



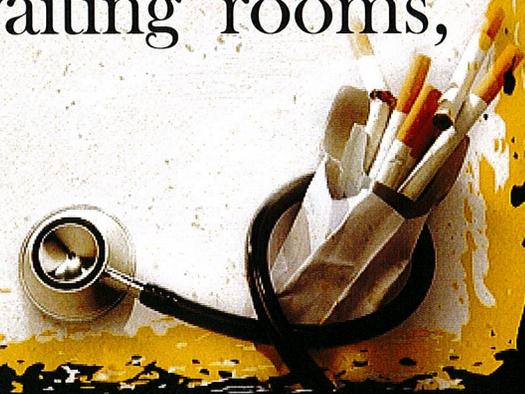
<http://www.lung.org/local-content/california/documents/state-of-tobacco-control/2016/2016-sotc-by-the-numberspdf.pdf>



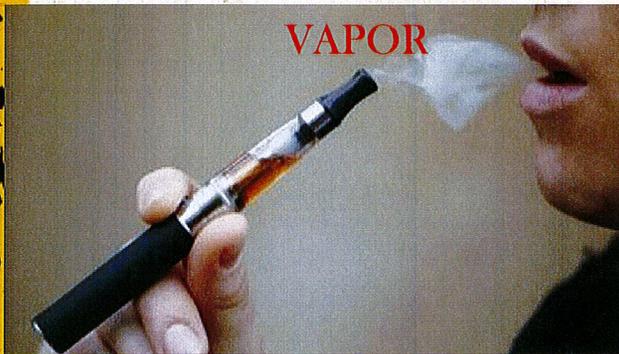
City of Cloverdale Proposed Draft Ordinance

Minor amendments to bring ordinance more in line with current law & trends:

- ❖ Amends definitions to include electronic cigarettes, vape pipes, and hookah in “cigarette/smoking devices”
- ❖ Deletes provisions related to certain allowable indoor smoking that is now illegal in California (bars, waiting rooms, employee cafeterias, etc.)
- ❖ Removes ‘Variance’ section

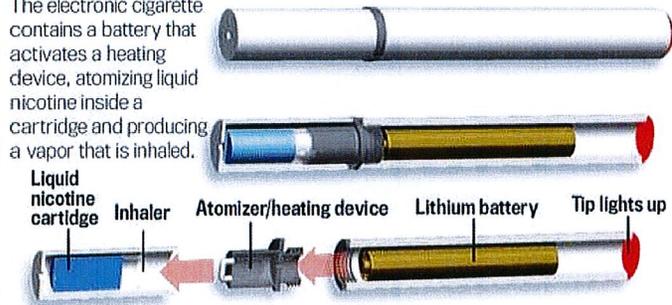


Including the regulation of E-cigarettes



How an electronic cigarette works

The electronic cigarette contains a battery that activates a heating device, atomizing liquid nicotine inside a cartridge and producing a vapor that is inhaled.



Source: allhookah.net

Tim Summers / The Detroit News

Myths and Facts About E-cigarettes

There's been a significant increase in electronic cigarette (e-cigarette) use in recent years, particularly among kids and teens, as well as smokers looking for an alternative to traditional cigarettes. But lack of basic consumer protection and U.S. Food and Drug Administration (FDA) oversight leaves concerns unanswered about the health and safety of these products. So what do we know? Here's a look at some common misperceptions about e-cigarettes.

MYTH: E-cigarettes are safe.

FACT: E-cigarettes are unregulated tobacco products.

Nearly 500 brands and 7,700 flavors of e-cigarettes are on the market and none of them have been evaluated by the FDA. We don't know for sure what's in them. Studies have found toxic chemicals, including an ingredient used in antifreeze and formaldehyde in e-cigarettes. Because the FDA doesn't regulate these products, there aren't requirements around ingredient disclosure, warning labels or youth access restrictions.

MYTH: E-cigarettes don't have nicotine.

FACT: Almost all e-cigarettes contain nicotine—including many that claim they are nicotine-free.

A 2014 study showed wide-ranging nicotine levels in e-cigarettes and inconsistencies between listed and actual nicotine levels in these products. Nicotine is an addictive substance that can have negative health impacts, including on adolescent brain development. The more nicotine a person uses, the greater the potential for addiction.

MYTH: E-cigarettes can help smokers quit.

FACT: The FDA hasn't found any e-cigarette to be safe and effective in helping smokers quit.

Instead of quitting, many e-cigarette users are continuing to use e-cigarettes while still using conventional cigarettes. In 2013, 76.8 percent of the people who recently used e-cigarettes also currently smoked conventional cigarettes. The U.S. Surgeon General has found that even smoking a few cigarettes a day is dangerous to your health.

When smokers are ready to quit, they should talk with their doctors about using one of the seven FDA-approved medications proven to be safe and effective in helping smokers quit. They can also contact the American Lung Association to find a program that is right for them.

MYTH: E-cigarettes aren't marketed to kids.

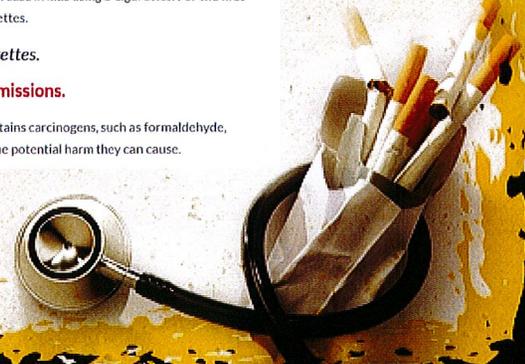
FACT: E-cigarette use among middle and high school students tripled from 2011 to 2013.

With aggressive industry tactics such as cartoon characters and candy flavors including bubble gum, fruit loops, chocolate and strawberry, it's no surprise studies show a dramatic increase in kids using e-cigarettes. For the first time ever, teens are smoking e-cigarettes more than traditional cigarettes.

MYTH: There's no secondhand emissions from e-cigarettes.

FACT: E-cigarettes expose others to secondhand emissions.

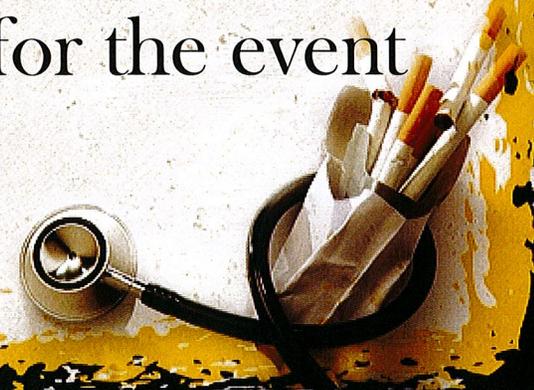
The aerosol (vapor) emitted by e-cigarettes and exhaled by users contains carcinogens, such as formaldehyde, according to early studies. Little is known about these emissions or the potential harm they can cause.



City of Cloverdale Proposed Draft Ordinance

Adds a prohibition section regarding public events (*8.08.035 - Public Events Regulated*):

- ❖ Shall apply to indoor & outdoor events
- ❖ Farmers' Markets (i.e., Friday Night Live!)
- ❖ Concerts, fairs, bazarres
- ❖ Does not prevent people from smoking on streets/sidewalks near event (20 feet or more) that aren't being used for the event



Municipalities that Restrict Smoking in Outdoor

Dining Areas

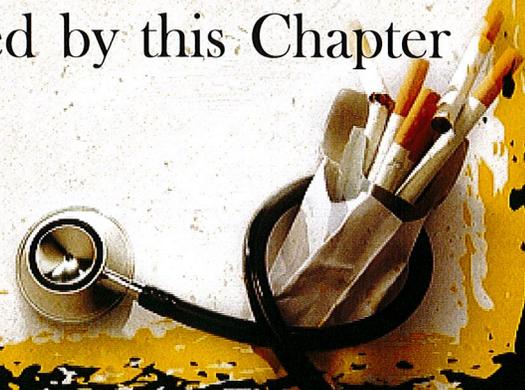
- ❖ **73** municipalities restrict smoking in all outdoor dining areas. These policies ensure that all workers and customers are protected from secondhand smoke exposure.
- ❖ **46** additional municipalities have policies with exemptions for certain types of outdoor dining areas. Some workers & customers continue to be exposed to secondhand smoke

<http://center4tobaccopolicy.org/wp-content/uploads/2014/03/List-of-Municipalities-that-Restrict-Smoking-in-Outdoor-Dining-Areas-March-2014.pdf>



8.08.035 – Public Events Regulated (*NEW!*)

“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, 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.”



Cloverdale is the only city
without this restriction:

Healdsburg, Santa
Rosa, Petaluma,
Sebastopol, Windsor,
Rohnert Park, and
Sonoma County *each*
restrict smoking in
outdoor dining areas



<http://www.eagle.com/politicalcartoons/PCcartoons/markstein.asp>

Secondhand Smoke is toxic

Cancer Causing Chemicals
All are extremely toxic:

- Formaldehyde**
Used to embalm dead bodies
- Chromium**
Used to make steel
- Benzene**
Found in gasoline
- Polonium-210**
Radioactive and very toxic
- Vinyl Chloride**
Used to make pipes
- Carbon Monoxide**
Found in car exhaust
- Hydrogen Cyanide**
Used in chemical weapons

Toxic Metals
Can cause cancer
Can cause death
Can damage the brain and kidneys

- Arsenic**
Used in pesticides
- Lead**
Once used in paint
- Cadmium**
Used in making batteries
- Tellurium**
Found in paint thinner

Secondhand smoke has more than 4,000 chemicals.

Many of these chemicals are toxic and cause cancer.

You breathe in these chemicals when you are around someone who is smoking.

Poison Gases
Can cause death
Can affect heart and respiratory functions
Can burn your throat, lungs, and eyes
Can cause unconsciousness

- Butane**
Used in lighter fluid
- Ammonia**
Used in household cleaners

Secondhand smoke
It hurts you. It doesn't take much. It doesn't take long.



Council Feedback on Additional Regulations

- ❖ *Does Council desire to prohibit smoking:*
 - ❖ At certain areas on multi-family properties?
 - ❖ Common areas (outdoor & indoors)?
 - ❖ Balconies?
 - ❖ Inside units?
 - ❖ Require lease language prohibiting smoking?



Council Feedback on Additional Regulations

❖ *Does Council desire to prohibit smoking:*

- ❖ Outdoor restaurant/bar patios?
- ❖ Recreational areas?
- ❖ Sidewalks?
- ❖ Bus stops?
- ❖ Tobacco shops?
- ❖ Hookah lounges?



NEXT STEPS TOWARD ADOPTION

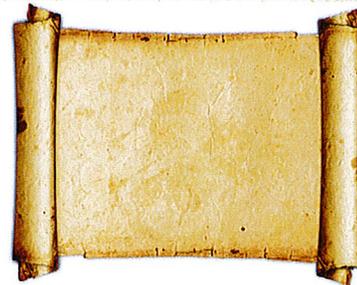


Introduction to Full Council ~ March
8th

Council Comments & Direction

First Reading ~ March 22nd

Second Reading ~ April 5th



Thank You!

Stephen Wayne Colmer

