



**CITY COUNCIL AGENDA
CITY HALL, 291 N. MAIN STREET
PORTERVILLE, CALIFORNIA
MARCH 5, 2024, 5:30 PM**

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<https://www.youtube.com/channel/UC5KuhSrNMNL9nwHJVtnJvvA>

Alternatively, this meeting will also be available via Zoom as a courtesy using the following information

City of Porterville – City Council Meeting of March 5, 2024

Please use the following link below to join the webinar:

<https://us06web.zoom.us/j/81099633881?pwd=udmg9z6vTEfEwBgl5g67g8bxQCgzTg.1SiYsaSpcgDonCr0>

Or via Telephone: **1-669-900-6833** Webinar ID: **810 9963 3881** Passcode: **766563**

Call to Order

Roll Call

ORAL COMMUNICATIONS

This is the opportunity to address the City Council on any matter scheduled for Closed Session. Unless additional time is authorized by the Council, all commentary shall be limited to three minutes.

CITY COUNCIL CLOSED SESSION:

A. Closed Session Pursuant to:

1 - Government Code Section 54956.9(d) (3) – Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to Litigation: Three (3) cases in which facts are not yet known to potential plaintiffs.

2 - Government Code Section 54956.9(d)(4) – Conference with Legal Counsel – Anticipated Litigation – Initiation of Litigation: Three (3) cases.

**6:30 P.M. RECONVENE OPEN SESSION AND REPORT ON REPORTABLE ACTION
TAKEN IN CLOSED SESSION**

Pledge of Allegiance Led by Council Member Weyhrauch

Invocation

PRESENTATIONS

Employee of the Month - Rafael Baez

Employee Service Awards

Bye Bye Mattress Presentation

ORAL COMMUNICATIONS

This is the opportunity to address the Council on any matter of interest, whether on the agenda or not. Please address all items not scheduled for public hearing at this time. Unless additional time is authorized by the Council, all commentary shall be limited to three minutes.

REPORTS

This is the time for all committee/commission/board reports; subcommittee reports; and staff informational items.

- I. Staff Informational Reports
 1. Proclamation Issuance Report (February 2024)
 2. Permanent Local Housing Allocation 5-Year Plan Amendment

CONSENT CALENDAR

All Consent Calendar Items are considered routine and will be enacted in one motion. There will be no separate discussion of these matters unless a request is made, in which event the item will be removed from the Consent Calendar. All items removed from the Consent Calendar for further discussion will be heard at the end of Scheduled Matters.

1. **Approval of Draft Minutes of February 20, 2024**
Re: Considering approval of the City Council draft Minutes of February 20, 2024.
2. **Authorization to Purchase Air Conditioner Units**
Re: Consideration to award the replacement and installation of two (2) 2-ton commercial air conditioner units to TAM-N-TJ'Z Cooling Inc. for a total project amount not to exceed \$14,980.
3. **Emergency Operations Center Technology Upgrade**
Re: Consideration to authorize staff to negotiate the purchase and installation of new technology upgrades from ITC for the amount of \$54,700 and authorize a 10% contingency for unforeseen issues.
4. **Authorization to Distribute Request for Proposals (RFP) for Consulting Services to Prepare the Community Development Block Grant (CDBG) Five-Year Consolidated Plan and Update the Analysis of Impediments or Prepare an Assessment of Fair Housing**
Re: Considering approval to distribute a Request for Proposals for Consulting Services to update the City of Porterville's CDBG Consolidated Plan and update the Analysis of Impediments or prepare an Assessment of Fair Housing.
5. **Award of Contract - Santa Fe Byway Revitalization and Beautification Project**
Re: Considering award of contract in the amount of \$4,091,908.89 to S & B Sons, Inc. for the Santa Fe Byway Revitalization and Beautification Project consisting of improvements to the existing asphalt trail, installation of concrete edge bands along the trail, one (1) new picnic shelter, a new playground and workout equipment area with shelter, benches, water fountains, solar trail lighting, and new lights at intersections for improvements to public

safety, which runs north to south between Henderson Avenue and Walnut Avenue along the old Santa Fe Railway.

6. Sports Complex Concession License

Re: That the City Council approve the Sports Complex Concession License renewal with Porterville Soccer League / South Valley Chivas contingent on any final edits to the License by the City Attorney.

7. HOME Investment Partnerships Program (HOME) Grant Funds

Re: Consideration of a request to disencumber \$400,000 in HOME Grant funds.

8. Program Supplement to the Administering Agency-State Agreement - Tule River Indian Tribe ATP Project

Re: Consideration to adopt the draft resolutions authorizing the Mayor to sign the Master Agreement and Program Supplement No. A426 to administering Agency-State Agreement for State-Aid Projects No. 06-5122S21.

9. California POST Team Building Workshop

Re: Consideration to approve the expenditure in the amount of \$6,531.09 for police department command and management staff to participate in the California Peace Officer Standards and Training (POST) Team Building Workshop.

10. Consideration of Appointment of CalTIP Alternate Board Member

Re: Consideration of the appointment of an individuals to serve as members on the California Transit Indemnity Pool Board.

11. Request for Proclamation - California Arbor Week - March 7 - 14, 2024

Re: Considering approval of a request to proclaim March 7th - 14th, 2024, as "California Arbor Week" in the City of Porterville.

12. Authorization to Become a Mattress Collection Site

Re: Authorization to partner with Bye Bye Mattress of the Mattress Recycling Council to become a mattress collection site and consider additional staff allocation to operate the Mattress Recovery Program.

13. Consideration of Updated Statement of Investment Policy

Re: Consideration to adopt the draft resolution approving the updated Statement of Investment Policy.

A Council Meeting Recess Will Occur at 8:30 p.m., or as Close to That Time as Possible

PUBLIC HEARINGS

14. Consideration of a Tentative Parcel Map and Conditional Use Permit (PRC No. 21-2028-C) to Authorize Development of a Convenience Store Including an Automobile Service Station and Off-sale Beer and Wine Licensing

Considering approval of a tentative subdivision map and CUP for project proposed on the northwest corner of North Grand Avenue and Highway 65.

SCHEDULED MATTERS

15. Porterville Veterans Homecoming Queen/Miss Porterville

Re: Council to consider partnering with the Porterville Homecoming Queen/Miss Porterville Pageant for the promotion of Porterville.

16. Consideration of Draft Ordinance Regulating Unsafe and Unauthorized Camping and Storage of Personal Property, Protecting Critical Infrastructure, and Mitigating Harm to the Public Health, Safety and Welfare; and Consideration of Administrative Options to Address Homelessness Within the City of Porterville

Re: Review and consideration of draft Ordinance and administrative options to address homelessness within the City of Porterville.

17. Status and Review of Local Drought Emergency

Re: Considering approval of the conclusion of the Declaration of Local Emergency.

18. Status and Review of Declaration of Local Flood Emergency

Re: Review of the Declaration of Local Emergency made on March 13, 2023, concerning the significant weather event and impacts or likely impacts relative to increased flow of the Tule River.

AB 1234 REPORTS

This is the time for all AB 1234 reports required pursuant to Government Code § 53232.3.

1. Flag Day Committee - February 20, 2024
2. Tulare County Task Force on Homelessness - February 21, 2024
3. Tulare County Regional Transit Agency (TCRTA) - February 21, 2024
4. Tulare County Association of Governments (TCAG) - February 26, 2024
5. Tulare County Economic Development Corp. (TCEDC) - February 28, 2024

ORAL COMMUNICATIONS

OTHER MATTERS

CLOSED SESSION

Any Closed Session Items not completed prior to 6:30 p.m. will be considered at this time.

ADJOURNMENT - to the meeting of March 19, 2024, at 5:30 p.m.

In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the Office of City Clerk at (559) 782-7464. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and/or provision of an appropriate alternative format of the agenda and documents in the agenda packet.

Materials related to an item on this Agenda submitted to the City Council after distribution of the Agenda packet are available for public inspection during normal business hours at the Office of City

Clerk, 291 North Main Street, Porterville, CA 93257, and on the City's website at www.ci.porterville.ca.us.



CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: 1. Proclamation Issuance Report (February 2024)

SOURCE: Administrative Services

COMMENT: Pursuant to the City Council Procedural Handbook, staff is herein providing a report on Proclamation Requests that were processed during the month of February 2024. For the period of February 1 to February 29, 2024, the following request was processed.

Date	Organization	Name of Event / Proclamation
01/12/2024	American Red Cross of Central Valley	Red Cross Month (March 2024)

RECOMMENDATION: Information Only

ATTACHMENTS: 1. Proclamation Policy_12-19-23
2. Proclamation - Red Cross Month

Appropriated/Funded:

Review By:
Department Director:
Yuliana Andrade, Acting Administrative Services Director

Final Approver: Patrice Hildreth, City Manager

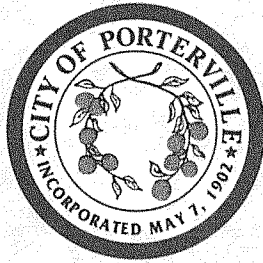
G. Requests for Proclamations

The City routinely receives requests for proclamations. To qualify as a proclamation, the language should be ceremonial and not convey legislative action or represent that it is establishing City policy or directives. Each individual Council Member has the authority to grant and sign proclamations on their own respective behalf if they are processed in accordance with this Section. The City Council may grant and sign "City Proclamations," only if the proclamation is approved by the City Council at a noticed and public City Council meeting in accordance with the Brown Act, and these proclamations shall be deemed to be "City Proclamations" and have the City Seal affixed.

Within one business day of receipt of a Request for Proclamation, staff shall scan and email the request to all City Council Members. In the event a Council Member is interested in granting the request, they shall individually notify staff of their interest. If more than one Council Member responds, the first responsive notification received by staff shall be the grantor. Staff shall then advise the remaining Council Members as to interest in signing the proclamation, and the Council Members shall have one business day to reply, after which the proclamation will be drafted with the appropriate number of signature blocks for execution by the Council Members. If more than two council members respond that they are interested in signing the proclamation, a consent calendar item will be prepared for the next scheduled city council meeting, for full City Council consideration. Approved City Proclamations may be signed by the Mayor, although the Mayor's signature shall not be compelled. Additionally, the City Council may provide express authority regarding additional members who wish to also be signatories.

All signed proclamations will be made available in the Office of City Clerk for pick up by the requestor unless arrangements have been made for presentation at a certain event. Proclamations shall not be included on the Council Agenda nor presented at a Council Meeting unless approved by a majority of the entire Council. Staff shall provide a monthly informational report to the City Council identifying the proclamations for the preceding month. (*Amended via Minute Order 15-121923, December 19, 2023.*)

City of Porterville



Proclamation

WHEREAS: during American Red Cross Month in March, we recognize the compassion of people in the City of Porterville and reaffirm our commitment to care for one another in time of crisis; and

WHEREAS: this generous spirit is woven into the fabric of our community and advances the humanitarian legacy of American Red Cross founder Clara Barton – one of the most honored women in our country's history – who nobly dedicated herself to alleviating suffering; and

WHEREAS: today, kindhearted individuals in our community exemplify Barton's commitment as they step up to provide a beacon of hope for our neighbors in need. Through their voluntary and selfless contributions, they make a lifesaving difference in people's darkest hours – whether its delivering shelter, food and comfort during disasters; supporting military families, veterans and caregivers through the unique challenges of service; saving lives with first aid, CPR and other skills; or delivering aid and reconnecting loved ones separated by global crises; and

WHEREAS: we hereby recognize this month of March in honor of all those who lead with their hearts to serve people in need, and we ask everyone to join in this commitment to strengthen our community.

NOW, THEREFORE, I MARTHA A. FLORES, Mayor of Porterville, on behalf of the Porterville City Council, do hereby proclaim March 2024 as,

"RED CROSS MONTH"

and encourage all citizens of Porterville to reach out and support its humanitarian mission.

PROCLAIMED this 1st day of March, 2024.

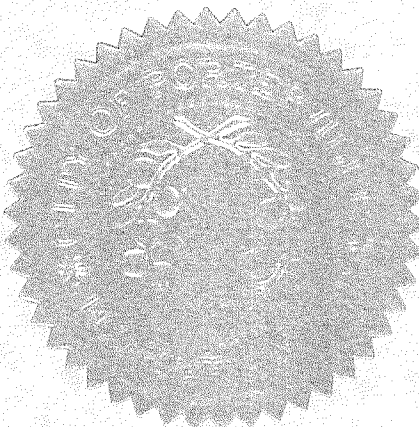
Martha A. Flores,
Mayor

Kellie Carrillo,
Vice Mayor

Donald Weyhrauch,
Council Member

Raymond Beltran,
Council Member

Greg Meister,
Council Member





CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: 2. Permanent Local Housing Allocation 5-Year Plan Amendment

SOURCE: Community Development

COMMENT: A Public Hearing notice was published for an amendment to the Permanent Local Housing Allocation (PLHA) 5-year plan, to take place at the City Council meeting scheduled for March 5, 2014. At this time, it is necessary to postpone this item to a later meeting as Staff is awaiting guidance from the State Department of Housing and Community Development (HCD) on the updated amendment template form provided by HCD. Without the requested information, the Public Hearing document could not be completed prior to this meeting. Staff will be bringing this item back to City Council at a future meeting, which will be publicly noticed.

RECOMMENDATION:

ATTACHMENTS:

Appropriated/Funded:

Review By:

Department Director:
Claudia Calderon, Acting Community Development Director

Final Approver: Jason Ridenour, Acting Deputy City Manager



CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: Approval of Draft Minutes of February 20, 2024

SOURCE: Administrative Services

COMMENT: Presented for Council's approval are the draft Minutes of February 20, 2024.

RECOMMENDATION: That the Council approve the draft Minutes of February 20, 2024.

ATTACHMENTS: 1. Draft Minutes 02-20-2024

Appropriated/Funded:

Review By:

Department Director:
Yuliana Andrade, Acting Administrative Services Director

Final Approver: Yuliana Andrade, Acting Administrative Services Director

**CITY COUNCIL MINUTES
CITY HALL, 291 N. MAIN STREET
PORTERVILLE, CALIFORNIA
FEBRUARY 20, 2024, 5:30 PM**

Call to Order at 5:30 p.m.

Roll Call: Council Member Greg Meister, Council Member Raymond Beltran,
Council Member Donald Weyhrauch, Vice Mayor Kellie Carrillo,
Mayor Martha A. Flores

ORAL COMMUNICATIONS

None.

CITY COUNCIL CLOSED SESSION:

A. Closed Session Pursuant to:

1 - Government Code Section 54956.95 – Liability Claim: Claimant: Esmeralda Espinoza.
Agency Claimed Against: City of Porterville.

2 - Government Code Section 54956.9(d)(3) – Conference with Legal Counsel –
Anticipated Litigation – Significant exposure to Litigation: Two (2) cases in which facts are
not yet known to potential plaintiff.

3 - Government Code Section 54956.9(d)(4) – Conference with Legal Counsel –
Anticipated Litigation – Initiation of Litigation: Two (2) cases.

**6:39 P.M. RECONVENE OPEN SESSION AND REPORT ON REPORTABLE ACTION
TAKEN IN CLOSED SESSION**

City Attorney Lew reported action pertaining to A-1, as follows:

A-1. On a MOTION made by Vice Mayor Carrillo, and SECONDED by Council Member Beltran
the City Council unanimously rejected the claim filed by Esmeralda Espinoza.

Documentation: M.O. 01-022024

Disposition: Claim rejected.

The Pledge of Allegiance was led by Council Member Beltran.

Invocation – a moment of silence was observed.

ORAL COMMUNICATIONS

- Greg Meister, Porterville, stated he opposed the council's decision to not approve the medical freedom resolution at their last meeting.
- Kristy Martin, Porterville Chamber of Commerce, provided the council with recent and

upcoming events.

- Josh Flowers, Strathmore, expressed his concern with his local government and his disappointment with council members.

REPORTS

I. City Commission and Committee Meetings

1. Parks & Leisure Services Commission - February 1, 2024

Commissioner Janet Uresti provided an update on the weed abatement, Shamrock Shapeup, the Military Banner program, youth sports, pool party reservations, and the upcoming Wall of Fame Ceremony as well as the Annual Youth Fishing Derby.

2. Library & Literacy Commission - February 13, 2024 – no report was provided.

3. Arts Commission – no report was provided.

4. Animal Control Commission – no report was provided.

5. Youth Commission - February 14, 2024 – no report was provided.

6. Transactions and Use Tax Oversight Committee (TUTOC) – no report was provided.

II. Staff Informational Reports

1. Water Conservation Phase IV Status Update - January 2024

2. Wall Of Fame

3. Youth Field Usage And Light Fees

CONSENT CALENDAR

Item No. 7 was removed for further discussion at the request of Council Member Meister.

COUNCIL ACTION: MOVED by Vice Mayor Carrillo, SECONDED by Council Member Weyhrauch that the City Council approve Items Nos. 1-6, 8 and 9. The motion carried unanimously.

1. APPROVAL OF DRAFT MINUTES OF FEBRUARY 6, 2024

Recommendation: That the Council approve the draft Minutes of February 6, 2024.

Documentation: M.O. 02-022024

Disposition: Approved.

2. AUTHORIZATION TO PURCHASE RELIEF VALVES FOR THE COMPRESSED NATURAL GAS FUELING STATION

Recommendation: That the City Council:

1. Authorize the purchase of relief valves for the CNG Fueling Station from Surface Pumps Inc. at a cost not to exceed \$19,461 (inclusive of all parts, taxes, freight, and a 10% contingency); and
2. Authorize payment of said repair upon satisfactory receipt of parts.

Documentation: M.O. 03-022024

Disposition: Approved.

3. AUTHORIZATION FOR PRINTER/COPIER REPLACEMENT FOR THE ADMINISTRATION DEPARTMENT

Recommendation: That the City Council approve the purchase of a copy machine for the Administration Department from California Business Machines utilizing Department budgeted funds in the amount of \$9,500.00, plus the applicable sales tax.

Documentation: M.O. 04-022024

Disposition: Approved.

4. AUTHORIZATION TO REPAIR CITY WELL NO. 7

Recommendation: That the City Council:

1. Direct the Finance Director to initiate a Purchase Order to S. A. Camp Pump And Drilling for an amount not to exceed \$10,330 (inclusive of all parts, taxes, labor, and contingency) for the repair of City Well No. 7; and
2. Direct the Finance Director to make payment to S.A. Camp Pump And Drilling upon receipt of the invoice approved by the Public Works Director.

Documentation: M.O. 05-022024

Disposition: Approved.

5. INTENT TO SET A PUBLIC HEARING - VACATION OF A PORTION OF COLLEGE AVENUE

Recommendation: That the City Council:

1. Approve the resolution of intent to abandon a portion of College Avenue; and
2. Set the Council meeting of March 19, 2024, as the time and place for the Public Hearing.

Documentation: Resolution No. 05-2024

Disposition: Approved.

6. PERMANENT LOCAL HOUSING ALLOCATION (PLHA) – REQUEST FOR PROPOSALS (RFP) FUNDING RECOMMENDATIONS

Recommendation: That the City Council:

1. Award Central California Family Crisis Center in the amount of \$34,973.53 for Permanent Supportive Housing (PSH) Operations and \$20,000 for Emergency Shelter & Bridge Housing Operations;
2. Award Family Services of Tulare County in the amount of \$12,894 for Permanent Supportive Housing Operations; and
3. Award Kings View in the amount of \$87,963.98 for Navigation Center Operations and \$18,216.76 for Emergency Shelter & Bridge Housing Operations.

Documentation: M.O. 06-022024

Disposition: Approved.

8. COMMUNITY CLEAN-UP EVENTS

Recommendation: That City Council:

1. Declare April 20, 2024, "Spring Clean-Up Day" and October 19, 2024, "Fall Clean-Up Day;"
2. Encourage all residents to clean up their properties and take advantage of these special opportunities offered by the City;
3. Authorize the City to accept trash, litter, and yard clippings delivered by City residents receiving City residential refuse service to the Spring and Fall Clean-Up Events for free disposal;
and
4. Authorize the cost of both events be funded from the Solid Waste Operating Budget.

Documentation: M.O. 07-022024

Disposition: Approved.

9. STATUS AND REVIEW OF LOCAL DROUGHT EMERGENCY

Recommendation: That the City Council receive and review the Declaration of Local Emergency, and determine the need exists to continue said Declaration.

Documentation: M.O. 08-022024

Disposition: Approved.

SCHEDULED MATTERS

10. CONSIDERATION OF APPOINTMENT OF CITY REPRESENTATIVE ON PORTERVILLE FLAG DAY COMMITTEE

Recommendation: That the City Council consider the appointment of Council Member Greg Meister to serve as a City Representative on the Porterville Flag Day Committee.

City Manager Hildreth introduced the item and Police Captain Josh Maniss presented the staff report.

COUNCIL ACTION: MOVED by Mayor Flores, SECONDED by Council Member Weyhrauch that the City Council appoint Council Member Meister to serve on the Porterville Flag Day Committee. The motion carried unanimously.

Documentation: M.O. 09-022024

Disposition: Approved.

11. ANIMAL SERVICES CONTRACTS WITH THE CITIES OF LINDSAY AND WOODLAKE

Recommendation: That the City Council authorize the termination of current agreements for animal shelter services between the City of Porterville and the cities of Lindsay and Woodlake, and direct staff to provide written notice to the aforementioned cities consistent with the agreements.

City Manager Hildreth introduced the item and Police Captain Josh Maniss presented the staff report.

COUNCIL ACTION: MOVED by Council Member Weyhrauch, SECONDED by Council Member Meister that the City Council terminate the current agreements for animal shelter services between the City of Porterville and the cities of Lindsay and Woodlake. The motion carried unanimously.

Documentation: M.O. 10-022024

Disposition: Approved.

12. STATUS AND REVIEW OF DECLARATION OF LOCAL FLOOD EMERGENCY

Recommendation: That the City Council receive the report of status and review of the Declaration of Local Emergency and determine the need exists to continue said Declaration.

City Manager Hildreth introduced the item and presented the staff report.

COUNCIL ACTION: MOVED by Council Member Weyhrauch, SECONDED by Vice Mayor Carrillo that the City Council approve the continuance of the Declaration of Local Flood Emergency. The motion carried unanimously.

Documentation: M.O. 11-022024

Disposition: Approved.

7. CONSIDERATION OF UPDATED STATEMENT OF INVESTMENT POLICY

Recommendation: That the City Council adopt the resolution approving the updated Statement of Investment Policy.

City Manager Hildreth introduced the item and presented the staff report.

Mayor Flores stated that the investment policy was reviewed by the Internal Audit Committee Meeting and was approved for inclusion on the agenda for Council consideration.

The council's consensus was to postpone this matter to the following meeting in order to allow for a thorough review of the investment policy by the council members, as well as the opportunity for them to meet with staff and provide feedback and ask questions.

Documentation: None.

Disposition: Direction given, item moved to a future meeting.

AB 1234 REPORTS

1. TCAG-California Association of Councils & Government Annual Conference - February 7-9, 2024

Mayor Flores spoke of those in attendance and provided updates on priority projects, the REAP budget, the legislative principles, and several discussion items.

2. Porterville Area Development Authority (PADA) - February 16, 2024

Due to the lack of a quorum during the meeting, a report was not provided.

ORAL COMMUNICATIONS

None.

OTHER MATTERS

- Council Member Beltran stated that he loves this time of year and encourages everyone to go out and enjoy the weather.
- Council Member Weyhrauch thanked the Internal City Audit Committee for their efforts in keeping the city finances in good shape, asked for a task revenue update, inquired if the city was able to share the Chamber Calendar, encouraged everyone to take time off for voting, and asked for an update on Love our Cities.
- Council Member Meister thanked the council for appointing him to the Flag Day Committee, expressed his excitement for the upcoming Wall of Fame ceremony, stated he was unable to attend the Coffee with a Cop, spoke of his father's attendance at the council meeting, spoke of the time he spent with Alexandra Macedo in the Porterville community, and commended Parks

and Leisure on the encampment cleanup efforts.

- Vice Mayor Carrillo thanked staff for the reports of the encampment cleanups, spoke of the great weather we are having, and wished her first grandson a Happy Birthday.
- Mayor Martha A. Flores thanked those for who attended the CDBG Block Grant Community Meeting, spoke of her attendance at the Farm Worker Appreciation Day, and thanked city staff.
- City Manager Hildreth urged everyone to drive safely.

CLOSED SESSION

None.

ADJOURNMENT

The City Council adjourned at 7:49 p.m. to the meeting of March 5, 2024, at 5:30 P.M.

Fernando Gabriel-Moraga,
Acting Chief Deputy City Clerk

SEAL

Martha A. Flores, Mayor



CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: Authorization to Purchase Air Conditioner Units

SOURCE: Public Works

COMMENT: The City of Porterville Laboratory has two (2) 2-ton air conditioners that have recently failed and need to be replaced. The units were originally installed in 1994 and replacement parts are no longer available.

Staff contacted three (3) air conditioner companies for quotes. The quotes are as follows:

TAM-N-TJ'Z Inc.	\$14,000
Shaw's Home Comfort	\$38,746
Prosperity Air Conditioning and Heating	Non-Responsive

TAM-N-TJ'Z Inc. submitted the lowest quote, therefore securing the purchase and installation of two (2) 2-ton air conditioners for a total project amount of \$14,980, which includes a seven percent (7%) contingency. Expenditure for the purchase and installation of the air conditioning units is to be funded by the Laboratory Equipment Replacement Fund.

RECOMMENDATION: That City Council:

1. Award the replacement and installation of two (2) 2-ton commercial air conditioner units to TAM-N-TJ'Z Cooling Inc. for a total project amount not to exceed \$14,980, which includes a seven percent contingency;
2. Direct the Finance Director to initiate a Purchase Order to TAM-N-TJ'Z Cooling Inc. for a total project amount not to exceed \$14,980, which includes a seven percent contingency; and
3. Direct the Finance Director to make payment to TAM-N-TJ'Z Cooling Inc. upon receipt of the invoice approved by the Public Works Director.

ATTACHMENTS:

1. TAM-N-TJ'Z Quote
2. Shaw's Home Comfort Quote

Appropriated/Funded:

Review By:

Department Director:
Michael Knight, Public Works Director

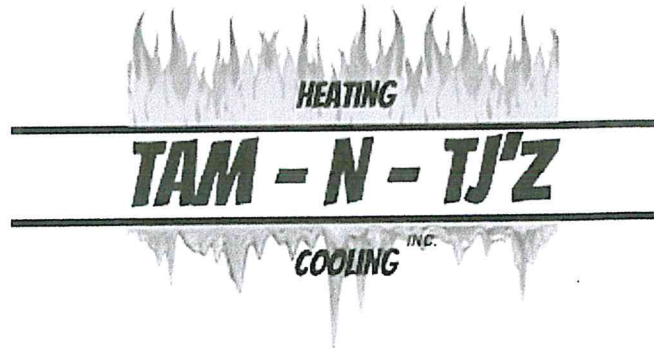
Final Approver: Jason Ridenour, Acting Deputy City Manager

Estimate

Tam-N-Tj'z Cooling-N-Heating Inc.

"Your comfort is our business"

P.O. Box 648
Porterville, CA 93258
559-789-6373
License #1063512



Prepared for: City Of Porterville Arthur

Jobsite: 1265 West Grand Avenue

Technician Name: Tam/TJ

Email: tamntjz2020@gmail.com

Date: January 30, 2024

Phone: Tam (559)306-9122/T.J.(559)789-6373

Job Description:

Tam-N-TJ'z will remove and dispose of old equipment. We will then install two ICP 2 ton rooftop units with no curb. We will connect to existing ductwork and electrical. We will install a new gas flex and valve. Two new surge protectors and two new Vive thermostats are included. Other miscellaneous materials are included. Upon completion we will ensure everything is working in a proper manner.

Total Price: \$14,000

***** WARRANTY*****

7 Year Compressor

2 Year Labor

1 Year Parts

This estimate is good for 90 days from the date above.

Acceptance of Estimate (Client Signature): _____ **Date:** _____

This is an estimate and the summary above is furnished by Tam-N-Tj'z Cooling-N-Heating Inc. as a good faith estimate of work to be performed at the location described above and is based on our evaluation which includes all material and labor cost. If paying with credit card or financing additional fees apply.

Thank you for considering Tam-N-TJ'z Cooling-N-Heating INC.



Make check payable to:
Shaw's Home Comfort
1356 W. Iona Ave, Lemoore, 93245
(559)925-9923
Ca Lic#844787

Estimate 71773167
Job 71718793
Estimate Date 2/4/2024
Technician Rene Maldonado
Customer PO

Billing Address
City Of Porterville
291 N. Main street
Porterville, CA 93257 USA

Job Address
City of Porterville - Lab
555 North Prospect Street
Porterville, CA 93257 USA

Estimate Details

2Ton Commercial Single Stage Package System with Existing Ductwork : (2) x Commercial package System with Existing Ductwork

Remove existing Package System and Install new sheet metal curb adaptor. Install new 2 ton 14 SEER 230 volt single phase Commercial package System. Will retrofit high voltage and install new single phase service disconnect. Will install new gas flex with drip leg and shut off valve. Will connect to existing Condensate drain. Will install a fresh air economizer and a in duct smoke alarm. Install new thermostat. Will conduct a factory start up and efficiency checks. Will file all proper permitting/ Hers paperwork. Will coordinate city inspection. **WARRANTY & GUARANTEES:** 1 year on parts – 5 years on compressor – 5 years on heat exchanger – 1 year warranty on labor - 100% customer satisfaction guarantee – property protection guarantee – best price up front guarantee

Task #	Description	Quantity	Your Price	Your Total
PMA Install	Planned Maintenance Agreement Includes: • 20% Discount on repairs • 5 Year warranty on all installed parts (excluding major components with continued bi-annual Planned Maintenance Agreement • Never an overtime charge • Emergency service 7 days a week • Priority customer status • Lower utility bills • Improved reliability • Extended equipment life • Fewer repairs • Improved capacity • Improved safety • Agreement is transferable with deed • Professionally trained technicians	1.00	\$0.00	\$0.00
Misc Quote-E	TRANE Commercial Package System / Single Phase	2.00	\$19,373.00	\$38,746.00
Member Savings				\$3,874.60
Sub-Total				\$38,746.00
Tax				\$0.00
Total				\$38,746.00
Est. Financing				\$613.18

Thank you for choosing Shaw's Home Comfort!

Customer Signature _____ Date _____

By signing above and/or the electronic signature via email, I agree and authorize the work as summarized on these estimated terms, and I agree to pay the full amount for all work performed at the completion of the work performed. All prices for estimates are good for 30 days. The summary above is furnished by Shaw's Home Comfort as a good faith estimate of work to be performed at the location described above and is based on our evaluation.



CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: Emergency Operations Center Technology Upgrade

SOURCE: Police

COMMENT: The Porterville Police Department's Emergency Operations Center (EOC) has been using the current technology in the Center since 2006 with minor upgrades necessary to keep it functioning. While this technology has been adequate, the department began noticing many deficiencies and malfunctions during March 2023 (Flood Fight) when the EOC was activated for an extended period of time. Previously, Department staff have been able to locate replacement equipment to remedy these malfunctions and try to make the center work. Now, after the last activation, city staff realized shortcomings in several areas of the technology in this important operations center. This, coupled with technological advances in the industry, the equipment has been made obsolete and parts are harder to find. In addition, normal wear and tear on this equipment over the past 18 years has degraded it to the extent that it needs to be replaced.

Properly functioning technology in the Emergency Operations Center is vital to public safety during major events such as Flood Fight 2023. It directly affects officers, public safety management, and other city staff in their ability to provide continuous emergency services at the highest level during significant and/or catastrophic events.

Due to the above issues, the Department began exploring options to update the outdated technology in the Emergency Operations Center, which includes, but is not limited to, audiovisual updates, connectivity, and advanced electronics. Purchasing equipment is a major and expensive project, and Department staff wanted to ensure that they researched a vendor with extensive experience in the field while also being familiar with the Porterville Police Department IT infrastructure. In doing so, staff contacted ITC, which is a local vendor currently working on public safety projects and is also our sole source provider for projects of this sort. ITC is a leading provider of technological projects and was able to provide a detailed description and mock-up defining exactly what would be necessary and purchased.

The cost of the technology upgrade, including the purchase and installation, is \$54,700. The police department has approximately \$27,000 available from the California Office of Emergency Services Customer Premise Equipment Fund for partial funding for this technology upgrade project. The remainder of the funding is available in the Police Department's Budget and Asset Forfeiture Funds.

RECOMMENDATION:

That the City Council:

1. Authorize staff to negotiate the purchase and installation of new technology upgrades from ITC for the amount of \$54,700 and authorize a 10% contingency for unforeseen issues;
2. Authorize staff to complete all documents necessary for these purchases; and,
3. Authorize payment upon completion of installation and acceptance of project.

ATTACHMENTS:

1. Video Wall_Tech Upgrade

Appropriated/Funded:

Review By:

Department Director:
Jake Castellow, Chief of Police

Final Approver: Jason Ridenour, Acting Deputy City Manager



850 N Main St.
Porterville, CA 93257
559-784-8324
Lic# 986455
ACO#7985

Estimate

Date	Estimate #
10/11/2023	5752

Name / Address
City of Porterville Police Department 291 N Main Street Porterville, CA 93257

Project
Porterville Police Department

Description	Qty
Porterville Police Department 2x2 Video Wall	
55" Video Wall Display Panel	4
Video Wall Display Adjustable Mount	4
120V 20Amp Standard Kit	3
IP TV Cable Kit	4
Speaker Cable Kit	4
40 RU Rack, 25 Inches Deep, AV Configured	1
Local PC Station Drop	1
Video Distribution Controller	1
Video Display Receiver	4
Video Display Source Transmitter	4
IP Audio Receiver with 2CH-150W 70V IP-Enabled Amplifier	1
70-Volt 2x2 Tile Replacement Speaker with 8" Woofer	4
L2 Managed Gigabit Switch with Full PoE+ 24	1
System AV Controller	1
10" In-Wall Touchscreen System Control Interface	1
Installation Labor	1
1 Year Warranty	1
Scope of Work: Furnish and install all Video Wall audio and visual equipment, systems and applications to ensure functionality and interoperability. The Video Wall will consist of four 55 inch displays set up as a 2x2 landscape display format, 7.95ft Width 4.48 Height. The audio will consist of four ceiling tile replacement speakers and one amplifier, and will play back audio from the selected video source. The wall mounted system controller will have the ability to control all video and audio display functions.	
* Optional Add: Not included in Estimate	
BYOD - Kramer VIA Campus ² Wireless Presentation Hub \$2800.00	1
BYOD - VIA Step-in Touch Pad \$120.00	1
Wall Construction Budget \$5,000.00	
** Sales Tax not Included	

The estimated price, specifications and conditions are satisfactory and are hereby accepted. Authorization has been given to do work as specified. Payment will be made as outlined above. I agree to pay for work performed and materials used on presentation of statement and further agree to pay reasonably charges for collection, including attorney's fees in the event of my default. Service charges at the rate of 18% per month on all accounts 15 days past due, plus rebilling charges.

Total \$54,700.00

Signature



CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: Authorization to Distribute Request for Proposals (RFP) for Consulting Services to Prepare the Community Development Block Grant (CDBG) Five-Year Consolidated Plan and Update the Analysis of Impediments or Prepare an Assessment of Fair Housing

SOURCE: Community Development

COMMENT: In 2020, the California Department of Housing and Community Development (HCD) adopted and certified the City of Porterville's current CDBG Five-Year Consolidated Plan. In April 2024, City Council will consider the Action Plan for the final year of the current Consolidated Plan. The next Consolidated Plan will cover the planning period of 2025/26 through 2029/30 program years. Due to the complexity of the task, staff are unable to perform the necessary technical studies and functions required for the update. At this time, staff is requesting authorization to distribute a Request for Proposals (RFP) for a specialized consultant with expertise in this field.

The services to be rendered under this contract would consist of, but not be limited to, the preparation of Initial Studies, Impact Studies, and other documents as necessary to comply with federal guidelines. The selected consultant must have a substantial working knowledge of Housing and Urban Development (HUD) requirements and the ability to perform specialized studies, such as addressing special needs populations, updating the Analysis of Impediments or providing an Assessment of Fair Housing depending on what HUD requires at the time of contracting, as well as preparation of the Five-Year Consolidated Plan and serving as the main contact with HUD in working through the approval process which can be quite onerous.

The RFP will request fixed costs for the above-mentioned tasks and then a comprehensive fee schedule for all personnel, equipment, and indirect costs related to additional services that may be required. Funding for the completion of the Consolidated Plan is available in the General Fund.

RECOMMENDATION: That City Council authorize staff to distribute a Request for Proposal for Consulting Services to update the City of Porterville's CDBG Consolidated Plan, Analysis of Impediments and/or creation of Assessment of Fair Housing, if required by HUD.

ATTACHMENTS: 1. RFP for Consolidated Plan

Appropriated/Funded: JR

Review By:

Department Director:

Claudia Calderon, Acting Community Development Director

Final Approver: Patrice Hildreth, City Manager



CITY OF PORTERVILLE

REQUEST FOR PROPOSALS FOR CONSULTING SERVICES FOR THE
PREPARATION OF THE U.S. DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT (HUD) 2025/26-2029/30 CONSOLIDATED PLAN AND OTHER
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) UPDATES

RFP No. _____

The City of Porterville is seeking a qualified consultant to prepare the City's required five-year CDBG Consolidated Plan for 2025/26-2029/30; update the City's Analysis of Impediments to Fair Housing Choices (AI) or prepare an Assessment for Fair Housing (AFH) if required by HUD; and review and update the City's internal CDBG Policies and Procedures Manual and associated sample forms.

Submittal: One PDF version must be received via Public Purchase by:
4:00 p.m., Tuesday, April 9, 2024

Addressed to: Community Development Department
City of Porterville
291 N. Main Street
Porterville, CA 93257
Attention: Claudia Calderon

Email Subject: RFQ No. ____ Consultant Services for Development of Consolidated Plan

Late or incomplete submittals will not be accepted and will be automatically disqualified from further consideration. All response packages and any accompanying documentation become the property of the City of Porterville and will not be returned.

INQUIRIES:

Proposal forms may be inspected and electronically downloaded at no cost, at the Public Purchase website, <https://www.publicpurchase.com>. No copies of said documents will be provided by the City. All addenda and correspondence during the bid process will be handled electronically through the Public Purchase website. ***No bid shall be received from an individual or company that is not an official proposal holder and has not registered and accessed the proposal documents from the Public Purchase website.***

Questions regarding this project are due no later than Wednesday, April 3, 2024.

**REQUEST FOR PROPOSALS (RFP)
FOR FIVE-YEAR CONSOLIDATED PLAN AND ANALYSIS OF
IMPEDIMENTS OR AN ASSESSMENT OF FAIR HOUSING**

I. PROPOSED PROJECT

The City of Porterville (City) is soliciting proposals for consulting services from individuals or firms with expertise and understanding of the U.S. Department of Housing and Urban Development (HUD) as it relates to the Community Development Block Grant Program (CDBG) for the development of a Consolidated Plan (Plan) as required by HUD. The City is an entitlement jurisdiction and receives an annual CDBG allocation directly from HUD. The proposal will highlight the consultant's capability to develop a five-year Plan that will establish goals and strategies for housing and community development in the City for 2025/26-2029/30.

A copy of the City's 2020/21-2024/25 Plan is available on the City's website: [https://www.ci.porterville.ca.us/departments/community_development/community_development_block_grant_program\(cdbg\)/housing_planning_documents_and_reports.php](https://www.ci.porterville.ca.us/departments/community_development/community_development_block_grant_program(cdbg)/housing_planning_documents_and_reports.php). The City's Analysis of Impediments to Fair Housing Choice (AI) was updated in 2020, and is available on the City's website: <http://www.ci.porterville.ca.us/depts/CommunityDevelopment/documents/PortervilleFinalAI.pdf>. The AI will need to be reviewed and updated as needed. Staff will provide a copy of the City's internal CDBG Policies and Procedures Manual to the selected firm.

The target start date and term for the proposed services is May 2024, through October 31, 2025, subject to negotiation of a final agreement.

II. SCOPE OF SERVICES

Five-Year Consolidated Plan

The required work, along with troubleshooting guidelines, can be found on the HUD Exchange at: <https://www.hudexchange.info/programs/consolidated-plan/guides/#consolidated-plan-template-in-idis>.

The required work must follow any and all amendments and updates, such as utilizing the HUD's Office of Community Planning and Development (CPD) eCon Planning Suite, including the Consolidated Plan template in IDIS Online and the CPD Maps website. The eCon Planning Suite is designed to support grantees and the public to assess their needs and make strategic investment decisions by providing better data and tools and by creating a seamless planning and grants management framework. Overview information is available here: <https://www.hudexchange.info/programs/consolidated-plan/>

The Consultant will review and tabulate the information supplied by the City, HUD, the U.S. Census Bureau, sub-grantees, and input from citizens, to complete the required Plan components per the HUD regulations, including all required charts, tables, maps and final input into IDIS.

Update AI OR Assessment of Fair Housing

The City is not required to complete the Assessment of Fair Housing (AFH) until October 31, 2024; however an updated AI is needed, and the AFH may be required by the time of contracting. The Consultant will review and update the City's AI as necessary. As part of the ConPlan, the City may be required to submit an AFFH certification, which requires the City to undertake Fair Housing Planning through 1.) the completion of Assessment to Fair Housing (AFH), 2.) actions to eliminate any identified impediments, and 3.) maintenance of AFFH records. The awarded consultant shall also assist to define,

and shall undertake the community/stakeholder participation process and data collection/analysis. The selected consultant will perform professional services under the supervision of the Community Development Department – Housing Division.

City's Internal CDBG Policies and Procedures Manual

A copy of the City's Internal CDBG Policies and Procedures Manual will be provided to the selected Consultant. The Consultant will review the current manual for compliance with HUD regulations and CDBG program administration.

III. CONSULTANT QUALIFICATIONS

The following lists the minimum qualification requirements of the respondent(s):

- At least five years of experience providing similar consulting services
- At least three references of clients currently/previously served; at least one of the references to be a city
- Familiarity with HUD's eCon Planning Suite
- Knowledge of:
 - CDBG Regulations
 - Consolidated Plan Regulations
 - Urban planning principles
 - Methods of data collection, analysis and summarization (in narrative and graphic formats)
 - Various housing and community development resources and governmental agencies
- Past experience preparing Consolidated Plans using the eCon Planning Suite

IV. PROPOSAL FORMAT

Proposals should include the following information:

1. Cover Letter, signed by the person authorized to bind the firm into an agreement
2. Complete legal name, address, telephone number, email address
3. DUNS number, and Tax Identification Number
4. Business organization including the date established, number of employees, and brief history of the firm.
5. Statement of qualifications included description of approach the Consultant will employ in carrying out the work described in the Scope of Services
6. Proposed time schedule for the Consolidated Plan, updates to the AI or prepare an Assessment of Fair Housing, and review of the City's internal CDBG Policies and Procedures Manual, including target dates for public participation
7. At least three references of past clients with similar Scope of Services conducted and the period that was involved to complete the client's projects. Include company name, address, contact name, and phone number
8. Proposed budget for complete project and hourly rate for staff person(s) (by staff position/title)

V. EVALUATION OF PROPOSALS AND SELECTION PROCESS

The City will review and evaluate each qualification and proposal submission. The City reserves the right to obtain clarification or request additional information, including an interview with up to three firms. If an interview is required, they will be tentatively scheduled for April 23 and 24, 2024. Proposals will be evaluated and ranked according to the following criteria:

Criteria	Points
Understanding of the project and scope of services	40
Experience of the consultant team in the disciplines directly relevant to the project and scope of services	40
Proposed budget and fee structure	20

Maximum Score: 100

Following an evaluation of the proposals, it is expected that a preferred consultant will be selected for recommendation to the City Council. After a mutually acceptable contract between the City and the selected consultant has been negotiated, it will be submitted for approval to the City Council.

If the City and selected consultant cannot agree on a satisfactory contract, the City reserves the right to terminate negotiations. The City may then negotiate an agreement with the consultant which ranked second.

The City reserves the right to reject any and all proposals. In addition, the City will not reimburse costs associated with the preparation or presentation of the proposals.

VI. RIGHTS TO PROPOSALS

All proposals, upon submission to the City of Porterville, shall become the City's property for its use as deemed appropriate. By submitting a proposal, the consultant covenants not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information. Nothing contained in this RFP shall create any contractual relationship between the consultant and the City of Porterville. The City accepts no financial responsibility for costs incurred by any consultant in responding to this RFP. The City of Porterville has the following prerogatives with regard to proposals submitted:

- To accept or reject any or all proposals
- To award all or part of the project at its discretion
- To adopt any or all parts of a proposal
- To utilize any or all ideas from proposals submitted
- To request additional information for the purposes of clarification
- To correct any arithmetic errors in any or all proposals submitted
- To change the deadline for submitting proposals upon appropriate notification to all consultants receiving the RFP
- To accept or negotiate any modifications to the scope and fee of any proposal following the deadline for receipt of all proposals and prior to contract award
- To waive any irregularity or any non-conformity of proposals with this RFP, whether of a technical or substantive nature

VII. DISCLOSURE OF CONTENTS

All proposals accepted by the City shall become a matter of public record and shall be regarded as public, with the exception of those elements of each proposal that are identified by the consultant as business or trade secrets and plainly marked as "trade secret," "confidential," or "proprietary." Each element of a proposal that the consultant desires not to be considered a public record must be clearly marked. Any

blanket statement (i.e. regarding entire pages, documents, or other non-specific designations) shall not be sufficient and shall not bind the City in any way whatsoever. If disclosure is required under the California Public Records Act or otherwise by law (despite the consultant's request for confidentiality), the City shall not in any way be liable or responsible for the disclosure of any such records or part thereof.

VIII. AGREEMENT FOR SERVICES

The consultant will enter into an Agreement for Services with the City of Porterville based upon the contents of the RFP and the consultant's proposal. The City's standard form of agreement is included as Attachment A. The consultant must include with the proposal a description of any exceptions requested to the standard contract. If there are no exceptions requested, a statement to that effect must be included in the proposal.

IX. INSURANCE REQUIREMENTS

Prior to executing an Agreement for Services, the consultant will be required to provide to the City proof of the required insurance and endorsement. Consultants are encouraged to contact their insurance carriers during the proposal stage to ensure that the insurance requirements can be met if selected. Insurance requirements are listed in Section 16 of the attached standard Agreement for Services.

X. CITY BUSINESS LICENSE

A City of Porterville business license will be required for the consultant and any subcontractors.

XI. ASSIGNED REPRESENTATIVES

The City will assign a responsible representative to administer the contract, and to assist the consultant in obtaining information. The consultant also shall assign a responsible representative (project manager) and an alternate, who shall be identified in the proposal. The consultant's representative will remain in responsible charge of the consultant's duties from the notice to proceed through project completion.

If the consultant's primary representative should be unable to continue with the project, then the alternate representative identified in the proposal shall become the project manager. The City's representative shall first approve any substitution of representatives or subcontractors identified in the proposal in writing. The City reserves the right to review and approve/disapprove all key staff and subcontractor substitution or removal, and may consider such changes not approved to be a breach of contract.

Attachment

A – Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2024, by the **CITY OF PORTERVILLE**, a municipal corporation, ("CITY") and _____, herein after referred to as "CONTRACTOR".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Porterville City Council action on _____, 2024, Minute Order No. _____.
2. CITY desires to utilize the services of CONTRACTOR to **prepare the City's required five-year CDBG Consolidated Plan for 2025/26-2029/30; update the City's Analysis of Impediments to Fair Housing Choices (AI) or prepare an Assessment for Fair Housing (AFH) if required by HUD; and review and update the City's internal CDBG Policies and Procedures Manual and associated sample forms.**
3. CONTRACTOR is qualified by virtue of experience, training, education and expertise to accomplish services.

AGREEMENT

IN CONSIDERATION OF MUTUAL COVENANTS AND AGREEMENTS HEREINAFTER set forth the parties hereto do contract and agree as follows:

SECTION 1. CONTRACT SERVICES:

CONSULTANT hereby agrees to provide the following services and materials, in a timely manner as described in the Scope of Work, Attachment A.

SECTION 2. PAYMENT:

In consideration for said services and materials, CITY shall pay CONSULTANT on a time and materials basis, and not to exceed _____ Dollars (\$).

TIME OF PAYMENT: Progress payment requests shall be submitted by the 25th of each month. CONSULTANT should receive payment within 45 days of the date the bill is received.

SECTION 3. COMPLETION DATE:

The services to be performed by CONSULTANT will be commenced upon execution of this agreement and all "work directives" shall be completed by _____. In the case of ongoing testing and results protocol, the CONSULTANT shall submit results as required to CITY, State and/or Federal governing agencies.

SECTION 4. FAMILIARITY WITH PROJECT:

CONSULTANT certifies and agrees that it is fully familiar with all of the details of the project required to perform its services. CONSULTANT agrees it will not rely upon any opinions and representations of CITY unless CITY is the only available source of said information.

SECTION 5. INDEPENDENT CONTRACTOR:

It is expressly understood that CONSULTANT is entering into this contract and will provide all services and materials required hereunder as an independent contractor and not as an employee of CITY. CONSULTANT specifically warrants that it will have in full force and effect, valid insurance covering:

(i) Professional Liability Insurance

Consultant shall maintain professional liability insurance that insures against professional errors and omissions that may be made in performing the Services to be rendered in connection with this Agreement, in the minimum amount of two million dollars (\$2,000,000) per claim in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and consultant agrees to maintain continuous coverage through a period of no less than three years after completion of the services required by this agreement.

(ii) General Liability

Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit. Consultant's general liability policies shall be primary and shall not seek contribution from the City's coverage, and be endorsed using Insurance Services Office form CG 20 10 (or equivalent) to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies.

(iii) Auto Liability

Consultant shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a limit of no less than one million dollars (\$1,000,000) per accident.

(iv) Worker's Compensation

Consultant shall maintain Worker's Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars

(\$1,000,000). Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

(v) Indemnity for Design Professional Services

To the fullest extent permitted by law, CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, employees, agents and volunteers (“City indemnitees”), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels’ fees and costs of litigation (“claims”), arising out of the CONSULTANT’s negligence, recklessness or willful misconduct in its performance of its obligations under this agreement or out of the operations conducted by CONSULTANT. In the event the City indemnitees are made party to any action, lawsuit, or other adversarial proceeding arising from CONSULTANT’s performance of this agreement, the CONSULTANT shall provide a defense to the City indemnitees, or at the CITY’s option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels’ fees, incurred in defense of such claims. In no event shall the cost to defend exceed the charged to CONSULTANT exceed the CONSULTANT’s proportionate share of fault, unless one or more defendants are unable to pay its share of defense costs due to bankruptcy or dissolution, in which case all defense parties shall meet and confer concerning unpaid defense costs.

(vi) Indemnity for Other than Professional Liability

As respects all acts or omissions which do not arise directly out of the performance of services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, CONSULTANT agrees to indemnify, defend (at CITY’s option), and hold harmless CITY, its elected and appointed officers, agents, employees, representatives, and volunteers from and against any and all claims, demands, defense costs, liability, or consequential damages of any kind or nature arising out of or in connection with CONSULTANT’s (or CONSULTANT’s subcontractors, if any) performance or failure to perform, under the terms of this Agreement; except to the extent those which arise out of the sole negligence or willful misconduct of CITY.

SECTION 6. WORKMANSHIP AND MATERIALS:

Every part of the work herein described shall be executed in a professional manner with competent, experienced personnel. Finished or unfinished material prepared under the agreement, prepared by CONSULTANT, shall become property of CITY. CONSULTANT hereby warrants that any materials prepared under this agreement shall be fit for the intended use contemplated by the parties.

No report, information or other data given or prepared or assembled by the CONSULTANT, pursuant to this Agreement, shall be made available to any individual or organization by the CONSULTANT, without prior written approval of the CITY. Notwithstanding the foregoing,

however, the CONSULTANT, shall not be required to protect or hold in confidence and confidential information which (1) is or becomes available to the public with the prior written consent of the CITY; (2) must be disclosed by law; or (3) must be disclosed in connection with any legal proceedings.

SECTION 7. ASSIGNMENT OF CONTRACT:

It is acknowledged by the parties that CITY has entered into this contract with the express understanding that CONSULTANT will perform all work. CONSULTANT shall not, without the written consent of CITY, assign, transfer or sublet any portion or part of this work, nor assign any payments to others.

SECTION 8. NO DISCRIMINATION:

CONSULTANT will not discriminate against any employee, or applicant for employment as required by applicable Federal and State law.

SECTION 9. CONFLICT OF INTEREST CODE:

CONSULTANT agrees to comply with the regulations of CITY'S "Conflict of Interest Code." Said code is in accordance with the requirements of the Political Reform Act of 1974.

CONSULTANT covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of service required hereunder. The term "conflict" shall include, as a minimum, the definition of a "conflict of interest" under the California Fair Political Practices Act and the City of Porterville Conflict of Interest Code, as that term is applied to consultants.

SECTION 10. TERMINATION:

Either party for just cause may terminate this contract by giving seven (7) days written notice to the other party. Upon termination by CITY, CITY shall be relieved of any obligation to pay for work not completed including profit and overhead. CONSULTANT may be entitled to just and equitable compensation for satisfactory work completed, except CITY can withhold damages incurred as a result of the termination.

SECTION 11. INTEGRATION/MODIFICATION:

It is understood and agreed that this Service Agreement and each of the noted exhibits, which are incorporated by reference, represents the entire understanding of the CITY AND CONSULTANT as to those matters contained herein. NO prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by the CITY and the CONSULTANT.

SECTION 12. ALTERNATIVE DISPUTE RESOLUTION/ATTORNEYS' FEES:

In the event a dispute arises, the parties agree, prior to the initiation of formal court action, to make good faith efforts to resolve the dispute informally, including good faith efforts to engage

in mediation by an objective third party mediator.

Should it be necessary to institute legal proceedings to enforce any and all of the covenants and conditions of this Agreement, the prevailing party, as determined by the court or arbitrator, shall be entitled to recover its reasonable attorneys' fees and costs incurred in the action brought thereon.

SECTION 12. JURISDICTION/VENUE/WAIVER OF REMOVAL:

This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that State. If either party initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that this Agreement is entered into and is to be performed in Tulare County, California. CONSULTANT hereby expressly waives any rights it might have to remove any such action to a county other than Tulare County as permitted pursuant to California Code of Civil Procedure Section 394.

SECTION 13. CONFLICT WITH LAW:

If any part of this Agreement is found to be in conflict with applicable laws, such part shall in inoperative, null and void insofar as it is in conflict with said law, but the remainder of the Agreement shall be in full force and effect.

SECTION 14. CONSTRUCTION:

This Agreement is the product of negotiation and compromise on the part of each party, and the parties agree, notwithstanding Civil Code Section 1654, that in the event of uncertainty the language will not be construed against the party causing the uncertainty to exist.

SECTION 15. AUTHORITY:

Each signatory to this Agreement represents that it is authorized to enter into this Agreement and to bind the party to which its signature represents.

IN WITNESS WHEREOF, the parties have executed this Service Agreement on the date and year first above written.

CITY OF PORTERVILLE

CONSULTANT

By _____

By _____

Date _____

Date _____



CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: Award of Contract - Santa Fe Byway Revitalization and Beautification Project

SOURCE: Engineering and Project Management

COMMENT: On February 29, 2024, staff received three (3) bids for the Santa Fe Byway Revitalization and Beautification Project. The project includes improvements to the existing asphalt trail, installation of concrete edge bands along the trail, one (1) new picnic shelter, a new playground and workout equipment area with shelter, benches, water fountains, solar trail lighting, and new lights at intersections for improvements to public safety. The Santa Fe Byway (formerly known as Rails-to-Trails) runs north to south between Henderson Avenue and Walnut Avenue along the old Santa Fe Railway.

The Engineer's Estimate of probable cost for the project was \$3,783,692.47 (including \$10,500 for the installation of lights by Southern California Edison at intersections). The low bid represented by S & B Sons, Inc. of Bakersfield is \$4,091,908.89, which is \$318,716.42 (8.4%) higher than the construction component of the Engineer's Estimate. An additional \$409,190 is necessary for construction contingency (10%) and \$409,190 is required for construction management, surveying, quality control, and inspection services (10%). The contractor's portion of the project includes the installation of playground equipment, exercise equipment, and two (2) sculptures/statues; the City is responsible for purchasing said items. The purchase of these items totals \$180,000 (\$115,000 for playground equipment, \$45,000 for exercise equipment, and \$20,000 for the sculptures/statues). This equates to a total construction cost of \$5,090,288.89.

Funding for this project in the amount of \$2,619,402 is provided by the Clean California Grant for the construction portion of the project. An additional \$300,000 is provided by the Clean California Grant for the Construction Management and Quality Control Portion of the Project. The difference of \$2,170,886.89 is available from Measure R - Alternate Transportation Funds to fully fund the project.

The bids are as follows:

<u>Contractor</u>	<u>Amount</u>
S & B Sons, Inc. Bakersfield, CA	\$4,091,908.89
MAC General Engineering, Inc Exeter, CA	\$4,791,772.00

CAL Valley Construction
Fresno, CA

\$6,525,257.00

Staff has found the low bid acceptable.

RECOMMENDATION:

That city Council:

1. Award the Santa Fe Byway Revitalization and Beautification Project to S & B Sons, Inc. in the amount of \$4,091,908.89;
2. Authorize progress payments up to 95% of the contract amount;
3. Authorize a 10% contingency to cover unforeseen costs;
4. Authorize 10% for construction management, quality control, and inspection services; and
5. Authorize the Engineering and Project Management Director to secure Measure R Funds to fully fund the project.

ATTACHMENTS:

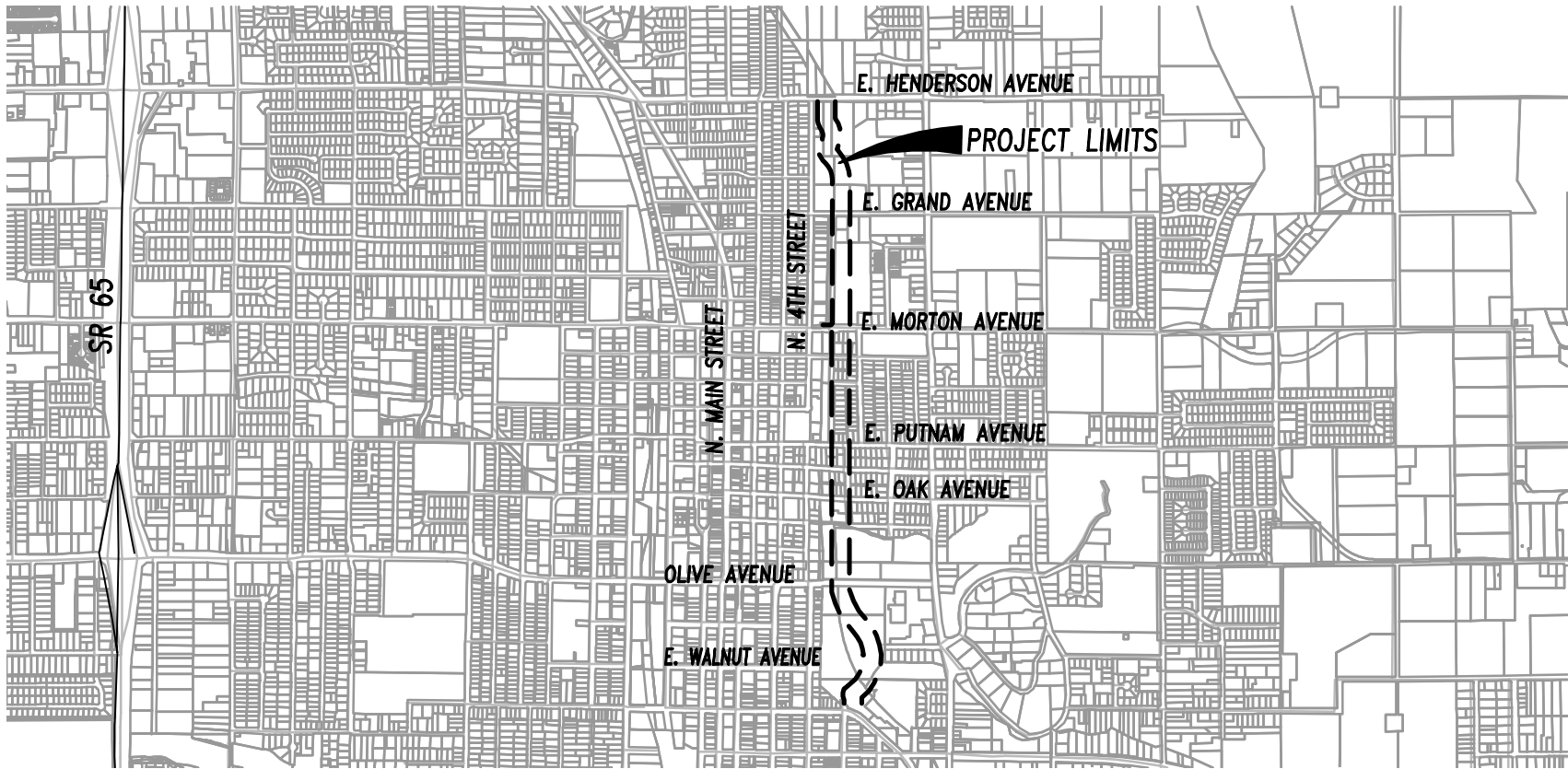
1. Locator Map

Appropriated/Funded:

Review By:

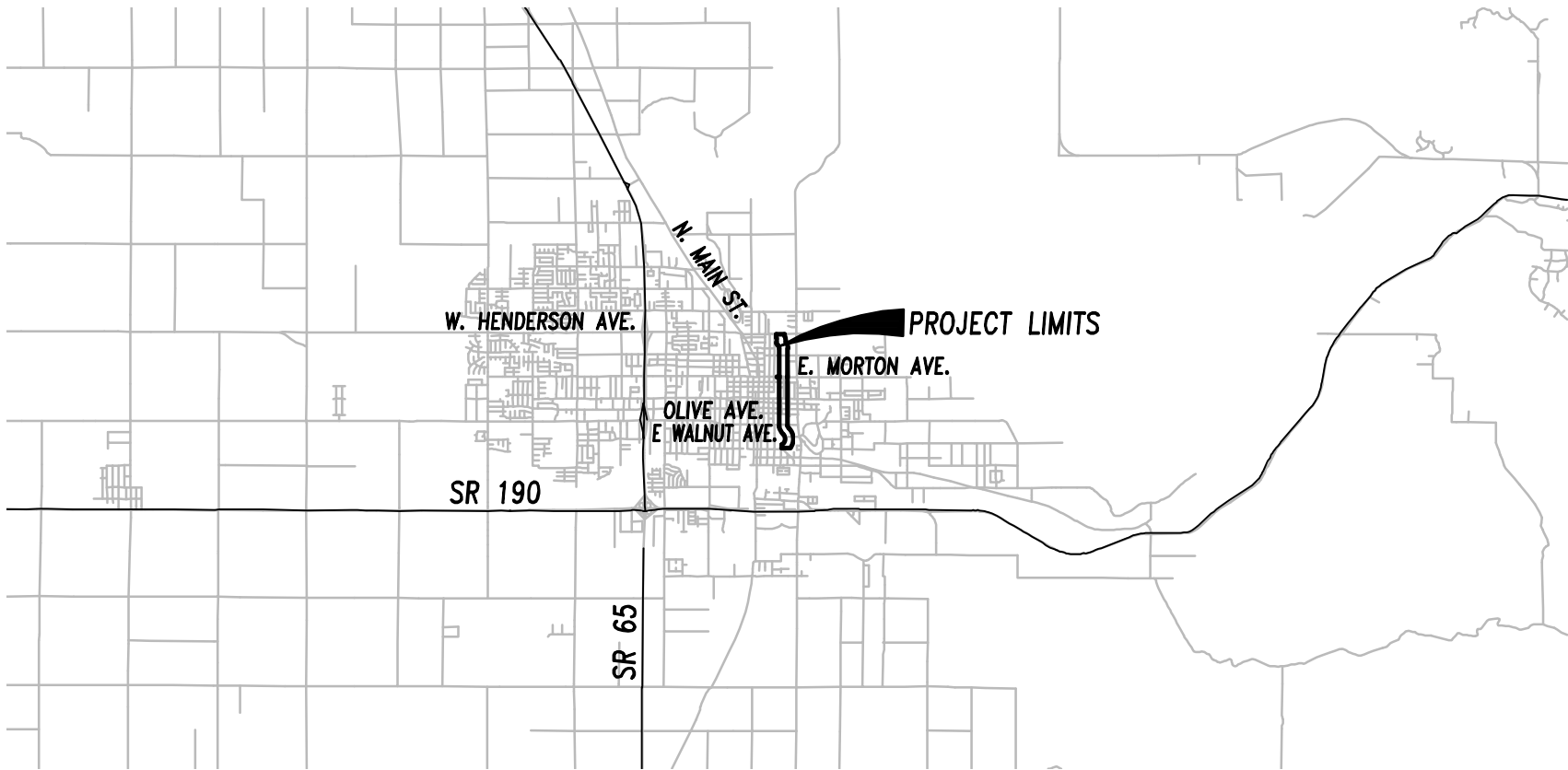
Department Director:
Javier Sanchez, Engineering & Project Management Director

Final Approver: Jason Ridenour, Acting Deputy City Manager



PROJECT MAP

SCALE 1" = 2,000'



VICINITY MAP

SCALE 1" = 2 mi.



CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: Sports Complex Concession License

SOURCE: Parks and Leisure Services

COMMENT: Non-profit organizations are entitled to request a License Agreement with the City for the purpose of authorizing them to exclusively utilize City facilities for fundraising concession sales. Past practice has been to award the Sports Complex Concession License to youth sports organizations who hold their games at the Sports Complex. Porterville Soccer League / South Valley Chivas holds games at the Sports Complex, and contacted City staff expressing an interest in being awarded the Concession License for 2024. They held the license in 2023, and other years in the past.

The License Agreement is for services to the public in general, for the sale of soft drinks, ice cream, hot dogs, pre-packaged food, general confectionery articles and products, and promotional items at the Sports Complex. The licensee shall keep and maintain all concession facilities, equipment and grounds in and around the concession building in good and sanitary condition. Also, the licensee is to remain in good standing with the City for the duration of the term of the License Agreement. At its meeting on February 1, 2024, the Parks and Leisure Services Commission recommended awarding Porterville Soccer League / South Valley Chivas the 2024 Sports Complex Concession License. The current fee for concession building usage is \$8.00 per hour. The fee is adjusted annually by the Consumer Price Index. The total fee incurred from the monthly usage is due by the 15th day of each month.

RECOMMENDATION: That the City Council approve the Sports Complex Concession License renewal with Porterville Soccer League / South Valley Chivas.

ATTACHMENTS:

1. Sports Complex Concession Locator Map
2. Sports Complex Concession License 2024

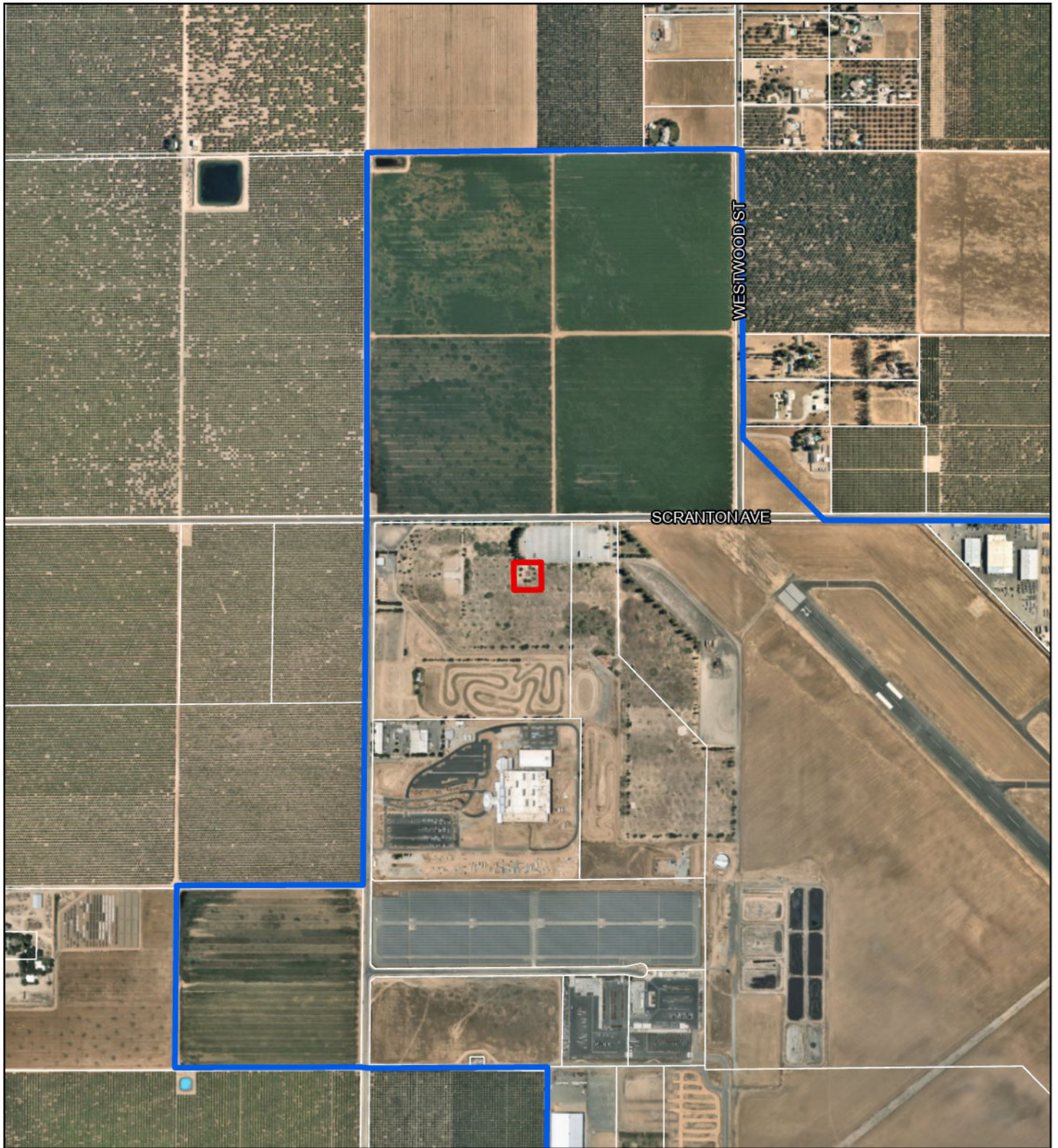
Appropriated/Funded:

Review By:

Department Director:
Donnie Moore, Parks and Leisure Services Director

Final Approver: Patrice Hildreth, City Manager

Sports Complex Concession License Locator Map



-  Project_Location
-  City Limits

1 in = 1,000 feet



Date Printed: 2/28/2024 by the Community Development Department

CITY OF PORTERVILLE SPORTS COMPLEX CONCESSION LICENSE

The City of Porterville, hereinafter referred to as "CITY" hereby grants to the Porterville Soccer League/South Valley Chivas, hereinafter referred to as "LICENSEE", a license for services to the public in general, for the sale of soft drinks, ice creams, hot dogs, pre-packaged food, general confectionery articles and products, and promotional items at the Sports Complex Concession Building located at 2701 W. Scranton Ave., Porterville, California, for a term of commencing March 16, 2024, and ending February 28, 2025.

1. The LICENSEE'S appointment is conditional upon passing a drug/alcohol test, fingerprint clearance, and/or reference check.
2. The LICENSEE shall not sell or serve any type of alcoholic beverage on the premises.
3. The LICENSEE shall, at all times during the term of said License, keep and maintain the concession building open for the convenience of patrons at said Field during the hours in which said Field is being utilized for organized sports or at any other time the CITY deems the operation of the concession necessary for special activities. Failure to operate the concession facilities during the specified periods is a breach of this Agreement and shall constitute grounds for termination of this Agreement.
4. The LICENSEE shall keep and maintain all concession facilities, equipment and grounds at and around said concession building in good and sanitary condition and shall keep and maintain all of the concession fixtures and equipment in good condition and repair. LICENSEE shall not make any additions to the facilities or grounds, or make any structural improvements to facilities, without receiving prior written consent of the CITY.
5. Each employee, volunteer or agent of LICENSEE should: a) be clean, neat, and well-groomed; b) be professional, courteous, and friendly to the public; and c) adhere to the CITY personnel policy regarding dress code.
6. The LICENSEE shall lock the concession building upon closing the concession building. The LICENSEE shall turn in all keys to the CITY five days after expiration of term.
7. In the event the LICENSEE coordinates placement of refrigerators or vending and dispensing machines at the facility, LICENSEE shall ensure such machines are removed or disengaged from City provided utilities promptly at the conclusion of each season. The LICENSEE shall also see to it that any type of machine or equipment does not block any door entrance.
8. In the event the LICENSEE shall fail, neglect or refuse to abide by and perform the terms, conditions, covenants, and agreements hereof, the CITY may, at its option, terminate and cancel this License, and in the event of a termination of this License, the LICENSEE shall

surrender up and deliver to the CITY complete possession of the premises where said License is being operated within 30 days after receiving notice to vacate. Notwithstanding the 30-day notice provision for breach of contract, the failure by LICENSEE to remain in good standing with CITY or comply with all applicable laws and regulations, or the apparent commission of a crime by LICENSEE or any of LICENSEE'S employees, contractors, agents, or volunteers during the term of this Agreement is grounds for **immediate** termination of this Agreement by the CITY.

9. Notwithstanding any provision of this agreement to the contrary, this agreement may be terminated by either party, with or without cause, by giving the other party thirty (30) days written notice of termination. Notice shall be given by personal delivery or first-class mail, return receipt requested.
10. If this Agreement is terminated by the CITY without cause prior to the conclusion of the initial License term, and a non-profit organization enters into a Concession License Agreement with the CITY for the facility, the CITY shall reimburse LICENSEE for any documented improvements made during the term of this License Agreement that were pre-approved in writing by the CITY, including but not limited to any such structural improvements. In this event the concession fees collected for the facility as specified in paragraph 15 shall be credited against said start-up costs.
11. The LICENSEE shall not assign, transfer or convey this license or any of the rights or benefits hereunder to any person, firm or corporation without first securing the written consent of the CITY, and such consent may be withheld for any reason.
12. The CITY, by its authorized agents and servants, reserves the right of entry upon the premises where said license is being operated for purposes of inspection.
13. Nothing herein shall be construed as creating a partnership or joint venture between the CITY and the LICENSEE.
14. To the fullest extent permitted by law, LICENSEE (and its officers, employees, contractors, agents or volunteers) shall indemnify, defend and hold harmless, the CITY, its officers, agents, employees, and volunteers ("City Indemnitees"), from and against all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of or in any way connected with the use, occupation or employment of said License, or LICENSEE's performance of this Agreement, including CITY's active or passive negligence EXCEPT for such loss or damage arising from the sole negligence or willful misconduct of the CITY. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from LICENSEE's performance of this Agreement, LICENSEE shall provide a defense to the City Indemnitees, or at the CITY's option, reimburse City Indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.
15. LICENSEE shall secure, at LICENSEE's expense, liability insurance including product liability indemnifying the CITY and the LICENSEE in the sum of two million dollars

(\$2,000,000) combined single limit for property damage and injury, including death, to one or more persons, and deposit with the CITY an original certificate of said insurance, and name the CITY, its officers, agents and employees as an additional insured on LICENSEE's policy.

16. During the entire term of this License, the Licensee shall not suffer, allow, or permit any income, profit, or emolument gross and net from any of its activities arising from, connected with, or in any manner associated with the use and employment by the LICENSEE of this License to inure, to be paid to, or delivered to the benefit of any members, private shareholder, or individual; and/or income, profit, gross and net, or other rights or benefits which shall arise from the use and employment of this LICENSEE shall be used solely, positively and exclusively to meet the necessary expenses or upkeep and operation of the activities of the LICENSEE as such, and not any members, shareholders, or individual.
17. The LICENSEE shall pay monthly to the City a fee of \$8.00 per hour for the use of the concession building by the 15th of each month. The payment will be made by Porterville Soccer League/South Valley Chivas. The fee will be adjusted July 1st of each year by the San Francisco Consumer Price Index.
18. The LICENSEE shall obtain a non-profit business license from the City of Porterville prior to the commencement date of this license agreement.
19. The LICENSEE shall maintain Workers' Compensation Insurance for all its employees and volunteers who are in any way connected with the performance of LICENSEE'S concessionary interest to the extent as provided by law.
20. The LICENSEE shall maintain and keep adequate records of its sales from the Licensed premises and agrees to permit the CITY to examine said records on demand. In addition, the LICENSEE shall submit a completed "Monthly Concession Report" form to the City no later than the fifth day of the month following any month during which the LICENSEE conducted concession sales.
21. The LICENSEE shall have the right and privilege, provided it is not in default of the terms and provisions of the License, at the end of the term or sooner termination thereof, to remove from the Licensed premises all personal property belonging to the LICENSEE, together with their stocks, goods and wares and trade fixtures that LICENSEE may have installed, provided the same can be removed without material injury to the premises and the LICENSEE hereby acknowledges receipt of the premises in good condition and repair.
22. Attorney Fees. If any litigation is commenced between the parties to the Agreement concerning the Agreement or the rights and duties of either in relation to the Agreement, the party prevailing in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation to a reasonable sum as and for its attorney's fees in the litigation, which shall be determined by the court in that litigation or in a separate action brought for that purpose.

23. Each party has participated fully in the review and revision of the Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

IN WITNESS whereof the parties have executed this License Agreement at Porterville, California, this ____ day of March, 2024.

CITY OF PORTERVILLE

PSL/SOUTH VALLEY CHIVAS

BY: _____
Martha A. Flores, Mayor

BY: _____
Board Chairperson

ATTEST:

APPROVED AS TO FORM:

BY: Patrice Hildreth, City Clerk

Julia M Lew, City Attorney



CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: HOME Investment Partnerships Program (HOME) Grant Funds

SOURCE: Community Development

COMMENT: In October 2020, the City received notification that it had been awarded \$400,000 in 2019 HOME grant funds from the California Department of Housing and Community Development (HCD) and subsequently received the Executed Standard Agreement No. 19-HOME-14972 in December 2021, after completion of General Setup Conditions. The City then received direction from HCD that the funds had to be placed on hold as their First Time Homebuyer (FTHB) guidelines were being audited at the Federal level, therefore placing all HOME grants on hold. On February 8, 2023, HCD held a webinar for HOME 2022-2023 NOFA Program Activities. HCD provided options that the City can take in order to replace the funding that was granted in 2020, and subsequently not allowed to spend, since the hold continues to this day and the grant funds received would have to be expended by October 2024.

The state has proposed that the City disencumber the \$400,000 in grant funds, and submit another application for FTHB down payment assistance. This is the state's proposed solution for all jurisdictions in a situation where it is not feasible to spend the awarded funds by the expenditure deadline due to the restriction on using the funds.

In addition to the \$400,000 in active grant funds awarded in 2020, the City currently has a balance of program income resulting from prior HOME grant loans being paid off and the funding accumulating as a result of not being able to use the funds. The balance is approximately \$1.1 million. It is important to note that this program income, on which there is also a hold, has to be spent prior to spending any existing or new active grant funds.

Jurisdictions in receipt of grant funds typically have three years to spend the funds. In the last three years, the City has funded ten (10) first time home buyer loans with CDBG and CalHOME funds, since HOME could not be used. The amounts of those loans total \$460,883.80. Additionally, in the same time frame, thirty (30) loans have been paid off, resulting in program income of \$1,139,987.49, \$810,874.66 of which is HOME program income.

Taking into account the program activity for the last three years, the expenditure timeline, and the current hold on HOME-funded loans, it is not advantageous to apply for additional funding at this time. Instead, staff recommends that the City take the steps necessary to disencumber the \$400,000 in grant funds awarded in 2020, as advised by HCD. This will give the City an

Item No. 7.

opportunity to collaborate with affordable housing developers on projects similar to Villa Siena, which was partially funded with a HOME grant. This will also allow the City to expend program income funds that have been accumulating during the hold.

RECOMMENDATION: That the City Council authorize the Mayor to sign a letter to the Department of Housing and Community Development requesting the disencumbrance of \$400,000 in grant funds associated with 19-HOME-14972.

ATTACHMENTS: 1. Draft Letter

Appropriated/Funded:

Review By:

Department Director:
Claudia Calderon, Acting Community Development Director

Final Approver: Jason Ridenour, Acting Deputy City Manager

March 6, 2024

SENT VIA EMAIL

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
Division of Federal Financial Assistance
Housing Branch – HOME Program
2020 West El Camino Avenue, Suite 200
Sacramento, CA 95833

Subject: 19-HOME-14972 Grant Funds

Dear Ms. Castilleja:

On February 20, 2024, the City received an email communication from HCD regarding grant 19-HOME-14972. The email requested confirmation that no funds have been utilized on the grant and there will be no project or General Admin drawdowns submitted.

Additionally, it was requested that the City agree on a disencumbrance amount for 19-HOME-14972, \$390,000 unspent in FTHB, and \$10,000 unspent in General Administration, for a total of \$400,000.

This letter serves to confirm that our records do concur with those of HCD, and the City agrees with the request to disencumber \$400,000 of the City of Porterville's 19-HOME-14972 grant.

Sincerely,

Martha A. Flores
City of Porterville Mayor



CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: Program Supplement to the Administering Agency-State Agreement - Tule River Indian Tribe ATP Project

SOURCE: Public Works

COMMENT: The Department of Transportation has submitted the Master Agreement Administering Agency-State Agreement for State-Funded Projects No. 06-5122S21 (Master Agreement) along with Program Supplement No. A426 to said master agreement and requests that the City execute both documents. The Master Agreement was revised to incorporate the various changes in regulations and policies. The executed Program Supplement shall become a part of the Master Agreement.

The attached Program Supplement is for the Tule River Tribe Village Corridor and Two Pedestrian Bridges Project.

RECOMMENDATION: That City Council:

- 1) Approve the program supplement by adopting a Resolution authorizing the Mayor to sign the subject program supplement; and
- 2) Direct the City Clerk to return the signed program supplement to the Department of Transportation.

ATTACHMENTS:

1. Master Agreement No. 06-5122S21
2. Program Supplement No. A426
3. Draft Resolution - Master Agreement No. 06-5122S21
4. Draft Resolution - Program Supplement No. A426

Appropriated/Funded:

Review By:

Department Director:
Javier Sanchez, Engineering & Project Management Director

Final Approver: Jason Ridenour, Acting Deputy City Manager

MASTER AGREEMENT
ADMINISTERING AGENCY-STATE AGREEMENT
STATE-FUNDED PROJECTS

06	City of Porterville
-----	-----
District	Administering Agency

Agreement No. 06-5122S21

This AGREEMENT, is entered into effective this _____ day of _____, 20____, by and between the City of Porterville, hereinafter referred to as "ADMINISTERING AGENCY," and the State of California, acting by and through its Department of Transportation (Caltrans), hereinafter referred to as "STATE", and together referred to as "PARTIES" or individually as a "PARTY."

RECITALS:

1. WHEREAS, the Legislature of the State of California has enacted legislation by which certain State funds are made available for use on local transportation related projects of public entities qualified to act as recipients of these state funds; and
2. WHEREAS, ADMINISTERING AGENCY has applied to the California Transportation Commission (CTC) and/or STATE for funding from a State-funded program (herein referred to as STATE FUNDS), as defined in the Local Assistance Program Guidelines (LAPG) and/or in the respective CTC Guidelines, for use on local authorized transportation related projects as a local administered project(s), hereinafter referred to as "PROJECT"; and
3. WHEREAS, said PROJECT will not receive any federal funds; and
4. WHEREAS, before STATE FUNDS will be made available for PROJECT, ADMINISTERING AGENCY and STATE are required to enter into an agreement to establish terms and conditions applicable to the ADMINISTERING AGENCY when receiving STATE FUNDS for a designated PROJECT facility and to the subsequent operation and maintenance of that completed facility.

NOW, THEREFORE, the PARTIES agree as follows:

ARTICLE I - PROJECT ADMINISTRATION

1. This AGREEMENT shall have no force or effect with respect to any program project unless and until a project- specific Program Supplement to this AGREEMENT for state funded projects, hereinafter referred to as "PROGRAM SUPPLEMENT", has been fully executed by both STATE and ADMINISTERING AGENCY.

2. The State approved project-specific allocation notification letter and approved CTC allocation documentation designate the party responsible for implementing PROJECT, type of work, and location of PROJECT for projects requiring CTC allocation by PROJECT component of work.

3. The PROGRAM SUPPLEMENT sets out special covenants as a condition for the ADMINISTERING AGENCY to receive STATE FUNDS from/through STATE for designated PROJECT. The PROGRAM SUPPLEMENT shall also show these STATE FUNDS that have been initially encumbered for PROJECT along with the matching funds to be provided by ADMINISTERING AGENCY and/or others. Execution of PROGRAM SUPPLEMENT by the PARTIES shall cause ADMINISTERING AGENCY to adopt all the terms of this AGREEMENT as though fully set forth therein in the PROGRAM SUPPLEMENT. Unless otherwise expressly delegated in a resolution by the governing body of ADMINISTERING AGENCY, and with written concurrence by STATE, the PROGRAM SUPPLEMENT shall be approved and managed by the governing body of ADMINISTERING AGENCY.

4. ADMINISTERING AGENCY agrees to execute and return each project-specific PROGRAM SUPPLEMENT. The PARTIES agree that STATE may suspend future allocations, encumbrances and invoice payments for any on- going or future STATE FUNDED PROJECT performed by ADMINISTERING AGENCY if any project-specific PROGRAM SUPPLEMENT is not returned, unless otherwise agreed by STATE in writing.

5. ADMINISTERING AGENCY further agrees, as a condition to the release and payment of STATE FUNDS encumbered for the PROJECT described in each PROGRAM SUPPLEMENT, to comply with the terms and conditions of this AGREEMENT and all the agreed-upon Special Covenants or Remarks incorporated within the PROGRAM SUPPLEMENT, and Cooperative/Contribution Agreement where appropriate, defining and identifying the nature of the specific PROJECT.

6. STATE FUNDS will not participate in any portion of PROJECT work performed in advance of the effective date of allocation by CTC, or by STATE for allocations delegated to STATE by CTC, for said PROJECT.

7. Projects allocated with STATE FUNDS will be administered in accordance with the current CTC STIP Guidelines, applicable chapter(s) of the LAPG, LAPM and/or any other instructions published by STATE.

8. ADMINISTERING AGENCY agrees to ensure compliance with all relevant State laws and requirements for work related to PROJECT, including the California Environmental Quality Act (CEQA).

9. ADMINISTERING AGENCY's eligible costs for preliminary engineering work includes all preliminary work directly related to PROJECT up to contract award for construction, including, but not limited to, environmental studies and permits (E&P), preliminary surveys and reports, laboratory work, soil investigations, the preparation of plans, specifications and estimates (PS&E), advertising for bids, awarding of a contract and project development contract administration.

10. ADMINISTERING AGENCY's eligible costs for construction engineering include actual inspection and supervision of PROJECT construction work; construction staking; laboratory and field testing; and the preparation and processing of field reports, records, estimates, final reports, and allowable expenses of employees/consultants engaged in such activities.

11. Unless the PARTIES agree otherwise in writing, ADMINISTERING AGENCY's employees or its contracted engineering consultant shall be responsible for all PROJECT engineering work.

12. ADMINISTERING AGENCY shall not proceed with final design of PROJECT until final environmental approval of PROJECT. Final design entails the design work necessary to complete the PS&E and other work necessary for a construction contract but not required earlier for environmental clearance of that PROJECT.

13. If PROJECT is not on STATE-owned right-of-way, PROJECT shall be constructed in accordance with Chapter 11 of the LAPM that describes minimum statewide design standards for local agency streets and roads. The design standards for projects off the National Highway System (NHS) allow STATE to accept either the current Caltrans Highway Design Manual standards, the current FHWA-adopted American Association of State Highway and Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets standards, or the approved geometric design standards of ADMINISTERING AGENCY. Additionally, for projects off the NHS, STATE will accept ADMINISTERING AGENCY-approved standard specifications, standard plans, materials sampling and testing quality assurance programs that meet the conditions described in the then current Local Assistance Procedures Manual.

14. If PROJECT involves work within or partially within STATE-owned right-of-way, that PROJECT shall also be subject to compliance with the policies, procedures and standards of the STATE Project Development Procedures Manual and Highway Design Manual and where appropriate, an executed cooperative agreement between STATE and ADMINISTERING AGENCY that outlines the PROJECT responsibilities and respective obligations of the PARTIES. ADMINISTERING AGENCY and its contractors shall each obtain an encroachment permit through STATE prior to commencing any work within STATE rights-of-way or work which affects STATE facilities.

15. When PROJECT is not on the State Highway System (SHS) but includes work to be performed by a railroad, the contract for such work shall be prepared by ADMINISTERING AGENCY or by STATE, as the PARTIES may hereafter agree. In either event, ADMINISTERING AGENCY shall enter into an agreement with the railroad providing for future maintenance of protective devices or other facilities installed under the contract.

16. ADMINISTERING AGENCY shall comply with the provisions of sections 4450 and 4454 of the California Government Code, as well as other Department of General Services guidance, if applicable, for the contract PS&E for the construction of buildings, structures, sidewalks, curbs and related facilities for accessibility and usability. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.

17. ADMINISTERING AGENCY shall provide a full-time public employee to be in responsible charge of each PROJECT. ADMINISTERING AGENCY shall provide or arrange for adequate supervision and inspection of each PROJECT. ADMINISTERING AGENCY may utilize consultants to perform supervision and inspection work for PROJECT with a

fully qualified and licensed engineer. Utilization of consultants does not relieve ADMINISTERING AGENCY of its obligation to provide a full-time public employee to be in responsible charge of each PROJECT.

18. Unless otherwise provided in the PROGRAM SUPPLEMENT, ADMINISTERING AGENCY shall advertise, award, and administer the PROJECT construction contract or contracts.

19. The cost of maintenance, security, or protection performed by ADMINISTERING AGENCY or contractor forces during any temporary suspension of PROJECT or at any other time may not be charged to the PROJECT.

20. ADMINISTERING AGENCY shall submit PROJECT-specific award information to STATE's District Local Assistance Engineer, within sixty (60) days after contract award.

21. ADMINISTERING AGENCY shall submit the final report documents that collectively constitute a "Final Project Expenditure Report", LAPM Exhibit 17-M, within one hundred eighty (180) days of PROJECT completion. Failure by ADMINISTERING AGENCY to submit a "Final Project Expenditure Report", within 180 days of project completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the Local Assistance Procedures Manual.

22. ADMINISTERING AGENCY shall comply with the Americans with Disabilities Act (ADA) of 1990 that prohibits discrimination on the basis of disability and all applicable regulations and guidelines issued pursuant to the ADA.

23. The Governor and the Legislature of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with public funds. ADMINISTERING AGENCY agrees to comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM, attached hereto as Exhibit A and further agrees that any agreement entered into by ADMINISTERING AGENCY with a third party for performance of work connected with PROJECT shall incorporate Exhibit A (with third party's name replacing ADMINISTERING AGENCY) as parts of such agreement.

24. ADMINISTERING AGENCY shall include in all contracts and subcontracts awarded when applicable, a clause that requires each subcontractor to comply with California Labor Code requirements that all workers employed on public works aspects of any project (as defined in California Labor Code sections 1720-1815) be paid not less than the general prevailing wage rates predetermined by the Department of Industrial Relations as effective at the date of contract award by the ADMINISTERING AGENCY.

ARTICLE II - RIGHTS-OF-WAY

1. No contract for the construction of a STATE FUNDED PROJECT shall be awarded until all necessary rights of way have been secured. Prior to the advertising for construction of PROJECT, ADMINISTERING AGENCY shall certify and, upon request, shall furnish STATE with evidence that all necessary rights-of-way are available for construction purposes or will be available by the time of award of the construction contract.

2. The furnishing of rights of way by ADMINISTERING AGENCY as provided for herein includes, and is limited to, the following, unless the PROGRAM SUPPLEMENT provides otherwise.

(a) Expenditures of capital and support to purchase all real property required for

PROJECT free and clear of liens, conflicting easements, obstructions and encumbrances, after crediting PROJECT with the fair market value of any excess property retained and not disposed of by ADMINISTERING AGENCY.

(b) The cost of furnishing of right-of-way as provided for herein includes, in addition to real property required for the PROJECT, title free and clear of obstructions and encumbrances affecting PROJECT and the payment, as required by applicable law, of damages to owners of remainder real property not actually taken but injuriously affected by PROJECT.

(c) The cost of relocation payments and services provided to owners and occupants pursuant to Government Code sections 7260-7277 when PROJECT displaces an individual, family, business, farm operation or nonprofit organization.

(d) The cost of demolition and/or the sale of all improvements on the right-of-way after credit is recorded for sale proceeds used to offset PROJECT costs.

(e) The cost of all unavoidable utility relocation, protection or removal.

(f) The cost of all necessary hazardous material and hazardous waste treatment, encapsulation or removal and protective storage for which ADMINISTERING AGENCY accepts responsibility and where the actual generator cannot be identified, and recovery made.

3. ADMINISTERING AGENCY agrees to indemnify and hold STATE harmless from any liability that may result in the event the right-of-way for a PROJECT is not clear as certified by ADMINISTERING AGENCY, including, but not limited to, if said right-of-way is found to contain hazardous materials requiring treatment or removal to remediate in accordance with Federal and State laws. ADMINISTERING AGENCY shall pay, from its own non- matching funds, any costs which arise out of delays to the construction of PROJECT because utility facilities have not been timely removed or relocated, or because rights-of-way were not available to ADMINISTERING AGENCY for the orderly prosecution of PROJECT work.

ARTICLE III - MAINTENANCE AND MANAGEMENT

1. ADMINISTERING AGENCY will maintain and operate the property acquired, developed, constructed, rehabilitated, or restored by PROJECT for its intended public use until such time as the parties might amend this AGREEMENT to otherwise provide. With the approval of STATE, ADMINISTERING AGENCY or its successors in interest in the PROJECT property may transfer this obligation and responsibility to maintain and operate PROJECT property for that intended public purpose to another public entity.

2. Upon ADMINISTERING AGENCY's acceptance of the completed construction contract or upon contractor being relieved of the responsibility for maintaining and protecting PROJECT, ADMINISTERING AGENCY will be responsible for the maintenance, ownership, liability, and the expense thereof, for PROJECT in a manner satisfactory to the authorized representatives of STATE and if PROJECT falls within the jurisdictional limits of another Agency or Agencies, it is the duty of ADMINISTERING AGENCY to facilitate a separate maintenance agreement(s) between itself and the other jurisdictional Agency or Agencies providing for the operation, maintenance, ownership and liability of PROJECT. Until those agreements are executed, ADMINISTERING AGENCY will be responsible for all PROJECT operations, maintenance, ownership and liability in a manner satisfactory to the authorized representatives of STATE. If, within ninety (90) days after receipt of notice from STATE that a PROJECT, or any portion thereof, is not

being properly operated and maintained and ADMINISTERING AGENCY has not satisfactorily remedied the conditions complained of, the approval of future STATE FUNDED PROJECTS of ADMINISTERING AGENCY will be withheld until the PROJECT shall have been put in a condition of operation and maintenance satisfactory to STATE. The provisions of this section shall not apply to a PROJECT that has been vacated through due process of law with STATE's concurrence.

3. PROJECT and its facilities shall be maintained by an adequate and well-trained staff of engineers and/or such other professionals and technicians as PROJECT reasonably requires. Said operations and maintenance staff may be employees of ADMINISTERING AGENCY, another unit of government, or a contractor under agreement with ADMINISTERING AGENCY. All maintenance will be performed at regular intervals or as required for efficient operation of the complete PROJECT improvements.

4. ADMINISTERING AGENCY shall comply with all applicable law, including but not limited to, all applicable legal authority regarding construction standards.

ARTICLE IV - FISCAL PROVISIONS

1. All contractual obligations of STATE are subject to the appropriation of resources by the Legislature and the allocation of resources by the CTC.

2. STATE'S financial commitment of STATE FUNDS will occur only upon the execution of this AGREEMENT, the execution of each project-specific PROGRAM SUPPLEMENT and/or STATE's approved finance letter.

3. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices in arrears for reimbursement of allowable PROJECT costs at least once every six months commencing after the STATE FUNDS are encumbered on either the project-specific PROGRAM SUPPLEMENT or through a project-specific finance letter approved by STATE. STATE reserves the right to suspend future allocations and invoice payments for any on-going or future STATE FUNDED project performed by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period

4. Invoices shall be submitted on a standardized billing summary template, in accordance with Chapter 5 of the LAPM to claim reimbursement by ADMINISTERING AGENCY. For construction invoices, pay estimates must be included.

5. ADMINISTERING AGENCY must retain at least one copy of supporting backup documentation for allowable costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.

6. Payments to ADMINISTERING AGENCY can only be released by STATE as reimbursements of actual allowable PROJECT costs already incurred and paid for by the ADMINISTERING AGENCY.

7. Indirect Cost Allocation Plans/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to the Inspector General - Independent Office of Audits and Investigations for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of

indirect cost incurred within each fiscal year being claimed for reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the LAPM, and the ICAP/ICRP approval procedures established by STATE.

8. STATE will withhold the greater of either two (2) percent of the total of all STATE FUNDS encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

9. The estimated total cost of PROJECT, the amount of STATE FUNDS obligated, and the required matching funds may be adjusted by mutual consent of the PARTIES with a finance letter, and an allocation notification letter when applicable. STATE FUNDING may be increased to cover PROJECT cost increases only if such additional funds are available and the CTC and/or STATE concurs with that increase in the form of an allocation and finance letter.

10. When such additional STATE FUNDS are not available, ADMINISTERING AGENCY agrees that any increases in PROJECT costs must be defrayed with ADMINISTERING AGENCY's own funds.

11. ADMINISTERING AGENCY shall use its own non-STATE FUNDS to finance the local share of eligible costs and all PROJECT expenditures or contract items ruled ineligible for financing with STATE FUNDS. STATE shall make the final determination of ADMINISTERING AGENCY's cost eligibility for STATE FUNDED financing with respect to claimed PROJECT costs.

12. ADMINISTERING AGENCY will reimburse STATE for STATE's share of costs for work performed by STATE at the request of ADMINISTERING AGENCY. STATE's costs shall include overhead assessments in accordance with section 8755.1 of the State Administrative Manual.

13. STATE FUNDS allocated by the CTC and/or STATE are subject to the timely use of funds provisions approved in CTC Guidelines and State procedures approved by the CTC and STATE.

14. STATE FUNDS encumbered for PROJECT are available for liquidation only for a limited period from the beginning of the State fiscal year when those funds were appropriated in the State Budget. STATE FUNDS not liquidated within these periods will be reverted unless a Cooperative Work Agreement (CWA) is submitted by ADMINISTERING AGENCY and approved by the California Department of Finance in accordance with Section 16304 of the Government Code. The exact date of fund reversion will be reflected in the STATE signed PROJECT finance letter.

15. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid to rank and file STATE employees under current California Department of Human Resources (CalHR) rules unless a Cooperative Work Agreement (CWA) is submitted by ADMINISTERING AGENCY and approved by the California Department of Finance in accordance with Government Code section 16304. If the rates invoiced by ADMINISTERING AGENCY are in excess of CalHR rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand.

16. ADMINISTERING AGENCY agrees to comply with California Government Code 4525-4529.14. Administering Agency shall undertake the procedures described in California Government Code 4527(a) and 4528(a). Administering Agency shall also comply with 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards, excluding 2 CFR Part 200.318-200.326.

17. ADMINISTERING AGENCY agrees and will assure that its contractors and subcontractors will be obligated to agree that Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items. Every recipient and sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards, excluding 2 CFR Part 200.318-200.326 Governments. ADMINISTERING AGENCY agrees to comply with the provisions set forth in 23 CFR Parts 140, 645 and 646 when contracting with railroad and utility companies.

18. Every recipient and sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR 200 excluding 2 CFR Part 200.318-200.326, 48 CFR Chapter 1, Part 31, LAPM, Public Contract Code (PCC) 10300- 10334 (procurement of goods), PCC 10335-10381 (non-A&E services), California Government Code 4525-4529.5 including 4527(a) and 4528(a), and other applicable STATE regulations.

19. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be questioned, disallowed, or unallowable under 2 CFR, Part 200, 48 CFR, Chapter 1, Part 31, 23 CFR Parts 140, 645 and 646, LAPM, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), California Government Code 4525-4529.5 including 4527(a) and 4528(a), and other applicable STATE regulations are subject to repayment by ADMINISTERING AGENCY to STATE and may result in STATE imposing sanctions on ADMINISTERING AGENCY as described in Chapter 20 of the Local Assistance Procedures Manual.

20. Should ADMINISTERING AGENCY fail to refund any moneys due upon written demand by STATE as provided herein or should ADMINISTERING AGENCY breach this AGREEMENT by failing to complete PROJECT without adequate justification and approval by STATE, then, within thirty (30) days of demand, or within such other period as may be agreed to in writing between the PARTIES hereto, STATE, acting through the State Controller, the State Treasurer, the CTC or any other public entity or agency, may intercept, withhold and demand the transfer of an amount equal to the amount paid by or owed to STATE for each PROJECT, from future apportionments, or any other funds due ADMINISTERING AGENCY from the Highway Users Tax Fund or any other sources of funds, and/or may also withhold approval of future STATE FUNDED projects proposed by ADMINISTERING AGENCY.

21. Should ADMINISTERING AGENCY be declared to be in breach of this AGREEMENT or otherwise in default thereof by STATE, and if ADMINISTERING AGENCY is constituted as a joint powers authority, special district, or any other public entity not directly receiving funds through the State Controller, STATE is authorized to obtain reimbursement from whatever sources of funding are available, including the withholding or transfer of funds, from those constituent entities comprising a joint powers authority or by bringing of an action against ADMINISTERING AGENCY or its constituent member entities, to recover all funds provided by STATE hereunder.

22. ADMINISTERING AGENCY acknowledges that the signatory party represents the ADMINISTERING AGENCY and further warrants that there is nothing within a Joint Powers Agreement, by which ADMINISTERING AGENCY was created, if any exists, that would restrict or otherwise limit STATE's ability to recover STATE FUNDS improperly spent by ADMINISTERING AGENCY in contravention of the terms of this AGREEMENT.

ARTICLE V

AUDITS, THIRD PARTY CONTRACTING, RECORDS RETENTION AND REPORTS

1. STATE reserves the right to conduct technical and financial audits of PROJECT work and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by paragraph three (3) of Article V.

2. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by STATE.

3. ADMINISTERING AGENCY, ADMINISTERING AGENCY's contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States, all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts, and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above-referenced parties shall make such AGREEMENT and PROGRAM SUPPLEMENT materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years, or 35 years for Prop 1B funds, from the date of final payment to ADMINISTERING AGENCY.

4. ADMINISTERING AGENCY shall not award a construction contract over \$25,000 on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. All contracts awarded by ADMINISTERING AGENCY intended or used as local match credit must meet the requirements set forth in this AGREEMENT regarding local match funds.

5. ADMINISTERING AGENCY shall comply with Chapter 10 (commencing with Section 4525) Division 5 of Title 1 of the Government Code and shall undertake the procedures described in California Government Code 4527(a) and 4528(a). Administering Agency shall comply with Chapter 10 of the LAPM for AE Consultant Contracts.

6. ADMINISTERING AGENCY shall comply with Government Code Division 5 Title 1 sections 4525-4529.5 and shall undertake the procedures described in California Government Code 4527(a) and 4528(a) for procurement of professional service contracts. Administering Agency shall follow Public Contract Code Section 10335-10381 for other professional service contracts.

7. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain all of the provisions of Article IV, FISCAL PROVISIONS, and this ARTICLE V, AUDITS, THIRD-PARTY CONTRACTING, RECORDS RETENTION AND REPORTS and shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as PROJECT costs only after those costs are incurred and paid for by the subcontractors.

8. To be eligible for local match credit, ADMINISTERING AGENCY must ensure that local match funds used for a PROJECT meet the fiscal provisions requirements outlined in ARTICLE IV in the same manner that is required of all other PROJECT expenditures.

9. Except as provided in this Article, this AGREEMENT is solely between and for the benefit of the PARTIES and there are no third-party beneficiaries.

ARTICLE VI - MISCELLANEOUS PROVISIONS

1. ADMINISTERING AGENCY agrees to use all PROJECT funds reimbursed hereunder only for transportation purposes that are in conformance with Article XIX of the California State Constitution and other California laws.

2. ADMINISTERING AGENCY shall conform to all applicable State and Federal statutes and regulations, and the Local Assistance Program Guidelines and Local Assistance Procedures Manual as published by STATE and incorporated herein, including all subsequent approved revisions thereto applicable to PROJECT unless otherwise designated in the project-specific executed PROJECT SUPPLEMENT.

3. This AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature or adopted by the CTC that may affect the provisions, terms, or funding of this AGREEMENT in any manner.

4. ADMINISTERING AGENCY and the officers and employees of ADMINISTERING AGENCY, when engaged in the performance of this AGREEMENT, shall act in an independent capacity and not as officers, employees or agents of STATE.

5. Each project-specific PROGRAM SUPPLEMENT shall separately establish the terms and funding limits for each described PROJECT funded under this AGREEMENT and that PROGRAM SUPPLEMENT. No STATE FUNDS are obligated against this AGREEMENT.

6. ADMINISTERING AGENCY certifies that neither ADMINISTERING AGENCY nor its principals are suspended or debarred at the time of the execution of this AGREEMENT, and ADMINISTERING AGENCY agrees that it will notify STATE immediately in the event a suspension or a debarment occurs after the execution of this AGREEMENT.

7. ADMINISTERING AGENCY certifies, by execution of this AGREEMENT, that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by ADMINISTERING AGENCY for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this AGREEMENT without liability, pay only for the value of the PROJECT work actually performed, or in STATE's discretion, to deduct from the price of PROGRAM SUPPLEMENT consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

8. In accordance with Public Contract Code section 10296, ADMINISTERING AGENCY hereby certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against ADMINISTERING AGENCY within the immediate preceding two (2) year period because of ADMINISTERING AGENCY's failure to comply with an order of a federal court that orders ADMINISTERING AGENCY to comply with an order of the National Labor Relations Board.

9. ADMINISTERING AGENCY shall disclose any financial, business, or other relationship with STATE that may have an impact upon the outcome of this AGREEMENT or any individual PROJECT encompassed within a PROGRAM SUPPLEMENT. ADMINISTERING AGENCY shall also list current contractors who may have a financial interest in the outcome of a PROJECT undertaken pursuant to this AGREEMENT. These disclosures shall be delivered to STATE in a form deemed acceptable by the STATE prior to execution of this AGREEMENT.

10. ADMINISTERING AGENCY hereby certifies that it does not have, nor shall it acquire, any financial or business interest that would conflict with the performance of any PROJECT initiated under this AGREEMENT.

11. ADMINISTERING AGENCY certifies that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any STATE employee. For breach or violation of this warranty, STATE shall have the right, in its sole discretion, to terminate this AGREEMENT without liability, to pay only for PROJECT work actually performed, or to deduct from a PROGRAM SUPPLEMENT price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

12. Any dispute concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by the STATE's Contract Manager, who shall be identified to ADMINISTERING AGENCY at the time of execution of this AGREEMENT and, as applicable , any time that Contract Manager changes during the duration of this AGREEMENT who may consider any written or verbal evidence submitted by ADMINISTERING AGENCY. The decision of the Contract Manager, issued in writing, shall be conclusive and binding on the PARTIES on all questions of fact considered and determined by the Contract Manager.

13. Neither the pendency of a dispute nor its consideration by the Contract Manager will excuse the ADMINISTERING AGENCY from full and timely performance in accordance with the terms of this AGREEMENT and each PROGRAM SUPPLEMENT.

14. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under or in connection with any work, authority or jurisdiction of ADMINISTERING AGENCY arising under this AGREEMENT. It is understood and agreed that ADMINISTERING AGENCY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims and suits or actions of every name, kind and description brought forth under, including but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under this AGREEMENT.

15. Neither ADMINISTERING AGENCY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or

jurisdiction arising under this AGREEMENT. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the ADMINISTERING AGENCY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this AGREEMENT.

16. In the event of (a) ADMINISTERING AGENCY failing to timely proceed with effective PROJECT work in accordance with the project-specific PROGRAM SUPPLEMENT; (b) failing to maintain any applicable bonding requirements; and (c) otherwise materially violating the terms and conditions of this AGREEMENT and/or any PROGRAM SUPPLEMENT, STATE reserves the right to terminate funding for that PROJECT upon thirty (30) days' written notice to ADMINISTERING AGENCY.

17. No termination notice shall become effective if, within thirty (30) days after receipt of a Notice of Termination, ADMINISTERING AGENCY either cures the default involved or, if the default is not reasonably susceptible of cure within said thirty (30) day period the ADMINISTERING AGENCY proceeds thereafter to complete that cure in a manner and time line acceptable to STATE.

18. Any such termination shall be accomplished by delivery to ADMINISTERING AGENCY of a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this AGREEMENT and the applicable PROGRAM SUPPLEMENT is terminated and the date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the period before the effective termination date, ADMINISTERING AGENCY and STATE shall meet to attempt to resolve any dispute. In the event of such termination, STATE may proceed with the PROJECT work in a manner deemed proper by STATE. If STATE terminates funding for PROJECT with ADMINISTERING AGENCY for the reasons stated in paragraph sixteen (16) of ARTICLE VI, STATE shall pay ADMINISTERING AGENCY the sum due ADMINISTERING AGENCY under the PROGRAM SUPPLEMENT and/or STATE-approved finance letter prior to termination, provided, however, ADMINISTERING AGENCY is not in default of the terms and conditions of this AGREEMENT or the project-specific PROGRAM SUPPLEMENT and that the cost of any PROJECT completion to STATE shall first be deducted from any sum due ADMINISTERING AGENCY.

19. In the case of inconsistency or conflicts with the terms of this AGREEMENT and that of a project-specific PROGRAM SUPPLEMENT and/or Cooperative Agreement, the terms stated in that PROGRAM SUPPLEMENT and/or Cooperative Agreement shall prevail over those in this AGREEMENT.

20. Without the written consent of STATE, this AGREEMENT is not assignable by ADMINISTERING AGENCY either in whole or in part.

21. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the PARTIES, and no oral understanding or agreement not incorporated herein shall be binding on any of the PARTIES.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT by their duly authorized officer.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

City of Porterville

By _____

By _____

Chief, Office of Project Management
Oversight
Division of Local Assistance

City of Porterville

Representative Name & Title
(Authorized Governing Body
Representative)

Date _____

Date _____

EXHIBIT A - FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, ADMINISTERING AGENCY will not discriminate against any employee for employment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ADMINISTERING AGENCY shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. ADMINISTERING AGENCY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, 12900 et seq.), and the applicable regulations promulgated thereunder (Cal. Code Regs., Title 2, 11000, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of the ADMINISTERING AGENCY'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. ADMINISTERING AGENCY shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

4. ADMINISTERING AGENCY will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which ADMINISTERING AGENCY was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that ADMINISTERING AGENCY has violated the Fair Employment Practices Act.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by ADMINISTERING AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to ADMINISTERING AGENCY, the difference between the price named in the Agreement

and the actual cost thereof to STATE to cure ADMINISTERING AGENCY's breach of this Agreement.

PROGRAM SUPPLEMENT NO. 00000A426
to
ADMINISTERING AGENCY-STATE AGREEMENT
FOR STATE FUNDED PROJECTS NO 06-5122S21

Adv. Project ID 0624000141
Date: January 16, 2024
Location: 06-TUL-0-PTRV
Project Number: ATPL-5122(096)
E.A. Number:
Locode: 5122

This Program Supplement, effective 12/07/2023, hereby adopts and incorporates into the Administering Agency-State Agreement No. 06-5122S21 for State Funded Projects which was entered into between the ADMINISTERING AGENCY and the STATE with an effective date of and is subject to all the terms and conditions thereof. This PROGRAM SUPPLEMENT is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. approved by the ADMINISTERING AGENCY on (See copy attached).

The ADMINISTERING AGENCY further stipulates that as a condition to the payment by the State of any funds derived from sources noted below encumbered to this project, Administering Agency accepts and will comply with the Special Covenants and remarks set forth on the following pages.

PROJECT LOCATION: On North and South Reservation Road between Cow Mountain Road and Million Dollar Bridge; construct 2 new Class 1 bridges and reconfigure roa

TYPE OF WORK: Pedestrian bridges **LENGTH:** 0.0(MILES)

Estimated Cost	State Funds	Matching Funds		
	STATE \$168,000.00	LOCAL		OTHER
\$168,000.00		\$0.00		\$0.00

CITY OF PORTERVILLE

By _____
Title _____
Date _____
Attest _____

STATE OF CALIFORNIA
Department of Transportation

By _____
Chief, Office of Project Implementation
Division of Local Assistance
Date _____

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

Accounting Officer



Date

01/16/2024

\$168,000.00

SPECIAL COVENANTS OR REMARKS

1. A. This PROJECT will be administered in accordance with the applicable CTC STIP guidelines and the Active Transportation Program guidelines as adopted or amended, the Local Assistance Procedures Manual (LAPM), the Local Assistance Program Guidelines (LAPG), and this PROGRAM SUPPLEMENT.

B. This PROJECT is programmed to receive State funds from the Active Transportation Program (ATP). Funding may be provided under one or more components. A component(s) specific fund allocation is required, in addition to other requirements, before reimbursable work can occur for the component(s) identified. Each allocation will be assigned an effective date and identify the amount of funds allocated per component(s).

This PROGRAM SUPPLEMENT has been prepared to allow reimbursement of eligible PROJECT expenditures for the component(s) allocated. Unless otherwise determined, the effective date of the component specific allocation will constitute the start of reimbursable expenditures.

C. STATE and ADMINISTERING AGENCY agree that any additional funds made available by future allocations will be encumbered on this PROJECT by use of a STATE-approved Allocation Letter and STATE Finance Letter. ADMINISTERING AGENCY agrees that STATE funds available for reimbursement will be limited to the amount allocated by the California Transportation Commission (CTC) and/or the STATE.

D. Upon ADMINISTERING AGENCY request, the CTC and/or STATE may approve supplementary allocations, time extensions, and fund transfers between components. Funds transferred between allocated project components retain their original timely use of funds deadlines, but an approved time extension will revise the timely use of funds criteria for the component(s) and allocation(s) requested. Approved supplementary allocations, time extensions, and fund transfers between components made after the execution of this PROGRAM SUPPLEMENT will be documented and considered subject to the terms and conditions thereof.

Documentation will consist of a STATE approved Allocation Letter, Fund Transfer Letter, Time Extension Letter, and Finance Letter, as appropriate.

E. This PROJECT is subject to the timely use of funds provisions enacted by the Active Transportation Program guidelines, as adopted or amended, and by approved CTC and State procedures as outlined below.

Funds allocated for the environmental & permits (E&P), plan specifications & estimate (PS&E), and right-of-way components are available for expenditure until the end of the second fiscal year following the year in which the funds were allocated.

SPECIAL COVENANTS OR REMARKS

Funds allocated for the construction component are subject to an award deadline and contract completion deadline. ADMINISTERING AGENCY agrees to award the contract within 6 months of the construction fund allocation and to complete and accept the construction within 36 months of award.

F. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer immediately after project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract. Failure to do so will cause a delay in the State processing of invoices for the construction phase.

G. The ADMINISTERING AGENCY shall invoice STATE for environmental & permits (E&P), plans specifications & estimate (PS&E), and right-of-way costs no later than 180 days after the end of last eligible fiscal year of expenditure. For construction costs, the ADMINISTERING AGENCY has 180 days after project completion or contract acceptance to make the final payment to the contractor prepare the final Report of Expenditures and final invoice, and submit to STATE for verification and payment.

H. ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current LAPM and the Active Transportation Program (ATP) Guidelines.

I. ADMINISTERING AGENCY indirect costs, as defined in 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards, to be claimed must be allocated in accordance with an Indirect Cost Allocation Plan (ICAP), submitted, reviewed, and approved in accordance with Caltrans Audits and Investigations requirements which may be accessed at: www.dot.ca.gov/hq/audits/.

ADMINISTERING AGENCY agrees to comply with, and require all sub-recipients and project sponsors to comply with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards, and all applicable Federal and State laws and regulations.

ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., and all applicable Federal and State laws and regulations, shall be used to determine the allowability of individual PROJECT cost items.

Any Fund expenditures for costs for which ADMINISTERING AGENCY has received

SPECIAL COVENANTS OR REMARKS

payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, or 48 CFR, Chapter 1, Part 3, are subject to repayment by ADMINISTERING AGENCY to STATE. Should ADMINISTERING AGENCY fail to reimburse Funds due STATE within 30 days of demand, or within such other period as may be agreed in writing between the Parties hereto, STATE is authorized to intercept and withhold future payments due ADMINISTERING AGENCY from STATE or any third-party source, including, but not limited to, the State Treasurer, the State Controller, and the California Transportation Commission.

J. By executing this PROGRAM SUPPLEMENT, ADMINISTERING AGENCY agrees to comply with all reporting requirements in accordance with the Active Transportation Program guidelines, as adopted or amended.

K. This PROJECT has received funds from Active Transportation Program (ATP). The ADMINISTERING AGENCY agrees to administer the project in accordance with the CTC Adopted SB1 Accountability and Transparency Guidelines.

2. The ADMINISTERING AGENCY shall construct the PROJECT in accordance with the scope of work presented in the application and approved by the California Transportation Commission. Any changes to the approved PROJECT scope without the prior expressed approval of the California Transportation Commission are ineligible for reimbursement and may result in the entire PROJECT becoming ineligible for reimbursement.

RESOLUTION NO. _____ -2024

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF PORTERVILLE AUTHORIZING THE MAYOR TO SIGN
MASTER AGREEMENT ADMINISTERING AGENCY-STATE
AGREEMENT FOR STATE-AID PROJECTS NO. 06-5122S21**

BE IT RESOLVED by the City Council of the City of Porterville, that the Mayor is hereby authorized to execute the document known as Master Agreement Administering Agency-State Agreement for State-Aid Projects No. 06-5122S21, for the project approval and environmental documentation phase of the Tule River Tribe Village Corridor and Two Pedestrian Bridges Project.

PASSED, ADOPTED AND APPROVED this 5th day of March, 2024.

Martha A. Flores, Mayor

ATTEST:
Patrice Hildreth, City Clerk

By Fernando Gabriel-Moraga, Acting Chief Deputy City Clerk

RESOLUTION NO. _____ -2024

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF PORTERVILLE AUTHORIZING THE MAYOR TO SIGN
PROGRAM SUPPLEMENT NO. A426
TO ADMINISTERING THE AGENCY-STATE AGREEMENT
FOR STATE-AID PROJECTS NO. 06-5122S21**

BE IT RESOLVED by the City Council of the City of Porterville that the Mayor is hereby authorized to execute the document known as Program Supplement No. A426 to administering Agency-State Agreement for State-Aid Projects No. 06-5122S21, for the project approval and environmental documentation phase of the Tule River Tribe Village Corridor and Two Pedestrian Bridges Project.

PASSED, ADOPTED AND APPROVED this 5th day of March, 2024.

Martha A. Flores, Mayor

ATTEST:
Patrice Hildreth, City Clerk

By Fernando Gabriel-Moraga, Acting Chief Deputy City Clerk



CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: California POST Team Building Workshop

SOURCE: Police

COMMENT: The California Commission on Peace Officer Standards and Training (POST) Team Building Workshop (TBW) Program pairs independent specialized consultant services with the management team of a local agency to assist with problem-solving, developing organizational goals and objectives, and/or team building within the agency. POST has an approved list of over 20 presenters to present/facilitate the workshop. The facilitation of the workshop by a POST-approved, impartial, non-client agency employee is crucial to the success of each workshop. Only POST-approved presenters, on the provided list, may be selected to conduct the workshop.

The Porterville Police Department applied for and was approved to take part in the above-described workshop. As such, staff reviewed the list of POST-approved presenters and selected Tyler G. Burtis as the facilitator. Mr. Burtis has started the interactive three-phase process that includes:

Identification of Need: The POST-certified presenter is surveying the police department and developing preliminary information about the issue(s) to be addressed in the workshop, and is developing a 16-hour workshop.

Workshop Session: The department will participate in a 16-hour workshop of group work at a location selected by the client agency. The location is ideally away from the police department to allow managers to disconnect and focus on the issues of the workshop. In previous years, Shell Beach has proven to be a successful location, being far enough away but also close enough in the case of a catastrophic or major event requiring additional response. Therefore, it is the selected location this year. During the workshop, an action plan will be developed to solve identified problems, set goals or objectives, and/or team build. The police department will return the completed team building workshop action plan to POST within 90 days.

Follow-up Evaluation: The presenter will contact the police department following the workshop to aid in the implementation of action items identified in the action plan.

Team Building Workshops are certified under the California POST Reimbursement - Plan V. The police department will be reimbursed for all costs related to employee participation, including venue location, hotel costs, employee meals and incidentals (per diem), and travel (mileage).

RECOMMENDATION:

That the City Council:

1. Approve the expenditure in the amount of \$6,531.09 for police department command and management staff to participate in the California Peace Officer Standards and Training (POST) Team Building Workshop; and
2. Accept reimbursement from the California Peace Officer Standards and Training (POST) upon submission of the Training Reimbursement Request.

ATTACHMENTS:

1. PORTERVILLE POLICE DEPARTMENT - ESTIMATE OF CHARGES - MEETING
2. PORTERVILLE POLICE DEPARTMENT - ESTIMATE OF CHARGES - ROOMS

Appropriated/Funded:

Review By:

Department Director:
Jake Castellow, Chief of Police

Final Approver: Patrice Hildreth, City Manager

To: Tiffany Savoie
Porterville Police Department

RES # 378015

From: Joey Flynn
Meeting & Events Coordinator



ESTIMATE OF CHARGES - MEETING

		ALL ++		2024
EVENT CHARGES:		QUANTITY	UNIT PRICE	TOTAL
3/25/2024				
Food & Beverage:	COFFEE STATION - ESTIMATE ONLY	4	\$35.00	\$140.00
Other Charges:	MEETING SETUP FEE	1	\$550.00	\$550.00
SUBTOTAL				\$690.00
SERVICE CHARGE (23%)				\$158.70
TAXES(7.75%)				\$65.77
DAY #1 TOTAL				\$914.47
3/26/2024				
Food & Beverage:	COFFEE STATION - ESTIMATE ONLY	3	\$35.00	\$105.00
Other Charges:	MEETING SETUP FEE	1	\$375.00	\$375.00
SUBTOTAL				\$480.00
SERVICE CHARGE (23%)				\$110.40
TAXES(7.75%)				\$45.76
DAY #2 TOTAL				\$636.16
DAY #1				\$914.47
DAY #2				\$636.16
MEETING AND EVENTS TOTAL				\$1,550.63
EVENT CHARGES TOTAL				\$1,550.63
PREPAYMENT				
AMOUNT DUE				\$1,550.63

**All numbers are Estimates Only. Final numbers may change based on a variety of factors.*

To: Tiffany Savoie
Porterville Police Department

RES # 378015

From: Joey Flynn
Meeting & Events Coordinator



ESTIMATE OF CHARGES - ROOMS

ALL ++ 2024

HOTEL ROOM CHARGES:		QUANTITY	UNIT PRICE	TOTAL PRICE	
3/24/2024	GUEST ROOMS	11	\$159.00	\$	1,749.00
	Nightly Facility Fee	11	\$40.00	\$	440.00
3/25/2024	GUEST ROOMS	11	\$159.00	\$	1,749.00
	Nightly Facility Fee	11	\$40.00	\$	440.00
SUB TOTAL					\$4,378.00
HOTEL TAX (14.75%)					\$645.76
TOTAL					\$5,023.76
HOTEL ROOMS TOTAL					\$5,023.76
HOTEL ROOMS TOTAL					\$5,023.76
DEPOSIT (VA 7660)					(\$500.00)
PREPAYMENT					
AMOUNT DUE					\$4,523.76

**All numbers are Estimates Only. Final numbers may change based on a variety of factors.*



CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: Consideration of Appointment of CalTIP Alternate Board Member

SOURCE: Public Works

COMMENT:

On January 20, 2004, the City Council authorized the City's participation in the California Transit System Joint Powers Authority, which does business as the California Transit Indemnity Pool ("CalTIP") for liability coverage and vehicle physical damage coverage for the City's transit fleet. Through its participation in the JPA, the City has realized significant savings in premiums over coverage previously purchased in the open market.

Each member of CalTIP is represented on the Board of Directors and plays an active role in the organization. The Board meets twice yearly for study sessions to conduct business of the pool, as well as to keep Board Members informed of trends in transit, including operations, risk exposures, and effective loss control mechanisms to help prevent claims and manage losses.

All Board Members are staff members of the entities belonging to the pool, with majority being well-versed in transit, finance or risk management. The costs incurred by the Board Member attending the CalTIP meetings are reimbursed to the City of Porterville by CalTIP.

Currently, Public Works Director Mr. Michael Knight serves as the Board Member and City Manager Ms. Patrice Hildreth serves as the Alternate on the board. It is now proposed that the City Council appoint Acting Administrative Services Director Ms. Yuliana Andrade to serve as the Alternate Board Member, with Mr. Michael Knight continuing to serve as the Board Member.

RECOMMENDATION:

That the City Council:

1. Approve the draft resolution designating Public Works Director Michael Knight as the City's CalTIP Board Member, and Acting Administrative Services Director Yuliana Andrade as the Alternate Member; and
2. Authorize the Mayor to execute said Resolution for submission to CalTIP.

ATTACHMENTS: 1. Draft Resolution

Appropriated/Funded:

Review By:

Department Director:
Michael Knight, Public Works Director

Final Approver: Patrice Hildreth, City Manager

RESOLUTION NO. ____ - 2024

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
DESIGNATING THE CITY'S REPRESENTATIVES TO THE CALIFORNIA TRANSIT
INDEMNITY POOL BOARD OF DIRECTORS**

WHEREAS, the City Council acted on January 20, 2004, approving the City of Porterville's membership in the California Transit Systems Joint Powers Authority, doing business as the California Transit Indemnity Pool (CalTIP); and

WHEREAS, the City of Porterville wishes to designate a representative of the City of Porterville to attend the CalTIP Board of Directors meetings and represent the City in its best interests; and

NOW THEREFORE, BE IT RESOLVED AND ORDERED that effective March 5, 2024, Mike Knight shall continue to be designated CalTIP Representative for the City of Porterville and, as such, is hereby authorized to be the CalTIP Board Member on behalf of the City of Porterville.

BE IT RESOLVED AND ORDERED that effective March 5, 2024, Yuliana Andrade shall be designated CalTIP Alternate Representative for the City of Porterville and, as such, is hereby authorized to be the Alternate CalTIP Board Member on behalf of the City of Porterville.

PASSED AND ADOPTED by the City Council of the City of Porterville, State of California, at a regular meeting of said Council held on March 5, 2024.

Martha A. Flores, Mayor

ATTEST:
Patrice Hildreth, City Clerk

By: _____
Fernando Gabriel-Moraga,
Acting Chief Deputy City Clerk



CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: Request for Proclamation - California Arbor Week - March 7 - 14, 2024

SOURCE: Administrative Services

COMMENT:

At its meeting on December 19, 2023, the Council amended the process by which proclamations are approved. The process requires that if more than two council members indicate interest in signing a requested proclamation, a consent calendar item will be prepared for the next scheduled City Council Meeting for full City Council consideration.

The Tule River Parkway Association & the Alta Peak Chapter of the California Native Plant Society has requested a proclamation to proclaim March 7th - 14th, 2024, as "California Arbor Week" in Porterville. Council Member Weyhrauch is sponsoring this Proclamation request. Because more than two members of Council indicated interest in signing, consistent with policy, the request is herein presented for consideration. If approved, the Proclamation will be drafted with the appropriate number of signature blocks for execution by the Council Members with an affixed City Seal.

RECOMMENDATION: That the City Council consider approval of the request to proclaim March 7th - 14th, 2024, as "California Arbor Week" in the City of Porterville.

ATTACHMENTS: 1. Proclamation Request - California Arbor Week - 2024

Appropriated/Funded: N/A

Review By:

Department Director:
Yuliana Andrade, Acting Administrative Services Director

Final Approver: Patrice Hildreth, City Manager



City of Porterville
REQUEST FOR PROCLAMATION



RECEIVED

FEB 26 2024

CITY OF PORTERVILLE
CITY CLERK'S OFFICE

Date of Request: 2-26-2024

Name of Event/Individual: California Arbor Week

i.e. "Porterville Tourism Week", "Mr. John Doe"

Alta Peak Chapter of
CNPS

Name of Sponsoring Organization: Tule River Parkway Association +

Name of Contact Person: Catherine Capone

Address: _____

Phone: _____

Email: _____

I would like the proclamation: ☐ mailed ☐ call for pick up ☒ presented at an event

Date Needed: March 9, 2024 Date of Event March 9, 2024
I can pick it up on the 8th if needed

Please attach a sample of your proclamation, or the pertinent information needed to formulate your proclamation. It is recommended that you submit your request at least four to six weeks in advance. If assistance is needed, or if you need a sample provided, or to return this form, contact:

Office of City Clerk
291 North Main Street
Porterville, CA 93257
(559) 782-7464 / Fax (559) 782-7452

Please be advised that a Proclamation is ceremonial in nature and does not convey official legislative action. The City reserves the right to correct grammar and spelling; to reject all advocacy of unlawful acts; and to reject all discriminatory language.

City Clerk's Section

Request Received by: FERNANDO Routed by: FERNANDO Date: 2-26-24

Granted by Council Member WEYHRAUCH Date: 2-26-24

Signatures: WELTER, BELTRAN, FLORES

Date Requestor Notified of Completion: _____ in writing ☐ by phone ☐

Comments: _____



California Arbor Week Proclamation

This measure would proclaim the week of March 7th – March 14th in each year as California Arbor Week and would urge City of Porterville residents to observe the week with appropriate tree planting and tree care activities and programs.

WHEREAS, Arbor Day is celebrated nationally to encourage everyone to maintain and replenish our country's vast forests, orchards, and woodlands; and

WHEREAS, In California, we also observe Arbor Day starting on the birthday of Luther Burbank, a famed California horticulturalist whose life's labor produced hundreds of plants and trees that have contributed to the natural splendor and food production in our state; and

WHEREAS, California Arbor Week has the involvement of Tule River Parkway Association and the Alta Peak Chapter of the California Native Plant Society; and

WHEREAS, Tule River Parkway Association and Alta Peak Chapter of California Native Plant Society is improving our community by planting and caring for trees and working to improve the quality of life in the City of Porterville; and

WHEREAS, Trees are a valuable economic asset in our cities that help maintain or increase property values and attract business and new residents in urban areas; and

WHEREAS, Trees play an important role in energy conservation by modifying temperature extremes with shade and humidity, and are particularly important in reducing the amount of energy consumed in heating and cooling buildings and homes; and

WHEREAS, Trees planted in urban areas play a significant role in meeting the state's greenhouse gas emission reduction targets by sequestering carbon as well as reducing energy consumption; and

WHEREAS, Trees directly contribute to improving California's air quality by reducing air pollution by removing airborne particulates from the atmosphere and helping to purify the air; and

WHEREAS, Trees play a significant role in protecting and purifying California's limited water resources by reducing surface runoff, contributing to stormwater management activity and protect urban water resources; and

WHEREAS, Trees provide essential habitat for much of California's wildlife, including many listed, threatened, and endangered species; and

WHEREAS, Trees enhance the aesthetic quality of life in urban communities by providing a natural buffer for surface noise and natural recreational resource for California's children and youth;

WHEREAS, Trees play a vital role in improving public health in our communities;

Therefore, I Martha Flores, Mayor of City of Porterville, on behalf of the City Council, do hereby proclaim March 7 through March 14 of each year as California Arbor Week, and urge all Californians to observe and celebrate the week by planting trees for our own benefit and for the benefit of future generations.

In testimony thereof, I have hereunto set my hand and caused to be affixed the city seal of City of Porterville on this [date].

Mayor



CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: Authorization to Become a Mattress Collection Site

SOURCE: Public Works

COMMENT: Staff is seeking Council approval to partner with the Mattress Recycling Council (MRC) to become a mattress collection site to reduce the amount of waste that goes into landfills and to discourage illegal dumping.

The Refuse operation has been considering this program since May 2021; it wasn't necessary at the time because Teapot Dome Landfill performed those services. However, in July 2022, the City was informed of the closing of the Teapot Dome Landfill, as access was restricted. Following the closure notice, Teapot Dome discontinued receiving mattresses in October 2023, and County Staff advised the City that they would not be reinstating the program at the Woodville Landfill. Therefore, the city is considering taking on the program to extend services to city residents. The need for a local mattress collection site is essential with the recent closure of the Teapot Dome Landfill. This leaves the south end of Tulare County without a site to dispose of mattresses properly.

The MRC operates the Bye Bye Mattress program and assists the mattress industry with fulfilling its legal obligations to support and administer this program. MRC educates the mattress industry concerning recycling laws and assists retailers and manufacturers with registration and reporting requirements. The MRC works closely with local governments and waste management professionals and allows for the reimbursement of up to \$2.50 per mattress collected.

MRC also promotes the California Illegally Dumped Mattress Collection Initiative. Illegally dumped mattresses have become an unfortunate eyesore throughout the City. Every year, the MRC allocates \$1 million to fund this program. By registering, the Refuse Department would receive a reimbursement of up to \$15.00 per unit for each mattress picked up within city limits. The initiative would require monthly reporting to MRC and encourage the Council to approve an additional staff member to collect the illegally dumped mattresses and stage them at the city corporation yard for processing.

A City of Porterville and MRC partnership would require a service agreement contract. Under this program, MRC will provide the trailer and hauling services to the Fresno mattress recycling facility. The City would be responsible for providing the staffing necessary to collect the items for disposal. Staff would ask the Council to consider an additional staffing allotment of one (1) Refuse Department Field Service Worker I position to operate this program if the

partnership is approved. The Solid Waste Recycling budget would be the funding source for the additional staff allocation.

RECOMMENDATION: That the City Council:

1. Approve the partnership of the City of Porterville and Bye Bye Mattress with the Mattress Recycling Council, and authorize the City Manager or their designee, the Public Works Director, as the Signature Authority to execute all documents necessary to implement and secure an agreement to become a mattress collection site; and
2. Approve a staff allotment increase by one (1) Field Service Worker I position, funded by the Solid Waste Recycling budget.

ATTACHMENTS:

1. CA-Collection-Sites-Info-Sheet (3)
2. MRC-2020-CA-IDMCI-Info-Sheet-1 (1)
3. City of Porterville.Agreement.DRAFT.02-15-2024(mlm) (1)
4. MRC Guidelines- 2024 Labeled Attachment E

Appropriated/Funded:

Review By:

Department Director:
Michael Knight, Public Works Director

Final Approver: Jason Ridenour, Acting Deputy City Manager



CALIFORNIA COLLECTION SITES

JOIN OUR COLLECTION NETWORK

Overview

Collection sites are an integral part of the Mattress Recycling Council's Bye Bye Mattress program. By participating, you'll provide your community a no-cost option for mattress recycling, divert valuable material from the waste stream, support local green jobs and help reduce illegal dumping in your community.

Join the hundreds of locations that are benefiting from the program's services and providing their residents or customers a no-cost option for mattress recycling.

Contact MRC today to be connected to the program coordinator in your area.

What We Provide

- Collection containers
- Compensation for handling and loading mattresses into the provided containers
- Transportation from your site to a mattress recycler
- No-cost mattress recycling services
- Promotional assistance

Eligibility Requirements

- Permitted solid waste facilities with a California SWIS number are automatically eligible.
- Nonprofits, CRV locations, scrap yards or other small businesses may also qualify.
- Collection sites must not charge an individual for dropping off a mattress.
- Mattress retailers must be registered with MRC and collecting and remitting the recycling fee.

Participation Requirements

Participants must sign a contract agreeing to these requirements:

- Provide a secure site
- Keep mattresses dry and segregated
- Pack mattresses efficiently to maximize container capacity
- Complete required paperwork to track outgoing shipments

Acceptable and Unacceptable Items

Most mattresses and box springs discarded by California residents or collected in curbside bulky waste pickup are eligible for the program.

We are unable to accept:

- Severely damaged, wet, twisted, frozen or soiled mattresses or box springs
- Items infested with bed bugs
- Mattress pads or toppers
- Sleeping bags
- Pillows
- Car beds
- Infant carriers, lounge pads or crib bumpers
- Juvenile products such as carriages, baskets, cribs, bassinets, dressing tables, strollers and playpens or their pads
- Water beds or camping air mattresses
- Fold-out sofa beds, futon frames/bases
- Furniture



MATTRESS RECYCLING COUNCIL'S BYE BYE MATTRESS:

(855) 494-8400, info@byebyemattress.com

Or visit www.MattressRecyclingCouncil.org for details



bye bye mattress®

A Program of the Mattress Recycling Council



FREQUENTLY ASKED QUESTIONS

PROGRAM PARTICIPATION & CONTRACT TERMS

(855) 494-8400, info@byebyemattress.com

Getting a contract signed by our city/county is a lengthy process, do you have a short-term solution?

Yes! We have a one-page online agreement to register as an MRC collection site. Through this simplified agreement, you will receive no-cost storage, transportation and recycling. To receive financial compensation for handling costs, the comprehensive contract is required.

Do we have to accept an unlimited amount of mattresses?

No. Collection sites may establish a limit on the number of mattresses allowed at no-cost per vehicle.

How much is the mattress handling reimbursement cost?

It is a flat per unit rate. The comprehensive contract must be completed in order to receive this. You must invoice MRC monthly and MRC pays net 30.

Can we charge businesses for mattress disposal?

You may choose to establish a maximum number to accept at no-cost per vehicle.

Through MRC's Commercial Volume Program businesses can deliver large quantities directly to participating recyclers for no-cost recycling. Locations and contact information can be found at ByeByeMattress.com.

Businesses with at least 100 units qualify for no-cost transportation of the units to a participating recycler. Coordination with MRC required.

What happens to mattresses that are too soiled or contaminated to recycle?

Regardless of the condition of the mattress, participating collectors cannot charge individuals a disposal fee.

Are we compensated for disposal of soiled or contaminated mattresses from commercial sources?

If your site accepts commercial volume for free, a soiled or contaminated unit would need to be accepted at no charge, but not placed in MRC's container.

If your site does not accept commercial volume for free, you are still permitted to charge the customer.

Who will be paying the mattress transporter and recycler?

MRC has contracts with transporters and recyclers throughout California. MRC pays these vendors directly.

What information, if any, do we need to take from an individual dropping off their mattress?

You do not need to collect personal information, however, mattresses must have been used and discarded in California.

What type of promotional assistance does MRC provide?

All collection sites are listed on ByeByeMattress.com and promoted through social media and a monthly newsletter. MRC also provides participants with a press release, flyer, suggested online content and site signage. Requests to cover the cost of paid advertising are considered on a case-by-case basis. Download the Collection Site Publicity Toolkit for full details and examples of these materials.

Will MRC provide equipment or help us make some improvements in order to accept mattresses?

MRC awards site improvement funding throughout the year. Past recipients have used funding to implement weather protection, enhance collection efficiency or improve safety. Visit MRC's Research page for the latest funding announcements and application materials.

Can MRC assist with illegally dumped units in our community?

Yes! Please ask us about the Illegally Dumped Mattress Collection Initiative. It requires a separate registration and has monthly reporting requirements. We would be happy to discuss the details and determine your eligibility.



bye bye mattress

A Program of the Mattress Recycling Council®



CALIFORNIA ILLEGALLY DUMPED MATTRESS COLLECTION INITIATIVE

Overview

Each year, the Mattress Recycling Council (MRC) allocates \$1 million to fund the California Illegally Dumped Mattress Collection Initiative (IDMCI). The maximum payout per unit is \$15 (urban) and \$20 (rural). Registration and monthly reporting is required. Participants may enroll at any time and also recycle the units with MRC's Bye Bye Mattress program at no-cost.

Participant Eligibility

Eligible entities must be collecting illegally dumped mattresses and box springs from the public right-of-way. Eligible entities include:

- Authorized solid waste operations
- Permitted solid waste facilities
- Urban and rural government entities
- Nonprofit organizations

See the reverse side for how we work with third-parties that are collecting on behalf of an eligible entity.

Reporting Obligations

Participants must report the number of units collected each month and maintain the following documentation about each mattress or box spring:

- The date the unit was collected
- The zip code it was collected from
- The end-of-life management of the unit (recycled, landfill, etc.)

MRC requires participants submit data within 45 days of the end of the reporting month.

Eligible and Ineligible Items

Mattresses and box springs illegally abandoned in the public right-of-way by California residents are eligible for IDMCI compensation. Units may be recycled through MRC's Bye Bye Mattress program. However, if a unit is too damaged or contaminated for recycling, it is still accepted for compensation through IDMCI.

The following items are not eligible for IDMCI or recycling services:

- Mattress pads or toppers
- Sleeping bags
- Car beds
- Water beds or camping air mattresses
- Fold-out sofa beds
- Futon frames or bases
- Furniture
- Juvenile products such as carriages, baskets, cribs, bassinets, dressing tables, strollers and playpens or their pads
- Infant carriers, lounge pads or crib bumpers

California's Used Mattress Recovery & Recycling Act created the Mattress Recycling Council and the Illegally Dumped Mattress Collection Initiative.

This initiative is made possible by the recycling fee that is required to be collected when mattresses and box springs are sold.

Ask us how to enroll and how to receive no-cost recycling of these units with MRC's Bye Bye Mattress program.

How to Sign Up

- Registration is available on Re-TRAC. <https://connect.re-trac.com/registration/mrc-idp>
- Your registration will be reviewed and approved by MRC within two business days.



ILLEGALLY DUMPED MATTRESS COLLECTION INITIATIVE CONTACT:

Taylor Grimes

(279) 999-2984

tgrimes@mattressrecyclingcouncil.org

For details, visit:

www.MattressRecyclingCouncil.org



bye bye mattress®

A Program of the Mattress Recycling Council



ILLEGALLY DUMPED MATTRESS COLLECTION INITIATIVE CONTACT:

Taylor Grimes: (279) 999-2984, tgrimes@mattressrecyclingcouncil.org

Frequently Asked Questions:

Why was this program created?

The Mattress Recycling Council (MRC) developed the Illegally Dumped Mattress Collection Initiative (IDMCI) to understand the extent of illegal mattress dumping by collecting community specific data. MRC uses this data to track dumping activities and develop solutions.

Who is eligible to receive payments from the IDMCI?

Authorized solid waste operations, permitted solid waste facilities, urban and rural government entities and nonprofits providing illegal dumping clean up projects on behalf of these entities are eligible to receive payments.

My municipality uses a franchised hauler(s) to collect illegally dumped mattresses. Are we eligible to receive compensation?

Yes, but only ONE entity may receive payment. If your municipality has an arrangement with a franchise hauler to pick up illegally dumped units on behalf of the municipality, then your franchise hauler must provide documentation of the illegally dumped units collected.

My organization is a nonprofit that is contracted with public entities to perform clean up duties in the public right-of-way. Is our nonprofit eligible to be reimbursed for any mattresses and box springs we collect and track?

Yes.

Do I have to be a contracted MRC collection location to receive compensation from the IDMCI?

No, but to be eligible for compensation, you must register with IDMCI and submit monthly reports. MRC requires participants input their data into Re-TRAC within 45 days of the end of the reporting month. Annual payments will be dispersed in the spring of the following year.

Are mattresses and box springs both eligible items that qualify for compensation?

Yes. Units that meet MRC quality guidelines outlined in your contract are also eligible for no-cost recycling with MRC's Bye Bye Mattress program.

How much will I be compensated for collecting illegally dumped units?

For the calendar year 2021, MRC has allocated \$1 million to the IDMCI. MRC will pay participants in urban areas up to \$15.00 per unit and rural county participants up to \$20.00 per unit.

Amount per unit is calculated at the close of the calendar year by dividing the total funded amount by the number of illegally dumped units collected during the calendar year.

How do I know if my county qualifies as rural?

MRC follows [Public Resources Code 40183-4 rev. 2008](#) that defines a rural county as one that disposes of less than 200,000 tons of waste annually. CalRecycle publishes a [list](#) annually.

When will MRC allocate payments from the IDMCI?

MRC will reimburse participants on an annual basis. Payments are made in the spring of the following year.

Our organization is a participating MRC collection location. Can we put illegally dumped units we collect in our collection container?

Yes, you may place the illegally dumped units in your container as long as they meet the MRC quality guidelines outlined in your contract.

Can I just provide MRC with the total number of units at the end of the year for illegally dumped mattresses and box springs collected?

No. MRC requires participants input their data into Re-TRAC within 45 days of the end of the reporting month.

Can I receive reimbursement for illegally dumped mattresses that must be landfilled due to the quality of the units?

Yes. Units that are excessively wet, dirty or damaged are not suitable for recycling. Units that meet MRC quality guidelines outlined in your contract are eligible for recycling.

Where can I register as a collector?

<https://connect.re-trac.com/registration/mrc-idp>



bye bye mattress®

A Program of the Mattress Recycling Council®



California Used Mattress Recycling Program Collection Facility and Used Mattress Management Services Agreement

This Agreement ("Agreement") is effective on [REDACTED] ("Effective Date") by and between City of Porterville Public Works, a municipality located at 555 N. Prospect St., Porterville, CA 93257 (the "Service Provider") and Mattress Recycling Council California, LLC, a Delaware limited liability company having its offices at 501 Wythe Street, Alexandria, VA 22314 ("MRC").

RECITALS

Whereas, MRC is the "mattress recycling organization" certified by the State of California to plan and implement a Mattress recycling program in California (the "Program"), as set forth in California Public Resources Code §§ 42985 – 42994 (2014) (the "Act"), and is organized (among other things) to negotiate and execute agreements to collect and transport used Mattresses for Recycling; and

Whereas, MRC and the Service Provider wish to enter into this Agreement, which describes the terms and conditions under which the Service Provider will provide the Services described herein to MRC.

Now, therefore, for and in consideration of the terms of this Agreement and the mutual promises and covenants contained herein, the parties hereto agree as follows:

ARTICLE 1 – DEFINITIONS

- 1.1 "Consolidate" means (as applicable) accepting, handling, storing, and packing only acceptable Program Products into Collection Containers provided by, or approved for use by, MRC or its subcontractors in a manner that is efficient, complies with the requirements of MRC or its subcontractors, and is conducive to safe and efficient transport.
- 1.2 "Collection Containers" are containers provided by, MRC, the Service Provider or their contractors to hold and transport Program Products.
- 1.3 "Collection Facility(ies)" means all permanent or temporary collection facilities that are owned, leased, subleased, or otherwise controlled by the Service Provider and designated by the Program to collect Program Products, and as specifically identified in Attachment D ("Collection Facility Information").

- 1.4 “Effective Date” means the date that the parties’ obligations begin under this Agreement. The Effective Date is the first date shown above.
- 1.5 “Foundation” means a ticking-covered structure used to support a Mattress or sleep surface. The structure may include constructed frames, foam, box springs, or other materials, used alone or in combination.
- 1.6 “Guidelines” mean the Mattress Recycling Council’s California Mattress Recycling Program Collection Guidelines, which provide an overview of the Program and which are amended from time to time. MRC reserves the right to update, change, modify, amend, add or remove terms, or otherwise alter the Guidelines at any time without prior notice. The current and effective Guidelines are posted and maintained at <https://mattressrecyclingcouncil.org/wp-content/uploads/MRC-CA-State-Guidelines.pdf>. Notwithstanding any other term of this Agreement, MRC may provide notice of any amendments to the Guidelines via email to Service Provider at the email address set forth below in Article 12. The effective Guidelines as of the date of this Agreement are contained in Attachment E.
- 1.7 “Materials and Activities” mean materials, supplies, tools, vehicles, equipment, labor, water, light, power, facilities, construction of any nature, supervision, and all other services, acts, activities, resources, and goods, but not Collection Containers, necessary for or otherwise used by the Service Provider to collect, pack, and otherwise comply with and fully perform its obligations under the Agreement.
- 1.8 “Mattress” means resilient material or a combination of materials that is enclosed by a ticking (the outermost layer of fabric or related material of a Mattress) that is intended or promoted for sleeping upon, Foundations, Renovated Mattresses, Renovated Foundations, and futon Mattresses. “Mattress” does not include any of the following: (i) an unattached mattress pad, an unattached mattress topper, including any item with resilient filling, with or without ticking, that is intended to be used with or on top of a mattress, (ii) a sleeping bag or pillow, (iii) a car bed, (iv) juvenile products, including a carriage, basket, dressing table, stroller, playpen, infant carrier, lounge pad, crib or bassinet mattress, crib bumper, or any pad for such juvenile product, (v) a product that contains liquid or gaseous filled ticking, including any water bed and or any air mattress that does not contain upholstery material between the ticking and the mattress core, and/or (vi) any upholstered furniture that does not otherwise contain a detachable mattress, including, without limitation, a fold-out sofa bed, sleeper sofa or folding cot.
- 1.9 “Non-Conforming Units” are Program Products that must be disposed of as solid waste because they are contaminated or too damaged to recycle.
- 1.10 “Non-Program Products” mean products not covered by the Program, including out of state Units. Non-Program Products include: sleeping bags, pillows, an unattached mattress pad or mattress toppers (even items with resilient filling intended to be used with or on top of a mattress), car bed, crib or bassinet mattress, juvenile products or the pads used for such juvenile products, waterbeds, air mattresses that contain no upholstery material (such as a camping mattress), units manufactured by California Prison Industry Authority and sofa beds.

- 1.11 "Program Products" means and includes Mattresses, as defined herein, Foundations, and Renovated Mattresses or Renovated Foundations.
- 1.12 "Program" means the California Used Mattress Recycling Program created by MRC.
- 1.13 "Recycle" or "Recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste and returning them to the economic mainstream in the form of a raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Recycling does not include, incineration, pyrolysis, distillation, or biological conversion other than composting.
- 1.14 "Recycler" means an entity that engages in the manual or mechanical separation of Mattresses to substantially recover components and commodities contained in Mattresses for the purpose of reuse or recycling.
- 1.15 "Renovate" or "Renovation" means altering a used Mattress or Foundation for the purpose of resale and includes one or more of the following: (a) replacing the Mattress ticking or filling; (b) adding additional filling; (c) rebuilding a used Mattress or (d) replacing components with new or post-consumer materials unless the material is a clean recycled material, consists of used electronic parts or controls, or is a used Mattress base that is not covered by ticking. Material sent to renovation will be considered Recycled material.
- "Renovate" or "Renovation" does not include any of the following: (a) stripping a Mattress of its ticking or filling without adding new material; (b) sterilizing or sanitizing a Mattress without otherwise altering the Mattress; (c) altering a Mattress by a Renovator when a person retains the altered Mattress for lease, rental or personal use or (d) refurbishing that disqualifies a Mattress for a yellow wholesale renovator tag to be affixed to the Mattress, in accordance with the regulations adopted by the Department of Consumer Affairs.
- 1.16 "Retailer" means any party who sells Mattresses in California or offers to a Consumer a Mattress in California through any means, including, but not limited to, by remote offering, including sales outlets or catalogs, electronically through the internet, by telephone, or through the mail.
- 1.17 "Services" means all services for which Service Provider is responsible, as described in this Agreement and in the Attachments hereto, including any and all Materials and Activities.
- 1.18 "State" means the State of California.
- 1.19 "Temporary Collection Events" mean an event hosted by the Service Provider to Consolidate Program Products at locations within the State that are short in duration and not at permanent collection facilities.
- 1.20 "Transportation Providers" or "Transporter" means a contractor hired by MRC or Service Provider to transport Program Products from the Collection Facilities or Temporary Collection Events.

- 1.21 “Unit” means a single Mattress or box spring dropped off at or collected from a California resident or business at no charge. For example, an individual Mattress and an individual box spring would each constitute a single Unit.

ARTICLE 2 – TERM OF AGREEMENT

- 2.1 This Agreement will commence upon the Effective Date and will remain in full force and effect for a period of two (2) years (the “Initial Term”). This Agreement will automatically renew for additional successive one (1) year terms. Either party may terminate the contract for any reason upon thirty (30) days’ notice.
- 2.2 If the agreement is terminated, the Service Provider will, at no additional cost to MRC, immediately make all Collection Containers available for pick up by MRC’s Transporter.

ARTICLE 3 – GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

- 3.1 In consideration of MRC’s payments, if any, to the Service Provider for Services, and for activities undertaken at MRC’s expense, the Service Provider will perform the Services provided for in Attachment A (“Scope of Services”) in conformity with the Program and Guidelines, except to the extent the Program and/or Guidelines conflict with the terms of this Agreement or any applicable Law.
- 3.2 The Service Provider will manage all Program Products Consolidated at the Collection Facilities only in accordance with Attachment A and will not dispose of Program Products in any other method without the prior written approval of MRC.
- 3.3 The Service Provider is responsible for and will manage, at its sole expense, any and all Non-Program Products it collects at the Collection Facilities or places in Collection Containers. MRC accepts no responsibility for such Non-Program Products and will not pay Service Provider any consideration in connection with such Non-Program Products.
- 3.4 The Service Provider will not charge any fees to California residents that drop off Program Products with the Service Provider, up to the maximum number as specified in Attachment D. Nothing in this Agreement prohibits the Service Provider from charging fees to California residents, businesses, or other entities for bulky or curbside collection of Program Products; California businesses or other entities that drop off Program Products; or California residents, business and other entities dropping off Non-Program Products or Program Products in excess of the quantities specified in Attachment D.
- 3.5 The Service Provider will inspect the Collection Containers upon arrival and determine whether they are in proper condition for use. MRC or its contractor is responsible for replacing any defective Collection Containers and repairing normal wear-and-tear to the Collection Containers. The Service Provider will immediately notify MRC if at any point during the term of the Agreement a Collection Container(s) is not in proper condition for use and will not use any such defective Collection Containers until they are repaired or replaced by MRC or its contractor. If a Collection Container is functional, but is delivered in a damaged condition, the Service Provider will notify MRC or its contractor in writing of the nature and

location of such damage upon the arrival of the Collection Container. Service Provider will exercise reasonable care in securing and maintaining their premises and safeguarding Collection Container from damage.

- 3.6 The Service Provider will inspect each Unit before placing it in a Collection Container to confirm whether it is a Program Product. Service Provider will separate Non-Conforming Units, including Units contaminated with bed bugs or otherwise unsuitable for recycling, and will dispose of such Units as solid waste.

ARTICLE 4 – SERVICE PROVIDER REPRESENTATIONS AND WARRANTIES

The Service Provider represents, covenants, and warrants that: it is a municipality in good standing and qualified to conduct business in California, and has all necessary approval, capacity, and authority to enter into this Agreement and fully perform its obligations under this Agreement.

ARTICLE 5 – MRC OBLIGATIONS

- 5.1 Upon receiving a request from the Service Provider, MRC will arrange for timely pick-up of Program Products Consolidated by the Service Provider. MRC or an MRC contractor will, at its expense, arrange for the transport to a Recycler.
- 5.2 MRC will make available to the Service Provider consumer brochures and signs identifying the site as an MRC drop-off location.
- 5.3 Unless the Service Provider elects to provide its own Collection Containers, MRC will assign, via email, an MRC approved Transporter. MRC's Transporters will provide Collection Containers to the Service Provider. All Collection Containers furnished by a Transporter will remain the property of the Transporter.

ARTICLE 6 – TITLE AND RISK OF LOSS

- 6.1 The Service Provider (and not MRC) has title to and risk of loss and liability for any and all Program Products, Non-Conforming Units and Non-Program Products that the Service Provider receives. Notwithstanding the foregoing, once a Transportation Provider accepts for transportation any Program Products collected by the Service Provider under this Agreement and Consolidated on a Collection Container, title to and risk of loss as to those Program Products, will transfer to that Transportation Provider. MRC at no time takes title to or assumes liability for any Program Products, Non-Conforming Units or Non-Program Products. However, MRC will require in its contracts with its Transportation Providers that they accept title and risk of loss immediately upon accepting any Program Products for transportation from the Service Provider.
- 6.2 MRC is not responsible for any damage to persons or property resulting from the use, misuse, or failure of any equipment used by the Service Provider, or by any of its employees or contractors, including the Collection Containers, even if such equipment is furnished, rented, or loaned to the Service Provider by MRC.

ARTICLE 7 – CONSIDERATION AND PAYMENT

- 7.1 As consideration under this Agreement, MRC or its contractors will; (i) facilitate the transportation of Program Products by Transportation Providers as set forth in this Agreement; (ii) pay the Service Provider for Services rendered as set forth in this Agreement; and (iii) perform other services incidental to the management of the Program.
- 7.2 MRC will pay Service Provider for Services rendered in the amount set forth in Attachment B (“Compensation Rates”). No other payment or reimbursement will be made for the Service Provider’s Collection of Program Products, furnishing of the Materials and Activities, or its performance of the Services.
- 7.3 The Service Provider will invoice MRC on a monthly basis, either by hardcopy or electronically, as determined by MRC. Invoices must include the information included in Attachment C (“Model Invoice”) and must state:
- a. the unique, identifying invoice number;
 - b. the specific categories of Services provided for under the Agreement;
 - c. the specific number of Units consolidated;
 - d. copies of each transportation Bill of Lading or equivalent shipping documentation; and
 - e. any additional information as agreed to in writing by the parties that is relevant to the Services being performed by the Service Provider.
- 7.4 MRC reserves the right to refuse payment of any invoice or portion thereof that is not received in an acceptable form or for Services performed by the Service Provider but not invoiced for more than 90 days.
- 7.5 All amounts invoiced by the Service Provider to MRC, or paid by MRC to the Service Provider, are subject to audit by MRC, as described below in ARTICLE 8 – AUDIT AND INSPECTION RIGHTS OF MRC.
- 7.6 The Service Provider will submit invoices to:

To: Mattress Recycling Council California, LLC
Attn: Accounts Payable
Phone: 1-855-229-1691
E-mail: payables@mrc-us.org
Address: 501 Wythe Street, Alexandria, VA 22314

MRC will send Service Provider payments to:

To: City of Porterville Public Works
Attn: Michael Knight, Public Works Director
Phone: 559-782-7586
E-mail: mknight@ci.porterville.ca.us
Address: 555 N. Prospect St., Porterville, CA 93257

- 7.7 Provided that the Service Provider has supplied the required information and otherwise performed its obligations under this Agreement, MRC will pay such invoice within thirty (30) days of the date that MRC receives the invoice. In the event MRC has a good-faith objection to an invoice, MRC will pay the undisputed amount pursuant to the terms of this Agreement and notify in writing the Service Provider of said objections and describe in reasonable detail the basis for the objections. The Dispute Resolution provisions in ARTICLE 14 - DISPUTE RESOLUTION will be used to resolve such disputed portion of an invoice. During any such dispute, the Service Provider will continue with its responsibilities under this Agreement and will not stop providing the Services unless this Agreement is terminated. MRC will make all payments due to the Service Provider over which there is no good-faith dispute.
- 7.8 MRC's payment of all or a part of an invoice neither relieves the Service Provider of any of its obligations under this Agreement nor constitutes a waiver of any claims by MRC.
- 7.9 The Service Provider warrants that, to the best of its knowledge, all documents, including invoices, billings, back-up information for invoices, and reports, submitted by the Service Provider to MRC to support amounts invoiced in connection with the Services truly reflect the facts about the activities and transactions to which they pertain. The Service Provider warrants that MRC, for whatever purpose, may rely upon all such documents and the data therein as being complete and accurate. The Service Provider will promptly notify MRC upon discovery of any instances where the Service Provider becomes aware of any discrepancies in relation to documents under this Article.

ARTICLE 8 – AUDIT AND INSPECTION RIGHTS OF MRC

- 8.1 MRC may audit and inspect, the Service Provider's Collection Facilities during the Collection Facilities' hours of operation, as well as any other site at which the Service Provider performs the Services. MRC will provide the Service Provider with at least twenty-four (24) hours' notice before any such audit or inspection.
- 8.2 The Service Provider will permit MRC to audit, examine, and make excerpts and transcripts, for any books or records, and to make audits of any invoices, materials, records, and other data related to all other matters covered by this Agreement.

ARTICLE 9 – INDEMNIFICATION

- 9.1 The Service Provider, and its successors and assigns (collectively, the “Indemnifying Party”), will, to the fullest extent allowed by law, indemnify, defend, and hold harmless MRC and its sole member (as identified under MRC’s Certificate of Incorporation), and their member companies, officers, directors, stockholders, employees, successors, assigns, attorneys, agents, and invitees (collectively, the “Indemnified Parties”) from and against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively, “Claims”), including cost of defense, settlement, arbitration, and reasonable attorney’s fees, resulting from injuries to or death of persons, including but not limited to employees of either party hereto, and damage to or destruction of property or loss of use thereof, including but not limited to the property of either party hereto, arising out of, pertaining to, or resulting from the acts or omissions of the Indemnifying Party, or the acts or omissions of anyone else directly or indirectly acting on behalf of the Indemnifying Party, its officers, agents, employees, or contractors, or for which the Indemnifying Party is legally liable under law regardless of whether caused in part by an Indemnified Party.
- 9.2 MRC, and its successors and assigns (collectively, the “MRC Indemnifying Party”), will, to the fullest extent allowed by law, indemnify, defend, and hold harmless the Service Provider and its officers, directors, stockholders, employees, successors, assigns, attorneys, agents, and invitees (collectively, the “MRC Indemnified Parties”) from and against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively, “Claims”), including cost of defense, settlement, arbitration, and reasonable attorney’s fees, resulting from injuries to or death of persons, including but not limited to employees of either party hereto, and damage to or destruction of property or loss of use thereof, including but not limited to the property of either party hereto, arising out of, pertaining to, or resulting from the acts or omissions of the MRC Indemnifying Party, or the acts or omissions of anyone else directly or indirectly acting on behalf of the MRC Indemnifying Parties, or for which the MRC Indemnifying Party is legally liable under law excepting only such injury, death, or damage to the extent caused by the active negligence or willful misconduct of an MRC Indemnified Party.
- 9.3 The following provisions apply to Paragraphs 9.1 and 9.2 above:
- a. This indemnity will not be limited by the types and amounts of insurance or self-insurance maintained by the Indemnifying or Indemnified Parties or their contractors;
 - b. Nothing in this indemnity will be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party; and
 - c. The provisions of this indemnity will survive the expiration or termination of this Agreement.
- 9.4 MRC WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES, WHETHER BASED ON BREACH OF

CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF SUCH POTENTIAL DAMAGES. NOTHING IN THIS AGREEMENT CONSTITUTES A WAIVER OR LIMITATION OF ANY RIGHTS THAT MRC MAY HAVE UNDER THE APPLICABLE LAW.

ARTICLE 10 – INSURANCE

- 10.1 The Service Provider must maintain, at its own expense, the policies of the following minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
a. Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
b. Workers Compensation	Statutory

- 10.2 The Required Insurance, except for worker's compensation insurance, must contain or be endorsed to contain MRC California, LLC and its sole member and their officers, directors, agents, and employees, as additional insureds and a waiver of subrogation in favor of MRC California, LLC and its sole member and their officers, directors, agents, and employees. The Service Provider will obtain any endorsement that may be necessary to affect the waiver of subrogation. The Required Insurance policies (except for worker's compensation) must contain (i) a written statement in the policies or in endorsements thereto that they are each primary insurance to any other insurance available to the Service Provider or to any additional insureds or additional named insureds, and (ii) a separation of insureds provision stating that the insurance applies separately to each insured against whom a claim is made or a suit is brought and that the actions or omissions of any insured that might give rise to application of an exclusion to coverage apply only to that insured actually committing the actions or omissions.
- 10.3 Service Provider must submit current evidence of insurance before Services begin. Certificates of insurance and renewals are to be sent via electronic mail to: contracts@mrc-us.org. Insurance brokers shall remit all renewals to the same email address.
- 10.4 Service Provider is required to provide MRC with notification of any cancellation or change in Service Provider's insurance coverage during the period of the Agreement with MRC with not less than thirty days' notice prior to the date said cancellation or change becomes effective.
- 10.5 In the event a Certificate of Insurance required by this Article should expire or be cancelled during the term of this Agreement, Service Provider agrees to provide, at least thirty days prior to said expiration or cancellation, a new Certificate of Insurance evidencing coverage, as provided for herein, for not less than the remainder of the Agreement.

- 10.6 Compliance by Service Provider with the foregoing requirements to carry insurance and furnish certificates will not relieve Service Provider from liability assumed under the provisions of this Agreement.
- 10.7 Both Parties will require all third parties that it uses to provide any services under this contract to comply with the same insurance requirements specified above.

ARTICLE 11 – ASSIGNMENT AND SUBCONTRACTING

- 11.1 The Service Provider may not assign, novate, or otherwise transfer (including transfer by operation of law) this Agreement or the obligations and rights hereunder without the express written consent of MRC.
- 11.2 MRC reserves the right to subcontract its duties and rights under this Agreement (including the conduct of audits, inspections, and monitoring activity) to third parties. Service Provider agrees that such subcontractors to MRC will have the same rights and responsibilities as MRC, unless otherwise noted.

ARTICLE 12 – NOTICES

Except where otherwise expressly authorized, notice will be by first class certified or registered mail, or by commercial delivery service issuing a receipt for delivery. Notices will be addressed as set forth below. Either party may change the address information below by providing written notice to the other party. Notice is effective upon delivery, or if delivery is refused, when delivery is attempted.

To: Mattress Recycling Council California, LLC
Attn: Gayle Hanlon, Senior Counsel
Email: ghanlon@mrc-us.org
Address: 501 Wythe Street, Alexandria, VA 22314

To: City of Porterville Public Works
Attn: Michael Knight, Public Works Director
E-mail: mknight@ci.porterville.ca.us
Address: 555 N. Prospect St., Porterville, CA 93257

ARTICLE 13 – INDEPENDENT CONTRACTOR STATUS

- 13.1 The parties intend that the Service Provider, in performing the Services specified herein, is acting as an independent contractor and that the Service Provider will control the Services and the manner in which it is performed. This Agreement is not intended and may not be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture, or association.
- 13.2 Each party, or its subcontractors, as appropriate, is solely liable and responsible for providing all compensation and benefits due to, or on behalf of, all persons

performing Services on its behalf in connection with this Agreement. Neither party has any liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the other party.

- 13.3 Each party understands and agrees that all persons performing Services pursuant to this Agreement are, for purposes of Workers' Compensation liability, solely employees of that party and not employees of the other party. Each party is solely liable and responsible for furnishing any and all Workers' Compensation benefits to its employees as a result of any injuries arising from or connected with any Services performed by or on behalf of that party pursuant to this Agreement.
- 13.4 MRC has no authority to manage, direct, or supervise employees, representatives, or agents of the Service Provider, including how they perform the Services and achieve compliance with applicable Law. MRC does not have responsibility for making day-to-day and critical decisions regarding the Services, including the management or supervision of any activities comprising the Services.
- 13.5 Third-party Transportation Providers are independent contractors and are not employees, partners, or agents of either party. Neither party is liable for the acts or omissions of third-party Transportation Providers under this Agreement.

ARTICLE 14 – DISPUTE RESOLUTION

- 14.1 Subject to the conditions and limitations of this Article, any controversy or claim arising out of or relating to this Agreement will be exclusively settled by arbitration under the laws of the State of California, in accordance with the rules of the American Arbitration Association.
- 14.2 The parties agree to consolidation of any arbitration between them with any other arbitration involving, arising from, or relating to this Agreement.
- 14.3 Each party hereto accepts the jurisdiction of the courts of the State of California for the purposes of commencing, conducting, and enforcing an arbitration proceeding pursuant to this Article. Each party will accept service of notice of the other party's intent to proceed with arbitration, and of any other step in connection therewith or enforcement thereof, if such notice is in writing and sent by certified letter addressed to said party according to Article 12, and such notice will have the same effect as if the party had been personally served within the State of California.
- 14.4 Any decision of an arbitrator engaged under this Article is final, binding, and enforceable upon both parties.
- 14.5 The Service Provider will continue with its responsibilities under this Agreement during any dispute.
- 14.6 The parties will continue to provide Services during the dispute resolution process in a diligent and timely manner in accordance with all applicable provisions of this Agreement.

- 14.7 Each party hereto will bear the costs and expenses incurred by it in connection with such arbitration processes. The cost of any independent decision maker will be shared equally between the parties.

ARTICLE 15 – CONFIDENTIALITY/PUBLICITY

- 15.1 The Service Provider will not disclose any details in connection with this Agreement to any person or entity without MRC's prior written authorization, except as may be otherwise provided hereunder or required by law. However, in recognizing the Service Provider's need to identify its services and related clients to sustain it, MRC will not inhibit the Service Provider from publishing its role in the Program within the following conditions:
- a. The Service Provider may utilize and develop publicity material regarding the MRC Program only upon the prior written consent of MRC, which consent will not be unreasonably withheld; and
 - b. During the term of the Agreement, the Service Provider will not, and will not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of MRC without the prior written consent of MRC, which consent will not be unreasonably withheld.
- 15.2 The Collection Facilities may be listed, referenced, or advertised as collection sites by MRC for the Program during the term of this Agreement.

ARTICLE 16- UNCONTROLLABLE CIRCUMSTANCES

- 16.1 Neither party will be liable for its failure to perform hereunder, in whole or in part, due to contingencies beyond its reasonable control ("Uncontrollable Circumstance(s)"), including, but not limited to strikes, riots, war, fire, acts of God or terrorism, pandemic, injunction, compliance with any applicable federal, state, local, and other laws, ordinances, rules, regulations or orders of any public body having jurisdiction, whether valid or invalid, whether now existing or hereafter created. For further clarification, Uncontrolled Circumstances do not include fluctuations in commodity or scrap prices, demand for such materials, or other such changes that affect the economic condition of the market as it relates to recycling and recycled goods.
- 16.2 The parties will use their best efforts to overcome or remove any Uncontrollable Circumstance and to minimize the effect of such Uncontrollable Circumstance and any costs resulting therefrom.
- 16.3 Each party will assume the risk of all losses and damages directly incurred by them except as otherwise limited pursuant to the terms of this Agreement, which arise out of an Uncontrollable Circumstance event. Neither party should be entitled to recover from the other revenues lost due to the occurrence of an Uncontrollable Circumstance, provided further, however, that each party is obligated in good faith and to the extent not detrimental to its interests and within any applicable provision

of law, to jointly attempt to mitigate the damages, costs and expenses arising out of an Uncontrollable Circumstance event.

- 16.4 The party asserting that an Uncontrollable Circumstance exists will, as a condition precedent to the right to claim the benefits of this Section, promptly after becoming aware of such Uncontrollable Circumstance, and in any event, within fifteen (15) calendar days from the date on which said party becomes or should have become aware of the occurrence of such Uncontrollable Circumstance, notify the other party of such event. This party will then, within fifteen (15) days of such initial notice, provide a written notice of the effect, if any, on either party's obligations under this Agreement, and available areas of mitigation or saving of the costs associated with such event. Each party will continue to keep the other party advised with respect to the anticipated impact of such Uncontrollable Circumstance.

ARTICLE 17 – MISCELLANEOUS PROVISIONS

- 17.1 **No Waiver.** The failure at any time to enforce any provision of this Agreement or failure to exercise any right herein granted does not constitute a waiver of such provision or of such right thereafter to enforce any or all of the provisions of this Agreement.
- 17.2 **Selective Waiver.** Either party may waive any default by the other party under this Agreement by an instrument in writing to that effect and no such waiver will extend to any subsequent or other default by the other party. No failure or delay on the part of either party to exercise any right hereunder operates as a waiver thereof. Either party may elect to selectively and successively enforce its rights hereunder, such rights being cumulative and not alternative.
- 17.3 **Entire Contract/Order of Precedence.** This Agreement and all Attachments and exhibits hereto, and all referenced documents, including the Guidelines, constitute the entire agreement between the parties with respect to the matters herein, and integrates, merges, and supersedes all prior negotiations, representations, or agreements relating thereto, whether written or oral, except to the extent they are expressly incorporated herein. The provisions of this Agreement and the accompanying documents are to be construed and interpreted as consistent whenever possible. Any conflicts in this Agreement and the accompanying documents will be resolved in accordance with the following descending order of precedence:
- a. Attachment A (“Scope of Services”);
 - b. Attachment B (“Compensation Rates”);
 - c. The terms of this Agreement
 - d. Attachment E (“Guidelines”);
 - e. Attachment D (“Collection Facility Information”); and
 - f. Attachment C (“Model Invoice”).

- 17.4 **Amendment or Modification.** Unless otherwise provided herein, no amendments, changes, alterations, variations, or modifications to this Agreement will be effective unless in writing and signed by the respective duly authorized officers of the parties hereto.
- 17.5 **Additional Sites.** Service Provider, either currently or in the future, may have additional sites, solid waste facilities, collection facilities or subsidiaries (“Additional Sites”) that it wishes to add to this Agreement. Additional Sites may become a Service Provider under this Agreement by executing its own Compensation Rate form in Attachment B and Collection Facility Information form in Attachment D. The Additional Sites will then be governed by the terms of this Agreement and the Attachments hereto (including its personalized Compensation Rate form in Attachment B and personalized Collection Facility Information form in Attachment D). Any changes or modifications made by an Additional Site to Attachment B and Attachment D will not affect other Service Providers that exist under this Agreement, nor will it change or modify any of the other Service Providers’ terms, conditions, responsibilities and/or liabilities under this Agreement.
- 17.6 **Governing Law/Venue.** This Agreement is executed and intended to be performed in the State of California, and the laws of that State will govern its interpretation and effect.
- 17.7 **Severability.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof will remain in full force and effect and will in no way be affected, impaired, or invalidated thereby.
- 17.8 **Calendar Days.** Any reference to the word “day” or “days” herein will mean calendar day or calendars days, respectively, including weekends and Federal Holidays, unless otherwise expressly provided. If a deadline falls on a weekend or Federal Holiday, the next business day will be the applicable deadline.
- 17.9 **No Third-Party Beneficiary.** This Agreement is intended solely for the benefit of the parties hereto, and no third party has any right or interest in any provision of this Agreement or as a result of any action or inaction by any party in connection therewith.
- 17.10 **Authorization.** Each party represents and warrants that it has full power and authority to enter into this Agreement and to perform its obligations set forth herein. The representative(s) signing this Agreement on behalf of each party represents that he/she has the authority to execute this Agreement on behalf of the applicable party and to bind it to its contractual obligations hereunder.
- 17.11 **Electronic Signatures.** Unless otherwise prohibited by law or Service Provider policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the Service Provider.

17.12 Survival of Terms. All services performed and deliverables provided pursuant to this Agreement are subject to the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement will so survive, including but not limited to: ARTICLE 4 – SERVICE PROVIDER REPRESENTATIONS AND WARRANTIES; ARTICLE 6 – TITLE AND RISK OF LOSS; ARTICLE 8 – AUDIT AND INSPECTION RIGHTS OF MRC; ARTICLE 9 – INDEMNIFICATION; ARTICLE 10 – INSURANCE; ARTICLE 13 – INDEPENDENT CONTRACTOR STATUS; ARTICLE 14 – DISPUTE RESOLUTION; ARTICLE 15 – CONFIDENTIALITY/PUBLICITY; and ARTICLE 17 – MISCELLANEOUS.

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed by its duly authorized representative on the day and year set forth below.

By:

Catherine Lyons, Manager
**Mattress Recycling Council
California, LLC**

Michael Knight, Public Works Director
City of Porterville Public Works

DATE

DATE

MRC Legal Approval

ATTACHMENT A: SCOPE OF SERVICES

As part of the Services under this Agreement, the Service Provider will do the following:

1. Provide the Services necessary to Consolidate acceptable Program Products, up to the maximum number specified in Attachment D, that are dropped off by individual California residents for pick up by Transportation Providers.
2. Include no Non-Program Products, no Non-Conforming Units and no Units that are unsuitable for recycling, including Units contaminated with bed bugs, in the Collection Containers.
3. Notify MRC assigned Transporter *before* collection containers are full to allow adequate time for Transporter to schedule pick-up services.
4. Provide to MRC a minimum of ninety (90) days' advance notice of any Temporary Collection Events conducted by the Service Provider that include the collection of Program Products dropped off by individual California residents free of charge to be picked up by Transportation Providers at the Temporary Collection Event.

CONFIDENTIAL DRAFT-NOT INTENDED FOR EXECUTION

ATTACHMENT B: COMPENSATION RATES

Service Provider:

Service	Description	Unit Price
<u>Program Product Consolidation</u>	MRC will compensate Service Provider for all Program Products dropped off by California residents for which a fee has not been collected and which Service Provider Consolidates in a Collection Container. The Service Provider will not place Non-Program Products, Non-Conforming Units or Units that are unsuitable for Recycling, including Units contaminated with bed bugs, in Collection Containers.	\$2.25 per Unit ¹

MRC and Service Provider hereby agree to the foregoing compensation rates, in accordance with the terms set forth herein.

MRC initials:

Service Provider initials:

¹ No sooner than one year following the effective date of this Agreement, and on an annual basis thereafter, the compensation rates may be adjusted based on actual percentage change to the Solid Waste Collection Producer Price Index (PPI) published by the Bureau of Labor Statistics (Series ID: PCU5621115621112) for the most recent available twelve-month period using published finalized numbers, not preliminary numbers. To be eligible for these adjustments, Service Provider makes a written request that is received by MRC no more than sixty days but at least thirty days in advance of the eligible adjustment effective date. No annual PPI adjustment will be made absent a written request. In each case, the PPI adjustment will be made for the most recent available and finalized twelve-month period only. Published preliminary PPI numbers released by the Bureau of Labor Statistics will not be included. Annual PPI adjustments that are not requested by Service Provider in accordance with this paragraph are forfeited.

ATTACHMENT C: MODEL INVOICE

Invoice Date: _____

Service Provider: _____

Collection Facility Location: _____

Unique Identifying Invoice Number: _____

Dates of Service: _____

Service (refer to Attachment B of Agreement for definitions of below Service terms)	Quantity of Units	Unit Price	Invoiced Amount
Program Product Consolidation		\$2.25 per Unit	
TOTAL			

The above invoice represents, to the best of my knowledge, complete and accurate information regarding the Services rendered and for which the Service Provider seeks payment through the Program. I hereby certify on behalf of the Service Provider that the attached back-up documentation is accurate.

Name: _____

Company Title: _____

ATTACHMENT D: COLLECTION FACILITY INFORMATION

Service Provider: City of Porterville Public Works

Full name of site	City of Porterville Public Works/Corporation Yard
Full address of site	555 N. Prospect Street Porterville, CA 93257
Phone number for general public	(559) 782-7514
Days/hours open to the public	3 rd Saturday of the month 8am-12pm
Website address	https://www.ci.porterville.ca.us/departments/public_works/index.php
Contact person's name and title	Briana Spry, Field Services Superintendent
Contact person's phone number & email address	559-782-7586 bspry@ci.porterville.ca.us
Maximum # of Units per vehicle, per day for residents	10
Maximum # of Units per vehicle, per day for other entities	0
Drop-off residency requirement? (list cities, towns, counties or eligible residential areas)	Tulare County residents
Will Mattresses collected as part of bulky curbside programs be placed in the MRC container? (Yes or No, if yes, complete the supplemental table.)	No

MRC and Service Provider hereby agree that all facilities listed in Attachment D are covered by the terms and conditions set forth in this Agreement.

MRC initials: _____ Service Provider initials: _____

ATTACHMENT E: COLLECTION SITE GUIDELINES

[see attached PDF]

CONFIDENTIAL DRAFT-NOT INTENDED FOR EXECUTION

ATTACHMENT E



Mattress Recycling Council®

BYE BYE MATTRESS

CALIFORNIA

COLLECTION GUIDELINES

PUBLISHED NOVEMBER 2023



bye bye mattress®

A Program of the Mattress Recycling Council®

TABLE OF CONTENTS

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About the Guidelines

Staff at all participating collection sites must be knowledgeable regarding these guidelines before accepting mattresses. For simplicity, these guidelines will refer to mattresses and box springs as mattresses. These guidelines describe the program and what is required to participate. MRC reserves the right to update, change, modify, amend, add or remove terms or otherwise alter these guidelines at any time with or without prior notice.

About the Mattress Recycling Council

In 2013, California enacted Senate Bill 254 as amended which requires mattress manufacturers to create a recycling program for mattresses discarded in the state. The bedding industry established the Mattress Recycling Council (MRC) to develop and operate the mattress recycling program known as Bye Bye Mattress.

What MRC Provides

MRC provides the following to participating collection sites:

- A collection container to store mattresses that is appropriate for the number of mattresses that the collection site expects to generate and the site's available space
- Transportation from the collection site to a contracted recycler
- No-cost mattress recycling services

CONTACTS

MRC Program Coordinators

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California Program Manager

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Mariposa, Merced, Mono, Monterey,
San Benito, San Luis Obispo, Stanislaus,
Tulare, Tuolumne

Christine Messer

Northern California Coordinator

916-908-3223

cmesser@mrc-us.org

Alpine, Amador, Butte, Colusa, Del Norte,
El Dorado, Glenn, Humboldt, Lassen,
Modoc, Nevada, Placer, Plumas,
Sacramento, Shasta, Sierra, Siskiyou,
Sutter, Tehama, Trinity, Yolo, Yuba

PROGRAM MATERIALS

INCLUDED PRODUCTS

Mattresses: Defined as any sleep surface covered with ticking or fabric that contains resilient material such as steel innersprings, foam, fiber or other filling or upholstery materials, used alone or in combination, regardless of size or shape. This definition includes foam mattresses.

Futons: See mattress definition above. Futon mattresses must be detachable from the frame or base to be accepted. (Futon mattresses that do not detach from the frame or base are not included.)

Box springs (also commonly called foundations): A ticking or fabric-covered structure used to support a mattress or sleep surface and may be comprised of a frame, foam, springs or other structure, or other materials, used alone or in combination, regardless of whether the product is stationary or adjustable.

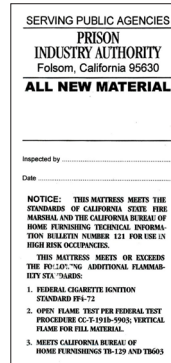


All items accepted for recycling by MRC must have been used and discarded in the state of California.

PROGRAM MATERIALS

EXCLUDED PRODUCTS

- Severely wet, damaged, twisted, frozen or soiled mattresses
- Adjustable bases not covered in ticking or fabric
- Air mattresses that contain no upholstery material (such as camping beds)
- Car beds
- California Prison Industry Authority units
- Collapsible roll-away beds
- Fold-out sofa beds
- Futon frames or bases
- Juvenile products including crib mattresses, carriages, baskets, dressing tables, strollers, playpens, infant carriers, lounge pad, crib bumpers
- Loose bedding, blankets or sheets
- Mattresses infested with bed bugs or other living organisms
- Mattress pads and toppers
- Metal bed frames
- Out-of-state mattresses
- Pillows and cushions
- Sleeping bags
- Water beds



PROGRAM MATERIALS

MATTRESS INSPECTION AND EXAMINATION

Collection site staff should screen incoming mattresses to determine whether they are suitable for recycling and should remove mattresses that are:

- Excessively wet or frozen
- Severely twisted, punctured or crushed
- Infested with bed bugs or other living organisms
- Exceptionally soiled or moldy

Mattresses not suitable for recycling should be disposed of through your existing solid waste stream.

Bed Bug Identification

Mattresses and box springs infested with bed bugs are unacceptable for recycling and should be disposed of through your existing solid waste stream. Staff at collection sites should evaluate program materials for evidence of bed bug infestation. A training webinar focused on dispelling health related myths, identifying bed bugs and offering best practices for protecting staff can be found here: <https://www.mattressrecyclingcouncil.org/resources>



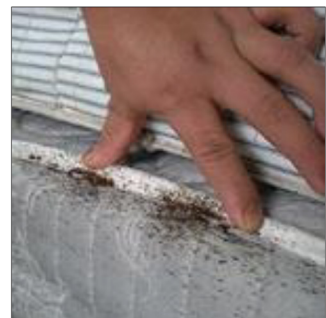
Bed bugs are tan to brown in color, but may appear redder if they have fed.

Adult Bed Bugs are dorsally flat insects, broadly oval and the size of an apple or melon seed (1/4").

Nymphs look like adults in shape but are smaller.

Eggs are white and barrel-shaped.

Signs of bed bug activity may be more obvious than the insects themselves. Look for clusters of dark spots or smudges on mattresses (fecal spots), especially along seams. Eggs, shed skins and all life stages of bed bugs may also be present in these 'soiled' areas.



For more information on bed bugs, please refer to the resources made possible by the **Connecticut Coalition Against Bed Bugs** at www.ct.gov/caes/CCABB

QUALITY STANDARDS

Acceptable Quality

IMPORTANT: Only units used and discarded in California are accepted by the program.

Shown here are examples of acceptable units.



Unacceptable Quality

Shown here are examples to illustrate severe damage, heavy soiling and infestation.

Other Conditions:

- Out-of-state mattresses
- Severely damaged or soiled mattresses
- Mattress that have been stripped of padding components.
- Pillows and cushions
- Fold-out sofa beds and futon frames or bases
- Loose mattress pads, toppers
- Loose bedding, blankets, or sheets
- Water beds
- Fire damaged units



MATERIALS COLLECTION & HANDLING

Each collection site will have unique operational considerations. Participating sites must make their own decisions about how to best manage their operations in the safest manner possible in accordance with applicable laws. At a minimum, each participating site must meet these requirements:

MINIMUM PROGRAM REQUIREMENTS	
SITE	Each collection site must be secure with adequate space and staffing to handle and store acceptable mattresses.
PERMITS	Each collection site must have knowledge of and comply with all applicable federal, state and local laws. These may include, but are not limited to, zoning requirements, state permit requirements and OSHA or other workplace requirements. Please contact your Local Enforcement Agency (LEA) to confirm whether your site is in compliance with all applicable notifications or requirements for accepting mattresses for recycling at your site. In many cases, this will be your county or local Public Health Department.
INSURANCE	Each collection site must maintain general liability insurance of at least \$1,000,000 per occurrence.
TRAINING	Staff at each collection site must be trained and knowledgeable regarding these guidelines before accepting mattresses for recycling.
STORING & LOADING MATTRESSES	Collection sites must keep mattresses dry by storing in weatherproof containers or under cover to maximize their recyclability. In addition, all collection sites must: • Make every effort to place mattresses in MRC-designated storage containers immediately upon acceptance • Do not store units on the ground for prolonged periods of time and make every effort to keep container doors closed • Keep mattresses intact and not intentionally crush or puncture them • Efficiently stack mattresses to maximize the number of units loaded in each storage container • Provide oversight to keep unacceptable items out of MRC-designated storage containers • Remove any non-program materials from MRC-designated storage containers before transport to MRC recyclers • Practice good housekeeping standards and keep storage containers and program materials in a neat and orderly condition
SITE ACCESS	Collection sites must allow MRC access to confirm compliance with these guidelines.

See page 9
for photos and
guidelines

MATERIALS COLLECTION & HANDLING

LOADING MATTRESSES IN STORAGE CONTAINERS

Expected number of mattresses that should fit in various container sizes:

Container Type	Number of Mattresses
20-foot sea container	30-45
28-foot trailer	60-95
40-foot sea container	75-95
40-yard roll-off container	35-50
48-foot trailer	110-180
53-foot trailer	125-190

Acceptable Loading

- 1. Begin each stack with a queen or full size box spring.**
This acts as a base pallet to create a secure stack and makes unloading of mattresses quick and efficient.
- 2. Mattresses should be stacked horizontally** to the top of the trailer to maximize space.
- 3.** In small quantities, king size mattresses can be placed vertically next to a stack of horizontal mattresses.
- 4.** If there are more than 10 king size units, stack horizontally.



Unacceptable Loading

IMPORTANT: Do not load units vertically or in an unsafe manner.

Please contact your Program Coordinator to learn more about acceptable/non-acceptable units and appropriate stacking and loading techniques.



TRANSPORTATION & PROCESSING

TRANSPORTERS

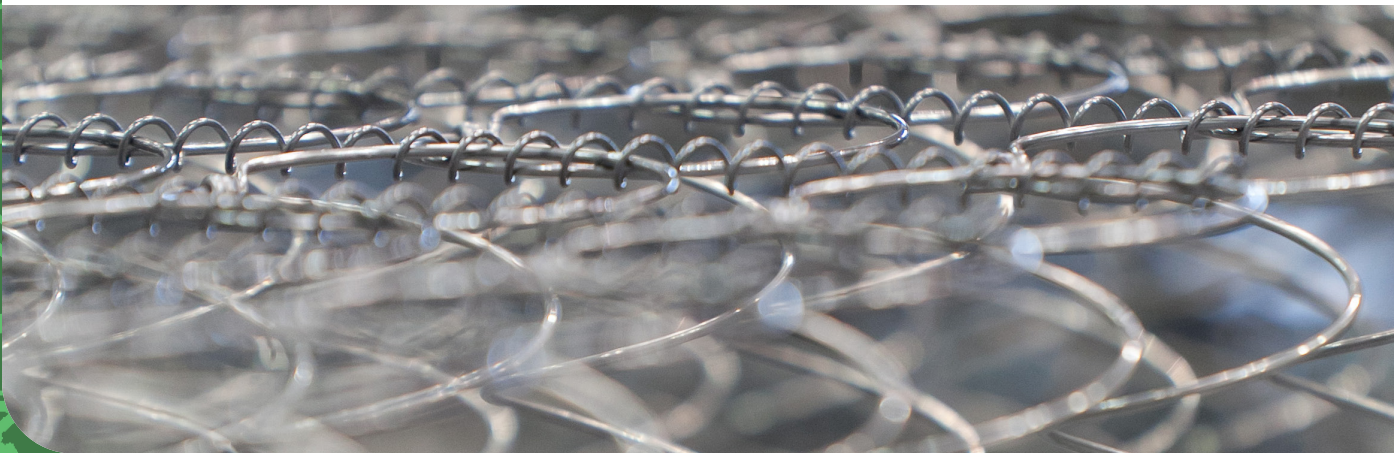
MRC will assign each collection site a transporter to provide a storage container and transport services.

- MRC-contracted transporters will provide participating locations with evidence of automobile insurance coverage of at least \$1,000,000 per occurrence
- Each collection site must notify transporter at least two business days before a storage container is full of mattresses
- The assigned transporter will pick up full containers and drop off an empty container at the same time
- On the scheduled pick up day, the collection site must make the collection container readily accessible to the transporter
- At the time of pick-up, collection site staff must be present to sign a three-part Bill of Lading (BOL) supplied by the transporter that details the quantity of mattresses in the container and must provide appropriate copies of the BOL to the transporter

A collection site may choose to provide its own storage containers and transportation. These locations must contact the recycler directly to arrange for a convenient drop-off time.

RECYCLERS

Recyclers under contract with MRC will meet established recycling standards and accurately account for all mattresses received, the mattress components recycled (e.g., foam, steel, wood, fiber, etc.) and any residual disposal. Collection sites will be assigned an MRC recycler to best service your facility.



RECORDKEEPING

Bill of Lading:

A Bill of Lading (BOL) will be provided by the transporter. Before a full container leaves the site, the BOL must be completed and signed by facility staff.

Annual Reporting to CalRecycle:

Per the law, mattress recyclers, renovators, and solid waste facilities, as defined by Public Resources Code section 42986, must submit an annual report to CalRecycle by May 1 each year. The annual reports must meet the requirements listed in Title 14, California Code of Regulations (CCR) sections 18965-18967, which includes contact information and quantitative information. Annual reports are used by CalRecycle and MRC to assess the program and establish and update the mattress recycling goals for the state.

See CalRecycle's website for more information:

<https://www.calrecycle.ca.gov/Mattresses/AnnualReport/>

BILL OF LADING		
Unique BOL #:	Truck #:	
Collection Site/ Generator		
Facility Name and Operator:		
Address:		
Type of Collection Site:	☐ solid waste facility ☐ mattress retailer ☐ other	
Collection Container Type:	☐ 20 ft. sea container ☐ 40 ft. sea container ☐ 28 ft. trailer ☐ 48 ft. trailer ☐ 53 ft. trailer ☐ other:	
Collection Site Count:	Mattress and Box Spring Units: _____	
Collection Site Certified Net Weight (if available):	_____ lbs.	
I hereby certify that to the best of my knowledge, the above information is accurate, and all of the products described in this document were used and discarded in California.		
Name (print), Title	Signature	Date
Transporter		
Company Name:		
Address:		
Notes for ancillary charges:		
Name (print), Title	Signature	Date
Mattress Recycler		
Company Name:	Appointment Date / Time:	
Address:	Arrival Date / Time:	
Recycler Count:	Total Units: _____	Departure Time:
Net Weight of all Mattress and Box Spring Units: _____ lbs.		
Comments/Count Discrepancies:		
I hereby certify that to the best of my knowledge, the above information is accurate, and all of the products described in this document were used and discarded in California.		
Name (print), Title	Signature	Date

Template Rev. 7/6/2020

PROGRAM WITHDRAWAL & TERMINATION

A collection site's participation in MRC's Bye Bye Mattress program in California is voluntary. Either party may withdraw from participation in accordance with the terms in your contract. Written notice to the other party is required. MRC reserves the right to remove any collection site not in compliance with these guidelines from further participation in the program.





CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: Consideration of Updated Statement of Investment Policy

SOURCE: Finance

COMMENT: At its meeting on February 20, 2024, the City Council provided direction to continue the consideration of updating the Statement of Investment Policy to the City Council meeting of March 5, 2024. Staff met with Council Member Meister and Council Member Weyhrauch on February 28, 2024, to review the Statement of Investment Policy. Staff was directed to research investing in precious metals. Staff performed additional research in regard to the request and reached out to local agencies (Visalia, Hanford, Dinuba and Exeter), connecting with the cities of Visalia and Exeter. The local agencies informed Staff that their agencies do not invest in precious metals, stating the reasoning is that investing in precious metals is high risk and is not an allowable investment in their city policies. Staff also contacted the City's auditor and broker, and was informed that investing in precious metals is not in conformance with all pertinent existing laws of the state of California Government Code Sections 53600, et seq.

The City of Porterville's Statement of Investment Policy was last considered and approved by the City Council in July 2006. Staff has recently reviewed the investment policy and are proposing an updated version to clarify and strengthen the requirements for investing, safekeeping, and reporting of the City's investment portfolio. The revisions include additions to the list of authorized and acceptable investments. The updated policy continues to meet the statutory requirements governing the investment of public funds and has been prepared in conformance with all pertinent existing laws of the State of California Government Code Sections 53600, et seq. Allowable investment instruments per the State Government Code applicable to all local agencies are included in the Local Agency Investment Guidelines.

On January 24, 2024, the City's Audit Committee met to review the updated Statement of Investment Policy and recommended approval of the same.

RECOMMENDATION: That the City Council adopt the resolution approving the updated Statement of Investment Policy.

ATTACHMENTS:

1. Investment Policy 2006
2. Redline - Draft Updated Investment Policy
3. Investment Policy 2023
4. Draft Resolution

5. Local Agency Investment Guidelines

Appropriated/Funded:

Review By:

Department Director:
Janie Rodriguez, Finance Director

Final Approver: Jason Ridenour, Acting Deputy City Manager

CITY OF PORTERVILLE

Statement of Investment Policy

INTRODUCTION

The City of Porterville has a fiduciary responsibility to maximize the productive use of its liquid assets entrusted to its care and to manage those public funds wisely and prudently. The purpose of this document is to identify various policies and procedures that enhance opportunities for a prudent and systematic investment policy and to organize and formalize investment-related activities. Related activities, which comprise good cash management, include accurate cash projections, the expeditious collection of revenue, the control of disbursements, cost-effective banking relations, and short-term borrowing programs which coordinate working capital requirements and investment opportunity. In concert with these requirements are the many facets of an appropriate and secure short-term investment program.

SCOPE

It is intended that this investment policy cover all funds and investment activities under the direct authority of the City of Porterville organization. This policy does not cover any funds held by the fiscal agent in connection with the issuance of any bonds by the City. Such funds shall be invested in accordance with the applicable trust indenture.

PHILOSOPHY

The basic premise underlying Porterville's investment philosophy is to insure that money is always available when needed. An amount of not less than one month's payables and one month's payroll, about \$2.5 million, is maintained in immediately available investments, such as the State Treasurer's Local Agency Investment Fund or other cash equivalents. This may include commercial paper or banker's acceptances.

Porterville takes an active investment posture in an attempt to earn a higher yield. This investment posture is best demonstrated by the City's long-term investments. By taking advantage of the positive yield curve (i.e., longer term rates are higher than shorter maturities), in the long run, the City should average a higher yield.

The City's investments will be limited to an average life of three years or less. When the market warrants purchase of longer maturities to capture a higher rate of return, purchases will be limited to United States Treasury Notes and Bonds and Mortgage Backed Securities. No investment will be made in securities that have a final maturity over five years.

The economy and various markets are monitored carefully to assess the probable course of interest rates. In a market with increasing interest rates, the City will attempt to invest in securities with shorter maturities. This makes funds available for other investments when the interest rates are higher. When interest rates appear to be near a relatively high rate, the City will attempt to purchase investments with medium to long-term maturities to lock in the higher rate of return. When interest rates are falling, the City will invest in securities with longer maturities to hold the higher rate for a longer period of time.

The City will also take advantage of any new vehicle that becomes eligible for municipal investment only after a detailed study of the investment, its safety, liquidity, and yield.

PRUDENCE

The City adheres to the guidance provided by the "prudent person standard," as set forth in Government Code section 53600.3, which specifically addresses public investing, as follows:

"Except as provided in subdivision (a) of Section 27000.3, all governing bodies of local agencies or persons authorized to make investment decisions on behalf of those local agencies investing public funds pursuant to this chapter are trustees and therefore fiduciaries subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired by law."

The primary objective is to safeguard the principal of the funds under the City's control. The secondary objective is to meet the liquidity needs of the City. The third objective is to achieve a return on the funds. Porterville strives to maintain the level of investment of all funds as near 100% as possible through daily and projected cash flow determinations. Investments are made so maturities match or precede the cash needs of the City. The City will maintain adequate cash availability and maximum yield on invested funds while insuring that principal invested is protected from loss.

INVESTMENT CRITERIA

Criteria for selecting investments are:

1. Safety;
2. Liquidity; and
3. Yield.

Porterville attempts to obtain the highest yield available when selecting investments, provided that criteria for safety and liquidity are met. Because ordinarily yield curves are positively sloped, (i.e., longer term rates are higher than shorter maturities), the City attempts to ladder its maturities. This meets anticipated cash needs in such a way that new investment money can be placed in maturities that carry a higher rate than is available in the extremely short market of 90 days or under.

Government and agency paper are the highest quality investments available in terms of safety and liquidity. Certificates of deposit, savings accounts, and bankers acceptances are insured or collateralized. Only direct-issue commercial paper, with A-1 Moody's and Standard and Poor's ratings, will be purchased. These quality-rating criteria shall apply at the time of investment. Should a particular issuer fall below these standards ("be downgraded") while the investment is in the City's portfolio, the prudent investor rule shall apply. Negotiable Certificates of Deposit are not insured or collateralized.

Most investments are highly liquid, with the exception of collateralized certificates of deposit held by banks, savings and loans, and Small Business Administration notes. Maturities are selected to anticipate cash needs, thereby avoiding the need for forced liquidation.

STATE AND CHARTER REGULATIONS

The City operates its investment pool with many State and self-imposed constraints. In accordance with SB 564 and SB 866, effective January 1, 1996, the City Treasurer will bring this Policy before City Council annually for its reaffirmation. Government Code Section 53601 restricts the City portfolio mix to:

1. 30% in Medium Term Notes;
2. 30% in Negotiable Certificates of Deposit;
3. 40% in Bankers Acceptance Notes, not to exceed 180 days in maturity; and
4. 25% in Commercial Paper, not to exceed 270 days in maturity.

These restrictions primarily apply to short-term investments and are interpreted to apply at the time of investment. If, as the portfolio mix changes over time, a particular segment exceeds these restrictions, the prudent investor rule shall apply. The City does not buy stocks and it does not speculate.

The City will be selective in purchasing long-term negotiable certificates of deposit and medium term notes, placing such an investment only with a large stable institution.

MATURITY OF INVESTMENTS

The City of Porterville will operate a portfolio with an average life of three years or less. This is to insure liquidity and the ability to move with changing markets and interest rate movements.

Accordingly, no investment will be made in securities that have a final maturity over five years. The long-term securities shall only be Treasury Notes and Bonds and Mortgage Backed Securities.

SECURITIES DEALERS AND BROKERS

The City of Porterville will undertake a yearly review of its broker/dealer relationships. The City will deal generally with the major broker/dealer firms or major banks in the country and then with only their institutional investment divisions. Primary government securities dealers are preferred for conducting transactions of all eligible securities. Primary dealers must report daily to the Federal Reserve, are very tightly regulated, and must keep specified levels of working capital. Secondary dealers are those dealers who buy and sell securities in the open market. Secondary and other security dealers who wish to engage in transactions with the City must meet the City's requirements for reliability and safety and be approved prior to purchase. These relationships are formalized through a corporate statement. The City will deal with both after meeting the City's requirements.

The City shall also be open to contracting investment management services for a portion of the portfolio. That portion shall be limited to longer-term investments of two years or longer. Any investment management firm contracted shall meet criteria established by the Finance Department. All investments made under contract will be purchased in the City's name and in accordance with the guidelines established by the City's investment policy.

PERIODIC REPORTING

Also in accordance with SB 564 and SB 866, each quarter, the City Treasurer will issue a report of the City's current investment portfolio, detailing securities, purchase and maturity date, and

face and market value. This report will also confirm that current portfolio holdings are in compliance with this policy and that the City's cash needs will be met.

Each quarter some of the long-term investments will be reviewed in order to determine if it is advantageous to sell those securities and purchase others. The review will consider current market conditions and various spread relationships among security types. The monitoring of the conditions set forth in this policy statement is the responsibility of the City Treasurer or delegate.

TYPES OF INVESTMENTS

Cash management and investment transactions are the responsibility of the City Treasurer or delegated investment officer. The following City of Porterville employees are defined as authorized investment officers:

John Longley, City Manager
John Lollis, Administrative Services Manager
Maria Bemis, Acting Chief Financial Officer

Investments are made in the following:

1. Securities of the U.S. Government

Securities of the Government include U.S. Treasury bills, notes and bonds.

U. S. Treasury Bills - are issued by the U.S. Treasury and are available in maturities out to one year. They are non-interest bearing and sold on a discount basis. The face amount is paid at maturity.

Treasury Notes - are issued by the U.S. Treasury with maturities from two to ten years. They are issued in coupon form and many issues are also available in registered form. Interest is payable at six month intervals until maturity.

Treasury Bonds - are issued by the U.S. Treasury with maturities of ten years to thirty years. The City may purchase the interest and/or principal of a U.S. Treasury Bond. A principal only instrument is commonly called a "stripped" or "zero" coupon. Stripped coupons are sold at discount basis. The face amount is paid at maturity.

2. Securities of U.S. Government Agencies

The United States Treasury initially financed the capital of U.S. Government agencies. But as they have grown and operated profitably over the years, the Treasury's investment has been replaced in large measure by private capital. At the present time, obligations of only a few agencies are backed by the full faith and credit of the U.S. Government. The obligations of all the federal agencies described in the following sections are not guaranteed by the U.S. Government with the exception of Government National Mortgage Association, but are considered to be investments of the highest quality.

Federal National Mortgage Association (Fannie Mae) is a quasi-public corporation created by an act of Congress to assist the home mortgage market by purchasing mortgages insured by the Federal Housing Administration and the Farmers Home Administration, as well as those guaranteed by the Veterans Administration. FNMA issues Notes and Bonds. Notes are issued with maturities of less than one year with interest paid at maturity. Bonds are issued for 15 and 30 year maturities with interest

paid semi-annually. Interest is computed on a 30/360-day basis. There is a strong secondary market in these securities. A secondary market means these instruments are actively traded, they are bought and sold daily.

Government National Mortgage Association (Ginnie Mae) is a wholly owned corporate instrumentality of the United States within the Department of Housing and Urban Development. A certificate collateralized by FHA/VA residential mortgages represents a share in a pool of FHA or VA mortgages. Ginnie Maes are registered securities. Principal and interest are paid monthly and sent directly from the issuer of the pool, usually a mortgage banker, to the City. Original maturities range from 12 to 30 years with a 7 to 12-year assumed average life (Assumed average life is due to prepayments of mortgages).

Federal Home Loan Banks provide credit to member lending institutions such as savings and loan associations, cooperative banks, insurance companies and savings banks. The agency offers bonds in the public market with maturities of one year to ten years. These bonds are usually offered on a quarterly basis depending on the current demands of the housing industry. Interest is paid semi-annually on a 30/360 day basis.

Federal Farm Credit Banks are debt instruments issued to meet the financial needs of farmers and the national agricultural industry. Discount notes are issued monthly with 6 and 9-month maturities. Discount notes pay interest at maturity. Longer-term debentures (2-5 years) are also issued. Debentures pay interest semi-annually on a 30/360-day basis. These issues enjoy an established secondary market.

Small Business Administration Loans (SBA). The Small Business Administration is an independent agency of the United States government that furnishes financial and management assistance to small businesses. The SBA guarantees the principal portion of the loans it approves. Porterville purchases the guaranteed portion of these loans. Maturity can be for 1 year to 30 years. These loans can be either set at a fixed rate or variable rate that is usually tied to the prime rate. Principal and interest are paid monthly on a 30/360-day basis.

Federal Home Loan Mortgage Corporation (Freddie Macs) participation certificates are backed by 30-year conventional residential mortgages and are 100 percent guaranteed by the Federal Home Loan Mortgage Corporation. The Federal Home Loan Mortgage Corporation is wholly owned by the Federal Home Loan Banks. The Mortgage Corporation is a corporate instrumentality of the United States. Freddie Macs are registered securities. Principal and interest passed through the Mortgage Corporation and then to the City monthly. These instruments have an assumed life of approximately 12 years and pay on a 30/360-day basis.

Other U.S. government securities available to the City for investment purposes include: Student Loan Marketing Association (SLMA or Sallie Mae), Aid for International Development (AID), and debentures of Tennessee Valley Authority (TVA). However, these instruments are not offered on a regular basis and do not offer the same liquidity as the before mentioned instruments.

3. Time Deposits or Certificates of Deposit

Time deposits are placed with commercial banks and savings and loan agencies. A time deposit is a receipt for funds deposited in a financial institution for a specified period of time at a specified rate of interest. Generally, the time is 3 months to 5 years. Denominations can be any agreed upon amount and interest is normally calculated using

actual number of days on a 360-day year and paid monthly. Deposits of \$100,000 (commonly referred to as Jumbo C.D.'s) per institution are insured by the government and collateralized Certificates of Deposit can be supported by either 110% Government agency notes or 150% mortgages currently held by the bank or savings and loan. An institution must meet the following criteria to be considered by the City:

1. The institution must maintain a net worth to asset ratio of at least 3% and a positive earnings record;
2. The institution must be in compliance with the Financial Institution Reform Act (FIRREA) capital ratio requirements for risk-based, tangible, and core capital; and
3. The institution must make available a current FDIC call reports (banks) or FHLB report. A call report presents the financial condition of the institution to the agency with oversight responsibility of that institution.

4. Negotiable Certificates of Deposit

Negotiable Certificates of Deposit are a form of Certificate of Deposit that have been an important money market instrument since 1961 when commercial banks began issuing them and a secondary market developed to provide liquidity. Since these certificates of deposit can be traded in the secondary market, they are negotiable instruments, hence their name negotiable certificate of deposit. They are supported only by the strength of the institution from which they are purchased. This is a riskier investment that provides a higher yield than regular certificates of deposit. Some issues have quarterly floating rates that mean they will more closely approximate the market in yield. Interest is paid semi-annually (quarterly on the floaters) computed on a 30/360-day basis. Maturities range from 3 months to 2 years. Negotiable Certificates of Deposit are generally issued in blocks of \$1 million, \$5 million, \$10 million and so on.

The City will restrict its investments in Negotiable Certificates of Deposit to the 100 largest United States banks and 100 largest international banks according to asset size. The profitability of the financial institution as well as its financial stability is also taken into account prior to placing the investment. As a general rule, the City will not place more than 15% of its portfolio in Negotiable Certificates of Deposit with one institution or 20% of its portfolio with any one Commercial Bank or savings and loan association in any form of Certificate of Deposit.

5. Bankers Acceptance Notes

A banker's acceptance (B.A.) is a unique credit instrument used to finance both domestic and international transactions. As a money market instrument, it is an attractive short-term investment. When a bank "accepts" such a time draft, it becomes, in effect, a predated certified check payable to the bearer at some future, specified date. Little risk is involved because the commercial bank assumes primary liability once the draft is accepted. Banker's acceptances are frequently in odd amounts. Maturities normally range from 30 up to 180 days. Banker's acceptances are sold at a discount. This means, the face amount is received at maturity. The City will purchase B.A.'s only of the top 100 U.S. or Foreign Banks. The profitability of the financial institution as well as its financial stability is also taken into account prior to placing the investment.

6. Commercial Paper

Commercial paper is the trade name applied to unsecured promissory notes issued by finance and industrial companies to raise funds on a short-term basis. Commercial paper can be purchased on an interest bearing or discount basis. Interest bearing instruments pay interest semi-annually. Discounted instruments pay interest at maturity. The City will invest in commercial paper only if the yields are attractive, and if the paper is rated A-1 by Moody's and by Standard & Poor's rating services. Maturities range from 30 to 180 days with interest computed on a 30/360-day basis.

7. Medium Term Notes

In recent years, this financing mechanism has grown, providing capital to the private sector, and diminishing the Negotiable Certificate of Deposit market. The trend towards medium term notes related to buyer and seller flexibility and convenience. The notes are issued on any given date and maturing on a negotiated date. They generally range from 2 to 5 years in maturity. This market provides an excellent alternative to Negotiable C.D.'s. The City will only purchase Medium Term Notes with ratings of A or better with maturities of 5 years or less. Their interest is calculated on a 30/360-day basis like Agency bonds. Interest is paid semi-annually.

8. Local Agency Investment Fund demand deposit

The Local Agency Investment Fund (LAIF) was established by the state to enable treasurers to place funds in a pool for investments. The LAIF has been particularly beneficial to those jurisdictions with small portfolios. Each agency is limited to an investment of \$15.0 million. Porterville uses this fund for short-term liquidity, investment, and yield when rates are declining. Funds are available on demand. At present, two accounts have been opened; one for the City and one for Porterville Redevelopment Agency. Interest is paid quarterly.

9. Central San Joaquin Valley Risk Management Authority (CSJVRMA) investment pool

As a member city of the CSJVRMA, the City accepted the opportunity in July 2001 to participate in its sponsored investment pool. The pool is managed by Chandler Asset Management and invests in agency instruments such as Federal Home Loan Bank, treasuries and high-grade corporate stock. Funds are available on demand, with interest paid quarterly.

10. County of Tulare investment pool

Porterville participates in the County of Tulare's investment pool that is managed by the County Treasurer, O. Gerald Fields. The County invests in the same type of State-approved instruments, as does the City. Funds are available on demand, and interest is paid quarterly.

CITY OF PORTERVILLE

Statement of Investment Policy

INTRODUCTION

The City of Porterville has a fiduciary responsibility to maximize the productive use of its liquid assets entrusted to its care and to manage those public funds wisely and prudently. The purpose of this document is to identify various policies and procedures that enhance opportunities for a prudent and systematic investment policy and to organize and formalize investment-related activities. Related activities, which comprise good cash management, include accurate cash projections, the expeditious collection of revenue, the control of disbursements, cost-effective banking relations, and short-term borrowing programs which coordinate working capital requirements and investment opportunity. In concert with these requirements are the many facets of an appropriate and secure short-term investment program.

SCOPE

It is intended that this investment policy cover all funds and investment activities under the direct authority of the City of Porterville organization. This policy does not cover any funds held by the fiscal agent in connection with the issuance of any bonds by the City. Such funds shall be invested in accordance with the applicable trust indenture.

PHILOSOPHY

The basic premise underlying Porterville's investment philosophy is to ~~insure~~ ensure that money is always available when needed. ~~An amount of not less than one month's payables and one month's payroll, about \$2.5 million;~~ A minimum amount of 6 percent of the adopted operating budget for all funds is maintained in immediately available investments, such as the State Treasurer's Local Agency Investment Fund or other cash equivalents. ~~This may include commercial paper or banker's acceptances.~~

Porterville takes an active investment posture in an attempt to earn a higher yield. This investment posture is best demonstrated by the City's long-term investments. By taking advantage of the positive yield curve (i.e., longer term rates are higher than shorter maturities), in the long run, the City should average a higher yield.

The City's investments will be limited to an average life of three years or less. When the market warrants purchase of longer maturities to capture a higher rate of return, purchases will be limited to United States Treasury Notes and Bonds ~~and Mortgage-Backed Securities,~~ Federal Agencies Notes and Bonds, Medium Term Notes, Time Deposits or Certificates of Deposit, and Negotiable Certificate of Deposit. No investment will be made in securities that have a final maturity over five years.

The economy and various markets are monitored carefully to assess the probable course of interest rates. In a market with increasing interest rates, the City will attempt to invest in securities with shorter maturities. This makes funds available for other investments when the interest rates are higher. When interest rates appear to be near a relatively high rate, the City will attempt to purchase investments with medium to long-term maturities to lock in the higher rate of return. When interest rates are falling, the City will invest in securities with longer maturities to hold the higher rate for a longer period of time.

The City will also take advantage of any new vehicle that becomes eligible for municipal investment only after a detailed study of the investment, its safety, liquidity, and yield.

INVESTMENT OBJECTIVES

As per California Government Code Section 53600.5, the primary objectives, in priority order of the City of Porterville's investment activities shall be:

1. **Safety:** Safety of principal is the foremost objective of the investment program. Investments of the City shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio with the objective of mitigating credit risk and interest rate or market risk.

Credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. Investments will be limited to the types of securities authorized in this policy. The City will diversify its investment portfolio in order to minimize the impact of potential losses from any one type of security or from any one individual issuer.

Interest rate or market risk is the risk that changes in interest rates will adversely affect the fair value of an investment. The investment portfolio will be structured so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities prior to maturity. Securities shall generally be held until maturity.

2. **Liquidity:** The City's investment portfolio will remain sufficiently liquid to enable the City to meet all payment requirements, including but not limited to payroll, accounts payable, capital projects, debt service, and other payments which might be reasonably anticipated.
3. **Yield:** The City's investment portfolio shall be designed and managed with the objective of maximizing return throughout budgetary and economic cycles, commensurate with the City's investment risk constraints and the cash flow characteristics of the portfolio.

The Treasurer/Finance Director and staff will avoid any transactions that might impair public confidence in the City.

PRUDENCE PRUDENT INVESTOR STANDARD

The City adheres to the guidance provided by the "prudent person standard," as set forth in Government Code section 53600.3, ~~which specifically addresses public investing, as follows:~~

~~"Except as provided in subdivision (a) of Section 27000.3, all governing bodies of local agencies or persons authorized to make investment decisions on behalf of those local agencies investing public funds pursuant to this chapter are trustees and therefore fiduciaries subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired~~

by law.”

~~The primary objective is to safeguard the principal of the funds under the City’s control. The secondary objective is to meet the liquidity needs of the City. The third objective is to achieve a return on the funds. Porterville strives to maintain the level of investment of all funds as near 100% as possible through daily and projected cash flow determinations. Investments are made so maturities match or precede the cash needs of the City. The City will maintain adequate cash availability and maximum yield on invested funds while insuring that principal invested is protected from loss.~~

The “prudent person standard” shall be applied in the context of managing an overall portfolio. Investments shall be made with judgement and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs; not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived. Investment officers acting in accordance with written procedures and the investment policy and exercising due diligence, shall be relieved of personal responsibility for an individual security’s credit risk or market price changes, provided the deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

INVESTMENT CRITERIA

Criteria for selecting investments are:

- ~~1. Safety;~~
- ~~2. Liquidity; and~~
- ~~3. Yield.~~

~~Porterville attempts to obtain the highest yield available when selecting investments, provided that criteria for safety and liquidity are met. Because ordinarily yield curves are positively sloped, (i.e., longer term rates are higher than shorter maturities), the City attempts to ladder its maturities. This meets anticipated cash needs in such a way that new investment money can be placed in maturities that carry a higher rate than is available in the extremely short market of 90 days or under.~~

~~Government and agency paper are the highest quality investments available in terms of safety and liquidity. Certificates of deposit, savings accounts, and bankers acceptances are insured or collateralized. Only direct issue commercial paper, with A-1 Moody’s and Standard and Poor’s ratings, will be purchased. These quality-rating criteria shall apply at the time of investment. Should a particular issuer fall below these standards (“be downgraded”) while the investment is in the City’s portfolio, the prudent investor rule shall apply. Negotiable Certificates of Deposit are not insured or collateralized.~~

~~Most investments are highly liquid, with the exception of collateralized certificates of deposit held by banks, savings and loans, and Small Business Administration notes. Maturities are selected to anticipate cash needs, thereby avoiding the need for forced liquidation.~~

ETHICS AND CONFLICTS OF INTEREST

Investment officers shall disclose material interests in financial institutions with which they do business, disclose personal financial interests that could be related to the performance of the investment portfolio and refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the City.

DELEGATION OF AUTHORITY

The City Council hereby delegates responsibility for the management of the investment program to the City Treasurer/Finance Director, who shall establish procedures for the operation of the investment program consistent with this investment policy. Under the provision of California Government Code 53603.3, the Treasurer/Finance Director is a trustee and a fiduciary subject to the prudent investor standard. The Treasurer/Finance Director will review the investment holdings monthly and ensure that they are in compliance with the City investment policy.

The Treasurer/Finance Director may delegate all or a portion of his/her investment authority. Prior to delegation, the Treasurer/Finance Director shall notify the City Council and request confirmation of the delegation. Delegation of investment authority will not remove or abridge the Treasurer/Finance Director's investment responsibility.

SAFEKEEPING AND CUSTODY

Securities owned by the City shall be held in safekeeping by third-party custodians acting as agent for the City and shall be evidenced by safekeeping receipts. The purchase of securities shall be conducted on a standard delivery versus payment (DVP) basis that guarantees the transfer of securities only after payment is made. The DVP system eliminates principal risk, decreasing the probability of not meeting delivery and/or payment obligations and reducing the possibility of liquidity risk. The third-party custodians are required to provide monthly statements illustrating the balance of securities held by those custodians.

Investments in investment pools and some certificates of deposit are not subject to delivery or third-party safekeeping requirements.

INTERNAL CONTROLS

The Treasurer/Finance Director is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the City are protected from loss, theft or misuse. The internal controls shall include separation of duties, safekeeping of securities and written confirmation of phone transactions and wire transfers.

STATE AND CHARTER REGULATIONS

~~The City operates its investment pool with many State and self-imposed constraints. In accordance with SB 564 and SB 866, effective January 1, 1996, the City Treasurer will bring this Policy before City Council annually for its reaffirmation. Government Code Section 53601 restricts the City portfolio mix to:~~

~~1. 30% in Medium Term Notes;~~
~~2. 30% in Negotiable Certificates of Deposit;~~
~~3. 40% in Bankers Acceptance Notes, not to exceed 180 days in maturity; and~~
~~4. 25% in Commercial Paper, not to exceed 270 days in maturity.~~

~~These restrictions primarily apply to short-term investments and are interpreted to apply at the time of investment. If, as the portfolio mix changes over time, a particular segment exceeds these restrictions, the prudent investor rule shall apply. The City does not buy stocks and it does not speculate.~~

~~The City will be selective in purchasing long-term negotiable certificates of deposit and medium term notes, placing such an investment only with a large stable institution.~~

MATURITY OF INVESTMENTS

~~The City of Porterville will operate a portfolio with an average life of three years or less. This is to insure liquidity and the ability to move with changing markets and interest rate movements. Accordingly, no investment will be made in securities that have a final maturity over five years. The long-term securities shall only be Treasury Notes and Bonds and Mortgage Backed Securities.~~

~~SECURITIES DEALERS AND BROKERS~~ AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS

~~The City of Porterville will undertake a yearly review of its broker/dealer relationships. The City will deal generally with the major broker/dealer firms or major banks in the country and then with only their institutional investment divisions. Primary government securities dealers are preferred for conducting transactions of all eligible securities. Primary dealers must report daily to the Federal Reserve, are very tightly regulated, and must keep specified levels of working capital. Secondary dealers are those dealers who buy and sell securities in the open market. Secondary and other security dealers who wish to engage in transactions with the City must meet the City's requirements for reliability and safety and be approved prior to purchase. These relationships are formalized through a corporate statement. The City will deal with both after meeting the City's requirements.~~

~~The City shall also be open to contracting investment management services for a portion of the portfolio. That portion shall be limited to longer-term investments of two years or longer. Any investment management firm contracted shall meet criteria established by the Finance Department. All investments made under contract will be purchased in the City's name and in accordance with the guidelines established by the City's investment policy.~~

The City of Porterville will maintain a list of banks, savings and loans, credit unions, and securities dealers authorized to provide investment services. Approved broker/dealers and financial institutions should meet all requirements established by federal and state law. Criteria to be considered in the selection will include creditworthiness, expertise and the types of securities. Qualifying financial dealers and institutions must provide the City with audited financial statements, proof of National Association of Securities Dealers (NASD) certification, and a certification of having read, understood and agreeing to comply with this investment policy.

PERIODIC REPORTING

~~Also in accordance with SB 564 and SB 866, each quarter, On a quarterly basis, the City Treasurer/Finance Director will issue a report of the City's current investment portfolio, detailing securities, purchase and maturity date, and face and market value, weighted average rate of earnings, weighted average days to maturity, and the percentage of liquid holdings. This report will also confirm that current portfolio holdings are in compliance with this policy and that the City's cash needs will be met.~~

~~Each quarter some of the long-term investments will be reviewed in order to determine if it is advantageous to sell those securities and purchase others. The review will consider current market conditions and various spread relationships among security types. The monitoring of the conditions set forth in this policy statement is the responsibility of the City Treasurer/Finance Director or delegate.~~

TYPES OF INVESTMENTS AUTHORIZED INVESTMENTS

~~Cash management and investment transactions are the responsibility of the City Treasurer or~~

~~delegated investment officer. The following City of Porterville employees are defined as authorized investment officers:~~

~~John Longley, City Manager
John Lollis, Administrative Services Manager
Maria Bemis, Acting Chief Financial Officer~~

Investments are made in [accordance with California State Code and include](#) the following:

1. Securities of the U.S. Government

Securities of the Government include U.S. Treasury bills, notes and bonds.

U. S. Treasury Bills - are issued by the U.S. Treasury and are available in maturities out to one year. They are non-interest bearing and sold on a discount basis. The face amount is paid at maturity.

Treasury Notes - are issued by the U.S. Treasury with maturities from two to ten years. They are issued in coupon form and many issues are also available in registered form. Interest is payable at six-month intervals until maturity.

Treasury Bonds - are issued by the U.S. Treasury with maturities of ten years to thirty years. The City may purchase the interest and/or principal of a U.S. Treasury Bond. A principal only instrument is commonly called a "stripped" or "zero" coupon. Stripped coupons are sold at discount basis. The face amount is paid at maturity.

2. Securities of U.S. Government Agencies

The United States Treasury initially financed the capital of U.S. Government agencies. But as they have grown and operated profitably over the years, the Treasury's investment has been replaced in large measure by private capital. At the present time, obligations of only a few agencies are backed by the full faith and credit of the U.S. Government. The obligations of all the federal agencies described in the following sections are not guaranteed by the U.S. Government ~~with the exception of Government National Mortgage Association~~, but are considered to be investments of the highest quality.

~~Federal National Mortgage Association (Fannie Mae) is a quasi-public corporation created by an act of Congress to assist the home mortgage market by purchasing mortgages insured by the Federal Housing Administration and the Farmers Home Administration, as well as those guaranteed by the Veterans Administration. FNMA issues Notes and Bonds. Notes are issued with maturities of less than one year with interest paid at maturity. Bonds are issued for 15 and 30 year maturities with interest paid semi-annually. Interest is computed publicly traded government-sponsored enterprise created to provide liquidity, stability and affordability to the mortgage market by purchasing mortgages from banks, savings and loans and mortgage companies. Fannie Mae issues both short-term debt with maturities of a year or less and long-term debt with maturities of over a year and can either be callable or noncallable with interest payments paid semi-annually on a 30/360-day basis. There is a strong secondary market in these securities. A secondary market means these instruments are actively traded, they are bought and sold daily.~~

~~Government National Mortgage Association (Ginnie Mae) is a wholly owned corporate instrumentality of the United States within the Department of Housing and Urban~~

~~Development. A certificate collateralized by FHA/VA residential mortgages represents a share in a pool of FHA or VA mortgages. Ginnie Maes are registered securities. Principal and interest are paid monthly and sent directly from the issuer of the pool, usually a mortgage banker, to the City. Original maturities range from 12 to 30 years with a 7 to 12-year assumed average life (Assumed average life is due to prepayments of mortgages).~~

~~*Federal Home Loan Banks* provide credit to member lending institutions such as savings and loan associations, cooperative banks, insurance companies and savings banks. The agency offers bonds in the public market with maturities of one year to ten years. These bonds are usually offered on a quarterly basis depending on the current demands of the housing industry.~~ are cooperatively owned by member financial institutions and provide a steady supply of lendable funds to financial institutions such as community banks, credit unions, commercial and savings banks, insurance companies, and community development financial institutions. They provide liquidity to their members to support housing finance and community development through all economic cycles. The agency offers bonds in the public market with majority of issues between one and five years. Interest is paid semi-annually on a 30/360 day basis.

~~*Federal Farm Credit Banks (FFCB) Agency bonds* are debt instruments issued to meet the financial needs of farmers and the national agricultural industry. Discount notes are issued monthly with 6 and 9-month maturities. Discount notes pay interest at maturity. Longer-term debentures (2-5 years) are also issued. Debentures pay interest~~ support rural communities and agriculture with reliable, consistent credit and financially related services. Fixed rate bonds which maybe callable or non-callable are regularly issued with typical maturities of one to five years. Designated bonds are non-callable securities with typical maturities of two to ten years. Interest payments are made semi-annually on a 30/360-day basis. ~~These issues enjoy an established secondary market.~~

~~*Small Business Administration Loans (SBA).* The Small Business Administration is an independent agency of the United States government that furnishes financial and management assistance to small businesses. The SBA guarantees the principal portion of the loans it approves. Porterville purchases the guaranteed portion of these loans. Maturity can be for 1 year to 30 years. These loans can be either set at a fixed rate or variable rate that is usually tied to the prime rate. Principal and interest are paid monthly on a 30/360-day basis.~~

~~*Federal Home Loan Mortgage Corporation (Freddie Macs)* participation certificates are backed by 30-year conventional residential mortgages and are 100 percent guaranteed by the Federal Home Loan Mortgage Corporation. The Federal Home Loan Mortgage Corporation is wholly owned by the Federal Home Loan Banks. The Mortgage Corporation is a corporate instrumentality of the United States. Freddie Macs are registered securities. Principal and interest passed through the Mortgage Corporation and then to the City monthly. These instruments have an assumed life of approximately 12 years and pay~~ is a publicly traded, government-sponsored enterprise created to promote stability and affordability in the housing market by purchasing mortgages from banks and other loan makers. Freddie Mac's term debt products offer investors both short-term notes (maturities of one year or less) or callable medium-term notes, typically one to fifteen years and pays interest semi-annually on a 30/360-day basis.

~~Other U.S. government securities available to the City for investment purposes include: Student Loan Marketing Association (SLMA or Sallie Mae), Aid for International Development (AID), and debentures of Tennessee Valley Authority (TVA). However,~~

~~these instruments are not offered on a regular basis and do not offer the same liquidity as the before mentioned instruments.~~

3. Time Deposits or Certificates of Deposit

Time deposits are placed with commercial banks and savings and loan agencies or state or federal credit unions. A time deposit is a receipt for funds deposited in a financial institution for a specified period of time at a specified rate of interest. Generally, the time is 3 months to 5 years. Denominations can be any agreed upon amount and interest is normally calculated using actual number of days on a ~~360-day~~ 365-day year and paid monthly. Deposits of ~~\$100,000 up to \$250,000~~ (commonly referred to as Jumbo C.D.'s) per institution are insured by the ~~government~~ Federal Deposit Insurance Corporation (FDIC) and collateralized Certificates of Deposit can be supported by either 110% U.S. Government agency notes or 150% mortgages currently held by the bank, ~~or~~ savings and loan or credit union. An institution must ~~meet the following criteria to be considered by the City:~~ maintain a net worth to asset ratio of at least 3% and a positive earnings record.

- ~~1. The institution must maintain a net worth to asset ratio of at least 3% and a positive earnings record;~~
- ~~2. The institution must be in compliance with the Financial Institution Reform Act (FIRREA) capital ratio requirements for risk-based, tangible, and core capital; and~~
- ~~3. The institution must make available a current FDIC call reports (banks) or FHLB report. A call report presents the financial condition of the institution to the agency with oversight responsibility of that institution.~~

4. Negotiable Certificates of Deposit

Negotiable Certificates of Deposit are a form of Certificate of Deposit that have been an important money market instrument since 1961 when commercial banks began issuing them and a secondary market developed to provide liquidity. Since these certificates of deposit can be traded in the secondary market, they are negotiable instruments, hence their name negotiable certificate of deposit. They are supported only by the strength of the institution from which they are purchased. This is a riskier investment that provides a higher yield than regular certificates of deposit. ~~Some issues have quarterly floating rates that mean they will more closely approximate the market in yield. Interest is paid semi-annually (quarterly on the floaters) computed on a 30/360-day basis. Maturities range from 3 months to 2 years. Negotiable Certificates of Deposit are generally issued in blocks of \$1 million, \$5 million, \$10 million and so on.~~

The City will restrict its investments in Negotiable Certificates of Deposit to the 100 largest United States banks and 100 largest international banks according to asset size. The profitability of the financial institution as well as its financial stability is also taken into account prior to placing the investment. As a general rule, the City will not place more than 15% of its portfolio in Negotiable Certificates of Deposit with one institution or 20% of its portfolio with any one Commercial Bank or savings and loan association in any form of Certificate of Deposit.

5. Bankers' Acceptance Notes

A banker's acceptance (B.A.) is a unique credit instrument used to finance both domestic and international transactions. As a money market instrument, it is an attractive short-term investment. When a bank "accepts" such a time draft, it becomes, in effect, a

predated certified check payable to the bearer at some future, specified date. Little risk is involved because the commercial bank assumes primary liability once the draft is accepted. Banker's acceptances are frequently in odd amounts. Maturities normally range from 30 up to 180 days. Banker's acceptances are sold at a discount. This means, the face amount is received at maturity. The City will purchase B.A.'s only of the top 100 U.S. or Foreign Banks. The profitability of the financial institution as well as its financial stability is also taken into account prior to placing the investment.

6. Commercial Paper

Commercial paper is the trade name applied to unsecured promissory notes issued by finance and industrial companies to raise funds on a short-term basis. Commercial paper can be purchased on an interest bearing or discount basis. Interest bearing instruments pay interest semi-annually. Discounted instruments pay interest at maturity. The City will invest in commercial paper only if the yields are attractive, and if the paper ~~is rated A-1 by Moody's and by Standard & Poor's rating services~~ attains the highest letter and number rating as provided for by national recognized statistical-rating organization (NRSRO). Maturities range from 30 to 180 days with interest computed on a 30/360-day basis.

7. Medium-Term Notes

~~In recent years, this financing mechanism has grown, providing capital to the private sector, and diminishing the Negotiable Certificate of Deposit market. The trend towards medium term notes related to buyer and seller flexibility and convenience. The notes are issued on any given date and maturing on a negotiated date. They generally range from 2 to 5 years in maturity. This market provides an excellent alternative to Negotiable C.D.'s.~~ A Medium-term note is a form of privately placed debt in a bond format. It refers to any fixed-income security with a maturity longer than 1 year, typically issued by financial institutions, corporations and public finance borrowers. The City will only purchase Medium Term Notes with ratings of A or its equivalent or better with maturities of 5 years or less. Their interest is calculated on a 30/360-day basis like Agency bonds. Interest is paid semi-annually.

8. Capital Stock

The City will only invest on water shares from local water companies as they become available.

8.9. Local Agency Investment Fund demand deposit

The Local Agency Investment Fund (LAIF) was established by the state to enable treasurers to place funds in a pool for investments. The LAIF has been particularly beneficial to those jurisdictions with small portfolios. Each agency is limited to an investment of ~~\$15.0~~ \$75.0 million. Porterville uses this fund for short-term liquidity, investment, and yield when rates are declining. Funds are available on demand. ~~At present, two accounts have been opened; one for the City and one for Porterville Redevelopment Agency. Interest and interest~~ is paid quarterly.

9.10. Central San Joaquin Valley Risk Management Authority (CSJVRMA) investment pool

As a member city of the CSJVRMA, the City accepted the opportunity in July 2001 to participate in its sponsored investment pool. The pool is managed by Chandler Asset Management and invests in agency instruments such as Federal Home Loan Bank, treasuries and high-grade corporate stock. Funds are available on demand, with interest

paid ~~quarterly~~ on a monthly basis.

~~10.11.~~ County of Tulare investment pool

Porterville participates in the County of Tulare's investment pool that is managed by the County Treasurer, ~~O. Gerald Fields~~. The County invests in the same type of State-approved instruments, as does the City. Funds are available on demand, and interest is paid quarterly.

12. California Cooperative Liquid Assets Securities System (CLASS)

California CLASS is a Joint Powers Authority investment pool that provides public agencies the opportunity to invest funds on a cooperative basis in rated pools that are managed in accordance with state law. Its primary objective is to offer participants safety, daily and next-day liquidity and optimized returns. The funds is an investment option and diversification tool for short-term and medium-term investments. Funds are available on demand with interest paid on a monthly basis.

Investments not specifically approved by this policy are prohibited.

~~STATE AND CHARTER REGULATIONS~~ DIVERSIFICATION REQUIREMENTS

The City of Porterville will diversify its investment portfolio in order to reduce exposure to risk by combining a variety of investments, limiting investment in securities with higher credit risks, investing in instruments with varying maturities, and continuously investing a portion of the portfolio in readily available funds to ensure that appropriate liquidity is maintained to meet ongoing obligations.

The City operates its investment pool with many State and self-imposed constraints. ~~In accordance with SB 564 and SB 866, effective January 1, 1996, the City Treasurer will bring this Policy before City Council annually for its reaffirmation.~~ Government Code Section 53601 (et seq) restricts the City portfolio ~~mix~~ to:

1. 30% in Medium Term Notes, not to exceed 5 years in maturity;
2. 30% in Negotiable Certificates of Deposit, not to exceed 5 years in maturity;
3. 40% in Banker's Acceptance Notes, not to exceed 180 days in maturity;
4. 25% in Commercial Paper, not to exceed 270 days in maturity; and
5. 50% in Placement Service Certificates of Deposit, not to exceed 5 years in maturity (On January 1, 2026, reverts back to 30% maximum percentage of the portfolio.)

These restrictions primarily apply to short-term investments and are interpreted to apply at the time of investment. If, as the portfolio mix changes over time, a particular segment exceeds these restrictions, the prudent investor rule shall apply. The City does not buy stocks and it does not speculate. The City will be selective in purchasing ~~long-term negotiable certificates of deposit and~~ medium-term notes, placing such an investment only with a large stable institution.

MATURITY OF INVESTMENTS

The City of Porterville will operate a portfolio with an average life of three years or less. This is to ~~insure~~ ensure liquidity and the ability to move with changing markets and interest rate movements. Accordingly, no investment will be made in securities that have a final maturity over five years. ~~The long-term securities shall only be Treasury Notes and Bonds and Mortgage Backed Securities.~~

PERIODIC REPORTING

~~Also in accordance with SB 564 and SB 866, each quarter,~~ On a quarterly basis, the City Treasurer/Finance Director will issue a report of the City's current investment portfolio, detailing securities, purchase and maturity date, ~~and~~ face and market value, weighted average rate of earnings, weighted average days to maturity, and the percentage of liquid holdings. This report will also confirm that current portfolio holdings are in compliance with this policy and that the City's cash needs will be met.

~~Each quarter some of the long-term investments will be reviewed in order to determine if it is advantageous to sell those securities and purchase others. The review will consider current market conditions and various spread relationships among security types.~~ The monitoring of the conditions set forth in this policy statement is the responsibility of the City Treasurer/Finance Director or delegate.

INVESTMENT POLICY ADOPTION

The City's investment policy shall be reviewed periodically by the City Council for consistency with the City's overall investment objectives regarding preservation of principal, liquidity, return, and relevance to current law as well as to current financial and economic trends. Any modifications necessary must be approved by the City Council and the investment policy shall be adopted in its entirety by resolution of the City Council.

CITY OF PORTERVILLE

Statement of Investment Policy

INTRODUCTION

The City of Porterville has a fiduciary responsibility to maximize the productive use of its liquid assets entrusted to its care and to manage those public funds wisely and prudently. The purpose of this document is to identify various policies and procedures that enhance opportunities for a prudent and systematic investment policy and to organize and formalize investment-related activities. Related activities, which comprise good cash management, include accurate cash projections, the expeditious collection of revenue, the control of disbursements, cost-effective banking relations, and short-term borrowing programs which coordinate working capital requirements and investment opportunity. In concert with these requirements are the many facets of an appropriate and secure short-term investment program.

SCOPE

It is intended that this investment policy cover all funds and investment activities under the direct authority of the City of Porterville organization. This policy does not cover any funds held by the fiscal agent in connection with the issuance of any bonds by the City. Such funds shall be invested in accordance with the applicable trust indenture.

PHILOSOPHY

The basic premise underlying Porterville's investment philosophy is to ensure that money is always available when needed. A minimum amount of 6 percent of the adopted operating budget for all funds is maintained in immediately available investments, such as the State Treasurer's Local Agency Investment Fund or other cash equivalents.

Porterville takes an active investment posture in an attempt to earn a higher yield. This investment posture is best demonstrated by the City's long-term investments. By taking advantage of the positive yield curve (i.e., longer term rates are higher than shorter maturities), in the long run, the City should average a higher yield.

The City's investments will be limited to an average life of three years or less. When the market warrants purchase of longer maturities to capture a higher rate of return, purchases will be limited to United States Treasury Notes and Bonds, Federal Agencies Notes and Bonds, Medium Term Notes, Time Deposits or Certificates of Deposit, and Negotiable Certificates of Deposit. No investment will be made in securities that have a final maturity over five years.

The economy and various markets are monitored carefully to assess the probable course of interest rates. In a market with increasing interest rates, the City will attempt to invest in securities with shorter maturities. This makes funds available for other investments when the interest rates are higher. When interest rates appear to be near a relatively high rate, the City will attempt to purchase investments with medium to long-term maturities to lock in the higher rate of return. When interest rates are falling, the City will invest in securities with longer maturities to hold the higher rate for a longer period of time.

The City will also take advantage of any new vehicle that becomes eligible for municipal investment only after a detailed study of the investment, its safety, liquidity, and yield.

INVESTMENT OBJECTIVES

As per California Government Code Section 53600.5, the primary objectives, in priority order of the City of Porterville's investment activities shall be:

1. **Safety:** Safety of principal is the foremost objective of the investment program. Investments of the City shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio with the objective of mitigating credit risk and interest rate or market risk.

Credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. Investments will be limited to the types of securities authorized in this policy. The City will diversify its investment portfolio in order to minimize the impact of potential losses from any one type of security or from any one individual issuer.

Interest rate or market risk is the risk that changes in interest rates will adversely affect the fair value of an investment. The investment portfolio will be structured so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities prior to maturity. Securities shall generally be held until maturity.

2. **Liquidity:** The City's investment portfolio will remain sufficiently liquid to enable the City to meet all payment requirements, including but not limited to payroll, accounts payable, capital projects, debt service, and other payments which might be reasonably anticipated.
3. **Yield:** The City's investment portfolio shall be designed and managed with the objective of maximizing return throughout budgetary and economic cycles, commensurate with the City's investment risk constraints and the cash flow characteristics of the portfolio.

The Treasurer/Finance Director and staff will avoid any transactions that might impair public confidence in the City.

PRUDENT INVESTOR STANDARD

The City adheres to the guidance provided by the "prudent person standard," as set forth in California Government Code Section 53600.3.

The "prudent person standard" shall be applied in the context of managing an overall portfolio. Investments shall be made with judgement and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs; not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived. Investment officers acting in accordance with written procedures and the investment policy and exercising due diligence, shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided the deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

ETHICS AND CONFLICTS OF INTEREST

Investment officers shall disclose material interests in financial institutions with which they do business, disclose personal financial interests that could be related to the performance of the investment portfolio and refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the City.

DELEGATION OF AUTHORITY

The City Council hereby delegates responsibility for the management of the investment program to the City Treasurer/Finance Director, who shall establish procedures for the operation of the investment program consistent with this investment policy. Under the provision of California Government Code 53603.3, the Treasurer/Finance Director is a trustee and a fiduciary subject to the prudent investor standard. The Treasurer/Finance Director will review the investment holdings monthly and ensure that they are in compliance with the City investment policy.

The Treasurer/Finance Director may delegate all or a portion of his/her investment authority. Prior to delegation, the Treasurer/Finance Director shall notify the City Council and request confirmation of the delegation. Delegation of investment authority will not remove or abridge the Treasurer/Finance Director's investment responsibility.

SAFEKEEPING AND CUSTODY

Securities owned by the City shall be held in safekeeping by third-party custodians acting as agent for the City and shall be evidenced by safekeeping receipts. The purchase of securities shall be conducted on a standard delivery versus payment (DVP) basis that guarantees the transfer of securities only after payment is made. The DVP system eliminates principal risk, decreasing the probability of not meeting delivery and/or payment obligations and reducing the possibility of liquidity risk. The third-party custodians are required to provide monthly statements illustrating the balance of securities held by those custodians.

Investments in investment pools and some certificates of deposit are not subject to delivery or third-party safekeeping requirements.

INTERNAL CONTROLS

The Treasurer/Finance Director is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the City are protected from loss, theft or misuse. The internal controls shall include separation of duties, safekeeping of securities and written confirmation of phone transactions and wire transfers.

AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS

The City of Porterville will maintain a list of banks, savings and loans, credit unions, and securities dealers authorized to provide investment services. Approved broker/dealers and financial institutions should meet all requirements established by federal and state law. Criteria to be considered in the selection will include creditworthiness, expertise and the types of securities. Qualifying financial dealers and institutions must provide the City with audited financial statements, proof of National Association of Securities Dealers (NASD) certification, and a certification of having read, understood and agreeing to comply with this investment policy.

AUTHORIZED INVESTMENTS

Investments are made in accordance with California State Code and include the following:

1. Securities of the U.S. Government

Securities of the Government include U.S. Treasury bills, notes and bonds.

U. S. Treasury Bills - are issued by the U.S. Treasury and are available in maturities out to one year. They are non-interest bearing and sold on a discount basis. The face amount is paid at maturity.

Treasury Notes - are issued by the U.S. Treasury with maturities from two to ten years. They are issued in coupon form and many issues are also available in registered form. Interest is payable at six-month intervals until maturity.

Treasury Bonds - are issued by the U.S. Treasury with maturities of ten years to thirty years. The City may purchase the interest and/or principal of a U.S. Treasury Bond. A principal only instrument is commonly called a "stripped" or "zero" coupon. Stripped coupons are sold at discount basis. The face amount is paid at maturity.

2. Securities of U.S. Government Agencies

The United States Treasury initially financed the capital of U.S. Government agencies. But as they have grown and operated profitably over the years, the Treasury's investment has been replaced in large measure by private capital. At the present time, obligations of only a few agencies are backed by the full faith and credit of the U.S. Government. The obligations of all the federal agencies described in the following sections are not guaranteed by the U.S. Government but are considered to be investments of the highest quality.

Federal National Mortgage Association (Fannie Mae) is a publicly traded government-sponsored enterprise created to provide liquidity, stability and affordability to the mortgage market by purchasing mortgages from banks, savings and loans and mortgage companies. Fannie Mae issues both short-term debt with maturities of a year or less and long-term debt with maturities of over a year and can either be callable or noncallable with interest payments paid semi-annually on a 30/360-day basis.

Federal Home Loan Banks are cooperatively owned by member financial institutions and provide a steady supply of lendable funds to financial institutions such as community banks, credit unions, commercial and savings banks, insurance companies, and community development financial institutions. They provide liquidity to their members to support housing finance and community development through all economic cycles. The agency offers bonds in the public market with majority of issues between one and five years. Interest is paid semi-annually on a 30/360-day basis.

Federal Farm Credit Bank (FFCB) Agency bonds are debt instruments issued to support rural communities and agriculture with reliable, consistent credit and financially related services. Fixed rate bonds which maybe callable or non-callable are regularly issued with typical maturities of one to five years. Designated bonds are non-callable securities with typical maturities of two to ten years. Interest payments are made semi-annually on a 30/360-day basis.

Federal Home Loan Mortgage Corporation (Freddie Mac) is a publicly traded, government-sponsored enterprise created to promote stability and affordability in the housing market by purchasing mortgages from banks and other loan makers. Freddie Mac's term debt products offer investors both short-term notes (maturities of one year or less) or callable medium-term notes, typically one to fifteen years and pays interest semi-annually on a 30/360-day basis.

3. Time Deposits or Certificates of Deposit

Time deposits are placed with commercial banks, savings and loan agencies or state or federal credit unions. A time deposit is a receipt for funds deposited in a financial institution for a specified period of time at a specified rate of interest. Generally, the time is three months to five years. Denominations can be any agreed upon amount and interest is normally calculated using actual number of days on a 365-day year and paid monthly. Deposits of up to \$250,000 (commonly referred to as Jumbo C.D.'s) per institution are insured by the Federal Deposit Insurance Corporation (FDIC) and collateralized Certificates of Deposit can be supported by either 110% U.S. Government agency notes or 150% mortgages currently held by the bank, savings and loan or credit union. An institution must maintain a net worth to asset ratio of at least 3% and a positive earnings record;

4. Negotiable Certificates of Deposit

Negotiable Certificates of Deposit are a form of Certificate of Deposit that have been an important money market instrument since 1961 when commercial banks began issuing them and a secondary market developed to provide liquidity. Since these certificates of deposit can be traded in the secondary market, they are negotiable instruments, hence their name negotiable certificate of deposit. They are supported only by the strength of the institution from which they are purchased. This is a riskier investment that provides a higher yield than regular certificates of deposit.

The City will restrict its investments in Negotiable Certificates of Deposit to the 100 largest United States banks and 100 largest international banks according to asset size. The profitability of the financial institution as well as its financial stability is also taken into account prior to placing the investment. As a general rule, the City will not place more than 15% of its portfolio in Negotiable Certificates of Deposit with one institution or 20% of its portfolio with any one Commercial Bank or savings and loan association in any form of Certificate of Deposit.

5. Bankers' Acceptance Notes

A banker's acceptance (B.A.) is a unique credit instrument used to finance both domestic and international transactions. As a money market instrument, it is an attractive short-term investment. When a bank "accepts" such a time draft, it becomes, in effect, a predated certified check payable to the bearer at some future, specified date. Little risk is involved because the commercial bank assumes primary liability once the draft is accepted. Banker's acceptances are frequently in odd amounts. Maturities normally range from 30 up to 180 days. Banker's acceptances are sold at a discount. This means, the face amount is received at maturity. The City will purchase B.A.'s only of the top 100 U.S. or Foreign Banks. The profitability of the financial institution as well as its financial stability is also taken into account prior to placing the investment.

6. Commercial Paper

Commercial paper is the trade name applied to unsecured promissory notes issued by finance and industrial companies to raise funds on a short-term basis. Commercial paper can be purchased on an interest bearing or discount basis. Interest bearing instruments pay interest semi-annually. Discounted instruments pay interest at maturity. The City will invest in commercial paper only if the yields are attractive, and if the paper attains the highest letter and number rating as provided for by a national recognized statistical-rating organization (NRSRO). Maturities range from 30 to 180 days with interest computed on a 30/360-day basis.

7. Medium-Term Notes

A Medium-term note is a form of privately placed debt in a bond format. It refers to any fixed-income security with a maturity longer than 1 year, typically issued by financial institutions, corporations and public finance borrowers. The City will only purchase Medium Term Notes with ratings of A *or its equivalent* or better, with maturities of five years or less. Their interest is calculated on a 30/360-day basis like Agency bonds. Interest is paid semi-annually.

8. Capital Stock

The City will only invest on water shares from local water companies as they become available.

9. Local Agency Investment Fund

The Local Agency Investment Fund (LAIF) was established by the state to enable treasurers to place funds in a pool for investments. The LAIF has been particularly beneficial to those jurisdictions with small portfolios. Each agency is limited to an investment of \$75.0 million. Porterville uses this fund for short-term liquidity, investment, and yield when rates are declining. Funds are available on demand and interest is paid quarterly.

10. Central San Joaquin Valley Risk Management Authority (CSJVRMA) Investment Pool

As a member city of the CSJVRMA, the City accepted the opportunity in July 2001 to participate in its sponsored investment pool. The pool is managed by Chandler Asset Management and invests in agency instruments such as Federal Home Loan Bank, treasuries and high-grade corporate stock. Funds are available on demand, with interest paid on a monthly basis.

11. County of Tulare Investment Pool

Porterville participates in the County of Tulare's investment pool that is managed by the County Treasurer. The County invests in the same type of State-approved instruments, as does the City. Funds are available on demand, and interest is paid quarterly.

12. California Cooperative Liquid Assets Securities System (CLASS)

California CLASS is a Joint Powers Authority investment pool that provides public agencies the opportunity to invest funds on a cooperative basis in rated pools that are managed in accordance with state law. Its primary objective is to offer participants safety, daily and next-day liquidity and optimized returns. The fund is an investment option and diversification tool for short-term and medium-term investments. Funds are available on demand with interest paid on a monthly basis.

Investments not specifically approved by this policy are prohibited.

DIVERSIFICATION REQUIREMENTS

The City of Porterville will diversify its investment portfolio in order to reduce exposure to risk by combining a variety of investments, limiting investment in securities with higher credit risks, investing in instruments with varying maturities, and continuously investing a portion of the portfolio in readily available funds to ensure that appropriate liquidity is maintained to meet ongoing obligations.

The City operates its investment pool with many State and self-imposed constraints. Government Code Section 53601 (*et seq*) restricts the City portfolio to:

1. 30% in Medium Term Notes, not to exceed 5 years in maturity;
2. 30% in Negotiable Certificates of Deposit, not to exceed 5 years in maturity;
3. 40% in Banker's Acceptance Notes, not to exceed 180 days in maturity;
4. 25% in Commercial Paper, not to exceed 270 days in maturity; and
5. 50% in Placement Service Certificates of Deposit, not to exceed 5 years in maturity (On January 1, 2026, reverts back to 30% maximum percentage of the portfolio.)

These restrictions primarily apply to short-term investments and are interpreted to apply at the time of investment. If, as the portfolio mix changes over time, a particular segment exceeds these restrictions, the prudent investor rule shall apply. The City does not buy stocks and it does not speculate. The City will be selective in purchasing medium-term notes, placing such an investment only with a large stable institution.

MATURITY OF INVESTMENTS

The City of Porterville will operate a portfolio with an average life of three years or less. This is to ensure liquidity and the ability to move with changing markets and interest rate movements. Accordingly, no investments will be made in securities that have a final maturity greater than five years.

PERIODIC REPORTING

On a quarterly basis, the City Treasurer/Finance Director will issue a report of the City's current investment portfolio, detailing securities, purchase and maturity date, face and market value, weighted average rate of earnings, weighted average days to maturity, and the percentage of liquid holdings. This report will also confirm that current portfolio holdings are in compliance with this policy and that the City's cash needs will be met.

The monitoring of the conditions set forth in this policy statement is the responsibility of the City Treasurer/Finance Director or delegate.

INVESTMENT POLICY ADOPTION

The City's investment policy shall be reviewed periodically by the City Council for consistency with the City's overall investment objectives regarding preservation of principal, liquidity, return, and relevance to current law as well as to current financial and economic trends. Any modifications necessary must be approved by the City Council and the investment policy shall be adopted in its entirety by resolution of the City Council.

RESOLUTION NO. ____ - 2024

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
APPROVING THE STATEMENT OF INVESTMENT POLICY

WHEREAS: An investment policy serves as the foundation of a local agency's investment goals and priorities and describes the parameters for investing government funds and identifies the investment objectives, preferences or tolerance for risk, constraints on the investment portfolio, and how the investment program will be managed and monitored; and

WHEREAS: The California Government Code contains specific provisions regarding the types of investments and practices permitted which are intended to promote the use of reliable, diverse and safe investment instruments to better ensure a prudently managed portfolio worthy of public trust; and

WHEREAS: The Statement of Investment Policy has been developed to provide guidance in the cash, treasury and investment management functions of the City, reducing the exposure to liability and protect the assets of the City with those specific provisions of the California Government Code having been incorporated into the updated Statement of Investment Policy;

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve the Statement of Investment Policy, in the form attached hereto as Exhibit A.

PASSED, APPROVED AND ADOPTED this 5th day of March, 2024.

Martha A Flores, Mayor

ATTEST:
Patrice Hildreth, City Clerk

By: _____
Fernando Gabriel-Moraga,
Acting Chief Deputy City Clerk



LOCAL AGENCY INVESTMENT GUIDELINES

CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION

Update for 2024

Reflects state law changes
effective as of January 1, 2024
CDIAC 23.07

California Debt and Investment Advisory Commission

The California Debt and Investment Advisory Commission (CDIAC) provides information, education, and technical assistance on debt issuance and public fund investments to local agencies and public finance professionals. CDIAC also serves as the State's clearinghouse for public debt issuance information.

FIONA MA, CPA

State Treasurer and Chair

GAVIN NEWSOM

Governor

MALIA M. COHEN

State Controller

DAVID ALVAREZ

Assemblymember

AVELINO VALENCIA

Assemblymember

SANDIE ARNOTT

Treasurer-Tax Collector

County of San Mateo

NIKOLAI SKLAROFF

Capital Finance Director

San Francisco Public Utilities Commission

ROBERT BERRY

Executive Director

Additional information concerning this report or CDIAC programs may be obtained by contacting CDIAC directly via phone (916) 653-3269, fax (916) 654-7440, e-mail (cdiac@treasurer.ca.gov) or by visiting CDIAC's website: www.treasurer.ca.gov/cdiac.

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About the Local Agency Investment Guidelines

The *Local Agency Investment Guidelines* is intended to aid local officials in their efforts to implement existing laws pertaining to the investment of public funds. Each year, CDIAC staff convenes a working group of public- and private-sector professionals to support its efforts to revise and update these *Guidelines*.

THOSE PARTICIPATING IN THE 2024 GUIDELINES INCLUDE:

- Constantine Baranoff, *Attorney, Lozano Smith*
- Bill Blackwill, *Managing Director, Stifel*
- Deborah Higgins, *President, Higgins Capital Management*
- John Johnson, *Asst. Auditor-Controller/Treasurer/Tax Collector, San Bernardino County*
- Carol Lew, *Shareholder, Stradling, Yocca, Carlson & Rauth, P.C.*
- Philip Marr, *Senior Portfolio Manager, City of Los Angeles*
- Kent Morris, MBA, CTP, *Director of Treasury, Irvine Ranch Water District*
- Laura Parisi, CPA, CFIP, *City Treasurer, City of Laguna Beach*
- Rick Phillips, CCM, *Chief Investment Strategist, Meeder Public Funds*
- Monique Spyke, *Managing Director, Head of California Practice, PFM Asset Management LLC*

This document briefly describes each issue, offers an interpretation of the minimum compliance requirements, and provides consensus recommendations where the working group deemed them necessary. These interpretations represent the best judgment of CDIAC and the professionals involved and are intended only as a guide for local agencies in their compliance. Agencies should rely only on their legal counsel for legal advice.

The *Local Agency Investment Guidelines: Update for 2024* reflects current investment statutes. It is divided into chapters on investment policy, fund management, reporting requirements, and the treasury oversight committee. Please note that an issue may not fit neatly into the following four chapters.

Generally speaking, all local agencies are subject to the reporting, fund management, and investment policy requirements. Only county governments may be subject to the county oversight committee requirements. Any jurisdiction that assumes it is not covered by these provisions should seek legal counsel. California Government Code Section 53600 states:

As used in this article, "local agency" means a county, city, city and county, including a chartered city or county, school district, community college district, public district, county board of education, county superintendent of schools, or any public or municipal corporation.

Summary of Changes

The *2024 Local Agency Investment Guidelines* incorporates the following California statutory changes: Government Code Section 53601 and 27000.7.

STATUTORY CHANGES

LOCAL FUNDS

Chapter 187, Statutes of 2023 (SB 882), *Local Government Omnibus Act of 2023*, amended Government Code section 53601 to clarify limitations imposed on public investment in a privately issued mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond (“mortgage pass-through and asset-backed securities”) that are not issued or guaranteed by a public agency or issuer identified in subdivision (b) or (f). These types of securities, issued by private companies, are permissible investments under subdivision (o) so long as they meet the following limitations: 1. rated in a rating category of “AA” or its equivalent or better; 2. have a maximum remaining maturity of five years or less; and, 3. do not exceed the 20% of the local agency’s portfolio (see Figure 1).

A provision of this bill also amended 27000.7 to eliminate one of the options for a person to demonstrate eligibility to be elected or appointed to the office of county treasurer, county tax collector, and county treasurer-tax collector. The option to possess a valid certificate issued by the Treasury Management Association showing the person to be designated a Certified Cash Manager, with a minimum of 16 college semester units, or their equivalent, in accounting, auditing, or finance, was eliminated.

This bill made additional changes to various legislative code sections not related to public debt issuance or public fund investments.

FEDERAL AND REGULATORY CHANGES

No changes.

OTHER CHANGES

The 2024 Local Agency Investment Guidelines includes changes to Chapter II: Fund Management:

New guidance has been added to Chapter 2, Fund Management, II.D. *What funds should a local agency use to calculate portfolio concentration compliance with state law? [Section 53601]*, to help an agency determine what funds are available for investment and what funds to include when calculating portfolio concentration limitations.

Chapter 2, II.M. *What are the rules regarding the use of mutual funds and money market funds? [Sections 53601(l) And 53601.6(b)]* now includes statements regarding the impermissibility of exchange-traded funds (ETFs) for public investment portfolios.

Glossary. The term, LIBOR, has been updated and the term, SOFR, has been added to the glossary.

All references to statutory code "sections" throughout this document shall refer to California Government Code unless otherwise stated.

Chapter I. The Annual Investment Policy

A good investment policy encompasses the cash, treasury, and investment management functions of an agency. It serves as a guide for setting and achieving program objectives, defines rules and establishes benchmarks, and reduces the exposure to liability of both the investment staff and the governing board. It is also important to note that rating agencies pay close attention to an agency's investment policy and portfolio in determining its credit rating.

From this point forward, all references to the word “section” refers to the California Government Code unless otherwise stated.

I. A Should local agencies produce an investment policy? Should the investment policy be presented to the local agency's legislative body? [Section 53646(a)]¹

The investment policy serves as the foundation of a local agency's investment goals and priorities. If the investment policy is carefully researched, effectively drafted, and reviewed regularly to assure that it continues to meet the agency's goals/priorities for its portfolio, it can help protect the assets of the organization. The existence of an approved investment policy demonstrates that the governing body is performing its fiduciary responsibilities, thereby, inspiring trust and confidence among the public that it serves.

MINIMUM LEGAL REQUIREMENTS:

Section 53646(a)(1) states that the treasurer of a county government may annually render to their board of supervisors and oversight committee an investment policy, which the board shall review and approve at a public meeting. In addition, the board shall review and approve any changes to the investment policy at a public meeting.

Section 53646(a)(2) states that the treasurer or chief fiscal officer of any other local agency may annually render to their legislative body and any oversight committee an investment policy, that the legislative body shall consider at a public

¹ All statutory references are to the California Government Code unless otherwise noted.

meeting. This raises questions about whether or not the policy should be adopted officially by the legislative body, and the time during the year that this “consideration” should take place.

CONSENSUS RECOMMENDATION:

An investment policy should always be in place. While not required by statute, it is in the best interest of the local agency to present and discuss the policy with the agency’s legislative body or oversight committee, and then have the policy approved by a vote of the legislative body. A public vote signifies that the legislative body shares fiduciary responsibility with the treasurer, increases the authority and legitimacy of the investment policy, and provides transparency and disclosure.

I. B When should the investment policy be reviewed and updated? How should the investment policy be rendered to the legislative body? [Section 53646(a)]

The size and complexity of the investment policy, portfolio, agency and the agency’s staff are factors that may affect the frequency of the investment policy review and revision.

MINIMUM LEGAL REQUIREMENT:

Section 53646(a) provides that if an investment policy is submitted to the local agency’s legislative body, it must be an agenda item at a public meeting. If submitted to a county board of supervisors, the board is required to review and approve the investment policy and any changes to it at the public meeting. The statute does not place the same specific approval requirements on other local agencies, but it does require consideration. The statute does not specify, however, when during the year that consideration or approval should occur.

CONSENSUS RECOMMENDATION:

Both the Association of Public Treasurers of the United States & Canada and the Government Finance Officers Association have established policy standards that recommend investment policies be reviewed annually. At a minimum, the internal treasury staff should conduct a review annually. Ideally, the review should be timed to coincide with the end of the state legislative cycle so that consideration may be given to any changes in statute that may impact the agency’s policy.

An update in the investment policy is warranted if treasury staff’s review results in a material change in policy due to either a change in statute or a change in the agency’s goals and objectives for safety, liquidity and yield. A change in statute, however, may not necessarily require a change in the policy. Many agencies’ policies are already more restrictive than statute. Likewise, an agency may choose to update its policy to restrict the purchase of a new investment product that is allowable by statute but that the agency deems to be too risky for its investment portfolio.

Although rendering the investment policy to the legislative body or oversight committee is not required, it is highly recommended. If it is done, it should be done annually, on an established schedule, such as after the annual review and update.

For newly-elected legislative body members, election terms may not coincide with the investment policy review. But, because of the fiduciary responsibility of the legislative body, any newly-elected members should be made aware of the existence of the investment policy and its contents as soon as possible.

I. C **What information should be included in the investment policy? [Section 27133]**

MINIMUM LEGAL REQUIREMENTS:

Except for county governments, the California Government Code does not contain any provisions specifying what must be included in the investment policy of a local agency. Section 27133 provides that county investment policies must contain:

- A list of securities or other instruments in which the county treasury may invest, according to the law, including the maximum percentage by type of security, and the maximum term of any security purchased;
- The manner of calculating and apportioning the authorized costs of investing, depositing, banking, auditing, reporting, handling, and managing of funds;
- Limits on the receipt of honoraria, gifts, and gratuities for county treasury oversight members from advisors, brokers, dealers, bankers, or other persons with whom the county treasury conducts business;
- Criteria for selecting brokers and dealers (including prohibitions against selecting any broker, dealer, or security firm within any consecutive 48-month period of making a campaign contribution exceeding the limitations contained in Rule G-37 of the Municipal Securities Rulemaking Board);
- A requirement that the treasurer provide the county treasury oversight committee with an investment report as required by the Board of Supervisors;
- Terms and conditions under which other local agencies that are not required to deposit funds may deposit funds in the county treasury if they so choose; and
- Criteria for considering requests to withdraw funds from the county treasury.

The last two of the above elements directly refer to the duties counties have in maintaining a local government investment pool.

CONSENSUS RECOMMENDATION:

Although statute does not specify the contents of the investment policy for local agencies other than counties, it should include at a minimum, the first five elements required of counties. In addition, the policy should specify the funds to which the policy will and will not apply. For instance, bond proceeds are usually guided by the bond documents and thus, may not be a part of the investment policy. Similarly, pension funds are guided by other code sections and may have different investment objectives.

The Association of Public Treasurers of the United States & Canada offers an Investment Policy Program that provides public investors with guidance and technical assistance in developing a comprehensive written investment policy at www.aptusc.org. The California Municipal Treasurers Association (CMTA) has sample investment policies that were certified through **CMTA's Investment Policy Certification Program**. Additional sources for recommended elements of an investment policy can be found in CDIAC's *California Public Fund Investment Primer* and *Investment Policy Reporting Practices: An Informative Guide*, and the Government Investment Officers Association's **Investment Policy Certification Program and Application**.

I. D How is the limit on a political contribution determined when selecting brokers and dealers? [Section 27133 (c) and MSRB Rule G-37]

The county treasury shall not select brokers and dealers who individually, or as a firm, have contributed more than the current limit established under Municipal Securities Regulatory Board (MSRB) Rule G-37.

MINIMUM LEGAL REQUIREMENT:

The county treasury is prohibited from selecting those brokers, brokerage firms, dealers, or securities firms having made political contributions within the last four years, which exceed the amount set forth in MSRB Rule G-37. For 2024, the limit is \$250. This limit applies to the local treasurer, any member of the governing board of the local agency, or any candidate for those offices.

In addition to the provisions outlined in Section 27133 and MSRB Rule G-37, local agencies, the state, and the Fair Political Practices Commission (FPPC) may adopt additional standards on acceptable political contribution limits. For reference, the local treasurer, any member of the governing board of the local agency, and treasury staff are required to report any gift of \$50 or more on his or her annual Form 700 submission to the FPPC.

CONSENSUS RECOMMENDATION:

All treasury staff should be knowledgeable of the specific state and local laws and ordinances governing their receipt of political contributions, gifts, and honoraria. Although the MSRB Rule G-37 applies to the local treasurer and the governing board of the local agency, treasury staff are likely subject to additional rules set forth by the FPPC and the local agency. If there is no policy on the receipt of political contributions, gifts, or honoraria at the local agency level, establish one and educate all agency employees who affect treasury decisions.

I. E What constraints can county pools place on voluntary depositors? [Section 27133(g)]

County treasurers have difficulty predicting withdrawals of voluntary funds made by pool participants. As a result, questions commonly arise regarding how county pools should treat funds from voluntary depositors. In the absence of information on a depositor's cash flow, an unanticipated withdrawal can create potential liquidity problems for the pool.

MINIMUM LEGAL REQUIREMENT:

State law does not require county pools to accept voluntary deposits.

CONSENSUS RECOMMENDATION:

Allow voluntary deposits only under a clearly written contract or memorandum of understanding. This agreement should spell out the exact rules for participating in the pool and provide the county treasurer with reasonable predefined discretion to establish the frequency and amount of voluntary funds that can be removed from the pool at a particular time. Another option is to ban voluntary deposits altogether if the county has confidence that other local agencies have reasonable investment alternatives.

Chapter II. Fund Management

For the investment of county funds in a county treasury, Section 27000.3 establishes the Board of Supervisors as a fiduciary that is subject to the prudent investor standard unless it delegates its investment duties to the county treasurer. For other local agencies' funds invested in the county treasury, the county treasurer serves as a fiduciary and is subject to the prudent investor standard.

Except as provided for in Section 27000.3, Section 53600.3 declares as a trustee each person, treasurer, or governing body authorized to make investment decisions on behalf of local agencies. As trustees these individuals are subject to the prudent investor standard. That is, they shall act with care, skill, prudence, and diligence under the circumstances then prevailing when investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing funds. Section 53600.5 further stipulates that the objectives of any person investing public funds is to, first, safeguard principal; second, to meet the liquidity needs of the depositor; and lastly, to achieve a return or yield on the funds under its control (Section 27000.5 specifies the same objectives for county treasurers and boards of supervisors).

Risk is inherent throughout the investment process. There is investment risk associated with any investment activity and opportunity risk related to inactivity. Market risk is derived from exposure to overall changes in the general level of interest rates while credit risk is the risk of loss due to the failure of the issuer of a security. The market value of a security varies inversely with the level of interest rates. If an investor is required to sell an investment with a 5% yield in a comparable 7% rate environment, that security will be sold at a loss. The magnitude of that loss will depend on the amount of time until maturity.

Purchasing certain allowable securities with a maturity of greater than five years from the settlement date, requires approval of the governing board (see Section 53601). Part of that approval process involves assessing and disclosing the risk and possible volatility associated with longer-term investments.

Another element of risk is liquidity risk. Instruments with extraordinary or special call features, sinking fund redemption structures, or those issued by little known issuers, are examples of "story bonds" and often are thinly traded. Their uniqueness often makes finding prospective buyers in a secondary market more difficult and, consequently, the securities' marketability and prices may be dis-

counted. However, under certain market conditions, gains may also be possible with these types of securities.

Default risk represents the possibility that the borrower may be unable to repay the obligation as scheduled. Generally, securities issued by the federal government and its agencies are considered the most secure, while securities issued by private corporations, or negotiable certificates of deposit issued by commercial banks have a greater degree of risk. Securities with additional credit enhancements, such as bankers' acceptances, collateralized repurchase agreements, and collateralized bank deposits, are somewhere between the two on the risk spectrum.

The vast majority of local agency portfolios are managed with a buy and hold investment strategy. Investments are purchased with the intent and capacity to hold them until maturity. At times, market forces or operations may dictate exchanging one security for another or selling a security before maturity. Continuous analysis and fine tuning of the investment portfolio are considered part of prudent investment management. This passive investment strategy is different from one in which securities are purchased with the intent to sell them before maturity at a profit or the use of leverage to enhance yield.

California Government Code contains specific provisions regarding the types of investments and practices permitted after considering the broad requirement of preserving principal and maintaining liquidity before seeking yield. These provisions are intended to promote the use of reliable, diverse, and safe investment instruments to better ensure a prudently managed portfolio worthy of public trust.

II. A Which investments are permissible? Which are prohibited? [Sections 16340, 16429.1, 27133, 53601, 53601.6, 53601.8, 53635, 53635.2, 53635.8, 53638, 53684, and 57603]

MINIMUM LEGAL REQUIREMENT:

Local agencies may invest only in those instruments specified in State law.

Sections 16340, 16429.1, 27133, 53601, 53601.6, 53601.8, 53635, 53635.2, 53635.8, 53638, 53684, and 57603 include a number of requirements on how and where public money may be invested. Figure 1 provides a synopsis of the permitted investment instruments and limitations on each, in which all local agencies may invest.

Section 53601 places limits on permissible securities. A five-year maximum maturity applies to all permissible securities unless otherwise stated in the code. A permissible security may exceed this limitation only if the legislative body has approved the investment either specifically or as a part of an investment program no less than three months prior to the investment. A permis-

sible investment's term or remaining maturity is to be measured from the investment's settlement date to final maturity. Any forward settlement that exceeds 45 days from the time of investment is prohibited.

Prohibited investments include securities not listed in Figure 1, as well as inverse floaters, range notes, and interest only strips derived from a pool of mortgages. This restriction does not apply to local agency investments in shares of beneficial interest issued by diversified management companies registered under the Investment Company Act of 1940 that are authorized for investment pursuant to subdivision (l) of Government Code Section 53601. Section 53601.6(b) prohibits investment by a local agency in any security that could result in a zero-interest accrual if held to maturity. However, beginning January 1, 2020, Section 53601.6(b), as amended by the Legislature, authorized local agencies to invest in securities issued by, or backed by the United States government that could result in zero- or negative-interest accrual if held to maturity, in the event of, and for the duration of, a period of negative market interest rates. A local agency may hold these instruments until their maturity date. This limited code exception allows local agencies the option of buying and holding onto zero- or negative-interest accrual United States government securities, if it would preserve more principal. This provision will sunset January 1, 2026.

Section 53601 provides that public agencies may invest in bonds issued by the local agency itself, but IRS rules may not support maintenance of the tax-exempt status. In 2008, the Legislature added Section 5925 to clarify that the purchase of bonds by the local agency that issued the bonds does not cancel, defease, or otherwise affect the bonds. With the addition of Section 5925 the repurchased or acquired bonds may be treated as outstanding bonds under state law to the extent provided by the issuer or the documents defining the rights of the bondholders. However, IRS rules that supported the maintenance of the tax-exempt status upon a purchase by a municipal issuer of its own debt sunset in 2010.

In 2019, the Legislature added Section 57600 et seq. authorizing local agencies to form a public bank. Furthermore, under 57603, local agencies that do not pool money in deposits or investments with other local agencies that have separate governing bodies as well as local agencies that pool money in deposits or investments with other local agencies, including local agencies that have the same governing body, are permitted to invest in debt securities or other obligations of a public bank.

CONSENSUS RECOMMENDATION:

Local agencies should include the list of permissible securities in the investment policy and modify the list to meet its unique needs. These modifications may include additional restrictions on the type and amount of specific authorized securities to reflect current federal tax and securities regulations and an agency's risk tolerance.

The addition of Section Code 5925 authorizing state and local agencies to purchase their own bonds was intended to be complementary to Internal Revenue Service (IRS) Notice 2008-41 and 2008-88 that allowed municipal issuers to temporarily hold certain types of their own tax-exempt debt without extinguish-

FIGURE 1
**ALLOWABLE INVESTMENT INSTRUMENTS PER STATE GOVERNMENT
CODE (AS OF JANUARY 1, 2024)^A APPLICABLE TO ALL LOCAL AGENCIES^B**

See "Table of Notes for Figure 1" on the next page for footnotes related to this figure.

INVESTMENT TYPE	MAXIMUM MATURITY ^C	MAXIMUM SPECIFIED % OF PORTFOLIO ^D	MINIMUM QUALITY REQUIREMENTS	GOV'T CODE SECTIONS
Local Agency Bonds	5 years	None	None	53601(a)
U.S. Treasury Obligations	5 years	None	None	53601(b)
State Obligations— CA And Others	5 years	None	None	53601(c) 53601(d)
CA Local Agency Obligations	5 years	None	None	53601(e)
U.S Agency Obligations	5 years	None	None	53601(f)
Bankers' Acceptances	180 days	40% ^E	None	53601(g)
Commercial Paper—Non-Pooled Funds ^F (under \$100,000,000 of investments)	270 days or less	25% of the agency's money ^G	Highest letter and number rating by an NRSRO ^H	53601(h)(2)(c)
Commercial Paper—Non-Pooled Funds ^I (min. \$100,000,000 of investments)	270 days or less	40% of the agency's money ^G	Highest letter and number rating by an NRSRO ^H	53601(h)(2)(c)
Commercial Paper— Pooled Funds ^J	270 days or less	40% of the agency's money ^G	Highest letter and number rating by an NRSRO ^H	53635(a)(1)
Negotiable Certificates of Deposit	5 years	30% ^K	None	53601(i)
Non-negotiable Certificates of Deposit	5 years	None	None	53630 et seq.
Placement Service Deposits	5 years	50% ^L	None	53601.8 and 53635.8
Placement Service Certificates of Deposit	5 years	50% ^L	None	53601.8 and 53635.8
Repurchase Agreements	1 year	None	None	53601(j)
Reverse Repurchase Agreements and Securities Lending Agreements	92 days ^M	20% of the base value of the portfolio	None ^N	53601(j)
Medium-Term Notes ^O	5 years or less	30%	"A" rating category or its equivalent or better	53601(k)
Mutual Funds And Money Market Mutual Funds	N/A	20% ^P	Multiple ^{Q, R}	53601(l) and 53601.6(b)
Collateralized Bank Deposits ^S	5 years	None	None	53630 et seq. and 53601(n)
Mortgage Pass-Through and Asset-Backed Securities ^T	5 years or less ^T	20%	"AA" rating category or its equivalent or better ^T	53601(o)
County Pooled Investment Funds	N/A	None	None	27133
Joint Powers Authority Pool	N/A	None	Multiple ^U	53601(p)
Local Agency Investment Fund (LAIF)	N/A	None	None	16429.1
Voluntary Investment Program Fund ^V	N/A	None	None	16340
Supranational Obligations ^W	5 years or less	30%	"AA" rating category or its equivalent or better	53601(q)
Public Bank Obligations	5 years	None	None	53601(r), 53635(c) and 57603

TABLE OF NOTES FOR FIGURE 1

- ^A Sources: Sections 16340, 16429.1, 27133, 53601, 53601.6, 53601.8, 53630 et seq., 53635, 53635.8, and 57603.
- ^B Municipal Utilities Districts have the authority under the Public Utilities Code Section 12871 to invest in certain securities not addressed here.
- ^C Section 53601 provides that the maximum term of any investment authorized under this section, unless otherwise stated, is five years from the settlement date. However, the legislative body may grant express authority to make investments either specifically or as a part of an investment program approved by the legislative body that exceeds this five year remaining maturity limit. Such approval must be issued no less than three months prior to the purchase of any security exceeding the five-year maturity limit.
- ^D Percentages apply to all portfolio investments regardless of source of funds. For instance, cash from a reverse repurchase agreement would be subject to the restrictions.
- ^E No more than 30% of the agency's money may be in bankers' acceptances of any one commercial bank.
- ^F Applies to local agencies, other than counties or a city and county, with less than \$100 million of investment assets under management. Includes agencies defined as a city, a district, or other local agency that do not pool money in deposits or investment with other local agencies, other than local agencies that have the same governing body.
- ^G Local agencies, other than counties or a city and county, may purchase no more than 10% of the outstanding commercial paper and medium-term notes of any single issuer.
- ^H Issuing corporation must be organized and operating within the U.S., have assets in excess of \$500 million, and debt other than commercial paper must be in a rating category of "A" or its equivalent or higher by a nationally recognized statistical rating organization, or the issuing corporation must be organized within the U.S. as a special purpose corporation, trust, or LLC, have program wide credit enhancements, and have commercial paper that is rated "A-1" or higher, or the equivalent, by a nationally recognized statistical rating organization.
- ^I Applies to counties or a city and county, and the City of Los Angeles that have \$100 million or more of investment assets under management.
- ^J Includes agencies defined as a county, a city and county, or other local agency that pools money in deposits or investments with other local agencies, including local agencies that have the same governing body. Local agencies that pool exclusively with other local agencies that have the same governing body must adhere to the limits set forth in Section 53601(h)(2)(C).
- ^K No more than 30% of the agency's money may be in negotiable certificates of deposit that are authorized under Section 53601(i).
- ^L Effective January 1, 2020, no more than 50% of the agency's money may be invested in deposits, including certificates of deposit, through a placement service as authorized under 53601.8 (excludes negotiable certificates of deposit authorized under Section 53601(i)). On January 1, 2026, the maximum percentage of the portfolio reverts back to 30%. Investments made pursuant to 53635.8 remain subject to a maximum of 30% of the portfolio.
- ^M Reverse repurchase agreements or securities lending agreements may exceed the 92-day term if the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity dates of the same security.
- ^N Reverse repurchase agreements must be made with primary dealers of the Federal Reserve Bank of New York or with a nationally or state chartered bank that has a significant relationship with the local agency. The local agency must have held the securities used for the agreements for at least 30 days.
- ^O "Medium-term notes" are defined in Section 53601 as "all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States."
- ^P No more than 10% invested in any one mutual fund. This limitation does not apply to money market mutual funds.
- ^Q A mutual fund must receive the highest ranking by not less than two nationally recognized rating agencies or the fund must retain an investment advisor who is registered with the SEC (or exempt from registration), has assets under management in excess of \$500 million, and has at least five years' experience investing in instruments authorized by Sections 53601 and 53635.
- ^R A money market mutual fund must receive the highest ranking by not less than two nationally recognized statistical rating organizations or retain an investment advisor registered with the SEC or exempt from registration and who has not less than five years' experience investing in money market instruments with assets under management in excess of \$500 million.
- ^S Investments in notes, bonds, or other obligations under Section 53601(n) require that collateral be placed into the custody of a trust company or the trust department of a bank that is not affiliated with the issuer of the secured obligation, among other specific collateral requirements.
- ^T Security types authorized under Section 53601(o) that are issued or guaranteed by an issuer identified in subdivisions (b) or (f), are not subject to the limitations placed on privately issued securities authorized in Section 53601(o)(2)(A)(B).
- ^U A joint powers authority pool must retain an investment advisor who is registered with the SEC (or exempt from registration), has assets under management in excess of \$500 million, and has at least five years' experience investing in instruments authorized by Section 53601, subdivisions (a) to (o).
- ^V Local entities can deposit between \$200 million and \$10 billion into the Voluntary Investment Program Fund, upon approval by their governing bodies. Deposits in the fund will be invested in the Pooled Money Investment Account.
- ^W Only those obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development (IBRD), International Finance Corporation (IFC), and Inter-American Development Bank (IADB), with a maximum remaining maturity of five years or less.

ment or loss of tax-exempt status. However, these IRS provisions were meant to be temporary and sunset on December 31, 2010, with some remaining exceptions for certain variable rate debt subject to a qualified tender. Given the incongruity between Section 5925 and IRS rules, a local agency should seek legal guidance on the potential tax implications of purchasing its own debt especially if that debt does not clearly fall within the remaining IRS exceptions.

As a result of amendments to Government Code Sections 53601.8 and 53635.8, local agencies should review portfolio limitations for CDs and negotiable CDs in their investment policies.

Some investments, such as straight floaters or floating rate notes that are not otherwise prohibited, have the potential to result in zero-interest accrual. Before purchasing these types of investments, the local agency should evaluate all possible outcomes, and, as a safeguard, should consider including in its investment policy a statement establishing an acceptable positive spread or floor for all securities, which pay interest based on a spread to an index.

Also, while not expressly prohibited by State law, unregistered securities, such as [Rule 144A](#) securities, may not be purchased by local agencies that do not meet the threshold of \$5 million investments and \$100 million in securities. On August 26, 2020 the Securities and Exchange Commission expanded the definition of Qualified Institutional Buyers (QIB)² to include any institution that qualifies as an accredited investor under Rule 501(a) under the Securities Act that are not otherwise stated in the definition of “qualified institutional buyer” provided they satisfy the \$100 million threshold.

² Refer to CDIA publication *Issue Brief: Rule 144A Securities* for a summary of securities in this class.

II. B What requirements must a financial institution satisfy before a local agency may deposit its money in it? [Section 53635.2]

Section 53635.2 states that all local agency money may be invested in investments set forth in 53601 or deposited for safekeeping in state or national banks, public banks, savings associations, federal associations, credit unions, or federally insured industrial loan companies in this state. It also specifies certain requirements that such financial institutions must satisfy to hold local agency money.

MINIMUM LEGAL REQUIREMENT:

To be eligible to receive local agency money, a financial institution must receive an overall rating of not less than “satisfactory” from the appropriate federal supervisory agency for meeting the criteria specified in Section 2906 of Title 12 of the U.S. Code (Community Reinvestment Act of 1977). The Community Reinvestment Act of 1977 (Act) requires financial institutions to demonstrate their commitment to meet-

ing the credit needs of local communities in which they are chartered to do business. For the purpose of the Act, the appropriate federal supervisory agency includes:

- The Comptroller of the Currency with respect to national banks;
- The Board of Governors of the Federal Reserve System with respect to state chartered banks that are members of the Federal Reserve system and bank holding companies;
- The Federal Deposit Insurance Corporation (FDIC) with respect to state chartered banks, public banks, and savings banks that are not members of the Federal Reserve system and the deposits of which are insured by the FDIC; and
- The Director of Office of Thrift Supervision with respect to savings associations (the deposits of which are insured by the FDIC) and savings holding companies.

CONSENSUS RECOMMENDATION:

A local agency should contact the appropriate federal supervisory agency to determine if its financial institution meets the overall rating requirement.

Local agencies should be aware that in some instances ratings from federal supervisory agencies may not be current, as financial institutions are evaluated only every year or two. Additional inquiry may be necessary to obtain updated information if the last published rating is more than one year old.

II. C When must investments contained in a local agency investment portfolio comply with state law? [Section 53601]

California Government Code provides a description of the types of instruments permissible for local agency investment and specifies the timing of compliance with state law. Questions arise concerning the timing of any test of compliance with these requirements.

MINIMUM LEGAL REQUIREMENT:

Where Section 53601 specifies a percentage restriction on a certain category of investment, this share of the investment portfolio must be in compliance with state law at the time that investment is purchased. The law does not specify that the *entire* portfolio must be in compliance when new instruments are purchased. It also does not require “rebalancing” when subsequent maturities, sales, withdrawals, or similar non-purchase activities result in the remaining portfolio having one or more of the categories of investment rise above the percentage restrictions applicable at the time of purchase.

Where Section 53601 clarifies that the settlement date is to be used to measure final maturity, it does not change the date of purchase. To determine when an investment portfolio must be in compliance with state law, the date of purchase must be used, despite the length of maturity starting from the settlement date. When local agencies purchase securities, the date of purchase and the date the purchase is settled may not always be the same.

CONSENSUS RECOMMENDATION:

In the event the portfolio or individual investments are deemed to be out of compliance with either statute or the investment policy, the local agency should have procedural guidelines in place that outline actions to take under various scenarios. Due to its fiduciary responsibility, early communication with and involvement of the legislative body concerning a major or critical event is of utmost importance. Therefore, the procedural guidelines should identify circumstances under which communication and discussion of the treasurer's analysis and recommended course of action to the legislative body or oversight committee is warranted.

II. D What funds should a local agency use to calculate portfolio concentration compliance with state law? [Section 53601]

California Government Code provides a description of the types of instruments permissible for local agency investment and specifies the timing of compliance with state law. Questions arise about how to determine what local agency funds are available for investment, as well as what funds to include when calculating portfolio concentration for those permissible investments that are limited by state law.

MINIMUM LEGAL REQUIREMENT:

Section 53601 states that, "The legislative body of a local agency having moneys in a sinking fund or moneys in its treasury not required for the immediate needs of the local agency may invest any portion of the moneys that it deems wise or expedient in those investments set forth below" [Section 53601(a) through (r)].

Statute establishes portfolio concentration limitations for certain permissible investments; however, it does not specify the calculation methods for calculating these limitations at the time of investment.

CONSENSUS RECOMMENDATION:

Terms such as "base value", "moneys", "agency's moneys", or "agency's surplus moneys" used when describing a portfolio limitation for a specific permissible investment in Section 53601 are referring to the agency's determination of funds available for investment (as defined above in Minimum Legal Requirement). The determination as to whether to include certain agency funds, such as funds in an

agency checking account, as part of the funds available for investment should rely on agency practices. For example, if the agency uses funds in its checking account for the immediate, day-to-day needs of the agency, it is recommended to not include the funds in the checking account when calculating portfolio compliance.

A determination of funds available for investment under Section 53601 may vary agency to agency but generally are those accounted for in a local agency's annual financial report. It is recommended that a local agency's investment policy should specify the funds to which the policy will and will not apply. *See Chapter 1, I.C. What information should be included in the investment policy? ([Section 27133]).*

Examples of moneys that can be available to invest under 53601 by local agency type:

CITIES/DISTRICTS

- General funds
- Reserve funds
- Bond Proceeds funds
- Debt Service funds
- Excess Enterprise funds

COUNTIES

- General funds
- Reserve funds
- Bond Proceeds funds
- Debt Service funds
- Excess Enterprise funds
- Voluntary Pool funds

Although the statute does not specify how an agency's portfolio should be calculated at the time of investment, local agencies should consider its cash flow needs each time it considers purchasing securities to determine the available amount of moneys in its treasury not required for the immediate needs of the local agency. A cash flow analysis is intended to help an agency understand and, to the extent possible, control the organization's cash resources. The goal is to ensure that cash is available to pay expenditures when needed and that temporarily unneeded cash can be invested optimally to maximize earnings on invested funds.³

When calculating portfolio compliance, it is recommended that the agency value its portfolio based on book value rather than market value. The book value of investments along with the agency's funds available for investment should be used for portfolio compliance calculations. Percentages apply to all portfolio investments regardless of source of funds.

³ Refer to CDLAC publication *California Public Fund Investment Primer* for more information on the purpose of cashflow forecasts.

II. E Must bond proceeds be invested in the securities set forth in statute? [Section 53601(m)]

Section 53601(m) allows greater flexibility with respect to the types of investments that may be made with bond proceeds. Specifically, the law permits money from bond proceeds, obligations under a lease, installment sales, or other agreements of a local agency to be invested in any security that meets the statutory provisions governing the issuance of the bond or other agreements made by the issuing agency. In so doing, this section of the code recognizes that outstanding contracts between issuers and bond holders may not comply with the investment statutes and gives local agencies greater discretion in how to invest bond proceeds.

MINIMUM LEGAL REQUIREMENT:

Bond proceeds may be invested in accordance with statutes or they may be invested in alternative vehicles if authorized by bond documents.

CONSENSUS RECOMMENDATION:

The agency's investment policy should either require that bond proceeds be invested in accordance with statutes, reference applicable bond documents (such as, the indenture or rating agency requirements), or specify the types of investments authorized for bond proceeds. Bond proceeds may be invested in instruments with maturities longer than five years. Applying the five-year maturity limitation found in statute may result in less yield. When investing bond proceeds, maturities should match the cash flow needs of the project or fund.

II. F How does the Municipal Advisor (MA) Rule affect investment of bond proceeds?

As a part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203) (Dodd-Frank Act), the Securities and Exchange Commission (SEC) enacted regulations addressing the apparent conflict of interest between municipal bond underwriters providing both underwriting and advice on the investment of bond proceeds for the same debt issue. These regulations were incorporated in the Municipal Advisor Rule (MA Rule). The MA Rule states that broker-dealers providing advice to government clients have a fiduciary duty to their clients and must be registered as a municipal advisor. In order to avoid becoming a fiduciary to municipal issuers, many broker-dealers, who have a significant municipal underwriting business, have adopted policies prohibiting brokers from providing investment advice. The MA Rule provides

specific exemptions to public agencies seeking to receive investment advice from broker-dealers, including receiving advice through a request for proposal (RFP) process or by entering into a formal relationship with an independent registered municipal advisor for advice.

MINIMUM LEGAL REQUIREMENT:

The MA Rule places no legal obligations on public agencies. The regulations address only the responsibilities of broker-dealers with respect to the bond proceeds.

CONSENSUS RECOMMENDATION:

Although the MA Rule does not specifically regulate the investment of bond proceeds by a local agency, it has materially affected the investment processes of many agencies. For example, treasury staff may have to adopt procedures, including the use of a mini-RFP that would exempt their brokers-dealer from being defined as a fiduciary. Local agency treasury staff should understand the MA Rule and its exemptions; have knowledge of the limitations of their broker-dealer firms as a result of the MA Rule; and address the MA Rule by adopting a policy regarding the investment of bond proceeds. Visit CDIAC's [Municipal Advisor Rule webpage](#) for more information.

II. G Are all U.S. Agency bonds legal investments for California local agencies? [Sections 53601(f) and 53601.6]

There has been a lot of discussion about the risk profile of certain products and derivatives issued by U.S. Agencies and U.S. government sponsored enterprises (GSEs). These Agencies and GSEs issue both traditional fixed-income securities (notes and bonds) as well as more complex, structured products including customized mortgage- and asset-backed securities and derivatives.⁴ The State's investment laws, however, place no restrictions on these types of investments other than the prohibitions against inverse floaters, range notes, and interest-only strips derived from mortgage pools. Until January 1, 2026, local agencies are authorized to invest in securities, issued by, or backed by, the United States government that could result in zero- or negative-interest accrual if held to maturity, in the event of, and for the duration of, a period of negative market interest rates. A local agency may hold these instruments until their maturity dates.

⁴ Refer to CDIAC publication *Issue Brief [Securitized Investments](#)* for a discussion of mortgage pass-through obligations and asset-backed securities.

In recent years, some GSE debt has been privatized and is now structured like corporate debt yet still falls under the limits of 53601(f) and 53601.6. The most commonly traded GSE debt includes that from the Federal Home Loan Bank (FHLB), Federal Farm Credit Bank (FFCB), Federal Home Loan Mortgage Corporation (Freddie Mac), Federal National Mortgage Association (Fannie Mae) and Federal Agricultural Mortgage Corporation (Farmer Mac). Other less common GSEs include Government National Mortgage Association (Ginnie Mae), Community Development Corporation (CDC), Student Loan Marketing Association (Sallie Mae)⁵, Small Business Administration (SBA), Overseas Private Investment Corporation (OPIC), and Tennessee Valley Authority (TVA).

MINIMUM LEGAL REQUIREMENT:

Obligations, including bonds, notes, certificates of participation, or other instruments issued as U.S. Agencies or GSE debt are permissible investments under Section 53601(f). These investments are, however, subject to the prohibition against inverse floaters, range notes, and interest-only strips derived from a pool of mortgages in Section 53601.6. Until January 1, 2026, local agencies are authorized to invest in securities, issued by, or backed by, the United States government that could result in zero- or negative-interest accrual if held to maturity, in the event of, and for the duration of, a period of negative market interest rates. A local agency may hold these instruments until their maturity dates.

CONSENSUS RECOMMENDATION:

Local agencies should institute restrictions that recognize the different characteristics and risk profile of the variety of U.S. Agency and GSE debt instruments. Factors such as the repayment pledge, size of the issue, prominence of the issuer in the market, and the complexity of the issue (such as call features, timing of interest and principal payments, or other options) will impact the risk profile and, thus, the balance of safety, liquidity, and yield in a local agency's portfolio. With SBA loans or pools, for example, the principal and interest may be guaranteed by the U.S. Government, but the prepayment or premium risk can be substantial. Investments in these types of products should only be entered into with a clear awareness, by both the legislative body and treasurer, of the risks involved and only if the local agency's staff have sufficient expertise and resources to manage such investments.

⁵ *SLMA (Sallie Mae) terminated its ties to the federal government in 2004; bonds issued prior to 2005 are GSE debt; bonds issued in 2005 and after are corporate debt issued by the SLM Corporation.*

II. H What are supranational securities? [Section 53601 (q)]

A supranational organization is formed by a group of countries through an international treaty with specific objectives such as promoting economic development. Supranational organizations also issue debt in the United States. The most commonly recognized supranational debt is issued by the International Bank for Reconstruction and Development (IBRD or World Bank).

Section 53601 (q) allows local agencies to invest in bonds issued by one of three supranationals: World Bank, International Finance Corporation (IFC) and Inter-American Development Bank (IADB), which were established by international treaties, incorporated into U.S. federal law by Congressional Acts and headquartered in Washington, D.C. Currently, these entities carry the highest credit ratings (AAA) based on their financial structure, policies, performance and capital support from shareholders. Securities issued by these supranationals include benchmark bonds, global bonds, structured notes, plain fixed and floating rate notes, discount notes as well as green bonds

MINIMUM LEGAL REQUIREMENT:

In order for local agencies to invest in bonds issued by supranationals, the bonds must meet the following criteria:

- Maturity of five years or less;
- Eligible for purchase and sale within the US;
- In a rating category of "AA" or its equivalent or better by a nationally recognized statistical rating organization (NRSRO); and
- Cannot exceed 30% of the agency's investment portfolio.

II. I Can a local agency invest in an investment pool administered by another state? [Section 53601 (d)]

Section 53601 is prescriptive of the types of investments permissible for local agency investment. It specifies, among other things, the issuer of the security, the type of obligation and the maturity of the security.

MINIMUM LEGAL REQUIREMENT:

Section 53601 (d) allows local agencies to invest in the debt of another state or department, board, agency or authority and 53601(p) allows joint powers authorities (JPA) established pursuant to Section 6509.7 to invest in securities and obligations authorized under 53601 (a)-(q) as long as each member of the JPA has an equal proportional interest in the purchased securities. Furthermore, members of the JPA may include public agencies outside of California. However, local agencies are not permitted to invest in an investment pool administered by another state.

CONSENSUS RECOMMENDATION:

Local agency permissible investments do not include investment pools administered by another state as an investment option.

II. J What are “medium-term notes?” [Section 53601(k)]

Until recently, the statutes defined medium-term notes as those instruments meeting certain term-length and quality requirements. Amendments to Section 53601(k) have attempted to clarify some of the ambiguity surrounding this definition. A variety of reasons account for this past confusion. One is that the SEC treats “corporate notes” slightly differently than “medium-term notes.” Another is that brokers often refer to corporate obligations that have an original term to maturity longer than five years as corporate rather than medium-term notes, even though the remaining term to maturity for these notes may be less than five years.

MINIMUM LEGAL REQUIREMENT:

Section 53601(k) defines medium-term notes as “all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating in the United States.” Therefore, investments in any corporate or depository institution debt securities that mature within five years from the time of purchase are legal as long as they meet the minimum quality standards. Moreover, the statute specifies that local agencies may not classify investments as medium-term notes if they satisfy the definition of

other allowable investments authorized under state law. For example, a local agency could not consider a security that satisfies the definition of commercial paper as a medium-term note in its portfolio. In addition, a local agency, other than a county or a city and a county, may invest no more than 10% of its total investment assets in the commercial paper and the medium-term notes of any single issuer.

CONSENSUS RECOMMENDATION:

With many companies and depository institutions operating worldwide, the interpretation of the phrases “organized and operating in the United States” and “licensed by the United States or any state” comes into question. The terms organized, operating, and licensed are not specifically defined by statutes nor are they legal terms that hold specific meaning. For the purpose of applying Section 53601(k), the following interpretations, based upon usage and context, are offered as guidance to local agencies.

- Organized – An entity organized as a corporation in the United States.
- Operating – Engaged in business activities for which it was organized and maintaining a functioning office (other than a representative office).
- Licensed – Permitted by the appropriate regulatory agency to operate and conduct business in the United States (federal license) or a specific state (state license).

Given that even the above interpretations do not provide certainty, local agencies should establish a method of determining whether a purchase of medium-term notes meets the requirements of Section 53601(k) in consultation with their legal counsel. The following provides additional general guidance and recommendations to consider:

- If an issuing entity is incorporated in the U.S., but is a subsidiary of a foreign-owned parent company the stability of either the parent company or the economy of the country of the parent company should be considered when purchasing debt issued by these types of entities.
- Alternately, a local agency may hold securities in a U.S. company that is subsequently purchased by or merges with a foreign company (for example, the InBev merger with Anheuser Busch in 2008). The local agency should monitor the merger or purchase to determine if it remains a prudent for the agency to hold the security.
- Identifying the venue for any legal recourse in the event of a bankruptcy or credit event would assist the local agency in determining whether the organization is organized and operating in the U.S. If the security is backed by assets that are in the U.S., then the investor may attempt to attach a claim on them in a U.S. court in the event of a bankruptcy or default. If the security is not backed by assets in the U.S., then the initial financing documents of the underlying security may provide a possible source to assist with determining the legal venue.

II. K Are bonds issued by departments and financing authorities of the State of California permissible investments for local agencies?[Section 53601(c)]

Securities issued by the State of California are permissible investments for local agencies under Section 53601(c). However, questions arise when considering whether bonds issued by departments or financing authorities of the State are also permissible under this section.

MINIMUM LEGAL REQUIREMENTS:

Section 53601(c) permits a local agency to invest in registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

CONSENSUS RECOMMENDATION:

There are two conditions that a bond could meet to be a permissible investment under Section 53601(c). The first part of Section 53601(c), "state warrants, treasury notes and bonds of this state", refers to bonds issued by the State of California, for instance, general obligation bonds. This was the operative code section prior to the state's issuance of revenue bonds.

The last part of the code section broadens the definition of permissible investments to include, "bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or a department, board, agency, or authority of the state". This describes state-issued revenue bonds. Issuance by a state authority or instrumentality alone is inadequate to meet the conditions in Section 53601(c) as the source of revenue for repayment must meet the qualifier included in the code section. For a security issued by a state authority or department, are the underlying agreements considered property owned/controlled/operated by the state? In general, if a public agency intends to purchase bonds issued by a state authority or department that are not clearly revenue bonds, an agency should consult counsel on the permissibility of such an investment.

II. L What are the rules regarding the use of reverse repurchase agreements and securities lending agreements? Are shorting strategies allowed? [Section 53601(j)]

The intent of Section 53601(j) is to limit the imprudent use of reverse repurchase agreements (reverse repos) and securities lending agreements. In 1995, the Legislature, concerned about the use of reverse repurchase agreements for enhancing yield, imposed a number of restrictions on local governments.

MINIMUM LEGAL REQUIREMENTS:

Section 53601(j) imposes the following restrictions on reverse repos:

- Reverse repos cannot constitute more than 20% of the “market value” of an agency’s portfolio;⁶
- Reverse repos are limited to 92 days unless the minimum spread between the rate on investment and cost of funds is guaranteed in writing; and
- Securities used to make reverse repos must be held for a minimum of 30 days prior to the transaction.

Section 53601(j) also applies the above restrictions to securities lending agreements with the exception that a local agency portfolio may not hold more than 20% of its base value in reverse repos and securities lending agreements combined.

Section 53601(j)(5) provides specific definitions for repurchase agreements, reverse repurchase agreements, and securities lending agreements. Agreements not meeting these specific definitions are therefore not authorized.

CONSENSUS RECOMMENDATION:

Both reverse repurchase agreements and securities lending agreements may be used to take advantage of certain short-term opportunities to improve yield and mitigate cash flow shortages. They should be entered into only when there is a clear understanding by both the legislative body and treasurer of the risks inherent in these types of agreements. The agency’s staff (or their municipal/investment advisor) must have sufficient expertise in the arrangement and management of these transactions.⁷

Although reverse repurchase agreements and securities lending agreements can be an effective short-term portfolio management tool in certain circumstances, they should not be confused with “short selling” or “margin selling.” Reverse repurchase agreements are used to address cash flow concerns by entering into an agreement in which a counterparty will buy securities from a local agency. At the end of the agreement, the counterparty that purchased the securities will resell the securities to the local agency at a specified date and price. With a securities lending agreement, securities owned by the local agency are loaned to a borrower who provides an agreed-upon return and collateral to the local agency. At the conclusion of the agreement, the loaned securities are returned to the local agency and the collateral is returned to the borrower.

“Short selling” or “margin selling” is a practice where a margin account is established with delivery versus payment (DVP) settlement and securities are loaned

⁶ For reverse repos purchased under Section 53601, the calculation is based upon the “base value” of the agency’s portfolio, which is defined as the dollar amount obtained by totaling all cash balances in the portfolio from all sources, excluding any amounts from reverse repos or similar borrowing methods.

⁷ Refer to CDLAC Issue Brief, *Securities Lending Agreements*, for a detailed discussion of these types of transactions.

by a broker/dealer to the local agency. The loaned securities may be immediately sold with the intent of purchasing the securities back when market prices are lower to close out the margin position, thus profiting on the decline in value of the securities. Shorting strategies carry a high degree of risk of not only a zero return, but significant loss of asset value. They do not meet the risk-limiting intent of the legislature in the adoption of 53601(j), and are not considered a prudent investment for the public portfolio.

II. M What are the rules regarding the use of mutual funds and money market funds? Are exchange-traded funds permissible investments? [Sections 53601(l) And 53601.6(b)]

Local agencies have the authority to invest in shares of mutual funds as described in Section 53601 (l) and 53601.6 (b) and in money market mutual funds as specified in the federal Investment Company Act of 1940. The permissible investments and strategies of the mutual fund or money market fund should be reviewed to determine whether or not they adhere to the parameters contained in both federal and state law. Questions arise about whether exchange-traded funds (ETFs) are a permissible investment under 53601(l) since they have characteristics similar to mutual funds.

MINIMUM LEGAL REQUIREMENT:

Local agencies can invest in shares of mutual funds that invest in the securities and obligations as authorized by subdivisions (a) to (k), inclusive, and subdivisions (m) to (q), inclusive, of Section 53601 and that comply with the investment restrictions of Section 53630. Local agencies can also invest in shares of mutual funds that are defined as money market mutual funds that follow regulations specified by the SEC under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, et seq.). The purchase price of shares shall not include any commission that the fund manager may charge and shall not exceed 20% of the agency's funds that may be invested pursuant to this Section 53601.

In addition, no more than 10% of the agency's funds may be invested in shares of any single mutual fund.⁸ Both mutual and money market mutual funds require that they have attained the highest ranking or the highest letter and numerical rating provided by not less than two NRSROs.⁹ In addition they have retained an investment advisor registered or exempt from registration with the SEC with not less than five years' experience managing their specific category of fund and have assets under management in excess of \$500,000,000.

Local agencies may invest only in those instruments specified in State law.

⁸ *Mutual fund as defined in Government Code Section 53601(1)(1).*

⁹ *Nationally Recognized Statistical Rating Organization.*

CONSENSUS RECOMMENDATION:

The investment policy should specify criteria for selection of both mutual funds and money market funds by the investment official. Local agencies should review the permissible investments and strategies of the mutual fund or money market fund to determine whether or not they adhere to both federal and state law.

While similar to mutual funds, exchange-traded funds (ETFs) are not specifically addressed in Section 53601 nor contemplated under 53601(l); therefore, ETFs are not a permissible investment for local agencies. *See Chapter 2, II. A. Which investments are permissible? Which are prohibited? [Sections 16340, 16429.1, 27133, 53601, 53601.6, 53601.8, 53635, 53635.2, 53635.8, 53638, 53684, and 57603]*)

FIGURE 2

GOVERNMENT CODE REQUIREMENTS FOR LOCAL AGENCY
INVESTMENT IN MONEY MARKET AND MUTUAL FUNDS

CONDITIONS ALLOWING FOR INVESTMENT	MONEY MARKET FUNDS	MUTUAL FUNDS
I. Must receive the highest ranking or the highest letter and numerical rating by no less than two nationally recognized rating services; —or— Must retain an investment advisor who is registered or exempt from registration with the SEC and has at least five years' experience investing in specified securities and managing assets in excess of \$500 million. ^A	● ●	● ●
II. Must abide by the same investment restrictions and regulations that apply to public agencies in California [Section 53601(a-k, m-o)].		●
III. Must follow regulations specified by the SEC under the investment company act of 1940 (15 U.S.C. Section 80a-1, et seq.).	●	

^A The requirement for mutual funds is an investment advisor with experience investing in securities and obligations authorized in Sections 53601 and 53635. For money market funds, the advisor must have experience in managing the types of investments that can be purchased by money market funds as specified in SEC Regulation 2a-7.

II. N What are the rules affecting the investment of tax and revenue anticipation note (TRAN) and grant anticipation note (GAN) proceeds? [Sections 53821.5, 53841.5, 53852.5 and 53859.02(b)]

Existing statutes prevent agencies from using the proceeds of their temporary borrowing, specifically TRANs and GANs, to purchase long-term securities in order to achieve higher investment yields in a manner which could limit liquidity needed to ensure sufficient cash to repay the temporary borrowing when due.

MINIMUM LEGAL REQUIREMENT:

Government Code Sections 53821.5, 53841.5, 53852.5 and 53859.02(b) prohibit the investment of the proceeds of temporary borrowing in securities that have terms exceeding those of the temporary borrowing itself. In other words, proceeds from a temporary borrowing due June 20 may not be invested in securities that mature after June 20. The minimum legal requirements are clear for securities that have an identifiable term to maturity. However, the law is ambiguous when an agency invests the proceeds of temporary borrowing in items that do not have a specific maturity date, such as investments in county pools or other funds that may have an average maturity that is longer than the temporary borrowing.

CONSENSUS RECOMMENDATION:

The proceeds of temporary borrowing can be placed in investments that have no specific term to maturity so long as the proceeds can be removed within the term of the temporary borrowing without a penalty. Therefore, cash equivalent shares in liquid funds such as LAIF or county pools—where an agency has relatively quick access to its deposits—are legitimate investments for the proceeds of temporary borrowing, as long as withdrawals in amounts sufficient to repay the temporary borrowing when due are not restricted or penalized.

II. O What is an appropriate safekeeping arrangement for securities? [Sections 53601 and 53608]

Sections 53601 and 53608 address the appropriate safekeeping arrangements for securities. While a third party institution is the standard used in safekeeping arrangements, securities may be held by the same firm from which they were purchased as long as the securities for safekeeping are in the name of or under the control of the local agency and kept in a legally separate trust department.

MINIMUM LEGAL REQUIREMENT:

Section 53601 specifically allows local agencies to use a counterparty bank's trust department or separate safekeeping department for the physical delivery of a security if the security is held in the name of the local agency. Section 53608 authorizes general safekeeping arrangements that allows local agencies to use for deposit for safekeeping a federal or state association (as defined by Section 5102 of the Financial Code), a trust company or a state or national bank located within this state or with the Federal Reserve Bank of San Francisco or any branch thereof within this state, or with any Federal Reserve bank or with any state or national bank located in any city designated as a reserve city by the Board of Governors of the Federal Reserve System, the bonds, notes, bills, debentures, obligations, certificates of indebtedness, warrants, or other evidences of indebtedness in which the money of the local agency is invested pursuant to this article or pursuant to other legislative authority. The local agency shall take from such financial institution a receipt for securities so deposited.

CONSENSUS RECOMMENDATION:

Industry standard is to set up a third-party (an institution other than the party that sold the agency the investment) safekeeping agreement. In order for the securities to be held by the same institution that sold the security, they must be kept in a separate area of the institution such as its trust department. The security must be in the local agency's name or "perfected" by transferring the security through a signed agreement that contains a description of the security.

II. P How does the Municipal Advisor (MA) Rule affect a local agency's relationship with an investment advisor? [Section 53600.3]

The MA Rule states that broker-dealers providing advice to government clients on the investment of bond proceeds have a fiduciary duty to their clients and must be registered as a municipal advisor. In order to avoid becoming a fiduciary to municipal issuers, many broker-dealers, who have a significant municipal underwriting business, have adopted policies prohibiting brokers from providing investment advice. The MA Rule provides specific exemptions to public agencies seeking to receive investment advice from broker-dealers, including receiving advice through a request for proposal (RFP) process or by entering into a formal relationship with another independent registered municipal advisor who provides investment advice.

MINIMUM LEGAL REQUIREMENT:

The MA Rule places no legal obligations on public agencies. The regulations address only the responsibility of broker-dealers with respect to bond proceeds.

It is important to note that a local agency's fiduciary responsibilities cannot be delegated regardless of the fiduciary standards imposed on other members of the municipal market. Section 53600.3 provides that a finance officer or treasurer

can delegate duties to an external investment manager via a principal-agent relationship, but they cannot delegate fiduciary responsibility.

CONSENSUS RECOMMENDATION:

Local agencies rely on municipal advisors to help make decisions about issuing municipal securities and investing bond proceeds. Registered investment advisors hold a fiduciary responsibility to their clients by virtue of their registration with the SEC under the Investment Advisor Act of 1940. Nonetheless, the fiduciary responsibility that ultimately rests with the legislative body and the treasurer cannot be wholly delegated to an external investment manager.

Under the MA Rule, when an investment adviser consents to act in the capacity of an Independent Registered Municipal Advisor (IRMA), the local agency is able to exchange information with broker-dealers that do not have a fiduciary duty to the agency. When a local agency retains an IRMA, it agrees to consult the IRMA when considering information provided by broker-dealers. Further, when a local agency has an IRMA they should communicate that information to the market. Local agencies should ensure that the professionals they use are registered with the SEC and MSRB by checking the MSRB's Municipal Advisor Registration webpage.

II. Q What are the rules regarding the payment of interest earned on non-general fund deposits to an agency's general fund? [Section 53647]

Many local agencies have the opportunity to earn interest on funds held in governmental accounts other than the general fund.

MINIMUM LEGAL REQUIREMENT:

Section 53647 provides that interest earned on a local agency's deposits shall be paid quarterly to the general fund of the agency unless otherwise directed by law. Alternatively, if directed by the governing body of the local agency, interest shall be paid to the fund containing the principle upon which the interest accrued.

CONSENSUS RECOMMENDATION:

Although all interest earned on its deposits should be paid to the agency's general fund on a quarterly basis, the governing body may direct that the interest be allocated to the fund in which the interest earning principle was deposited. It is important to note that other directives provided in law or contract for the payment of interest to a specific fund (e.g., funds held by a trustee) are overriding exceptions.

II. R Should local agencies invest in financial futures and option contracts? If so, in what manner should they be utilized? [Sections 53601.1]

In addition to the permitted investments in Section 53601 such as treasuries, agencies, money markets, medium-term notes, and pooled investments, local agencies are permitted to invest in financial futures and option contracts in relation to any of these authorized investments. Local agencies can use a financial futures contract to potentially hedge risk because the buyer/seller are obligated to purchase/sell an asset at a predetermined future date and price thereby limiting a local agency's exposure to price fluctuations.¹⁰ Financial options contracts, which allows the buyer to buy or sell an obligation at a specified price for a specified time, are more risky and usually expire with a zero value.¹¹

MINIMUM LEGAL REQUIREMENT:

Section 53601.1 states that the authority of a local agency to invest funds pursuant to Section 53601 includes, in addition thereto, authority to invest in financial futures or financial option contracts in any of the investment categories enumerated in that section.

CONSENSUS RECOMMENDATION:

Although the language in Section 53601.1 is very broad in its application to execute option and futures contracts on any investment categories enumerated in Section 53601, extreme care should be taken when using these strategies. Option and futures strategies are complicated and should only be used to hedge matched positions in securities currently held in the portfolio as a means to limit the risk of adverse price movements of a given security. Option and futures contracts should not be utilized in the public portfolio as a high-yield strategy.

An imprudent high-yield options and future strategy involves taking “naked” positions. “Naked” positions are those option and futures contract strategies placed on securities that are not covered by matched positions held in the portfolio. A “naked” position will require acquisition of securities in the marketplace at the prevailing market price in order to close out the position, which could result in unlimited risk and large asset losses. A high-risk, high-yield option and futures strategy is not consistent with the prudent investor standards established in Section 53600.3 and safety-liquidity-yield objectives established under Section 53600.5.

¹⁰ Brian Beers. "How are Futures Used to Hedge a Position?" *Investopedia* (Updated October 3, 2021). Accessed January 2023. www.investopedia.com/ask/answers/06/futureshedge.asp.

¹¹ Beth Gaston Moon. "Understanding Options Risk." *InvestorPlace* (April 12, 2012). Accessed February 2018. <https://investorplace.com/2012/04/understanding-options-risk/#.WnSdQK6nG70>.

II. S How long should a local agency retain trade ticket information?

Pursuant to SEC's Rules 17a-3 and 17a-4 detailing the record-keeping requirements for broker-dealers, trade blotters or records of sales and purchases are required to be retained for six years. Trade confirmations, on the other hand, are required to be kept for three years. Given that there is no specific state requirement requiring a period of time that trade ticket information should be retained, local agencies may consider adopting such guidelines.

MINIMUM LEGAL REQUIREMENT:

There are no existing legal requirements pertaining to the retention of trade tickets.

CONSENSUS RECOMMENDATION:

Trade ticket information includes the price, yield, Committee on Uniform Securities Identification Procedures (CUSIP) reference number of the security as well as net money including principal, accrued interest, and total money. It also identifies the broker-dealer with whom the trade was done. It is important to retain trade ticket information for several reasons, most importantly for compliance and audit reasons. In addition, if there are any questions regarding a particular trade, it would be beneficial to have documentation. To be prudent, trade tickets should be kept for at least six years. Local agencies should consider adopting their own agency guidelines for retention of financial records, including trade ticket information.

Chapter III. Reporting Requirements

Reporting requirements and recommendations are imposed on local agencies in Sections 53646 and 53607.

Section 53646 states that the treasurer or chief fiscal officer of a local agency may file reports on the status of their investment portfolios with their respective legislative body, internal auditor, and chief executive officer. These reports generally are intended to provide the legislative body the ability to meet its fiduciary obligations as a trustee and to increase the disclosure of the agency's investment activities to those outside the agency. Section 53646 states that if the quarterly investment portfolio report is submitted, it must contain, among other things, a listing of investments, fund balances, activity, and return on investments made by the local agency. Quarterly reports should reflect the current positions and past performance of a portfolio of investments for the period of time under consideration.

Section 53646(e) states that for local agency funds that have been placed in a county investment pool, LAIF, FDIC-insured bank deposits, National Credit Union Shared Insurance Fund-insured accounts in a credit union, accounts insured or guaranteed pursuant to California Financial Code Section 14858, or some combination of the above, the treasurer may substitute the most recent account statement received from those entities in lieu of the information on these investments that is otherwise required by this section. Section 53646(f) states that securities, investments, or monies held by a school district or county office of education in individual accounts that are less than twenty-five thousand dollars (\$25,000) may be excluded from the report.

Local agency treasurers to whom the authority to invest or reinvest funds or to sell or exchange securities has been delegated by the legislative body of a local agency are required by Section 53607 to submit a monthly report of transactions to the legislative body.

III. A What specific information regarding portfolio investments needs to be included in the report to the legislative body? [Section 53646(b)(1-4) and 53607]

Section 53646 specifically encourages treasurers to prepare the quarterly investment report to enable the legislative body to perform its fiduciary duty and provide full disclosure of the public entity's investment activities.

MINIMUM LEGAL REQUIREMENTS:

If the treasurer or chief fiscal officer of a local agency elects to submit or if the legislative body mandates the submission of a quarterly investment report to the legislative body pursuant to Section 53646, it must do so within 45 days after the end of the quarter and include the following information:

- Type of investment (i.e. U.S. Treasury security, commercial paper);¹²
- Issuer name;
- Date of maturity;
- Par amount;
- Dollar amount invested in all securities, and investments and monies held by the local agency;¹³
- A description of the funds, investments, and programs (including lending programs) managed by contracted parties (i.e. LAIF, investment pools, outside money managers, and securities lending agents);
- Current market value as of the date of the report of all funds held by the local agency and under the management of any outside party that is not also a local agency or LAIF and the source of the valuation;
- A statement of compliance with the investment policy or an explanation for non-compliance; and
- A statement of the local agency's ability to meet its pool's expenditure requirements for the next six months, as well as an explanation of why sufficient money will not be available if that is the case.

The legislative body of the local agency may elect to require this report on a monthly basis. Furthermore, the legislative body may require the treasurer to provide additional information beyond that listed above.

¹² Refer to CDIA publication *California Public Fund Investment Primer* for definitions of investment types.

¹³ "Dollar amount invested" is defined as cost, however, best practice uses amortized cost or book value. Confusion exists as to the meaning of the words "held by the local agency" found in Government Code Section 53646(b)(1). Several standards have been suggested to clarify this phrase, including "ownership," "control," "under direct management by," "possession," and "accountability for the funds." Each of these suggestions would lead to different determinations as to the specific funds required to be reported. The apparent intent of the Legislature in enacting this requirement was to provide for comprehensive disclosure of local agency investments.

If the local agency's legislative body delegates, to the local agency's treasurer, its authority to invest or reinvest the agency's funds or sell or exchange the agency's securities, the treasurer shall make a monthly report of those transactions to the legislative body, pursuant to Section 53607. The delegation of authority may be made for a period of one year. The requirement to submit the transaction report lasts until the authority is revoked or expires. In contrast to the specific information required in the quarterly report under Section 53646(b), the contents of the monthly report of transactions required under Section 53607 are not enumerated.

CONSENSUS RECOMMENDATION:

Based upon the public benefits achieved by reporting, it is recommended that the treasurer or designated official provide the local agency's legislative body a quarterly investment report that provides a clear picture of the status of the current investment portfolio. The quarterly investment report should include the following:

1. A listing of individual securities held at the end of the reporting period by authorized investment category.
2. Average life and final maturity of all investments listed.
3. Coupon, discount or earnings rate.
4. Par value, amortized book value and market value.
5. Percentage of the portfolio represented by each investment category.
6. A description of the funds, investments, and programs (including lending programs) managed by contracted parties (i.e. LAIF, investment pools, outside money managers, and securities lending agents).
7. A statement of compliance with the investment policy or an explanation for non-compliance.
8. A statement of the local agency's ability to meet its pool's expenditure requirements for the next six months, as well as an explanation of why sufficient money will not be available if that is the case.

Local agency funds that have been placed in a county investment pool, LAIF, FDIC insured bank deposits, National Credit Union Shared Insurance Fund-insured accounts in a credit union, accounts insured or guaranteed pursuant to California Financial Code Section 14858, or some combination of the above, may substitute the most recent account statement received from those entities in lieu of the information recommended above.

In addition to the reporting requirement set forth by Section 53646, a local agency treasurer who has been delegated authority to invest or reinvest funds of the local agency by the legislative body under Section 53607 must submit a report to the legislative body accounting for transactions made during the month. This reporting requirement is separate and distinct from the quarterly report submitted under Section 53646. If the legislative body has delegated authority to the treasurer and has elected to require the quarterly report under Section 53646 on a monthly basis, it may be very practical and efficient to merge the elements of

the quarterly report with the month's transactions and provide a combined report on a monthly basis. While the elements of each reporting requirement may be different they may be combined in one report.

III. B Should the report include market value measures for individual securities? [Section 53646(b)(1)]

The market value of each security in a portfolio must be computed before determining the portfolio's overall market value.

MINIMUM LEGAL REQUIREMENT:

Section 53646(b)(1) states: "With respect to all securities held by the local agency, and under management of any outside party that is not also a local agency or the LAIF, the report shall also include a current market value as of the date of the report, and shall include the source of this same valuation."

CONSENSUS RECOMMENDATION:

The law is not clear whether "all" securities implies the market value of the overall portfolio or each security. The level of detail to be presented in the report depends on the portfolio activity and the audience. The report for internal treasury staff and the oversight committee should list the individual market value for each security. This approach gives a more complete picture of the health of a portfolio and brings individual investment performance to the attention of those responsible for compliance oversight. For the legislative body, the report should be a summary with aggregate market value listed and include a footnote stating that data on particular investments is available upon request.

HOW SHOULD THE MARKET VALUE OF THE PORTFOLIO BE DETERMINED?

In establishing market value of the portfolio as required by Section 53646(b)(1), the Government Finance Officers Association recommends that local entities obtain independent third-party assessment of investments and risk from a reputable source.

The most common approach is to request pricing information from the agency's safekeeping service, custodial service, or trustee. Agencies may need to contract with pricing service companies for more complex securities. These companies specialize in giving the current market price for a broad range of securities.

An alternative way to determine the value of securities in a portfolio is to perform an in-house analysis by collecting information from different sources such as dealer quotes, online computer information, and certain publications that provide price estimates. These sources may not be as up-to-date or accurate as a pric-

ing service, but they offer a relatively inexpensive method to make price estimates. Finally, to assess the value of securities where specific prices are not available, a treasurer can either tie the spread of a recent investment to a benchmark security that is easy to value or use a matrix pricing formula. A matrix pricing formula displays the prices of a variety of different securities which are then used as a basis for approximating the value of the security in question. These formulas are particularly useful for short-term securities that mature between 90 and 180 days.

MINIMUM LEGAL REQUIREMENT:

Section 53646(b)(1) provides that the agency shall include the current market value as of the reporting period date and the source of the valuation.

CONSENSUS RECOMMENDATION:

To provide the most unbiased method of reporting current market values, the local agency should obtain an independent valuation of the portfolio from a reputable source, such as, a broker or other financial institution, custodial bank, available publications or other pricing services. The independent sources should not be a party to the transaction. For example, the broker that sold the security should not be used to provide the valuation. The agency should use the best sources of market price information available. Prices for securities are estimates that carry a certain degree of error regardless of the approach used and will fluctuate over time due to market conditions. It is imperative that local officials pay extra attention to estimates on complex, infrequently traded, or highly customized securities.

HOW FREQUENTLY SHOULD MARKET VALUE BE CHECKED?

MINIMUM LEGAL REQUIREMENT:

None. Government Code does not specify frequency of market valuation.

CONSENSUS RECOMMENDATION:

Frequency of market valuation will be dependent on the complexity of the securities in the portfolio and the frequency of trading. For infrequent or passive investors, market value should be “marked-to-market” quarterly at a minimum. For a more active portfolio, the industry standard is monthly.

III. C Should an analysis of cash flows be prepared by the local agency in order to validate the six-month liquidity certification? [Section 53646]

A public agency is required to include a statement indicating that the projected cash flow is adequate to meet expected obligations over the next six months or provide an explanation as to why sufficient money may or may not be available.

MINIMUM LEGAL REQUIREMENT:

Section 53646(b)(3) addresses the requirement for the local agency to include a statement denoting the ability of the local agency to meet its pool's expenditure requirements for the next six months or provide an explanation as to why sufficient money may or may not be available. There are no other requirements for identifying cash flows and setting liquidity targets at the local agency.

Section 53646(c) requires the treasurer or chief fiscal officer to report whatever additional information or data may be required by the legislative body of the local agency.

CONSENSUS RECOMMENDATION:

An analysis of cash flows is not required. However, the treasurer should be prepared to discuss cash flow projections and methodology at the request of legislative or oversight bodies. This analysis may list basic projections—based on historical data, market sensitivity or other relevant information—that support the cash flow liquidity statement. There are no guarantees when it comes to predicting future obligations. A sound justification for the expenditure statement gives the finance officer added protection against decisions that originally looked good but turned out poorly because of unforeseen circumstances.

The nature of the analysis will vary greatly depending on the size, sophistication, and complexity of the local agency staff and portfolio. Best practices dictate that cash flow statements should be prepared on a regular basis. However, in some agencies it may not be practicable or necessary, for instance, for LAIF-only participants. An analysis of cash flows is the precursor to portfolio management and should be prepared and updated, as needed, at least for internal investment staff use.

Those who manage investment pools need to pay close attention to the needs and accuracy of the requests of participants to ensure accurate cash flow projections. Incomplete information about a pool's investors not only compromises the legitimacy of the six-month cash flow statement, but also adds substantially to the liquidity risk of the pool.

In the case of investment pools, all participants' cash flow needs must be taken into account in preparing the six month cash flow statement. The pool administrator or manager should keep close tabs on mandatory and voluntary pool participants' cash flows needs and establish clear criteria for the deposit and withdrawal of their funds. Also, the pool administrator or manager should obtain expected deposit/disbursement information from pool participants at the time of major fund deposits or updates of cash flow projections.

III. D What tools can be used to measure interest rate risk?

Interest rate risk, also known as market risk, is the risk that a security's value or price will decline as interest rates rise in the general market. Weighted average maturity (WAM) and duration are commonly used measures of interest rate risk. WAM measures the portfolio's "average life." Duration considers all of the cash flow receipts not just the last cash flow as in WAM and provides an approximate percentage change in the value of a security or portfolio for a given change in interest rates.¹⁴ Some local agencies have inquired whether they should include this information in their report.

MINIMUM LEGAL REQUIREMENT:

Existing statutes do not require local agencies to report an interest rate risk measure in their portfolios. Section 16480.7 requires the State Treasurer to submit a quarterly report to the Pooled Money Investment Board that includes the weighted average maturity of the investments in the Pooled Money Investment Account.

CONSENSUS RECOMMENDATION:

Local agencies should consider including the WAM or duration measurement in the report. The type of duration measure (e.g. modified and/or effective duration) used will depend on the type of investments being analyzed and the capacity of the agency to perform or source the calculations. While duration will present greater precision than WAM in the measurement of interest rate risk, given the need for specialized software to perform calculations or an external source for duration information, an agency may find greater utility in the easier to calculate WAM. The decision on which metric to use will be based on the needs and resources of the local agency.

Local agencies also should consider whether their investment policies should provide guidance on acceptable ranges or limits for the respective measure used. These figures trigger a number of valuable considerations about the status of the portfolio for both internal and external purposes including liquidity, cash flow, and average maturity (for example, WAM). WAM is a relatively simple calculation which may be determined by dividing the sum of the days to maturity multiplied by the book value for each security by the total book value of the portfolio. Figure 3 shows an example of how WAM is calculated:

¹⁴ Refer to CDLIAC publications *California Public Fund Investment Primer* and *Duration Basics*.

FIGURE 3**CALCULATION OF WEIGHTED AVERAGE MATURITY**

PAR VALUE	SECURITY DESCRIPTION	DAYS TO MATURITY	BOOK VALUE	DAYS BY BOOK VALUE
\$1,350,000	Repurchase Agreements	1	\$1,350,000	1,350,000
5,000,000	Local Agency Inv. Fund	1	5,000,000	5,000,000
5,000,000	Fed Natl. Mtg. Assn.	185	4,886,108	903,930,041
5,000,000	Fed Home Loan Bank	550	5,000,000	2,750,000,000
5,000,000	U.S. Treasury Note	720	4,985,156	3,589,312,500
5,000,000	Fed Natl. Mtg. Assn.	822	5,000,000	4,110,000,000
5,000,000	Fed Farm Credit Bank	910	4,988,941	4,539,936,255
TOTAL			\$31,210,206	15,899,528,796

$$\text{WAM} = \frac{\frac{\sum \text{Days to Maturity Multiplied by Book Value of Each Investment}}{\text{Total Book Value}}}{\$31,210,206} = \frac{15,899,528,796}{\$31,210,206} = \frac{509 \text{ Days}}{\text{or } 1.42 \text{ Years}}$$

Duration is a more complex computation and requires the proper software to perform the specific calculations for each security and then for the entire portfolio. Three types of duration are commonly used.

MACAULAY DURATION. The simplest method of calculating duration which measures the number of years required to recover the true cost of a security and is the only type of duration measurement quoted in “years.”

MODIFIED DURATION. Builds upon Macaulay duration to measure the price sensitivity of an investment to interest rate changes and assumes the cash flows of an investment do not change as interest rates change. Modified duration is quoted as a percentage of value change as interest rates change. Figure 4 is an example of a basic modified duration application.

EFFECTIVE DURATION. Further refines modified duration using an iterative estimation process and is typically used with floating rate, asset-backed, and pass-through securities and more generally, with securities that have call option features. Effective duration takes into account embedded options of a security (e.g., call features or sinking fund schedule) and adjusts the price of the investment to reflect changes in the value of those embedded options.¹⁵ Thus, effective duration requires simulations of many possible interest rate scenarios to calculate the duration to call and provides a wider assessment of risk for a portfolio containing more than fixed rate securities. Due to the complexity of calculating effective duration, no example appears below.

¹⁵ Refer to CDIAC publication *Investing in Callable Securities – September 2020 Update* for a summary of callable securities. Refer to CDIAC publication *Issue Brief: Benefits and Limitations of Option-Adjusted Spread Analysis* for general guidance about option-adjusted spread (OAS) and how to interpret OAS values.

FIGURE 4

**DURATION—GAIN/LOSS OF MARKET VALUE MATRIX
FOR A \$100,000,000 PORTFOLIO**

		PORTFOLIO MODIFIED DURATION			
		1.2	2.7	5.0	6.0
RATE CHANGE	.25%	\$300,000	\$675,000	\$1,250,000	\$1,500,000
	.50%	600,000	1,350,000	2,500,000	3,000,000
	1.50%	1,800,000	4,050,000	7,500,000	9,000,000
	2.00%	2,400,000	5,400,000	10,000,000	12,000,000
	5.00%	6,000,000	13,500,000	25,000,000	30,000,000

Modified duration measures the approximate change in the market value of assets as a result of a change in market interest rates. Thus, for a portfolio with a market value of \$100,000,000 and a duration of 1.2, as interest rates increase by 1.5%, the portfolio's market value would be expected to decrease by \$1,800,000. Specifically:

$$\frac{\$100,000,000}{\text{portfolio size}} \times \frac{1.2}{\text{duration}} \times \frac{0.015}{\text{interest rate increase}} = \frac{\$1,800,000}{\text{portfolio market value decrease}}$$

Conversely, for the same portfolio, if interest rates were to decrease by 2%, the portfolio's market value increases by approximately \$2,400,000. Specifically:

$$\frac{\$100,000,000}{\text{portfolio size}} \times \frac{1.2}{\text{duration}} \times \frac{0.02}{\text{interest rate increase}} = \frac{\$2,400,000}{\text{portfolio market value increase}}$$

Securities or portfolios with higher duration carry more interest rate risk and have higher price volatility (i.e., sensitivity of the security's price to changes in market interest rates) than those with lower durations. For example, if the same \$100,000,000 portfolio had a duration of 2.7, a 1.5% increase in market interest rates will produce a greater change in the portfolio's market value:

$$\frac{\$100,000,000}{\text{portfolio size}} \times \frac{2.7}{\text{duration}} \times \frac{0.015}{\text{interest rate increase}} = \frac{\$4,050,000}{\text{portfolio market value decrease}}$$

For a 2% decrease in interest rates:

$$\frac{\$100,000,000}{\text{portfolio size}} \times \frac{2.7}{\text{duration}} \times \frac{0.02}{\text{interest rate increase}} = \frac{\$5,400,000}{\text{portfolio market value decrease}}$$

III. E What action should the legislative body take with the report? [Section 53646]

Section 53646(b) states that the “treasurer or chief fiscal officer may render a quarterly report to the chief executive officer, internal auditor, and the legislative body” within 45 days of the quarter’s end. Questions arise as to whether the legislative body needs to discuss and approve the report during a regular meeting, have it placed on the consent calendar, or only receive a copy.

MINIMUM LEGAL REQUIREMENT

Section 53646(b) only states that the report may be rendered to the legislative body. It does not require the legislative body to take action on this report.

CONSENSUS RECOMMENDATION

If presented to the legislative body of the local agency, it should discuss the report as necessary and take action on the report in public session. The report could be listed as a consent calendar item or as a non-consent calendar item, depending on the preferences of the legislative body. Possible actions of the governing body on the report could include: receiving and filing the report, approving or disapproving the report (with or without amendments), or asking staff for further information/clarification. In addition, if presented to an investment oversight body, the oversight body should discuss the reports at their own meetings.

III. F How should agencies address difficulties in meeting the 45-day requirement for submitting quarterly investment reports to the legislative body? [Section 53646(b)]

It can be difficult for an agency to collect all the appropriate information for the report, have an oversight committee (if a jurisdiction has one) review or approve it, and present it to the legislative body within 45 days of the quarter’s end. Various factors such as the length and diversity of the portfolio, size of staff, and type and availability of computer software can influence the amount of time it takes to compile a report.

MINIMUM LEGAL REQUIREMENT:

Section 53646(b) requires that if the quarterly investment report is submitted to the legislative body, it may be rendered within 45 days of the end of the quarter.

CONSENSUS RECOMMENDATION:

A report, as complete as possible, should be submitted within the allotted 45 days. If current values for certain investments are not available within the time frame to complete the report in a timely fashion, submit the report on time and indicate in the report the most recent valuation and its date and then submit updated values to the legislative body at the soonest possible date thereafter. It should be available for individual legislative body members to review within 45 days of quarter end. This may include providing a copy to each member, including it in agenda materials for a public meeting, or actually presenting the report at a public meeting of the legislative body.

Chapter IV. Treasury Oversight Committees

Section 27131 and 27132 through 27132.4 consider the formation, composition, and role of a county treasury oversight committee. These code sections provide that the function of the treasury oversight committee is to monitor and review the county investment policy by conducting or causing an annual audit and discussing its findings at a public meeting. The rationale behind the creation of an oversight committee is to give local agencies and private sector citizens a say in the policies governing the investment pool.

IV. A What options are available for structuring the county treasury oversight committee? [Sections 27131 and 27132 through 27132.4]

The statutes governing the structure of county treasury oversight committees are meant to bring together a representative and knowledgeable committee while limiting conflicts of interest with the treasurer and the treasury functions subject to oversight. However the composition is subject to specific requirements that can make it difficult for local agencies to recruit and staff a committee. Specifically, the statutes prohibit individuals from employment with or securing employment within one year of serving on a county treasury oversight committee with underwriting, bond counsel or broker-dealer firms doing business with the county treasurer. Committee members are also prohibited from making individual political contributions to, or being employed by an entity that makes political contributions to, or from doing any fund raising on behalf of any candidate for office of the governing board of any agency that deposits funds in the county treasury in the previous three years.

MINIMUM REQUIREMENT:

Section 27131(a) states that the board of supervisors in any county that invests surplus money may establish a treasury oversight committee. If established, the committee must consist of three to eleven members, the exact number determined by the board of supervisors in consultation with the county treasurer. Members must be appointed from the following categories:

- | | |
|---|--|
| 1. County treasurer. | school districts and community college districts in the county. |
| 2. County auditor, auditor-controller, or finance director as the case may be. | 5. County superintendent of schools or their designee. |
| 3. A representative appointed by the board of supervisors. | 6. A representative selected by a majority of the presiding officers of the legislative bodies of the special districts that are required or authorized to deposit funds in the county treasury. |
| 4. A representative selected by a majority of the presiding officers of the governing bodies of the | |

A majority of the public members of the committee shall have expertise in or an academic background in public finance. The other public members shall be economically diverse and bipartisan in political registration. Committee members cannot:

- Be employed by an entity that has contributed to the campaign of a candidate for the office of local treasurer;
- Be employed by an entity that has contributed to the campaign of a candidate for membership on a legislative body of any local agency that has deposited funds in the county treasury in the previous three years or during the period the employed person is a member of the committee;
- Directly or indirectly raise money for a candidate for local treasurer or a member of the governing board of any local agency that has deposited funds in the county treasury while a member of the committee; and
- Secure employment with, or be employed by, bond underwriters, bond counsel, security brokerages or dealers, or financial services firms, with whom the treasurer is doing business during the period that the person is a member of the committee or for one year after leaving the committee.

CONSENSUS RECOMMENDATION:

County legislative bodies should decide if an oversight committee is necessary and if they should have private sector individuals from the restricted firm types serve on the committee. If so, the county may choose one of three options to compose the committee (Figure 5).

If the committee is composed of public and private sector members (Option 1), the members, for their term of service and one year following, cannot work for firms doing business with the treasurer. As a way to obtain the participation of private sector professions employed by firms doing business with the treasurer, a county may create an advisory board of the county treasury oversight committee (Option 2). However, a county that chooses Option 2 and forms an advisory

FIGURE 5

**APPROACHES TO ESTABLISHING THE COUNTY
TREASURY OVERSIGHT COMMITTEE**

VARIOUS OPTIONS AVAILABLE TO LOCAL GOVERNMENTS

1. A committee of both public and private sector members.
2. A committee of public sector officials that has an advisory board made up of private sector professionals and citizens.
3. A committee that only consists of individuals who work for agencies that have funds invested in the pool.

sory board whose membership criteria is less stringent than the criteria used to compose an oversight committee is advised to consult legal counsel. Finally, the county may establish an oversight committee composed exclusively of individuals unaffiliated with private sector firms doing business with the treasurer. The easiest way to do so is to draw members of the committee from the public agencies investing funds with the county treasurer (Option 3).

**IV. B Does the appointment of the treasurer to the county treasury oversight committee create a conflict of interest?
[Sections 27131 and 27132]**

Since the oversight committee's central task is to oversee the treasurer's policies, some believe that allowing the treasurer to sit on the oversight committee represents a conflict of interest. Others claim that a treasurer who donates money to their own campaign cannot be on the county treasury oversight committee because the law bars those who contribute to the campaign of someone running for treasurer while serving on the committee from participation.

MINIMUM LEGAL REQUIREMENT:

None. Sections 27131 and 27132 do not specify whether or not the county treasurer should be a member of the oversight committee. Section 27132 specifically lists the county treasurer as a potential member of the county treasury oversight committee.

CONSENSUS RECOMMENDATION:

The question of whether or not a county treasurer should sit on the treasury oversight committee must be made by the county board of supervisors and the treasurer. Their answer should consider the advantages and disadvantages of having someone with the treasurer's influence and expertise sit on the committee and the future employment implications to the treasurer since any person who serves on a county treasury oversight committee is prohibited from seeking employment with the financial services industry for one year after leaving the

committee. It should not in any way hinge on whether a treasurer donated money to his or her own campaign. Contributing money to one's own campaign does not represent a legitimate conflict of interest in the context of the treasury oversight committee.

Specifying that the treasurer does not serve as the chair of the oversight committee is one approach to lessening the "conflict of interest" concern.

IV. C What is the role of the county treasury oversight committee? [Sections 27134 and 27137]

MINIMUM LEGAL REQUIREMENT:

Sections 27134 and 27137 limit the oversight committee's functions to monitoring and reviewing the county treasury's compliance with the investment policy and reporting provisions of the Government Code through an annual audit.

CONSENSUS RECOMMENDATION:

The statutes address concerns that individuals serving on the treasury oversight committees may try to micro-manage decisions that should be left to the treasurer. Considerations by the committee regarding the risk and structure of a portfolio are permitted in the law, however, any attempts to direct individual investment decisions, select individual investment advisors, brokers, or dealers, or impinge on the day-to-day operations of the county treasurer are discouraged. The local agency should clearly stipulate that the responsibilities of the treasury oversight committee are to focus on investment policy issues and to audit the portfolio for compliance with the policy.

IV. D Should other local agencies have treasury oversight committees?

It is not uncommon to find treasury oversight committees in cities and other local agencies even though the law does not require them to have such a committee. An important issue in the decision to establish a committee is the level of discretion accorded the agency treasurer in making investment decisions: the more discretion, the greater the need for oversight procedures. However, even in situations where an agency has a great deal of discretion, some believe an oversight committee merely duplicates work that can be better performed by the governing board or auditors. Others support the view that an oversight committee provides valuable information to the investment staff and involves members of the com-

munity in an important government function. If other local agencies decide that they want to engage an oversight committee, its role with respect to reviewing investment policies and quarterly investment reports should be clearly specified.

MINIMUM LEGAL REQUIREMENT:

There are no legal requirements for local agencies to have oversight committees.

CONSENSUS RECOMMENDATION:

Local agencies that are not counties should consider if an oversight committee is appropriate based on its current oversight procedures, complexity of its portfolio, frequency with which it purchases securities, and skill level of its staff. The limitations and restrictions associated with membership on a county treasury oversight committee do not apply to committees formed by other local government entities.

California Government Code

CODE SECTION	TITLE DESCRIPTION
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ACQUISITION OF BONDS

5925	Repurchase investment
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LOCAL AGENCY INVESTMENT FUND (LAIF)

16340	Voluntary Investment Program Fund
16429.1	Creation, maintenance, and operation
16429.2	Local investment advisory board
16429.3	Deposits; prohibited transfers and loans; impoundment or seizure
16429.4	Right of withdrawal

COUNTY TREASURER - DUTIES GENERALLY

27000	Custody and payment of moneys
27000.1	Investment of county funds; delegation and revocation of authority by board of supervisors; responsibility for transactions
27000.3	Prudent investor standard; use in transactions with public funds
27000.5	Objectives; managing public funds
27000.6	Effective date of specified provisions; candidate eligibility and continuing education programs; county ordinances; authority to repeal ordinances
27000.7	Eligibility for offices of county treasurer and tax collector; criteria; application of section
27000.8	County treasurers and tax collectors serving on January 1, 1996; service for remaining term; continuing education; certification; violation
27000.9	Continuing education; requirements beginning in 2000; certification; violation
27001	Certificates of auditor; filing; preservation
27002	Accounts of receipts and expenditures; requisites
27002.1	Photographic records of receipts and expenditures
27003	Separate accounts; general account

27005	Disbursements on warrants; checks or electronic funds transfers; exception
27006	Disbursements on warrants based on orders; payment of warrants
27007	Possession of money; special deposits
27008	Certificates of auditor necessary for receipt of money
27009	Receipt for deposit of moneys into county treasury
27010	Receipt of gifts and bequests
27011	Deposit of private money prohibited; penalty
27012	Conferences between controller and treasurers regarding administration of applicable law; expenses
27013	Administrative cost of investing, depositing or handling funds; reimbursement of county

COUNTY TREASURY OVERSIGHT COMMITTEES

27130	Legislative findings and declarations
27131	Establishment; determinations of size and membership
27132	Membership; pool of candidates
27132.1	Member employment by campaign contributors
27132.2	Member fundraising
27132.3	Member employment in financial services industry
27132.4	Open meetings; Ralph M. Brown Act
27133	Periodic investment policy; preparation by treasurer; committee review and oversight
27134	Periodic audits by committee; article compliance
27135	Costs of compliance; reimbursement
27136	Withdrawal of funds from county treasury pool; requests; evaluation; approval criteria
27137	Day-to-day operations and decisions; committee involvement

INVESTMENT OF SURPLUS

53600	Local agency
53600.3	Prudent investor standard; investments on behalf of local agencies
53600.5	Objectives; managing public funds
53600.6	Legislative findings and declarations; solvency and creditworthiness
53601	Local agencies; authorized investments
53601.1	Investment in financial futures or financial option contracts
53601.2	Limited liability corporation
53601.5	Investments; qualified purchase agent
53601.6	Prohibited investments
53601.8	Investment in placement service assisted deposits, including certificates of deposit

53602	Investment in legal investments for savings banks; securities of public districts
53603	Direct purchase of securities
53604	Sale or exchange of securities; reinvestment of proceeds
53605	Sale of securities; application of proceeds to original purposes
53606	Cancellation of bonds issued by purchaser; resale
53607	Delegation of duties to treasurer; monthly report
53608	Deposit of securities; receipt; delegation of authority
53609	Eligible securities for investment of funds held by local agency pursuant to deferred compensation plans
53610	Proposition 1A receivables; purchase by local agency
57603	Investments in public bank obligations

HEALTH FUND INVESTMENTS

53620	Investment funds designated for employee retiree health benefits' payments
53621	Delegation of the governing body's investment authority to designated officers
53622	Funds to pay employee retiree health benefits; discharge of duties of the governing body or designated officer

DEPOSIT OF FUNDS

16340	The Voluntary Investment Program Fund
53630	Definitions
53630.1	Legislative findings and declarations; solvency and creditworthiness
53630.5	Additional definitions
53631	Deposits to pay principal, interest or warrants of bonds; electronic funds disbursement
53632	Classes of deposits
53632.5	Classes of security for deposits
53633	Determination of amounts to be deposited in each class
53634	Transfers from inactive to active deposits
53635	Local agency investments; commercial paper; concentration limits
53635.2	Deposit of money belonging to or in custody of local agency
53635.7	Agency consideration when borrowing funds in excess of \$100,000
53635.8	Investment in placement service assisted deposits, including certificates of deposit
53636	Deposited money as in treasury of local agency
53637	Selection of depositary; interest
53638	Maximum deposits
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Government Code Section 5925

5925

The purchase or other acquisition of bonds by or on behalf of the state or local government that issued the bonds does not cancel, extinguish, or otherwise affect the bonds and the bonds shall be treated as outstanding bonds for all purposes except to the extent otherwise determined by the issuer or otherwise provided in the constituent instruments defining the rights of the holders of the bonds.

Government Code Section 16340

16340

(a) (1) The Voluntary Investment Program Fund is hereby created within the State Treasury, for the receipt of voluntary deposits from local entities.

(2) For purposes of this section, a “local entity” includes, but is not limited to, any city, county, school district, or special district.

(b) Each local entity that is approved by its governance body to deposit moneys in the fund shall deposit no less than a total of two hundred million dollars (\$200,000,000). The total amount of moneys that may be deposited in the fund from all eligible sources shall not exceed, at any point in time, a total of ten billion dollars (\$10,000,000,000), or lesser amount as determined by the Director of Finance, in consultation with the Treasurer.

(c) The terms and conditions of deposits made into the fund shall be set by the Director of Finance, in consultation with the Treasurer. Those terms shall include, but not be limited to, the size of the deposit from a particular local entity, the length of time those moneys shall be held in deposit in the fund, the availability of funds for withdrawal by the local entity depositing the funds, and the annual rate of interest paid on deposits, as described in subdivision (e). However, the director and the Treasurer may only permit deposits that do not exceed funds needed to address an actual or anticipated cash shortfall in the General Fund not exceeding the amounts of existing appropriations, including continuing and continuous appropriations, to which resulting proceeds are to be applied.

(d) Moneys held in the Fund shall be invested by the Treasurer in investments authorized pursuant to Sections 16430 and 16480 through the Pooled Money Investment Account, and whenever the Controller determines that moneys in the General Fund, after allowing for internal borrowing from other funds are, or are expected to be, insufficient for the payment of all appropriations made by the Legislature which are to be paid out of the moneys in the General Fund, the State Controller may, based upon his or her estimate of the probable income to the General Fund during the then fiscal year and the probable dates of receipt thereof, may draw a demand or demands against appropriations made from the General Fund to be paid in the then current fiscal year prior to the receipt of the income, and deliver the demand or demands to the Treasurer. The Treasurer

shall register the demand or demands for nonpayment and may borrow moneys from the fund in an amount or amounts that is no greater than the demand or demands provided. The borrowing, together with the interest owed upon the account thereon, shall be paid exclusively from moneys in the General Fund on probable or reasonably anticipated revenues that are expected to be forthcoming within a short period of time, but not excepting recourse to internal borrowing from other funds in the event insufficient moneys are available from the General Fund. Repayment of any of those borrowings shall be considered a priority payment, equivalent to any other loan repayment made from the General Fund to another state fund.

(e) Notwithstanding any other law, the rate of interest to be earned by the depositors shall be the base apportionment rate based on their pro rata share of the earnings of the Pooled Money Investment Account on a quarterly basis at the end of each quarter plus an enhanced amount. The pro rata share shall be determined by a dollar day participation. The base apportionment rate applied to dollar day participation in the fund shall be the quarter-to-date average yield of the Pooled Money Investment Account for the current quarter. The enhancement amount paid to depositors in the fund shall be determined by the Director of Finance, in consultation with the Treasurer, and shall be added to the base rate earned by the Pooled Money Investment Account at the time the apportionment is made. The total interest cost described in this subdivision shall not exceed that provided for in paragraph (1) of subdivision (d) of Section 16731.

(f) Notwithstanding Section 13340, moneys in the fund are hereby continuously appropriated for payment of interest expenditures to depositors calculated in accordance with subdivision (e), other related expenses as determined by the Department of Finance, and return of deposits to depositors according to terms and conditions set by the Director of Finance, in consultation with the Treasurer. The amounts paid for interest and other related expenses shall be attributable to the fiscal year in which the borrowing occurred which is also the fiscal year upon which the appropriations against which the demand or demands were made.

(g) The Department of Finance shall determine the budget items to be used for the recording and reporting of interest expenditures and other related expenses pursuant to this section.

(h) Deposits in the fund shall be tracked separately for each participant in the state's accounting system, and shall be deemed to be assets of each participant. These assets shall be reflected as such on each participant's individual financial statements.

(i) These deposits are, and may only be used, to cover short-term cash needs of the state and are, and shall be, in compliance with the provisions of Proposition 58 of March 2004 as stated in subdivision (c), Section 1.3 of Article XVI of the California Constitution. Deposits and borrowing from the fund shall comply with the state's debt limit restrictions.

(j) Actions by the Director of Finance, in consultation with the Treasurer, in implementing and administering the investment program provided for in this

section and the Treasurer's and Controller's actions in borrowing from the fund shall be exempt from the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3).

(k) Upon projection of insufficient cash in the General Fund, the Director of Finance, in consultation with the Treasurer and Controller, may utilize provisions similar to Section 16381 to facilitate the implementation of the program.

Government Code Section 16429.1-16429.4

16429.1

(a) There is in trust in the custody of the Treasurer the Local Agency Investment Fund, which fund is hereby created. The Controller shall maintain a separate account for each governmental unit having deposits in this fund.

(b) Notwithstanding any other provisions of law, a local governmental official, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.

(c) Notwithstanding any other provisions of law, an officer of any nonprofit corporation whose membership is confined to public agencies or public officials, or an officer of a qualified quasi-governmental agency, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.

(d) Notwithstanding any other provision of law or of this section, a local agency, with the approval of its governing body, may deposit in the Local Agency Investment Fund proceeds of the issuance of bonds, notes, certificates of participation, or other evidences of indebtedness of the agency pending expenditure of the proceeds for the authorized purpose of their issuance. In connection with these deposits of proceeds, the Local Agency Investment Fund is authorized to receive and disburse moneys, and to provide information, directly with or to an authorized officer of a trustee or fiscal agent engaged by the local agency, the Local Agency Investment Fund is authorized to hold investments in the name and for the account of that trustee or fiscal agent, and the Controller shall maintain a separate account for each deposit of proceeds.

(e) The local governmental unit, the nonprofit corporation, or the quasi-governmental agency has the exclusive determination of the length of time its money will be on deposit with the Treasurer.

(f) The trustee or fiscal agent of the local governmental unit has the exclusive determination of the length of time proceeds from the issuance of bonds will be on deposit with the Treasurer.

(g) The Local Investment Advisory Board shall determine those quasi-governmental agencies which qualify to participate in the Local Agency Investment Fund.

- (h) The Treasurer may refuse to accept deposits into the fund if, in the judgment of the Treasurer, the deposit would adversely affect the state's portfolio.
- (i) The Treasurer may invest the money of the fund in securities prescribed in Section 16430. The Treasurer may elect to have the money of the fund invested through the Surplus Money Investment Fund as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2.
- (j) Money in the fund shall be invested to achieve the objective of the fund which is to realize the maximum return consistent with safe and prudent treasury management.
- (k) All instruments of title of all investments of the fund shall remain in the Treasurer's vault or be held in safekeeping under control of the Treasurer in any federal reserve bank, or any branch thereof, or the Federal Home Loan Bank of San Francisco, with any trust company, or the trust department of any state or national bank.
- (l) Immediately at the conclusion of each calendar quarter, all interest earned and other increment derived from investments shall be distributed by the Controller to the contributing governmental units or trustees or fiscal agents, nonprofit corporations, and quasi-governmental agencies in amounts directly proportionate to the respective amounts deposited in the Local Agency Investment Fund and the length of time the amounts remained therein. An amount equal to the reasonable costs incurred in carrying out the provisions of this section, not to exceed a maximum of 5 percent of the earnings of this fund and not to exceed the amount appropriated in the annual Budget Act for this function, shall be deducted from the earnings prior to distribution. The amount of this deduction shall be credited as reimbursements to the state agencies, including the Treasurer, the Controller, and the Department of Finance, having incurred costs in carrying out the provisions of this section.
- (m) The Treasurer shall prepare for distribution a monthly report of investments made during the preceding month.
- (n) As used in this section, "local agency," "local governmental unit," and "local governmental official" includes a campus or other unit and an official, respectively, of the California State University who deposits moneys in funds described in Sections 89721, 89722, and 89725 of the Education Code.

16429.2

There is created the Local Investment Advisory Board consisting of five members. The chairman shall be the State Treasurer or his or her designated representative. Two members who are qualified by training and experience in the field of investment or finance, shall be appointed by the State Treasurer. Two members who are treasurers, finance or fiscal officers or business managers, employed by any county, city or local district or municipal corporation of this state, shall be appointed by the Treasurer.

The term of office of each appointed member of the board is two years, but each appointed member serves at the pleasure of the appointing authority. A vacancy

in the appointed membership, occurring other than by expiration of term, shall be filled in the same manner as the original appointment, but for the unexpired term only.

Members of the board who are not state officers or employees shall not receive a salary, but shall be entitled to a per diem allowance of fifty dollars (\$50) for each day's attendance at a meeting of the board, not to exceed three hundred dollars (\$300) in any month. All members shall be entitled to reimbursement for expenses incurred in the performance of their duties under this part, including travel and other necessary expenses.

The board's primary purpose shall be to advise and assist the State Treasurer in formulating the investment and reinvestment of moneys in the Local Agency Investment Fund, and the acquisition, retention, management, and disposition of investments of the fund. The board, from time to time, shall review those policies and advise therein as it considers necessary or desirable. The board shall advise the State Treasurer in the management of the fund and consult the State Treasurer on any matter relating to the investment and reinvestment of moneys in the fund.

16429.3

Moneys placed with the Treasurer for deposit in the Local Agency Investment Fund by cities, counties, special districts, nonprofit corporations, or qualified quasi-governmental agencies shall not be subject to either of the following:

- (a) Transfer or loan pursuant to Sections 16310, 16312, or 16313.
- (b) Impoundment or seizure by any state official or state agency.

16429.4

The right of a city, county, city and county, special district, nonprofit corporation, or qualified quasi-governmental agency to withdraw its deposited moneys from the Local Agency Investment Fund, upon demand, may not be altered, impaired, or denied, in any way, by any state official or state agency based upon the state's failure to adopt a State Budget by July 1 of each new fiscal year.

Government Code Section 27000-27013

27000

The county treasurer shall receive and keep safely all money belonging to the county and all other money directed by law to be paid to him and apply and pay it out, rendering the account as required by law.

27000.1

Subject to Section 53607, the board of supervisors may, by ordinance, delegate to the county treasurer the authority to invest or reinvest the funds of the county

and the funds of other depositors in the county treasury, pursuant to Chapter 4 (commencing with Section 53600) of Part 1 of Division 2 of title 5. The county treasurer shall thereafter assume full responsibility for those transactions until the board of supervisors either revokes its delegation of authority, by ordinance, or decides not to renew the annual delegation, as provided in Section 53607. Nothing in this section shall limit the county treasurer's authority pursuant to Section 53635 or 53684.

27000.3

(a) With regard to county funds deposited in the county treasury, the board of supervisors is the agent of the county who serves as a fiduciary and is subject to the prudent investor standard, unless a delegation has occurred pursuant to Section 53607 in which case the county treasurer shall be the agent of the county with respect to these funds, serve as a fiduciary, and be subject to the prudent investor standard and the board of supervisors shall not be the agent, serve as a fiduciary, or be subject to the prudent investor standard.

(b) With regard to funds deposited in the county treasury that are deposited by local agencies other than the county and at the discretion of those local agencies, the county treasurer serves as a fiduciary subject to the prudent investor standard.

(c) When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, the county treasurer or the board of supervisors, as applicable, shall act with care, skill, prudence, and diligence under the circumstances then prevailing, specifically including, but not limited to, the general economic conditions and the anticipated needs of the county and other depositors, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the county and the other depositors. Within the limitations of this section and considering individual investments as part of an overall investment strategy, investments may be acquired as authorized by law. Nothing in this chapter is intended to grant investment authority to any person or governing body except as provided in Sections 53601, 53607, and 53635.

27000.5

When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, the primary objective of the county treasurer or the board of supervisors, as the case may be, shall be to safeguard the principal of the funds under the treasurer's or the board's control. The secondary objective shall be to meet the liquidity needs of the depositor. The third objective shall be to achieve a return on the funds under his or her control.

27000.6

The provisions of Sections 27000.7, 27000.8, and 27000.9 shall become effective only in those counties in which, prior to the first date of the period for filing declarations of candidacy for the office of county treasurer, county tax collector, or county treasurer-tax collector, the board of supervisors by majority vote at

a regular meeting with all members present, enact an ordinance adopting the provisions of those sections. That ordinance may be repealed by the board of supervisors at any time.

27000.7

(a) A person shall not be eligible for election or appointment to the office of county treasurer, county tax collector, or county treasurer-tax collector of any county unless that person meets at least one of the following criteria:

(1) The person has served in a senior financial management position in a county, city, or other public agency dealing with similar financial responsibilities for a continuous period of not less than three years, including, but not limited to, treasurer, tax collector, auditor, auditor-controller, or the chief deputy or an assistant in those offices.

(2) The person possesses a valid baccalaureate, masters, or doctoral degree from an accredited college or university in any of the following major fields of study: business administration, public administration, economics, finance, accounting, or a related field, with a minimum of 16 college semester units, or their equivalent, in accounting, auditing, or finance.

(3) The person possesses a valid certificate issued by the California Board of Accountancy pursuant to Chapter 1 (commencing with Section 5000) of Division 3 of the Business and Professions Code, showing that person to be, and a permit authorizing that person to practice as, a certified public accountant.

(4) The person possesses a valid charter issued by the Institute of Chartered Financial Analysts showing the person to be designated a Chartered Financial Analyst, with a minimum of 16 college semester units, or their equivalent, in accounting, auditing, or finance.

(b)(1) This section shall only apply to any person duly elected or appointed as a county treasurer, county tax collector, or county treasurer-tax collector on or after January 1, 1998.

(2) The amendments made by the act adding this paragraph apply to any person duly elected or appointed as a county treasurer, county tax collector, or county treasurer-tax collector on or after January 1, 2024.

27000.8

Any duly elected county treasurer, county tax collector, or county treasurer-tax collector serving in that office on January 1, 1996, may serve for his or her remaining term of office during which period of time the requirements of this section shall not apply. After the election of a county treasurer, county tax collector, or county treasurer-tax collector to office, that person shall complete a valid continuing course of study as prescribed in this section, and shall during the person's four-year term of office on or before June 30 of the fourth year, render to the Controller a certification indicating that the person has successfully completed a continuing education program consisting of, at a minimum, 48 hours, or an

equivalent amount of continuing education units within the discipline of treasury management, tax collection, public finance, public administration, governmental accounting, or directly related subjects, offered by a recognized state or national association, institute, or accredited college or university, or the California Debt and Investment Advisory Commission, that provides the requisite educational programs prescribed in this section. The willful or negligent failure of any elected county treasurer, county tax collector, or county treasurer-tax collector to comply with the requirements of this section shall be deemed a violation of this section.

27000.9

Notwithstanding any other requirement of law, any duly appointed county officer serving in the capacity of county treasurer, county tax collector, or county treasurer-tax collector shall, beginning in 2000, complete a valid continuing course of study as prescribed in this section, and shall, on or before June 30 of each two-year period, render to the Controller, a certification indicating that the county officer has successfully completed a continuing education program consisting of, at a minimum, 24 hours or an equivalent amount of continuing education units within the discipline of treasury management, tax collection, public finance, public administration, governmental accounting, or directly related subjects, offered by a recognized state or national association, institute, or accredited college or university, or the California Debt and Investment Advisory Commission, that provides the requisite educational programs prescribed in this section. The willful or negligent failure of any county officer serving in the capacity of county treasurer, county tax collector, or county treasurer-tax collector to comply with the requirements of this section shall be deemed a violation of this section.

27001

The treasurer shall file and keep the certificates of the auditor delivered to him or her when money is paid into the treasury.

Notwithstanding Sections 26201, 26202, and 26205, the treasurer may destroy any certificate pursuant to this section under either of the following circumstances:

- (a) The certificate has been filed for more than five years.
- (b) The certificate has been filed for more than one year, and all of the following conditions are complied with:
 - (1) The record, paper, or document is photographed, microphotographed, reproduced by electronically recorded video images on magnetic surfaces, or recorded on optical disk or reproduced on any other medium that does not permit additions, deletions, or changes to the original document and is produced in compliance with Section 12168.7 for recording of permanent records or nonpermanent records if the copy is kept or maintained for five years from the date of the document.
 - (2) The device used to reproduce the record, paper, or document on film or any other medium is one that accurately reproduces the original thereof in all details. A duplicate copy of any record reproduced in compliance with Section 12168.7

for recording of permanent or nonpermanent records, whichever applies, shall be deemed an original.

(3) The photographs, microphotographs, or other reproductions on film or any other medium are placed in conveniently accessible files and provision is made for preserving, examining, and using the same.

(4) The record, paper, or document is reproduced and preserved utilizing other information technology.

27002

The treasurer shall keep an account of the receipt and expenditure of all money received or paid out by him or her in books provided for the purpose. He or she shall enter in the books the amount, the time, from whom, and on what account all money was received by him or her, and the warrant number, the amount, time, and on what account all disbursements were made by him or her.

27002.1

(a) The treasurer may, in lieu of entering in books an account of the receipt and expenditure of all money received or paid out by him or her as provided in Section 27002, photograph, microphotograph, photocopy, or enter into an electronic data-processing system that utilizes optical transmission and filing, all receipts for money received by him or her and all warrants paid out by him or her.

(b) Every reproduction described in subdivision (a) shall be deemed and considered an original, and a transcript, exemplification, or certified copy of any of those reproductions shall be deemed and considered a transcript, exemplification, or certified copy, as the case may be, of the original.

(c) All reproductions described in subdivision (a) shall be properly indexed and placed in convenient, accessible files. Each roll of microfilm shall be deemed and constitute a book, and shall be designated and numbered, and provision shall be made for preserving, examining, and using it. A duplicate of each roll of microfilm shall be made and kept in a safe and separate place.

27003

The treasurer shall keep his or her books or any other authorized form of record so that the amounts received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, and the whole receipts and expenditures shown in one general or cash account.

27005

The treasurer shall disburse the county money and all other money placed in his or her custody by official authority only on county warrants, checks, or electronic fund transfers issued by the county auditor, except for the making of legal investments.

27006

The treasurer shall disburse the money in the treasury on county warrants only when they are based on orders of the board of supervisors, upon order of the superior court, or as otherwise provided by law. In the payment of the warrants he may issue his order, check, or draft drawn upon proper funds that are on deposit in any bank.

27007

The treasurer shall keep all money belonging to the State, or any county of the State in his own possession until disbursed according to law. He shall not place the money in the possession of any person to be used for any purpose, nor shall he loan or in any manner use, or permit any person to use it, except as provided by law. This section does not prohibit him from making special deposits for the safe-keeping of public money, but he is liable therefore on his official bond.

27008

(a) The treasurer shall not receive money into the treasury or for deposit with him or her as treasurer, unless it is accompanied by the certificate of the auditor.

(b) Notwithstanding subdivision (a), the auditor and treasurer may establish alternate control procedures for the treasurer to receive or deposit money without the certificate of the auditor.

27009

The treasurer shall give a receipt to each person who deposits money into the county treasury.

27010

The treasurer may receive any money constituting gift, bequest, or devise, and pay it out in accordance with the terms thereof, or, if none are fixed, according to law.

27011

Any county officer who knowingly accepts or allows any deposit in the county treasury of money from any private and unofficial source is guilty of a misdemeanor, punishable by imprisonment in the county jail for not less than six months nor more than one year, or by a fine of not less than five hundred dollars (\$500) and not more than five thousand dollars (\$5,000), or by both that fine and imprisonment, and shall forfeit his or her office.

27012

The Controller may summon county treasurers or the authorized representative of any county treasurer to meet with the Controller or his or her duly

authorized representatives, in those groups and at that place or those places within the state as may be designated by the Controller for the purpose of discussing the interpretation, procedures, uniformity of operation, and efficient administration of the Revenue and Taxation Code and the Government Code. The actual and necessary expenses of any county officer or his or her authorized representative that are incurred while traveling to and from or while attending any meeting called pursuant to this section by the Controller shall be a charge against the county, to be paid in the same manner as other county charges are paid, provided that prior approval of the board of supervisors has been obtained.

27013

Notwithstanding any other provision of law, any treasurer, or other authorized county officer, who invests, deposits or otherwise handles funds for public agencies for the purpose of earning interest or other income on such funds as permitted by law, may deduct from such interest or income, before distribution thereof, the actual administrative cost of such investing, depositing or handling of funds and of distribution of such interest or income. Such cost reimbursement shall be paid into the county general fund.

Government Code Section 27130-27137

27130

The Legislature finds and declares that local agencies, including school districts, should participate in reviewing the policies that guide the investment of those funds. The Legislature further finds and declares that by pooling deposits from local agencies and other participants, county treasuries operate in the public interest when they consolidate banking and investment activities, reduce duplication, achieve economies of scale, and carry out coherent and consolidated investment strategies. The Legislature further finds and declares that the creation of county treasury oversight committees will promote the public interest by involving depositors in the management of their funds and by enhancing the security and investment return on their funds by providing a more stable and predictable balance for investment by establishing criteria for the withdrawal of funds.

27131

(a) The board of supervisors in each county or city and county may, if the county or city and county is investing surplus funds, establish a county treasury oversight committee. The board of supervisors, in consultation with the county treasurer, shall determine the exact size of the committee, which shall consist of from 3 to 11 members, and the categories from which the members shall be represented, as specified in subdivisions (a) to (g), inclusive, of Section 27132. Members shall be nominated by the treasurer and confirmed by the board of supervisors.

(b) In recognition of the state and local interests served by the action made optional in subdivision (a), the Legislature encourages local agencies to continue taking the action formerly mandated by this section. However, nothing in this subdivision may be construed to impose any liability on a local agency that does not continue to take the formerly mandated action.

27132

The county treasury oversight committee, pursuant to Section 27131, shall consist of members appointed from the following:

- (a) The county treasurer.
 - (b) The county auditor, auditor-controller, or finance director, as the case may be.
 - (c) A representative appointed by the county board of supervisors.
 - (d) The county superintendent of schools or his or her designee.
 - (e) A representative selected by a majority of the presiding officers of the governing bodies of the school districts and community college districts in the county.
 - (f) A representative selected by a majority of the presiding officers of the legislative bodies of the special districts in the county that are required or authorized to deposit funds in the county treasury.
 - (g) Up to five other members of the public.
- (1) A majority of the other public members shall have expertise in, or an academic background in, public finance.
 - (2) The other public members shall be economically diverse and bipartisan in political registration.

27132.1

A member may not be employed by an entity that has (a) contributed to the campaign of a candidate for the office of local treasurer, or (b) contributed to the campaign of a candidate to be a member of a legislative body of any local agency that has deposited funds in the county treasury, in the previous three years or during the period that the employee is a member of the committee.

27132.2

A member may not directly or indirectly raise money for a candidate for local treasurer or a member of the governing board of any local agency that has deposited funds in the county treasury while a member of the committee.

27132.3

A member may not secure employment with, or be employed by, bond underwriters, bond counsel, security brokerages or dealers, or financial services firms,

with whom the treasurer is doing business during the period that the person is a member of the committee or for one year after leaving the committee.

27132.4

Committee meetings shall be open to the public and subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

27133

In any county that establishes a county treasury oversight committee pursuant to this article, the county treasurer shall annually prepare an investment policy that will be reviewed and monitored by the county treasury oversight committee. The investment policy shall include all of the following:

- (a) A list of securities or other instruments in which the county treasury may invest, according to law, including the maximum allowable percentage by type of security.
- (b) The maximum term of any security purchased by the county treasury.
- (c) The criteria for selecting security brokers and dealers from, to, or through whom the county treasury may purchase or sell securities or other instruments. The criteria shall prohibit the selection of any broker, brokerage, dealer, or securities firm that has, within any consecutive 48-month period following January 1, 1996, made a political contribution in an amount exceeding the limitations contained in Rule G-37 of the Municipal Securities Rulemaking Board, to the local treasurer, any member of the governing board of the local agency, or any candidate for those offices.
- (d) Limits on the receipt of honoraria, gifts, and gratuities from advisors, brokers, dealers, bankers, or other persons with whom the county treasury conducts business by any member of the county treasury oversight committee. These limits may be in addition to the limits set by a committee member's own agency, by state law, or by the Fair Political Practices Commission.
- (e) A requirement that the county treasurer provide the county treasury oversight committee with an investment report as required by the board of supervisors.
- (f) The manner of calculating and apportioning the costs, authorized by Section 27013, of investing, depositing, banking, auditing, reporting, or otherwise handling or managing funds.
- (g) The terms and conditions under which local agencies and other entities that are not required to deposit their funds in the county treasury may deposit funds for investment purposes.
- (h) Criteria for considering requests to withdraw funds from the county treasury, pursuant to Section 27136. The criteria shall include an assessment of the effect of a proposed withdrawal on the stability and predictability of the investments in the county treasury.

27134

The county treasury oversight committee shall cause an annual audit to be conducted to determine the county treasury's compliance with this article. The audit may include issues relating to the structure of the investment portfolio and risk.

27135

The costs of complying with this article shall be county charges and may be included with those charges enumerated under Section 27013.

27136

(a) Notwithstanding any other provision of law, any local agency, public agency, public entity, or public official that has funds on deposit in the county treasury pool and that seeks to withdraw funds for the purpose of investing or depositing those funds outside the county treasury pool, shall first submit the request for withdrawal to the county treasurer before withdrawing funds from the county treasury pool.

(b) The county treasurer shall evaluate each proposed withdrawal for its consistency with the criteria adopted pursuant to subdivision (h) of Section 27133. Prior to approving a withdrawal, the county treasurer shall find that the proposed withdrawal will not adversely affect the interests of the other depositors in the county treasury pool.

27137

Nothing in this article shall be construed to allow the county treasury oversight committee to direct individual investment decisions, select individual investment advisors, brokers, or dealers, or impinge on the day-to-day operations of the county treasury.

Government Code Section 53600-53610

53600

As used in this article, "local agency" means county, city, city and county, including a chartered city or county, school district, community college district, public district, county board of education, county superintendent of schools, or any public or municipal corporation.

53600.3

Except as provided in subdivision (a) of Section 27000.3, all governing bodies of local agencies or persons authorized to make investment decisions on behalf of those local agencies investing public funds pursuant to this chapter are trustees and therefore fiduciaries subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public

funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law.

53600.5

When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, the primary objective of a trustee shall be to safeguard the principal of the funds under its control. The secondary objective shall be to meet the liquidity needs of the depositor. The third objective shall be to achieve a return on the funds under its control.

53600.6.

The Legislature hereby finds that the solvency and creditworthiness of each individual local agency can impact the solvency and creditworthiness of the state and other local agencies within the state. Therefore, to protect the solvency and creditworthiness of the state and all of its political subdivisions, the Legislature hereby declares that the deposit and investment of public funds by local officials and local agencies is an issue of statewide concern.

53601.

This section shall apply to a local agency that is a city, a district, or other local agency that does not pool money in deposits or investments with other local agencies, other than local agencies that have the same governing body. However, Section 53635 shall apply to all local agencies that pool money in deposits or investments with other local agencies that have separate governing bodies. The legislative body of a local agency having moneys in a sinking fund or moneys in its treasury not required for the immediate needs of the local agency may invest any portion of the moneys that it deems wise or expedient in those investments set forth below. A local agency purchasing or obtaining any securities prescribed in this section, in a negotiable, bearer, registered, or nonregistered format, shall require delivery of the securities to the local agency, including those purchased for the agency by financial advisers, consultants, or managers using the agency's funds, by book entry, physical delivery, or by third-party custodial agreement. The transfer of securities to the counterparty bank's customer book entry account may be used for book entry delivery.

For purposes of this section, "counterparty" means the other party to the transaction. A counterparty bank's trust department or separate safekeeping department may be used for the physical delivery of the security if the security is held in the name of the local agency. Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable

only at the date of purchase. For purposes of compliance with this section, an investment's term or remaining maturity shall be measured from the settlement date to final maturity. A security purchased in accordance with this section shall not have a forward settlement date exceeding 45 days from the time of investment. Where this section does not specify a limitation on the term or remaining maturity at the time of the investment, no investment shall be made in any security, other than a security underlying a repurchase or reverse repurchase agreement or securities lending agreement authorized by this section, that at the time of the investment has a term remaining to maturity in excess of five years, unless the legislative body has granted express authority to make that investment either specifically or as a part of an investment program approved by the legislative body no less than three months prior to the investment:

- (a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.
- (b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.
- (c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.
- (d) Registered treasury notes or bonds of any of the other 49 states in addition to California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the other 49 states, in addition to California.
- (e) Bonds, notes, warrants, or other evidences of indebtedness of a local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.
- (f) Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises.
- (g) Bankers' acceptances otherwise known as bills of exchange or time drafts that are drawn on and accepted by a commercial bank. Purchases of bankers' acceptances shall not exceed 180 days' maturity or 40 percent of the agency's moneys that may be invested pursuant to this section. However, no more than 30 percent of the agency's moneys may be invested in the bankers' acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing moneys in its treasury in a manner authorized by the Municipal Utility District Act (Division 6 (commencing with Section 11501) of the Public Utilities Code).

(h) Commercial paper of “prime” quality of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical rating organization (NRSRO). The entity that issues the commercial paper shall meet all of the following conditions in either paragraph (1) or (2):

(1) The entity meets the following criteria:

(A) Is organized and operating in the United States as a general corporation.

(B) Has total assets in excess of five hundred million dollars (\$500,000,000).

(C) Has debt other than commercial paper, if any, that is rated in a rating category of “A” or its equivalent or higher by an NRSRO.

(2) The entity meets the following criteria:

(A) Is organized within the United States as a special purpose corporation, trust, or limited liability company.

(B) Has program wide credit enhancements including, but not limited to, over-collateralization, letters of credit, or a surety bond.

(C) Has commercial paper that is rated “A-1” or higher, or the equivalent, by an NRSRO. Eligible commercial paper shall have a maximum maturity of 270 days or less. Local agencies, other than counties or a city and county, that have less than one hundred million dollars (\$100,000,000) of investment assets under management, may invest no more than 25 percent of their moneys in eligible commercial paper. Local agencies, other than counties or a city and county, that have one hundred million dollars (\$100,000,000) or more of investment assets under management may invest no more than 40 percent of their moneys in eligible commercial paper. A local agency, other than a county or a city and a county, may invest no more than 10 percent of its total investment assets in the commercial paper and the medium-term notes of any single issuer. Counties or a city and county may invest in commercial paper pursuant to the concentration limits in subdivision (a) of Section 53635.

(i) Negotiable certificates of deposit issued by a nationally or state-chartered bank, a savings association or a federal association (as defined by Section 5102 of the Financial Code), a state or federal credit union, or by a federally licensed or state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit shall not exceed 30 percent of the agency’s moneys that may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposit do not come within Article 2 (commencing with Section 53630), except that the amount so invested shall be subject to the limitations of Section 53638. The legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the moneys are prohibited from investing local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or a person with investment decision-making authority in the administrative office manager’s office, budget office, auditor-controller’s office, or treasurer’s office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, or the credit

committee or the supervisory committee of the state or federal credit union issuing the negotiable certificates of deposit.

(j)(1) Investments in repurchase agreements or reverse repurchase agreements or securities lending agreements of any securities authorized by this section, as long as the agreements are subject to this subdivision, including the delivery requirements specified in this section.

(2) Investments in repurchase agreements may be made, on an investment authorized in this section, when the term of the agreement does not exceed one year. The market value of securities that underlie a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted no less than quarterly. Since the market value of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements shall be in compliance if the value of the underlying securities is brought back up to 102 percent no later than the next business day.

(3) Reverse repurchase agreements or securities lending agreements may be utilized only when all of the following conditions are met:

(A) The security to be sold using a reverse repurchase agreement or securities lending agreement has been owned and fully paid for by the local agency for a minimum of 30 days prior to sale.

(B) The total of all reverse repurchase agreements and securities lending agreements on investments owned by the local agency does not exceed 20 percent of the base value of the portfolio.

(C) The agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(D) Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty using a reverse repurchase agreement or securities lending agreement shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement or securities lending agreement, unless the reverse repurchase agreement or securities lending agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(4)(A) Investments in reverse repurchase agreements, securities lending agreements, or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security may be made only upon prior approval of the governing body of the local agency and shall be made only with primary dealers of the Federal Reserve Bank of New York or with a nationally or state-chartered bank that has or has had a significant banking relationship with a local agency.

(B) For purposes of this chapter, “significant banking relationship” means any of the following activities of a bank:

(i) Involvement in the creation, sale, purchase, or retirement of a local agency’s bonds, warrants, notes, or other evidence of indebtedness.

(ii) Financing of a local agency’s activities.

(iii) Acceptance of a local agency’s securities or funds as deposits.

(5)(A) “Repurchase agreement” means a purchase of securities by the local agency pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third-party custodial agreement. The transfer of underlying securities to the counterparty bank’s customer book-entry account may be used for book-entry delivery.

(B) “Securities,” for purposes of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.

(C) “Reverse repurchase agreement” means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date and includes other comparable agreements.

(D) “Securities lending agreement” means an agreement under which a local agency agrees to transfer securities to a borrower who, in turn, agrees to provide collateral to the local agency. During the term of the agreement, both the securities and the collateral are held by a third party. At the conclusion of the agreement, the securities are transferred back to the local agency in return for the collateral.

(E) For purposes of this section, the base value of the local agency’s pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements, securities lending agreements, or other similar borrowing methods.

(F) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement and the earnings obtained on the reinvestment of the funds.

(k) Medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated in a rating category of “A” or its equivalent or better by an NRSRO. Purchases of medium-term notes shall not include other instruments authorized by this section and shall not exceed 30 percent of the agency’s moneys that may be invested pursuant to this section. A local agency, other than a county or a city and a county, may invest no more than 10 percent of its total investment assets in the commercial paper and the medium-term notes of any single issuer.

(l)(1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (k), inclusive, and subdivisions (m) to (q), inclusive, and that comply with the investment restrictions of this article and Article 2 (commencing with Section 53630). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement or securities lending agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement or securities lending agreement may be 100 percent of the sales price if the securities are marked to market daily.

(2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

(3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two NRSROs.

(B) Retained an investment adviser registered or exempt from registration with the United States Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by subdivisions (a) to (k), inclusive, and subdivisions (m) to (q), inclusive, and with assets under management in excess of five hundred million dollars (\$500,000,000).

(4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two NRSROs.

(B) Retained an investment adviser registered or exempt from registration with the United States Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars (\$500,000,000).

(5) The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that the companies may charge and shall not exceed 20 percent of the agency's moneys that may be invested pursuant to this section. However, no more than 10 percent of the agency's funds may be invested in shares of beneficial interest of any one mutual fund pursuant to paragraph (1).

(m) Moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds or other indebtedness, or obligations under a lease, installment sale, or other agreement of a local agency, or certificates of participation in those bonds, indebtedness, or lease installment sale, or other agreements, may be invested in accordance with the statutory provisions governing the issuance of

those bonds, indebtedness, or lease installment sale, or other agreement, or to the extent not inconsistent therewith or if there are no specific statutory provisions, in accordance with the ordinance, resolution, indenture, or agreement of the local agency providing for the issuance.

(n) Notes, bonds, or other obligations that are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the trust department of a bank that is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

(o)(1) A mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond.

(2) For securities eligible for investment under this subdivision not issued or guaranteed by an agency or issuer identified in subdivision (b) or (f), the following limitations apply:

(A) The security shall be rated in a rating category of “AA” or its equivalent or better by an NRSRO and have a maximum remaining maturity of five years or less.

(B) Purchase of securities authorized by this paragraph shall not exceed 20 percent of the agency’s surplus moneys that may be invested pursuant to this section.

(p) Shares of beneficial interest issued by a joint powers authority organized pursuant to Section 6509.7 that invests in the securities and obligations authorized in subdivisions (a) to (r), inclusive. Each share shall represent an equal proportional interest in the underlying pool of securities owned by the joint powers authority. To be eligible under this section, the joint powers authority issuing the shares shall have retained an investment adviser that meets all of the following criteria:

(1) The adviser is registered or exempt from registration with the United States Securities and Exchange Commission.

(2) The adviser has not less than five years of experience investing in the securities and obligations authorized in subdivisions (a) to (q), inclusive.

(3) The adviser has assets under management in excess of five hundred million dollars (\$500,000,000).

(q) United States dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development, International Finance Corporation, or Inter-American Development Bank, with a maximum remaining maturity of five years or less, and eligible for purchase and sale within the United States. Investments under this subdivision shall be rated in a rating category of “AA” or its equivalent

or better by an NRSRO and shall not exceed 30 percent of the agency's moneys that may be invested pursuant to this section.

(r) Commercial paper, debt securities, or other obligations of a public bank, as defined in Section 57600.

This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

53601.1

The authority of a local agency to invest funds pursuant to Section 53601 includes, in addition thereto, authority to invest in financial futures or financial option contracts in any of the investment categories enumerated in that section.

53601.2

As used in this article, "corporation" includes a limited liability company.

53601.5

The purchase by a local agency of any investment authorized pursuant to Section 53601 or 53601.1, not purchased directly from the issuer, shall be purchased either from an institution licensed by the state as a broker-dealer, as defined in Section 25004 of the Corporations Code, or from a member of a federally regulated securities exchange, from a national or state-chartered bank, from a savings association or federal association (as defined by Section 5102 of the Financial Code) or from a brokerage firm designated as a primary government dealer by the Federal Reserve bank.

53601.6

(a) A local agency shall not invest any funds pursuant to this article or pursuant to Article 2 (commencing with Section 53630) in inverse floaters, range notes, or mortgage-derived, interest-only strips.

(b) (1) Except as provided in paragraph (2), a local agency shall not invest any funds pursuant to this article or pursuant to Article 2 (commencing with Section 53630) in any security that could result in zero interest accrual if held to maturity. However, a local agency may hold prohibited instruments until their maturity dates. The limitation in this subdivision shall not apply to local agency investments in shares of beneficial interest issued by diversified management companies registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) that are authorized for investment pursuant to subdivision (l) of Section 53601.

(2) Notwithstanding the prohibition in paragraph (1), a local agency may invest in securities issued by, or backed by, the United States government that could result in zero- or negative-interest accrual if held to maturity, in the event of, and for the duration of, a period of negative market interest rates. A local agency may hold these instruments until their maturity dates.

(c) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

53601.8

Notwithstanding any other provision of this code, a local agency that has the authority under law to invest funds, at its discretion, may invest a portion of its surplus funds in deposits at a commercial bank, savings bank, savings and loan association, or credit union that uses a private sector entity that assists in the placement of deposits. The following conditions shall apply:

(a) The local agency shall choose a nationally or state-chartered commercial bank, savings bank, savings and loan association, or credit union in this state to invest the funds, which shall be known as the “selected” depository institution.

(b) The selected depository institution may use a private sector entity to help place local agency deposits with one or more commercial banks, savings banks, savings and loan associations, or credit unions that are located in the United States and are within the network used by the private sector entity for this purpose.

(c) The selected depository institution shall request that the local agency inform it of depository institutions at which the local agency has other deposits, and the selected depository institution shall provide that information to the private sector entity.

(d) Any private sector entity used by a selected depository institution to help place its local agency deposits shall maintain policies and procedures requiring all of the following:

(1) The full amount of each deposit placed pursuant to subdivision (b) and the interest that may accrue on each such deposit shall at all times be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(2) Every depository institution where funds are placed shall be capitalized at a level that is sufficient, and be otherwise eligible, to receive such deposits pursuant to regulations of the Federal Deposit Insurance Corporation or the National Credit Union Administration, as applicable.

(3) At the time of the local agency’s investment with a selected depository institution and no less than monthly thereafter, the private sector entity shall ensure that the local agency is provided with an inventory of all depository institutions in which deposits have been placed on the local agency’s behalf, that are within the private sector entity’s network.

(4) Within its network, the private sector entity shall ensure that it does not place additional deposits from a particular local agency with any depository institution identified pursuant to subdivision (c) as holding that local agency’s deposits if those additional deposits would result in that local agency’s total amount on deposit at that depository institution exceeding the Federal Deposit Insurance Corporation or the National Credit Union Administration insurance limit.

(e) If a selected depository uses two or more private sector entities to assist in the placement of a local agency's deposits, the selected depository shall ensure that it does not place additional deposits from a particular local agency with a depository institution if those additional deposits would result in that local agency's total amount on deposit at that depository institution exceeding the Federal Deposit Insurance Corporation or the National Credit Union Administration insurance limit.

(f) The selected depository institution shall serve as a custodian for each such deposit.

(g) On the same date that the local agency's funds are placed pursuant to subdivision (b) by the private sector entity, the selected depository institution shall receive an amount of insured deposits from other financial institutions that, in total, are equal to, or greater than, the full amount of the principal that the local agency initially deposited through the selected depository institution pursuant to subdivision (b).

(h) Notwithstanding subdivisions (a) to (g), inclusive, a credit union shall not act as a selected depository institution under this section unless both of the following conditions are satisfied:

(1) The credit union offers federal depository insurance through the National Credit Union Administration.

(2) The credit union is in possession of written guidance or other written communication from the National Credit Union Administration authorizing participation of federally insured credit unions in one or more deposit placement services and affirming that the moneys held by those credit unions while participating in a deposit placement service will at all times be insured by the federal government.

(i) It is the intent of the Legislature that this section shall not restrict competition among private sector entities that provide placement services pursuant to this section.

(j) The deposits placed pursuant to this section shall be subject to Section 53638 and shall not, in total, exceed 30 percent of the agency's funds that may be invested for this purpose.

(k) This section shall become operative on January 1, 2026.

53602

The legislative body shall invest only in notes, bonds, bills, certificates of indebtedness, warrants, or registered warrants which are legal investments for savings banks in the State, provided, that the board of supervisors of a county may, by a four-fifths vote thereof, invest in notes, warrants or other evidences of indebtedness of public districts wholly or partly within the county, whether or not such notes, warrants, or other evidences of indebtedness are legal investments for savings banks.

53603

The legislative body may make the investment by direct purchase of any issue of eligible securities at their original sale or after they have been issued.

53604

The legislative body may sell, or exchange for other eligible securities, and reinvest the proceeds of, the securities purchased.

53605

From time to time, the legislative body shall sell the securities so that the proceeds may be applied to the purposes for which the original purchase money was placed in the sinking fund or the treasury of the local agency.

53606

The bonds purchased, which were issued by the purchaser, may be canceled either in satisfaction or sinking fund obligations or otherwise. When canceled, they are no longer outstanding, unless in its discretion, the legislative body holds them uncanceled. While held uncanceled, the bonds may be resold.

53607

The authority of the legislative body to invest or to reinvest funds of a local agency, or to sell or exchange securities so purchased, may be delegated for a one-year period by the legislative body to the treasurer of the local agency, who shall thereafter assume full responsibility for those transactions until the delegation of authority is revoked or expires, and shall make a monthly report of those transactions to the legislative body. Subject to review, the legislative body may renew the delegation of authority pursuant to this section each year.

53608

The legislative body of a local agency may deposit for safekeeping with a federal or state association (as defined by Section 5102 of the Financial Code), a trust company or a state or national bank located within this state or with the Federal Reserve Bank of San Francisco or any branch thereof within this state, or with any Federal Reserve bank or with any state or national bank located in any city designated as a reserve city by the Board of Governors of the Federal Reserve System, the bonds, notes, bills, debentures, obligations, certificates of indebtedness, warrants, or other evidences of indebtedness in which the money of the local agency is invested pursuant to this article or pursuant to other legislative authority. The local agency shall take from such financial institution a receipt for securities so deposited. The authority of the legislative body to deposit for safekeeping may be delegated by the legislative body to the treasurer of the local agency; the treasurer shall not be responsible for securities delivered to and receipted for by a financial institution until they are withdrawn from the financial institution by the treasurer.

53609

Notwithstanding the provisions of this chapter or any other provisions of this code, funds held by a local agency pursuant to a written agreement between the agency and employees of the agency to defer a portion of the compensation otherwise receivable by the agency's employees and pursuant to a plan for such deferral as adopted by the governing body of the agency, may be invested in the types of investments set forth in Sections 53601 and 53602 of this code, and may additionally be invested in corporate stocks, bonds, and securities, mutual funds, savings and loan accounts, credit union accounts, life insurance policies, annuities, mortgages, deeds of trust, or other security interests in real or personal property. Nothing herein shall be construed to permit any type of investment prohibited by the Constitution.

Deferred compensation funds are public pension or retirement funds for the purposes of Section 17 of Article XVI of the Constitution.

53610

(a) For purposes of this section, "Proposition 1A receivable" means the right to payment of moneys due or to become due to a local agency, pursuant to clause (iii) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 25.5 of Article XIII of the California Constitution and Section 100.06 of the Revenue and Taxation Code.

(b) Notwithstanding any other law, a local agency may purchase, with its revenue, Proposition 1A receivables sold pursuant to Section 53999.

(c) A purchaser of Proposition 1A receivables pursuant to this section shall not offer them for sale pursuant to Section 6588.

Government Code Section 53620-53622

53620

Notwithstanding Section 53601 or 53635, the governing body of a local agency may invest funds designated for the payment of employee retiree health benefits in any form or type of investment deemed prudent by the governing body pursuant to Section 53622.

53621

The authority of the governing body to invest or to reinvest funds intended for the payment of employee retiree health benefits, or to sell or exchange securities purchased for that purpose, may be delegated by the governing body to designated officers.

53622

- (a) Funds intended for the payment of employee retiree health benefits shall only be held for the purpose of providing benefits to participants in the retiree health benefit plan and defraying reasonable expenses of administering that plan.
- (b) The governing body or designated officer, when making investments of the funds, shall discharge its duties with respect to the investment of the funds.
- (1) Solely in the interest of, and for the exclusive purposes of providing benefits to, participants in the retiree health benefit plan, minimizing employer contributions thereto, and defraying reasonable expenses of administering the plan.
- (2) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.
- (3) Shall diversify the investments of the funds so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so.

Government Code Section 53630-53686

53630

As used in this article:

- (a) “Local agency” means county, city, city and county, including a chartered city or county, a community college district, or other public agency or corporation in this state.
- (b) “Treasurer” means treasurer of the local agency.
- (c) “Depository” means a state or national bank, savings association or federal association, a state or federal credit union, or a federally insured industrial loan company, in this state in which the moneys of a local agency are deposited.
- (d) “Agent of depository” means a trust company or trust department of a state or national bank located in this state, including the trust department of a depository where authorized, and the Federal Home Loan Bank of San Francisco, which is authorized to act as an agent of depository for the purposes of this article pursuant to Section 53657.
- (e) “Security” means any of the eligible securities or obligations listed in Section 53651.
- (f) “Pooled securities” means eligible securities held by an agent of depository for a depository and securing deposits of one or more local agencies.
- (g) “Administrator” means the Administrator of Local Agency Security of the State of California.

(h) “Savings association or federal association” means a savings association, savings and loan association, or savings bank as defined by Section 5102 of the Financial Code.

(i) “Federally insured industrial loan company” means an industrial loan company licensed under Division 7 (commencing with Section 18000) of the Financial Code, the investment certificates of which are insured by the Federal Deposit Insurance Corporation.

(j) “Corporation” includes a limited liability company.

53630.1

The Legislature hereby finds that the solvency and creditworthiness of each individual local agency can impact the solvency and creditworthiness of the state and other local agencies within the state. Therefore, to protect the solvency and creditworthiness of the state and all of its political subdivisions, the Legislature hereby declares that the deposit and investment of public funds by local officials and local agencies is an issue of statewide concern.

53630.5

(a) The definitions in Section 1750 of, and Chapter 1 (commencing with Section 99) of Division 1 of, the Financial Code apply to this section.

(b) In this article, for purposes of being a depository of moneys belonging to or being in the custody of a local agency, the phrases “state or national bank located in this state,” “state or national bank,” “state or national bank in this state,” and “state or national banks in the state” include, without limitation, any of the following:

(1) Any California branch office of a foreign (other state) state bank that the bank is authorized to maintain under the law of its domicile and federal law.

(2) Any California branch office of a foreign (other state) national bank that the bank is authorized to maintain under federal law.

(3) Any California branch office of a foreign (other nation) bank that the bank is licensed to maintain under Article 3 (commencing with Section 1800) of Chapter 20 of Division 1.1 of the Financial Code.

(4) Any California federal branch of a foreign (other nation) bank that the bank is authorized to maintain under federal law.

53631

Under those conditions as the treasurer of a local agency fixes with the approval of the legislative body, he or she may establish accounts at banks within or without the state and deposit money in those accounts to the extent necessary to pay the principal and interest of bonds to pay any warrant that has been presented for payment, or to fund any electronic disbursement of funds from the treasury of the local agency. This article does not apply to deposits for those purposes.

53632

There are three classes of deposits:

- (a) Inactive deposits.
- (b) Active deposits.
- (c) Interest-bearing active deposits.

53632.5

There are three classes of security for deposits:

- (a) Securities described in subdivision (m) of Section 53651.
- (b) Securities described in subdivision (p) of Section 53651.
- (c) Securities enumerated in Section 53651, except for those described in subdivisions (m) and (p) of that section.

53633

The treasurer shall determine the amounts of money to be deposited as inactive, active, and interest-bearing active deposits, except as otherwise provided in Section 53679.

53634

The treasurer may call in money from inactive deposits and place it in active deposits as current demands require. When there is money in his possession for which there is no demand as inactive deposits, he may place it as active deposits.

53635

(a) This section shall apply to a local agency that is a county, a city and a county, or other local agency that pools money in deposits or investments with other local agencies, including local agencies that have the same governing body. However, Section 53601 shall apply to all local agencies that pool money in deposits or investments exclusively with local agencies that have the same governing body.

This section shall be interpreted in a manner that recognizes the distinct characteristics of investment pools and the distinct administrative burdens on managing and investing funds on a pooled basis pursuant to Article 6 (commencing with Section 27130) of Chapter 5 of Division 2 of Title 3.

A local agency that is a county, a city and county, or other local agency that pools money in deposits or investments with other agencies may invest in commercial paper pursuant to subdivision (h) of Section 53601, except that the local agency shall be subject to the following concentration limits:

- (1) No more than 40 percent of the local agency's money may be invested in eligible commercial paper.
- (2) No more than 10 percent of the total assets of the investments held by a local agency may be invested in any one issuer's commercial paper.
- (b) Notwithstanding Section 53601, the City of Los Angeles shall be subject to the concentration limits of this section for counties and for cities and counties with regard to the investment of money in eligible commercial paper.
- (c) A local agency subject to this section may invest in commercial paper, debt securities, or other obligations of a public bank, as defined in Section 57600.

53635.2

As far as possible, all money belonging to, or in the custody of, a local agency, including money paid to the treasurer or other official to pay the principal, interest, or penalties of bonds, shall be deposited for safekeeping in state or national banks, public banks, savings associations, federal associations, credit unions, or federally insured industrial loan companies in this state selected by the treasurer or other official having legal custody of the money; or may be invested in the investments set forth in Section 53601. To be eligible to receive local agency money, a bank, savings association, federal association, or federally insured industrial loan company shall have received an overall rating of not less than "satisfactory" in its most recent evaluation by the appropriate federal financial supervisory agency of its record of meeting the credit needs of California's communities, including low- and moderate-income neighborhoods, pursuant to Section 2906 of Title 12 of the United States Code. Sections 53601.5 and 53601.6 shall apply to all investments that are acquired pursuant to this section.

53635.7

In making any decision that involves borrowing in the amount of one hundred thousand dollars (\$100,000) or more, the legislative body of the local agency shall discuss, consider, and deliberate each decision as a separate item of business on the agenda of its meeting as prescribed in Chapter 9 (commencing with Section 54950). As used in this section, "borrowing" does not include bank overdrafts or security lending.

53635.8

Notwithstanding any other provision of this code, a local agency that has the authority under law to invest funds, at its discretion, may invest a portion of its surplus funds in deposits at a commercial bank, savings bank, savings and loan association, or credit union that uses a private sector entity that assists in the placement of deposits. The following conditions shall apply:

- (a) The local agency shall choose a nationally or state-chartered commercial bank, savings bank, savings and loan association, or credit union in this state to invest the funds, which shall be known as the "selected" depository institution.

- (b) The selected depository institution may use a private sector entity to help place local agency deposits with one or more commercial banks, savings banks, savings and loan associations, or credit unions that are located in the United States and are within the network used by the private sector entity for this purpose.
- (c) The selected depository institution shall request that the local agency inform it of depository institutions at which the local agency has other deposits, and the selected depository institution shall provide that information to the private sector entity.
- (d) Any private sector entity used by a selected depository institution to help place its local agency deposits shall maintain policies and procedures requiring all of the following:
- (1) The full amount of each deposit placed pursuant to subdivision (b) and the interest that may accrue on each such deposit shall at all times be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.
 - (2) Every depository institution where funds are placed shall be capitalized at a level that is sufficient, and be otherwise eligible, to receive such deposits pursuant to regulations of the Federal Deposit Insurance Corporation or the National Credit Union Administration, as applicable.
 - (3) At the time of the local agency's investment with a selected depository institution and no less than monthly thereafter, the private sector entity shall ensure that the local agency is provided with an inventory of all depository institutions in which deposits have been placed on the local agency's behalf, that are within the private sector entity's network.
 - (4) Within its network, the private sector entity shall ensure that it does not place additional deposits from a particular local agency with any depository institution identified pursuant to subdivision (c) as holding that local agency's deposits if those additional deposits would result in that local agency's total amount on deposit at that depository institution exceeding the Federal Deposit Insurance Corporation or the National Credit Union Administration insurance limit.
- (e) If a selected depository uses two or more private sector entities to assist in the placement of a local agency's deposits, the selected depository shall ensure that it does not place additional deposits from a particular local agency with a depository institution if those additional deposits would result in that local agency's total amount on deposit at that depository institution exceeding the Federal Deposit Insurance Corporation or the National Credit Union Administration insurance limit.
- (f) The selected depository institution shall serve as a custodian for each such deposit.
- (g) On the same date that the local agency's funds are placed pursuant to subdivision (b) by the private sector entity, the selected depository institution shall receive an amount of insured deposits from other financial institutions that, in total, are equal to, or greater than, the full amount of the principal that the local

agency initially deposited through the selected depository institution for investment pursuant to subdivision (b).

(h) Notwithstanding subdivisions (a) to (g), inclusive, a credit union shall not act as a selected depository institution under this section unless both of the following conditions are satisfied:

(1) The credit union offers federal depository insurance through the National Credit Union Administration.

(2) The credit union is in possession of written guidance or other written communication from the National Credit Union Administration authorizing participation of federally insured credit unions in one or more deposit placement services and affirming that the moneys held by those credit unions while participating in a deposit placement service will at all times be insured by the federal government.

(i) It is the intent of the Legislature that this section shall not restrict competition among private sector entities that provide placement services pursuant to this section.

(j) The deposits placed pursuant to this section shall be subject to Section 53638 and shall not, in total, exceed 30 percent of the agency's funds that may be invested for this purpose.

53636

Money so deposited is deemed to be in the treasury of the local agency.

53637

The money shall be deposited in any bank, savings association or federal association, state or federal credit union, or federally insured industrial loan company with the objective of realizing maximum return, consistent with prudent financial management, except that money shall not be deposited in any state or federal credit union if a member of the legislative body of a local agency, or any person with investment decision making authority of the administrative office, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency, also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee, of the state or federal credit union.

53638

(a) The deposit shall not exceed the shareholder's equity of any depository bank. For the purposes of this subdivision, shareholder's equity shall be determined in accordance with Section 463 of the Financial Code, but shall be deemed to include capital notes and debentures.

(b) The deposit shall not exceed the total of the net worth of any depository savings association or federal association, except that deposits not exceeding a total of five hundred thousand dollars (\$500,000) may be made to a savings associa-

tion or federal association without regard to the net worth of that depository, if such deposits are insured or secured as required by law.

(c) The deposit to the share accounts of any regularly chartered credit union shall not exceed the total of the unimpaired capital and surplus of the credit union, as defined by rule of the Commissioner of Business Oversight, except that the deposit to any credit union share account in an amount not exceeding five hundred thousand dollars (\$500,000) may be made if the share accounts of that credit union are insured or guaranteed pursuant to Section 14858 of the Financial Code or are secured as required by law.

(d) The deposit in investment certificates of a federally insured industrial loan company shall not exceed the total of the unimpaired capital and surplus of the insured industrial loan company.

53639

Except as otherwise provided in Section 53682, the depository shall bear the expenses of transportation of money to and from the depository.

53640

Except as otherwise provided in Section 53682, the depository shall handle, collect, and pay all checks, drafts, and other exchange without cost to the local agency.

53641

When money is deposited in a depository, the treasurer or other authorized official shall take and preserve a receipt, certificate of deposit, or other evidence of the deposit as he or she requires.

53642

The money deposited may be drawn out by check or order of the treasurer or other official authorized to make such deposit.

53643

The treasurer may deposit any part of the money as agreed upon between the treasurer and the depository.

53644

If an agreement is not made:

(a) Active deposits and interest thereon are subject to withdrawal upon the demand of the treasurer or other authorized official, subject to any penalties which may be prescribed by federal law or regulation.

(b) Inactive deposits are subject to notice of at least thirty days before withdrawal.

53645

Interest shall be computed and paid by the depository, as follows:

- (a) For active deposits upon which interest is payable, interest shall be computed on the average daily balance for the calendar quarter, and shall be paid quarterly.
- (b) For inactive deposits, interest shall be computed on a 360-day basis, and shall be paid quarterly.

53646

(a)(1) In the case of county government, the treasurer may annually render to the board of supervisors and any oversight committee a statement of investment policy, which the board shall review and approve at a public meeting. Any change in the policy shall also be reviewed and approved by the board at a public meeting.

(2) In the case of any other local agency, the treasurer or chief fiscal officer of the local agency may annually render to the legislative body of that local agency and any oversight committee of that local agency a statement of investment policy, which the legislative body of the local agency shall consider at a public meeting. Any change in the policy shall also be considered by the legislative body of the local agency at a public meeting.

(b)(1) The treasurer or chief fiscal officer may render a quarterly report to the chief executive officer, the internal auditor, and the legislative body of the local agency. The quarterly report shall be so submitted within 45 days following the end of the quarter covered by the report. Except as provided in subdivisions (e) and (f), this report shall include the type of investment, issuer, date of maturity par and dollar amount invested on all securities, investments and moneys held by the local agency, and shall additionally include a description of any of the local agency's funds, investments, or programs, that are under the management of contracted parties, including lending programs. With respect to all securities held by the local agency, and under management of any outside party that is not also a local agency or the State of California Local Agency Investment Fund, the report shall also include a current market value as of the date of the report, and shall include the source of this same valuation.

(2) The quarterly report shall state compliance of the portfolio to the statement of investment policy, or manner in which the portfolio is not in compliance.

(3) The quarterly report shall include a statement denoting the ability of the local agency to meet its pool's expenditure requirements for the next six months, or provide an explanation as to why sufficient money shall, or may, not be available.

(4) In the quarterly report, a subsidiary ledger of investments may be used in accordance with accepted accounting practices.

(c) Pursuant to subdivision (b), the treasurer or chief fiscal officer shall report whatever additional information or data may be required by the legislative body of the local agency.

(d) The legislative body of a local agency may elect to require the report specified in subdivision (b) to be made on a monthly basis instead of quarterly.

(e) For local agency investments that have been placed in the Local Agency Investment Fund, created by Section 16429.1, in National Credit Union Share Insurance Fund-insured accounts in a credit union, in accounts insured or guaranteed pursuant to Section 14858 of the Financial Code, or in Federal Deposit Insurance Corporation-insured accounts in a bank or savings and loan association, in a county investment pool, or any combination of these, the treasurer or chief fiscal officer may supply to the governing body, chief executive officer, and the auditor of the local agency the most recent statement or statements received by the local agency from these institutions in lieu of the information required by paragraph (1) of subdivision (b) regarding investments in these institutions.

(f) The treasurer or chief fiscal officer shall not be required to render a quarterly report, as required by subdivision (b), to a legislative body or any oversight committee of a school district or county office of education for securities, investments, or moneys held by the school district or county office of education in individual accounts that are less than twenty-five thousand dollars (\$25,000).

(g) In recognition of the state and local interests served by the actions made optional in subdivisions (a) and (b), the Legislature encourages the local agency officials to continue taking the actions formerly mandated by this section. However, nothing in this subdivision may be construed to impose any liability on a local agency that does not continue to take the formerly mandated action.

53647

(a) Interest on all money deposited belongs to, and shall be paid quarterly into the general fund of, the local agency represented by the officer making the deposit, unless otherwise directed by law.

(b) Notwithstanding the provisions of subdivision (a), and except as otherwise directed by law, if the governing body of the local agency represented by the officer making the deposit so directs, such interest shall be paid to the fund which contains the principal on which the interest accrued.

53647.5

Notwithstanding any other provision of law, interest earned on any bail money deposited by a court in a bank account pursuant to Section 1463.1 of the Penal Code and Section 53679 of this code shall, be allocated for the support of that court.

53648

Notwithstanding this article, the treasurer may deposit moneys in, and enter into contracts with, a state or national bank, savings association or federal association, federal or state credit union, or federally insured industrial loan company, pursuant to a federal law or a rule of a federal department or agency adopted pursuant to the law if the law or rule conflicts with this article in regulating the payment of interest on deposits of public moneys by any of the following:

- (a) Banks which are Federal Reserve System members or whose deposits are insured by the Federal Deposit Insurance Corporation.
- (b) Savings associations or federal associations which are federal home loan bank members or whose deposits are insured by the Federal Savings and Loan Insurance Corporation.
- (c) State or federal credit unions whose accounts are insured by the National Credit Union Share Insurance Fund or guaranteed by the California Credit Union Share Guaranty Corporation or insured or guaranteed pursuant to Section 14858 of the Financial Code, unless a member of the legislative body of a local agency, or any person with investment decision making authority of the administrative office, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency, also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee, of the state or federal credit union.
- (d) A federally insured industrial loan company.

53648.5

Upon the removal by federal law of the conflicting federal law or rule the agreement between the treasurer or other authorized official and a depository may be terminated by either party.

53649

The treasurer is responsible for the safekeeping of money in his or her custody and shall enter into any contract with a depository relating to any deposit which in his or her judgment is to the public advantage. The depository, and the agent of depository to the extent the agent of depository has been notified of deposits and the amount thereof, are responsible for securing moneys deposited pursuant to such a contract in accordance with Section 53652. One copy of each contract shall be filed with the auditor, controller, secretary, or corresponding officer of the local agency. The contract shall:

- (a) Fix the duration of deposits, if appropriate.
- (b) Fix the interest rate, if any.
- (c) Provide conditions for withdrawal and repayment.
- (d) Provide for placement of pooled securities in a named agent of depository in accordance with Section 53656.
- (e) Grant authority for agent of depository to place securities for safekeeping in accordance with Section 53659.
- (f) Set forth in accordance with Section 53665 the conditions upon which the administrator shall order pooled securities converted into money for the benefit of the local agency, and the procedure therefor.

(g) Provide for compliance in all respects with the provisions of this article and other applicable provisions of law.

(h) Provide, upon notice to the treasurer from the administrator, that a treasurer may withdraw deposits in the event a depository fails to pay the assessments, fines, or penalties assessed by the administrator or may withdraw authorization for the placement of pooled securities in an agent of depository in the event that the agent of depository fails to pay the fines or penalties assessed by the administrator.

53651

Eligible securities are any of the following:

(a) United States Treasury notes, bonds, bills or certificates of indebtedness, or obligations for which the faith and credit of the United States are pledged for the payment of principal and interest, including the guaranteed portions of small business administration loans, so long as the loans are obligations for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Notes or bonds or any obligations of a local public agency (as defined in the United States Housing Act of 1949) or any obligations of a public housing agency (as defined in the United States Housing Act of 1937) for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Bonds of this state or of any local agency or district of the State of California having the power, without limit as to rate or amount, to levy taxes or assessments to pay the principal and interest of the bonds upon all property within its boundaries subject to taxation or assessment by the local agency or district, and in addition, limited obligation bonds pursuant to Article 4 (commencing with Section 50665) of Chapter 3 of Division 1, senior obligation bonds pursuant to Article 5 (commencing with Section 53387) of Chapter 2.7, and revenue bonds and other obligations payable solely out of the revenues from a revenue-producing property owned, controlled or operated by the state, local agency or district or by a department, board, agency or authority thereof.

(d) Bonds of any public housing agency (as defined in the United States Housing Act of 1937, as amended) as are secured by a pledge of annual contributions under an annual contribution contract between the public housing agency and the Public Housing Administration if such contract shall contain the covenant by the Public Housing Administration which is authorized by subsection (b) of Section 22 of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in the contract pursuant to that subsection 22(b) shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on the obligations.

(e) Registered warrants of this state.

(f) Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by the United States Postal Service, federal land

banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended, consolidated obligations of the federal home loan banks established under the Federal Home Loan Bank Act, bonds, debentures and other obligations of the Federal National Mortgage Association or of the Government National Mortgage Association established under the National Housing Act, as amended, bonds of any federal home loan bank established under that act, bonds, debentures and other obligations of the Federal Home Loan Mortgage Corporation established under the Emergency Home Finance Act of 1970, and obligations of the Tennessee Valley Authority.

(g) Notes, tax anticipation warrants or other evidence of indebtedness issued pursuant to Article 7 (commencing with Section 53820), Article 7.5 (commencing with Section 53840) or Article 7.6 (commencing with Section 53850) of this Chapter 4.

(h) State of California notes.

(i) Bonds, notes, certificates of indebtedness, warrants or other obligations issued by: (1) any state of the United States (except this state), or the Commonwealth of Puerto Rico, or any local agency thereof having the power to levy taxes, without limit as to rate or amount, to pay the principal and interest of such obligations, or (2) any state of the United States (except this state), or the Commonwealth of Puerto Rico, or a department, board, agency or authority thereof except bonds which provide for or are issued pursuant to a law which may contemplate a subsequent legislative appropriation as an assurance of the continued operation and solvency of the department, board, agency or authority but which does not constitute a valid and binding obligation for which the full faith and credit of such state or the Commonwealth of Puerto Rico are pledged, which are payable solely out of the revenues from a revenue-producing source owned, controlled or operated thereby; provided the obligations issued by an entity described in (1), above, are rated in one of the three highest grades, and such obligations issued by an entity described in (2), above, are rated in one of the two highest grades by a nationally recognized investment service organization that has been engaged regularly in rating state and municipal issues for a period of not less than five years.

(j) Obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development, Inter-American Development Bank, the Government Development Bank of Puerto Rico, the Asian Development Bank, the International Finance Corporation, or the African Development Bank.

(k) Participation certificates of the Export-Import Bank of the United States.

(l) Bonds and notes of the California Housing Finance Agency issued pursuant to Chapter 7 (commencing with Section 51350) of Part 3 of Division 31 of the Health and Safety Code.

(m) Promissory notes secured by first mortgages and first trust deeds which comply with Section 53651.2.

(n) Any bonds, notes, warrants, or other evidences of indebtedness of a nonprofit corporation issued to finance the construction of a school building or school buildings pursuant to a lease or agreement with a school district entered into in compliance with the provisions of Section 39315 or 81345 of the Education Code, and also any bonds, notes, warrants or other evidences of indebtedness issued to refinance those bonds, notes, warrants, or other evidences of indebtedness as specified in Section 39317 of the Education Code.

(o) Any municipal securities, as defined by Section 3(a)(29) of the Securities Exchange Act of June 6, 1934, (15 u.s.c. Sec. 78, as amended), which are issued by this state or any local agency thereof.

(p) With the consent of the treasurer, letters of credit issued by the Federal Home Loan Bank of San Francisco which comply with Section 53651.6.

53651.2

(a) To be an eligible security under subdivision (m) of Section 53651, a promissory note placed in a securities pool on or after January 1, 1987, shall comply with all of the following provisions:

(1) Each promissory note shall be secured by a first mortgage or first trust deed on improved 1 to 4 unit residential real property located in California, shall be fully amortized over the term of the note, and shall have a term of no more than 30 years. Any first mortgage or first trust deed which secures a promissory note providing for negative amortization shall be removed from the securities pool and replaced with an eligible security under subdivision (m) of Section 53651 if the loan to value ratio exceeds 85 percent of the original appraised value of the security property as a consequence of negative amortization.

(2) Each promissory note shall be eligible for sale to the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation; provided, however, that up to 25 percent of the total dollar amount of any promissory note securities pool established pursuant to Section 53658 may consist of promissory notes with loan amounts which exceed the maximum amounts eligible for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, but which do not exceed: (i) five hundred thousand dollars (\$500,000) in the case of a single family dwelling; (ii) one million dollars (\$1,000,000) in the case of a 2, 3, or 4 unit dwelling.

(b) The following shall not constitute eligible securities under subdivision (m) of Section 53651:

(1) Any promissory note on which any payment is more than 60 days past due.

(2) Any promissory note secured by a mortgage or deed of trust as to which there is a lien prior to the mortgage or deed of trust. For the purposes of this paragraph, no lien specified in Section 766 of the Financial Code shall be considered a prior encumbrance unless any installment or payment thereunder (other than a rental or royalty under a lease) is due and delinquent.

(3) Any promissory note secured by a mortgage or deed of trust as to which a notice of default has been recorded pursuant to Section 2924 of the Civil Code or an action has been commenced pursuant to Section 725a of the Code of Civil Procedure.

(c) The depository may exercise, enforce, or waive any right granted to it by the promissory note, mortgage, or deed of trust.

(d) For purposes of this article, the market value of a promissory note which is an eligible security under subdivision (m) of Section 53651, shall be determined in accordance with the regulations adopted by the Treasurer under paragraph (2) of subdivision (m) of Section 53651, as the regulations and statute were in effect on December 31, 1986. However, if and when regulations on the subject are adopted by the administrator, the market value shall be determined in accordance with those regulations of the administrator.

53651.4

(a) A depository that uses eligible securities of the class described in subdivision (m) of Section 53651 shall, within 90 days after the close of each calendar year or within a longer period as the administrator may specify, file with the administrator a report of an independent certified public accountant regarding compliance with this article and with regulations and orders issued by the administrator under this article with respect to eligible securities of that class. The report shall be based upon the audit, shall contain the information, and shall be in the form the administrator may prescribe. The depository shall provide a copy of the report to the treasurer on request.

(b) If a depository that is a state bank files with the administrator, not less than 90 days before the beginning of the calendar year, a notice that it elects to be examined by the administrator instead of filing a report of an independent certified public accountant under subdivision (a) for that calendar year, the depository shall be exempt from subdivision (a) for that calendar year and shall for that calendar year be subject to examination by the administrator regarding compliance with this article and with regulations and orders under this article with respect to eligible securities of the class described in subdivision (m) of Section 53651. The administrator shall provide a report to a treasurer with deposits in the examined state bank upon request of the treasurer.

(c) A national bank may apply to the administrator to be examined, and the administrator, in his or her discretion, may examine a national bank for the purposes of satisfying the requirements of subdivision (a). The administrator shall provide a report to a treasurer with deposits in the examined national bank upon request of the treasurer.

(d) Whenever the administrator examines a depository pursuant to subdivision (b) or (c), the depository shall pay, within 30 days after receipt of a statement from the administrator, a fee of seventy-five dollars (\$75) per hour for each examiner engaged in the examination.

53651.6

(a) To be an eligible security under subdivision (p) of Section 53651, a letter of credit shall be in such form and shall contain such provisions as the administrator may prescribe, and shall include all of the following terms:

- (1) The administrator shall be the beneficiary of the letter of credit.
- (2) The letter of credit shall be clean and irrevocable and shall provide that the administrator may draw upon it up to the total amount in the event of the failure of the depository savings association or federal association or if the depository savings association or federal association refuses to permit the withdrawal of funds by a treasurer.

53652

To secure active or inactive deposits a depository shall at all times maintain with the agent of depository eligible securities in securities pools, pursuant to Sections 53656 and 53658, in the amounts specified in this section. Uncollected funds shall be excluded from the amount deposited in the depository when determining the security requirements for the deposits.

- (a) Eligible securities, except eligible securities of the classes described in subdivisions (m) and (p) of Section 53651, shall have a market value of at least 10 percent in excess of the total amount of all deposits of a depository secured by the eligible securities.
- (b) Eligible securities of the class described in subdivision (m) of Section 53651 shall have a market value at least 50 percent in excess of the total amount of all deposits of a depository secured by those eligible securities.
- (c) Eligible securities of the class described in subdivision (p) of Section 53651 shall have a market value of at least 5 percent in excess of the total amount of all deposits of a depository secured by those eligible securities. For purposes of this article, the market value of a letter of credit which is an eligible security under subdivision (p) of Section 53651 shall be the amount of credit stated in the letter of credit.

53653

When in his or her discretion local conditions so warrant, the treasurer may waive security for the portion of any deposits as is insured pursuant to federal law, notwithstanding this article. For deposits equivalent to and not less than the maximum amount insured pursuant to federal law for which a treasurer has waived security under this section, a treasurer at his or her discretion may also waive security for the interest accrued on the deposits which, when added to the deposits, would cause the sum of the interest and deposits to exceed the maximum amount insured pursuant to federal law, provided that the interest is computed by the depository on the average daily balance of the deposits, paid monthly and computed on a 360-day basis.

53654

(a) The depository may add securities to the pool or substitute securities of equal value for those in the pool at any time, but shall not interchange classes of security, as defined in Section 53632.5, without prior approval of the treasurer.

(b) Withdrawal of securities from the pool without replacement at equal value may be ordered only by two duly authorized officers or employees of the depository who satisfy the requirements as may be set by the administrator.

(c) The agent of depository is responsible for the safekeeping and disbursement of securities placed in its custody by a depository. It shall release securities only upon presentation by the depository of the most reasonably current statement of the total deposits subject to this article held by the depository, such statement to be verified and countersigned by two duly authorized officers, other than those who ordered the withdrawal of securities. A copy of this statement shall be forwarded to the administrator concurrently by the agent of depository.

53655

A placement of securities by a depository with an agent of depository pursuant to this article shall have the effect of perfecting a security interest in those securities in the local agencies having deposits in that depository notwithstanding provisions of the Uniform Commercial Code to the contrary and notwithstanding that the agent of depository may be the trust department of the depository.

53656

(a) At the time the treasurer enters into a contract with the depository pursuant to Section 53649, he or she shall authorize the agent of depository designated by the depository, but including the trust department of the depository only when acceptable to both the treasurer and the depository, to hold securities of the depository in accordance with this article to secure the deposit of the local agency.

(b) Only those trust companies and trust departments, or the Federal Home Loan Bank of San Francisco, which have been authorized by the administrator pursuant to Section 53657 shall be authorized by treasurers to act as agents of depository.

(c) The securities are subject to order of the depository in accordance with Section 53654 except when the provisions of subdivision (i) of Section 53661 and Section 53665 are in effect.

(d) An agent of depository shall not release any security held to secure a local agency deposit in a depository unless the administrator issues an order authorizing the release where either of the following occurs:

(1) A state or federal regulatory agency has taken possession of the depository.

(2) A conservator, receiver, or other legal custodian has been appointed for the depository.

53657

(a) No person shall act as an agent of depository unless that person is a trust company located in this state, the trust department of a bank located in this state, or the Federal Home Loan Bank of San Francisco, and is authorized by the administrator to act as an agent of depository.

(b)(1) An application for authorization shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the administrator so requires) be verified in such manner, as the administrator may prescribe.

(2) The fee for filing an application for authorization with the administrator shall be five hundred dollars (\$500).

(3) If the administrator finds, with respect to an application for authorization, that the applicant is competent to act as an agent of depository and that it is reasonable to believe the applicant will comply with all applicable provisions of this article and of any regulation or order issued under this article, the administrator shall approve the application. If the administrator finds otherwise, the administrator shall deny the application.

(4) When an application for authorization has been approved, the applicant shall file with the administrator an agreement to comply with all applicable provisions of this article and of any regulation or order issued under this article. The agreement shall be in such form, shall contain such provisions, and shall be signed in such manner as the administrator may prescribe.

(5) When an application for authorization has been approved, the applicant has complied with paragraph (4), and all conditions precedent to authorizing the applicant to act as agent of depository have been fulfilled, the administrator shall authorize the applicant to act as agent of depository.

53658

An agent of a depository may hold and pool securities to secure deposits for one or more depositories pursuant to Section 53656, but shall maintain a separate pool for each said depository. Each local agency shall have an undivided security interest in the pooled securities in the proportion that the amount of its deposits bears to the total amount of deposits secured by the pooled securities.

53659

Whenever an agent of depository accepts securities pursuant to Section 53656 it may, with the authorization of the depository, place such securities for safekeeping with a Federal Reserve Bank or branch thereof or with any bank located in a city designated as a reserve city by the Board of Governors of the Federal Reserve System or with the Federal Home Loan Bank of San Francisco or with a trust company located in this state. Authority for such placement together with the names of the banks or, including the Federal Home Loan Bank of San Francisco, trust companies to be so used, shall be contained in the contract between the treasurer and the depository required in Section 53649.

53660

When deposits of a local agency are secured by pooled securities pursuant to Section 53656, the agent of depository shall make available to the treasurer for review at a mutually agreed upon time and location all of the following information which may be in the form of a copy of the report required in subdivision (e) of Section 53661:

- (a) A certification that there are securities in the pool in the amounts required by Section 53652 to secure deposits.
- (b) A certified report of the individual securities then on deposit in the pool with the location and total market value thereof.
- (c) The total amount of deposits then reported by the depository to be secured by the pool.

53661

(a) The Commissioner of Business Oversight shall act as Administrator of Local Agency Security and shall be responsible for the administration of Sections 53638, 53651, 53651.2, 53651.4, 53651.6, 53652, 53654, 53655, 53656, 53657, 53658, 53659, 53660, 53661, 53663, 53664, 53665, 53666, and 53667.

(b) The administrator shall have the powers necessary or convenient to administer and enforce the sections specified in subdivision (a).

(c)(1) The administrator shall issue regulations consistent with law as the administrator may deem necessary or advisable in executing the powers, duties, and responsibilities assigned by this article. The regulations may include regulations prescribing standards for the valuation, marketability, and liquidity of the eligible securities of the class described in subdivision (m) of Section 53651, regulations prescribing procedures and documentation for adding, withdrawing, substituting, and holding pooled securities, and regulations prescribing the form, content, and execution of any application, report, or other document called for in any of the sections specified in subdivision (a) or in any regulation or order issued under any of those sections.

(2) The administrator, for good cause, may waive any provision of any regulation adopted pursuant to paragraph (1) or any order issued under this article, where the provision is not necessary in the public interest.

(d) The administrator may enter into any contracts or agreements as may be necessary, including joint underwriting agreements, to sell or liquidate eligible securities securing local agency deposits in the event of the failure of the depository or if the depository fails to pay all or part of the deposits of a local agency.

(e) The administrator shall require from every depository a report certified by the agent of depository listing all securities, and the market value thereof, which are securing local agency deposits together with the total deposits then secured by the pool, to determine whether there is compliance with Section 53652. These reports may be required whenever deemed necessary by the administrator, but shall be required at least four times each year at the times designated by the Comptrol-

ler of the Currency for reports from national banking associations. These reports shall be filed in the office of the administrator by the depository within 20 business days of the date the administrator calls for the report.

(f) The administrator may have access to reports of examination made by the Comptroller of the Currency insofar as the reports relate to national banking association trust department activities which are subject to this article.

(g)(1) The administrator shall require the immediate substitution of an eligible security, where the substitution is necessary for compliance with Section 53652, if (i) the administrator determines that a security listed in Section 53651 is not qualified to secure public deposits, or (ii) a treasurer, who has deposits secured by the securities pool, provides written notice to the administrator and the administrator confirms that a security in the pool is not qualified to secure public deposits.

(2) The failure of a depository to substitute securities, where the administrator has required the substitution, shall be reported by the administrator promptly to those treasurers having money on deposit in that depository and, in addition, shall be reported as follows:

(A) When that depository is a national bank, to the Comptroller of the Currency of the United States.

(B) When that depository is a state bank, to the Commissioner of Business Oversight.

(C) When that depository is a federal association, to the Office of the Comptroller of the Currency.

(D) When that depository is a savings association, to the Commissioner of Business Oversight.

(E) When that depository is a federal credit union, to the National Credit Union Administration.

(F) When that depository is a state credit union or a federally insured industrial loan company, to the Commissioner of Business Oversight.

(h) The administrator may require from each treasurer a registration report and at appropriate times a report stating the amount and location of each deposit together with other information deemed necessary by the administrator for effective operation of this article. The facts recited in any report from a treasurer to the administrator are conclusively presumed to be true for the single purpose of the administrator fulfilling responsibilities assigned to him or her by this article and for no other purpose.

(i)(1) If, after notice and opportunity for hearing, the administrator finds that any depository or agent of depository has violated or is violating, or that there is reasonable cause to believe that any depository or agent of depository is about to violate, any of the sections specified in subdivision (a) or any regulation or order issued under any of those sections, the administrator may order the depository or agent of depository to cease and desist from the violation or may by order suspend or revoke the authorization of the agent of depository. The order may

require the depository or agent of depository to take affirmative action to correct any condition resulting from the violation.

(2)(A) If the administrator makes any of the findings set forth in paragraph (1) with respect to any depository or agent of depository and, in addition, finds that the violation or the continuation of the violation is likely to seriously prejudice the interests of treasurers, the administrator may order the depository or agent of depository to cease and desist from the violation or may suspend or revoke the authorization of the agent of depository. The order may require the depository or agent of depository to take affirmative action to correct any condition resulting from the violation.

(B) Within five business days after an order is issued under subparagraph (a), the depository or agent of depository may file with the administrator an application for a hearing on the order. The administrator shall schedule a hearing at least 30 days, but not more than 40 days, after receipt of an application for a hearing or within a shorter or longer period of time agreed to by a depository or an agent of depository. If the administrator fails to schedule the hearing within the specified or agreed to time period, the order shall be deemed rescinded. Within 30 days after the hearing, the administrator shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded. The right of a depository or agent of depository to which an order is issued under subparagraph (a) to petition for judicial review of the order shall not be affected by the failure of the depository or agent of depository to apply to the administrator for a hearing on the order pursuant to this subparagraph.

(3) Whenever the administrator issues a cease and desist order under paragraph (1) or (2), the administrator may in the order restrict the right of the depository to withdraw securities from a security pool; and, in that event, both the depository to which the order is directed and the agent of depository which holds the security pool shall comply with the restriction.

(4) In case the administrator issues an order under paragraph (1) or (2) suspending or revoking the authorization of an agent of depository, the administrator may order the agent of depository at its own expense to transfer all pooled securities held by it to such agent of depository as the administrator may designate in the order. The agent of depository designated in the order shall accept and hold the pooled securities in accordance with this article and regulations and orders issued under this article.

(j) In the discretion of the administrator, whenever it appears to the administrator that any person has violated or is violating, or that there is reasonable cause to believe that any person is about to violate, any of the sections specified in subdivision (a) or any regulation or order issued thereunder, the administrator may bring an action in the name of the people of the State of California in the superior court to enjoin the violation or to enforce compliance with those sections or any regulation or order issued thereunder. Upon a proper showing a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted, and the court may not require the administrator to post a bond.

(k) In addition to other remedies, the administrator shall have the power and authority to impose the following sanctions for noncompliance with the sec-

tions specified in subdivision (a) after a hearing if requested by the party deemed in noncompliance. Any fine assessed pursuant to this subdivision shall be paid within 30 days after receipt of the assessment.

(1) Assess against and collect from a depository a fine not to exceed two hundred fifty dollars (\$250) for each day the depository fails to maintain with the agent of depository securities as required by Section 53652.

(2) Assess against and collect from a depository a fine not to exceed one hundred dollars (\$100) for each day beyond the time period specified in subdivision (b) of Section 53663 the depository negligently or willfully fails to file in the office of the administrator a written report required by that section.

(3) Assess against and collect from a depository a fine not to exceed one hundred dollars (\$100) for each day beyond the time period specified in subdivision (e) that a depository negligently or willfully fails to file in the office of the administrator a written report required by that subdivision.

(4) Assess and collect from an agent of depository a fine not to exceed one hundred dollars (\$100) for each day the agent of depository fails to comply with any of the applicable sections specified in subdivision (a) or any applicable regulation or order issued thereunder.

(l)(1) In the event that a depository or agent of depository fails to pay a fine assessed by the administrator pursuant to subdivision (k) within 30 days of receipt of the assessment, the administrator may assess and collect an additional penalty of 5 percent of the fine for each month or part thereof that the payment is delinquent.

(2) If a depository fails to pay the fines or penalties assessed by the administrator, the administrator may notify local agency treasurers with deposits in the depository.

(3) If an agent of depository fails to pay the fines or penalties assessed by the administrator, the administrator may notify local agency treasurers who have authorized the agent of depository as provided in Sections 53649 and 53656, and may by order revoke the authorization of the agent of depository as provided in subdivision (i).

(m) The amendments to this section enacted by the Legislature during the 1999–2000 Regular Session shall become operative on January 1, 2001.

53663

(a) Each agent of depository shall report in writing to the administrator within two business days after any withdrawal, substitution or addition of pooled securities and shall state the name and market value of the securities withdrawn, substituted or added together with the total deposits then secured by the pool. This information shall be available from the administrator to the treasurer upon request.

(b) Each depository shall report in writing to the administrator weekly, giving the total amount of all deposits held by the depository pursuant to this article.

The report shall be as of close of business on Wednesday of each week and shall be delivered to the office of the administrator, deposited in the United States mail, postage prepaid, or delivered electronically via email, or other electronic means approved by the administrator, addressed to the office of the administrator, within five business days. Where there has occurred no change in the deposits required to be held by the depository pursuant to this article, the report required by this subdivision need only state that fact.

53664

The individual reports specified in Sections 53654, 53660, 53661, and 53663 are not public documents and are not open to inspection by the public.

53665

If a depository fails to pay all or part of the deposits of a local agency secured by pooled securities in accordance with the contract provided for in Section 53649, and on demand of its treasurer or other authorized official and the treasurer files a report with the administrator, or if the depository fails:

(a) In case the pooled securities consist of securities other than securities of the class described in subdivision (p) of Section 53651, the administrator shall order the agent of depository holding the pooled securities to convert into money that portion of the pooled securities necessary to produce an amount equal to the sum of (i) the deposits of the local agency, (ii) any accrued interest due on the deposits, and (iii) the reasonable expenses of the agent of depository in complying with the order of the administrator and to pay the sum of items (i) and (ii) to the treasurer in satisfaction of the deposits. The agent of depository shall be reimbursed out of the proceeds of the conversion for its reasonable expenses in complying with the order of the administrator, as approved by the administrator. Any excess moneys resulting from the conversion shall be retained by the agent of depository as part of the securities pool until the depository substitutes for the excess moneys securities having a market value sufficient to bring the total of pooled securities up to the amount required by Section 53652.

(b) In case the pooled securities consist of a security of the class described in subdivision (p) of Section 53651, the administrator shall draw on the letter of credit an amount equal to the sum of (i) the deposits of the local agency, (ii) any accrued interest on the deposits, and (iii) the reasonable expenses of the administrator in paying the deposits and pay the sum of items (i) and (ii) to the treasurer in satisfaction of the deposits.

53666

The only liability that shall attach to the administrator as the result of the operation of this article is that which would attach as a result of other laws of this state.

53667

(a) Expenses incurred by the administrator in carrying out the duties and responsibilities assigned to the administrator by the sections specified in subdivision (a) of Section 53661, shall be borne by the Local Agency Deposit Security Fund, which is hereby created and continuously appropriated to the administrator for the administration of the sections specified in subdivision (a) of Section 53661. This fund shall consist of fines levied pursuant to Section 53661, fees collected pursuant to the sections specified in subdivision (a) of Section 53661, and assessments levied pursuant to this section.

(b) Each fiscal year the administrator shall levy an assessment on a pro rata basis on those depositories which at any time during the preceding fiscal year held local agency deposits. The total assessment levied on all of those depositories shall be in an amount which, when added to the amount of fines and fees that the administrator estimates will be collected during the fiscal year when the assessment is levied, is sufficient in the judgment of the administrator to meet the expenses of the administrator in administering the sections specified in subdivision (a) of Section 53661 and to provide a reasonable reserve for contingencies. The basis of the apportionment of the assessment among the depositories assessed shall be the proportion that the average amount of local agency deposits held by each of those depositories bears to the average total amount of local agency deposits held by all of those depositories as shown by the reports of depositories to the administrator for the preceding fiscal year, as required in subdivision (e) of Section 53661; provided, however, that the amount of the assessment levied on each of those depositories shall be not less than twenty-five dollars (\$25).

(c) The administrator shall notify each depository by mail of the amount levied against it. The depository shall pay the amount levied within 20 days after such notice into the Local Agency Deposit Security Fund for the administration of the sections specified in subdivision (a) of Section 53661. If payment is not made to the administrator within such time, the administrator shall assess and collect, in addition to the annual assessment, a penalty of 5 percent of the assessment for each month or part thereof that the payment is delinquent. If a depository fails to pay the assessment or penalties assessed by the administrator, the administrator may notify local agency treasurers with deposits in the depository.

53669

The treasurer or other authorized official is not responsible for money while it is deposited pursuant to this article.

53676

The treasurer is not responsible for securities delivered to and receipted for by any bank, savings and loan association, credit union, federally insured industrial loan company, or trust company.

53678

The charges for the handling and safekeeping of any such securities are not a charge against the treasurer but shall be paid by the depository owning the securities.

53679

So far as possible, all money belonging to a local agency under the control of any of its officers or employees other than the treasurer shall, and money deposited as bail coming into the possession of a judge or officer of a superior court may, be deposited as active deposits in the state or national bank, inactive deposits in the state or national bank or state or federal association, federal or state credit union, or federally insured industrial loan company in this state selected by the officer, employee, or judge of the court. For purposes of this section, an officer or employee of a local agency and a judge or officer of a superior court are prohibited from depositing local agency funds or money coming into their possession into a state or federal credit union if an officer or employee of the local agency, or a judge or officer of a superior court, also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee, of the particular state or federal credit union. That money is subject to this article except:

(a) Deposits in an amount less than that insured pursuant to federal law are not subject to this article.

For deposits in excess of the amount insured under any federal law a contract in accordance with Section 53649 is required and the provisions of this article shall apply.

(b) Interest is not required on money deposited in an active deposit by a judge or officer of a superior court.

(c) Interest is not required on money deposited in an active deposit by an officer having control of a revolving fund created pursuant to Chapter 2 (commencing with Section 29300) of Division 3 of Title 3.

(d) Interest is not required on money deposited in an active deposit by an officer having control of a special fund established pursuant to Article 5 (commencing with Section 29400) or Article 6 (commencing with Section 29430) of Chapter 2 of Division 3 of Title 3.

53679.1

Notwithstanding any other provision of law, the accounting practices of each county utilized prior to the effective date of this section relating to interest on trust funds shall be deemed appropriate and to have been made under the direction of the board of supervisors of that county. This section is declaratory of the law in existence prior to the enactment of this section.

53680

A tax collector of a local agency shall immediately deposit with the treasurer all money under his control, unless he deposits the money in a depository pursuant to this article under permission and instructions of the treasurer having authority to make such deposit.

53681

An officer or employee of a local agency who deposits money belonging to, or in the custody of, the local agency in any other manner than that prescribed in this article is subject to forfeiture of his office or employment.

53682

Notwithstanding any other provision in this article except Section 53652, the treasurer may deposit moneys in and enter into contracts with any depository, as defined in subdivision (c) of Section 53630, for services to be rendered by that depository that in the treasurer's judgment are to the public advantage. One copy of each contract entered into under this section shall be filed with the auditor or corresponding officer of the local agency. The contract shall:

- (a) Fix the duration of compensating deposits, if any.
- (b) Fix the interest rate of that compensating deposit, if any.
- (c) Specify the services to be rendered by the depository.
- (d) Indicate whether the depository shall bear the expenses of transportation of the money to and from the depository.
- (e) Fix the consideration payable by the agency for such services.
- (f) Specify who may deposit moneys into the treasurer's active account and how those persons are to make those deposits.

53683

Notwithstanding any other provision in this article, the consideration payable by the agency as specified in subdivision (e) of Section 53682 shall be paid by the treasurer by applying such consideration as costs applied on a pro rata basis against the interest earned by all the agencies for which the treasurer invests.

53684

(a) Unless otherwise provided by law, if the treasurer of any local agency, or other official responsible for the funds of the local agency, determines that the local agency has excess funds which are not required for immediate use, the treasurer or other official may, upon the adoption of a resolution by the legislative or governing body of the local agency authorizing the investment of funds pursuant to this section and with the consent of the county treasurer, deposit the excess funds in the county treasury for the purpose of investment by the county trea-

surer pursuant to Section 53601 or 53635, or Section 20822 of the Revenue and Taxation Code.

(b) The county treasurer shall, at least quarterly, apportion any interest or other increment derived from the investment of funds pursuant to this section in an amount proportionate to the average daily balance of the amounts deposited by the local agency and to the total average daily balance of deposits in the investment pool. In apportioning and distributing that interest or increment, the county treasurer may use the cash method, the accrual method, or any other method in accordance with generally accepted accounting principles. Prior to distributing that interest or increment, the county treasurer may deduct the actual costs incurred by the county in administering this section in proportion to the average daily balance of the amounts deposited by the local agency and to the total average daily balance of deposits in the investment pool.

(c) The county treasurer shall disclose to each local agency that invests funds pursuant to this section the method of accounting used, whether cash, accrual, or other, and shall notify each local agency of any proposed changes in the accounting method at least 30 days prior to the date on which the proposed changes take effect.

(d) The treasurer or other official responsible for the funds of the local agency may withdraw the funds of the local agency pursuant to the procedure specified in Section 27136.

(e) Any moneys deposited in the county treasury for investment pursuant to this section are not subject to impoundment or seizure by any county official or agency while the funds are so deposited.

(f) This section is not operative in any county until the board of supervisors of the county, by majority vote, adopts a resolution making this section operative in the county.

(g) It is the intent of the Legislature in enacting this section to provide an alternative procedure to Section 51301 for local agencies to deposit money in the county treasury for investment purposes. Nothing in this section shall, therefore, be construed as a limitation on the authority of a county and a city to contract for the county treasurer to perform treasury functions for a city pursuant to Section 51301.

53686

(a) Any audit conducted relating to the investment of local agency funds and other funds by the county treasurer in the county fund maintained pursuant to Section 53684 shall be rendered to the depository, the auditor, the controller, the secretary, or the corresponding officer of the local agency, the treasurer or other official responsible for the funds of any local agency that has funds on deposit in the county treasury, and the presiding judge of any superior court that has ordered, pursuant to Section 3412, Section 3413, or Section 3611 of the Probate Code, that assets of an estate be deposited with the county treasurer for deposit or investment.

(b) Any report rendered pursuant to Section 53646 shall be provided to the treasurer or other official responsible for the funds of any local agency that has funds on deposit in the county treasury.

Government Code Section 53820 – 53821.5

53820

As used in this article, “local agency” means county, city, regional park district, school district, community college district, or any other municipal or public corporation or district.

53821.

Subsequent to approval of the final budget and levy of taxes, if funds are needed for the immediate requirements of a local agency in any fiscal year to pay obligations lawfully incurred in the fiscal year and before the receipt of income for the fiscal year sufficient to meet the payments, money may be borrowed by:

- (a) The legislative body of a county on the recommendation of the auditor and treasurer.
- (b) The legislative body of the county having the largest area within the regional park district on the recommendation of the auditor and treasurer.
- (c) A school district, county board of education, or community college district on the request of two-thirds of the members of its governing board, approved by the county auditor and treasurer.
- (d) A regional park district on the request of four-fifths of the members of its legislative body, approved by the auditor and treasurer of the county having the largest area within the district.
- (e) The legislative body of a city on the recommendation of the city treasurer and chief accounting officer.
- (f) The legislative body of any other municipal or public corporation or district on the recommendation of the officers performing the functions of auditor and treasurer.

53821.5

Proceeds of sales or funds set aside for the repayment of any notes issued pursuant to this article shall not be invested for a term that exceeds the term of the notes.

Government Code Section 53840-53841.5

53840

It is hereby declared the intention of the Legislature by the enactment of this article to provide an alternative procedure under which short term loans may be procured by those counties in which the board of supervisors has declared it to be county policy to make advances of current operating requirements to subsidiary political subdivisions required by law to deposit their funds in the county treasury as such advances are authorized by the provisions of Section 25 of Article XIII of the State Constitution. In any such county the board of supervisors, upon recommendation of the county treasurer with the approval of the county auditor, may borrow on July 1st or thereafter such amounts as may be required to meet current obligations payable by the county treasury, pending collection of the revenue provided for the year in progress. Amounts so borrowed shall be evidenced by notes signed by the chairman of the board of supervisors, the county auditor and the county treasurer, and the liability created thereby shall be secured by a lien on all revenue to accrue to the county treasury from any source during the year then in progress.

53841

Any amounts borrowed by a county as provided in the preceding section shall not exceed 85 percent of the total of taxes levied for all purposes on said county's tax roll for the next preceding fiscal year, and at no time during the year for which borrowed shall the unpaid total of the amounts so borrowed as shown by the auditor's accounts at the close of any month be allowed to remain at more than 85 percent of the uncollected balance of taxes for the current year as shown by said accounts.

53841.5

Proceeds of sales or funds set aside for the repayment of any notes issued pursuant to this article shall not be invested for a term that exceeds the term of the notes.

Government Code Section 53850-53851.5

53850

(a) As used in this article, "local agency" means a county, city and county, city, school district of any type, community college district, county board of education, or any other municipal or public corporation or district.

(b) For purposes of this article only, "local agency" also includes a charter school. This subdivision does not make a charter school a local agency for any purpose other than for this article.

53851

The powers conferred by this article are in addition to and an alternative to any power conferred by any other law for borrowing by a local agency and any amount borrowed hereunder shall not be considered in any limitation on the amount which may be borrowed by any such local agency under any other law.

53852

On or after the first day of any fiscal year a local agency may borrow money pursuant to this article, the indebtedness to be represented by a note or notes issued to the lender pursuant to this article. The money borrowed may be used and expended by the local agency for any purpose for which the local agency is authorized to use and expend moneys, including but not limited to current expenses, capital expenditures, investment and reinvestment, and the discharge of any obligation or indebtedness of the local agency.

53852.5

Proceeds of sales or funds set aside for the repayment of any notes issued pursuant to this article shall not be invested for a term that exceeds the term of the notes.

Government Code Section 53859-53859.02

53859

As used in this article: (a) “local agency” means county, city and county, city, school district, community college district, or any other municipal or public corporation or district.

(b) “Grant anticipation note” means a note issued upon the security of specified accounts receivable from state or federal governments, including, without limitation, grants, loans, or a combination of both, for which funds have been appropriated and committed to a local agency.

(c) “Loan” includes, but is not limited to, a borrowing by a local agency represented or to be represented by bonds of a local agency.

53859.01

The powers conferred by this article are in addition to an alternative to any powers conferred by any other law for borrowing by a local agency and any amount borrowed hereunder shall not be considered in any limitation on the amount which may be borrowed by any such local agency under any other law.

53859.02

(a) A local agency may borrow money pursuant to this article, the indebtedness to be represented by a grant anticipation note or notes issued to the lender pursu-

ant to this article. The money borrowed may be used and expended by the local agency solely for the purpose for which the grant or loan is to be received.

(b) Proceeds of sales or funds set aside for the repayment of any notes issued pursuant to this article shall not be invested for a term that exceeds the term of the notes.

Government Code Section 57600-57607

57600

For purposes of this division:

(a) “Local financial institution” means a certified community development financial institution, a credit union, as defined in Section 165 of the Financial Code, or a small bank or an intermediate small bank, as defined in Section 25.12 of Title 12 of the Code of Federal Regulations.

(b) (1) “Public bank” means a corporation, organized under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) or the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) for the purpose of engaging in the commercial banking business or industrial banking business, that is wholly owned by a local agency, local agencies, or a joint powers authority formed pursuant to the Joint Exercise of Powers Act (Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1) that is composed only of local agencies.

(2) A local agency located within a county with a population of less than 250,000 may organize a public bank only if it does so as part of a joint powers authority formed for those purposes.

(3) For purposes of paragraph (2), population shall be based on the most recent estimate of population data determined by the Demographic Research Unit of the Department of Finance.

(c) “Public bank license” means a certificate of authorization to transact business as a bank as described in Section 1042 of the Financial Code.

57601

(a) If a public bank is organized as a nonprofit mutual benefit corporation, the articles of incorporation shall include the following purpose statement: “This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law as a public bank. The purpose of the corporation is to engage in the commercial banking business or industrial banking business and any other lawful activities which are not prohibited to a public bank by applicable laws or regulations.”

(b) If a public bank is organized as a nonprofit public benefit corporation, the articles of incorporation shall include the following purpose statement: “This corporation is a nonprofit public benefit corporation and is not organized for

the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for the public purpose of engaging in the commercial banking business or industrial banking business as a public bank.”

(c) Notwithstanding Sections 5410 and 7411 of the Corporations Code, a public bank may make distributions to its members.

(d) All provisions of law applicable to nonprofit corporations generally, including, but not limited to, the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code) shall apply to public banks. Whenever a provision of this division applicable to public banks is inconsistent with a provision of law applicable to nonprofit mutual benefit corporations or nonprofit public benefit corporations generally, the provision of this division shall apply, and the inconsistent provision of law applicable to nonprofit mutual benefit corporations or nonprofit public benefit corporations generally shall not apply to a public bank.

57602

(a) A public bank shall obtain and maintain deposit insurance provided by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.).

(b) In seeking and retaining insurance, a public bank may do all things and assume and discharge all obligations required of it that are not in conflict with state law.

57603

(a) Before engaging in business, a public bank shall obtain a certificate of authorization to transact business as a bank pursuant to Division 1.1 of the Financial Code (commencing with Section 1000).

(b) A local agency shall comply with the requirements of Section 53638 with respect to its deposits in a public bank unless, with the prior approval of the Commissioner of Business Oversight, the public bank and the local agency depositor agree otherwise.

(c) Notwithstanding Section 23010, a county may lend any of its available funds to any public bank.

(d) Notwithstanding Section 53601, any local agency that does not pool money in deposits or investments with other local agencies that have separate governing bodies may invest in debt securities or other obligations of a public bank.

(e) Notwithstanding Section 53635, any local agency that pools money in deposits or investments with other local agencies, including local agencies that have the same governing body, may invest in debt securities or other obligations of a public bank.

(f) Notwithstanding Section 53635.2, a public bank shall be eligible to receive local agency money.

(a) As used in this section:

(1) “Conducted in partnership with” means pursuant to a written agreement with a local financial institution to provide financial products and services to the public located within the jurisdiction of the public bank.

(2) “Infrastructure lending” means granting a loan or extending credit to a local agency for the purpose of building or improving public infrastructure, including housing projects, as defined in Section 34212 of the Health and Safety Code, and affordable housing, as defined in subdivision (a) of Section 62250.

(3) “Local agency banking” means providing any of the following services to a local agency:

(A) Accepting a deposit of any kind.

(B) Granting a loan or extension of credit of any kind.

(4) “Participation lending” means purchasing or selling an interest in a loan or loans originated by or sold to a local financial institution, or originating, leading, or directing a loan transaction involving a local financial institution pursuant to a written agreement with the local financial institution.

(5) “Person” means a person as defined in Section 127 of the Financial Code, except that a person does not mean a local agency as defined in Section 50001 of the Government Code, but includes any individual employed by a local agency.

(6) “Retail activities” means providing any kind of financial product or service to a person that is typically offered or provided by a local financial institution, including, but not limited to, all of the following:

(A) Accepting a deposit of any kind from a person, including the issuance of shares by a credit union.

(B) Granting a loan or extension of credit, of any kind, to a person.

(7) “Wholesale lending” means granting a loan or extension of credit to a local financial institution.

(b) Except as provided in paragraph (2) of subdivision (c), a public bank shall conduct retail activities in partnership with local financial institutions and shall not compete with local financial institutions.

(c) A public bank may do both of the following:

(1) Engage in all of the following banking activities:

(A) Local agency banking.

(B) Infrastructure lending.

(C) Wholesale lending.

(D) Participation lending.

(2) Engage in retail activities without partnering with a local financial institution, if those retail activities are not offered or provided by local financial institutions in the jurisdiction of the local agency or agencies that own the public bank.

57605

For the purposes of Section 1280 of the Financial Code, any person or entity, including a local agency, that owns, controls, or holds an ownership interest in a public bank is not a bank holding company by reason of that ownership interest.

57606

(a) Before submitting an application to organize and establish a public bank pursuant to Section 1020 of the Financial Code, a local agency shall conduct a study to assess the viability of the proposed public bank. The study shall include, but is not limited to, all of the following elements:

(1) A discussion of the purposes of the bank including, but not limited to, achieving cost savings, strengthening local economies, supporting community economic development, and addressing infrastructure and housing needs for localities.

(2) A fiscal analysis of costs associated with starting the proposed public bank.

(3) An estimate of the initial amount of capital to be provided by the local agency to the proposed public bank.

(4) Financial projections, including a pro forma balance sheet and income statement, of the proposed public bank for at least the first five years of operation. The financial projections shall include an estimate of the time period for when expected revenues meet or exceed expected costs and an estimate of the total operating subsidy that the local agency may be required to provide until the proposed public bank generates sufficient revenue to cover its costs. In addition to projections that assume favorable economic conditions, the analysis shall also include a downside scenario that considers the effect of an economic recession on the financial results of the proposed public bank. The projections may include the downside scenario of continuing to do business with the local government's current banker or bankers.

(5) A legal analysis of whether the proposed structure and operations of the public bank would likely comply with Section 6 of Article XVI of the California Constitution, but nothing herein shall compel the waiver of any attorney-client privilege attaching to that legal analysis.

(6) An analysis of how the proposed governance structure of the public bank would protect the bank from unlawful insider transactions and apparent conflicts of interest.

(b) The study may include any of the following elements:

- (1) A fiscal analysis of benefits associated with starting the proposed public bank, including, but not limited to, cost savings, jobs created, jobs retained, economic activity generated, and private capital leveraged.
 - (2) A qualitative assessment of social or environmental benefits of the proposed public bank.
 - (3) An estimate of the fees paid to the local agency's current banker or bankers.
 - (4) A fiscal analysis of the costs, including social and environmental, of continuing to do business with the local agency's current banker or bankers.
- (c) (1) The study required by subdivision (a) shall be presented to and approved by the governing body of the local agency, and a motion to move forward with an application for a public banking charter shall be approved by a majority vote of the governing body at a public meeting prior to the local agency submitting an application pursuant to Section 1020 of the Financial Code. In addition, the local agency shall include a copy of the study required by subdivision (a) in the application submitted to the Commissioner of Business Oversight.
- (2) Before the local agency submits an application pursuant to Section 1020 of the Financial Code, the motion to move forward with an application for a public banking charter shall be subject to voter approval at the next regularly scheduled election held at least 180 days following the vote of the governing body.
- (3) The voter approval requirement described in paragraph (2) shall apply to a local agency entering into a joint powers authority formed pursuant to the Joint Exercise of Powers Act (Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1) after the study required in subdivision (a) has been completed and before submitting an application to organize and establish a public bank pursuant to Section 1020 of the Financial Code.
- (4) As used in paragraphs (2) and (3), "local agency" does not include a charter city.
- (d) The local agency shall make available to the public the financial models and key assumptions used to estimate the elements described in paragraphs (2) through (4) of subdivision (a) before presenting the study to the governing body of the local agency as required by subdivision (c).

57607

- (a) The Commissioner of Business Oversight shall not issue more than two public bank licenses in a calendar year.
- (b) The Commissioner of Business Oversight shall not issue a public bank license if issuing that public bank license would cause there to be more than 10 public banks authorized to transact business pursuant to Division 1.1 (commencing with Section 1000) of the Financial Code.
- (c) The Commissioner of Business Oversight shall conduct a study of public banking in California within two years after the date upon which the commissioner issues the 10th public bank license.

(d) The Commissioner of Business Oversight shall not issue a public bank license after the expiration of a period of seven years from the date upon which the commissioner first promulgates regulations for the purpose of carrying out the commissioner's duties under this division.

Glossary

A

ACTIVE MANAGEMENT STRATEGY

Investment strategy based on a manager or a team of managers actively managing a fund's portfolio with the goal of outperforming benchmarks through analytical research, forecasts, and their own judgment and experience.

ACCRETION

The accumulation of value that occurs during the duration or time between a bond's issuance and maturity.

ACCRUED INTEREST

Coupon interest accumulated on a bond or note since the last interest payment or, for a new issue, from the dated date to the date of delivery.

AMORTIZATION OF COSTS

Reconciliation of the purchase price of a security and par value resulting in net interest.

ARBITRAGE

Transactions by which securities are bought and sold in different markets at the same time for the sake of the profit arising from a yield difference in the two markets. The 1986 Tax Reform Act made this practice by municipalities illegal solely as a borrowing tactic, except under certain safe-harbor conditions.

ASSET ALLOCATION

The division of an investment portfolio among different asset categories, such as stocks, bonds, and cash.

ASSET-BACKED SECURITIES

Securities that are supported by pools of assets, such as installment loans or leases, or by pools of revolving lines of credits. Asset-backed securities are structured as trusts in order to perfect a security interest in the underlying assets.

AVERAGE

An arithmetic mean of selected stocks intended to represent the behavior of the market or some component of it.

B

BANK DEPOSITS

Deposits in banks or other depository institutions that may be in the form of demand accounts (checking) or investments in accounts that have a fixed term and negotiated rate of interest.

BANK NOTES

A senior, unsecured, direct obligation of a bank or U. S. branch of a foreign bank.

BANKERS' ACCEPTANCE

A draft or bill or exchange accepted by a bank or trust company. The accepting institution, as well as the issuer, guarantees payment of the bill.

BASIS POINTS

Refers to the yield on bonds. Each percentage point of yield in bonds equals 100 basis points (1/100% or 0.01%). If a bond yield changes from 7.25% to 7.39%, that is a rate of 14 basis points.

BENCHMARK

A passive index used to compare the performance, relative to risk and return, of an investor's portfolio.

BOND PROCEEDS

The money paid to the issuer by the purchaser or underwriter of a new issue of municipal securities. These moneys are used to finance the project or purpose for which the securities were issued and to pay certain costs of issuance as may be provided in the bond contract.

BONDS

A debt obligation of a firm or public entity. A bond represents the agreement to repay the debt in principal and, typically, in interest on the principal.

BOOK RETURN

Book return includes interest, amortization/accretion of premiums/discounts, realized gains and losses, over a given period of time.

BOOK VALUE

The value at which an asset is carried on a balance sheet.

BROKER

A person or firm that acts as an intermediary by purchasing and selling securities for others rather than for its own account.

BUY AND HOLD STRATEGY

A strategy based on holding all securities until maturity, regardless of fluctuations in the market.

C

CALL OPTION

The terms of the bond contract giving the issuer the right to redeem or call an outstanding issue of bonds prior to its stated date of maturity.

CALL RISK

The risk to a bondholder that the bond issuer will exercise a callable bond feature and redeem the issue prior to maturity.

CALLABLE SECURITIES

An investment security that contains an option allowing the issuer to retire the security prior to its final maturity date.

CASH FLOW

A comparison of cash receipts (revenues) to required payments (debt service, operating expenses, etc.).

CERTIFICATE OF DEPOSIT

A short-term, secured deposit in a financial institution that usually returns principal and interest to the lender at the end of the loan period. Certificates of Deposit (CDs) differ in terms of collateralization and marketability. Those appropriate to public agency investing include:

Negotiable Certificates of Deposit

Generally, short-term debt instrument that usually pays interest and is issued by a bank, savings or federal association, state or federal credit union, or state-licensed branch of a foreign bank. The majority of negotiable CDs mature within six months while the average maturity is two weeks. Negotiable CDs are traded in a secondary market and are payable upon order to the bearer or initial depositor (investor). Negotiable CDs are insured by FDIC up to \$250,000, but they are not collateralized beyond that amount.

Non-Negotiable Certificates of Deposit

CDs that carry a penalty if redeemed prior to maturity. A secondary market does exist for non-negotiable CDs, but redemption includes a transaction cost that reduces returns to the investor. Non-negotiable CDs issued by banks and savings and loans are insured by the Federal Deposit Insurance Corporation up to the amount of \$250,000, including principal and interest. Amounts deposited above this amount may be secured with other forms of collateral through an agreement between the investor and the issuer. Collateral may include other securities including Treasuries or agency securities such as those issued by the Federal National Mortgage Association.

CDARS (CERTIFICATE OF DEPOSIT ACCOUNT REGISTRY SYSTEM)

A private CD placement service that allows local agencies to purchase more than \$250,000 in CDs from a single financial institution (must be a participating institution of CDARS) while still maintaining FDIC insur-

ance coverage. CDARS is currently the only entity providing this service. CDARS facilitates the trading of deposits between the California institution and other participating institutions in amounts that are less than \$250,000 each, so that FDIC coverage is maintained.

CD PLACEMENT SERVICE

A service that allows local agencies to purchase more than \$250,000 in CDs from a single financial institution while still maintaining FDIC insurance coverage. See “CDARS”.

COLLATERALIZATION OF DEPOSITS

Process by which a bank or financial institution pledges securities, or other deposits for the purpose of securing the repayment of deposited funds.

COMMERCIAL PAPER

An unsecured short-term promissory note issued by corporations or municipalities, with maturities ranging from 2 to 270 days.

CONVEXITY

A measure of the price sensitivity of a fixed income security to changes in interest rates. Convexity is influenced by such factors as the coupon rate, maturity, and any call options that may or may not exist. Prices rise at increasing rates as yields fall and prices decline at decreasing rates as yields rise.

CORPORATE NOTES AND BONDS

Debt instruments, typically unsecured, issued by corporations, with original maturities in most cases greater than one year and less than ten years.

COUNTY POOLED INVESTMENT FUNDS

The aggregate of all funds from public agencies placed in the custody of the county treasurer or chief finance officer for investment and reinvestment.

COUPON

The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value; a certificate attached to a bond evidencing interest due on a payment date.

CREDIT RATING

Various alphabetical and numerical designations used by credit rating or nationally recognized statistical rating organizations (NRSROs), institutional investors, Wall Street underwriters, and commercial rating companies to give relative indications of bond and note creditworthiness.

Long-term Ratings

The three most commonly used NRSROs are Standard & Poor's, Fitch Ratings, and Moody's. Standard & Poor's and Fitch Ratings use the same system, starting with their highest rating, of AAA, AA, A, BBB, BB, B, CCC, CC, C, and D for default. Moody's Investors Service uses Aaa, Aa, A, Baa, Ba, B, Caa, and Ca. Each of the services use pluses (+), minuses (-), or numerical modifiers to indicate steps within each category. The S&P ratings from AA to CCC may be modified by the addition of a plus (+) or minus (-) sign to show relative standing within the major rating categories. Moody's appends numerical modifiers 1, 2, and 3 to each generic rating classification from Aa through Caa. The modifier 1 indicates that the obligation ranks in the higher end of its generic rating

category; the modifier 2 indicates a mid-range ranking; and the modifier 3 indicates a ranking in the lower end of that generic rating category. The top four letter categories are considered investment grade ratings.

Short-term Ratings

Standard & Poor's short-term ratings system is A-1+, A-3, B, C, and / for default. Fitch Ratings use F1+, F3, B, C, and / for default. Finally, Moody's uses P1 and P3, anything below P3 is considered not prime.

CREDIT RISK

The chance that an issuer will be unable to make scheduled payments of interest and principal on an outstanding obligation. Another concern for investors is that the market's perception of an issuer/borrower's credit will cause the market value of a security to fall, even if default is not expected.

CUSIP NUMBER

The Committee on Uniform Security Information Procedures (CUSIP) Number refers to a security's identification number assigned to each publicly traded security by the CUSIP Service Bureau operated by Standard & Poor's for the American Bankers Association. The CUSIP Number is a nine-character identifier unique to the issuer, the specific issue and the maturity, if applicable (the first six characters identifying the issuer, the next two identifying the security and the last digit providing a check digit to validate the accuracy of the preceding CUSIP number).

CUSTODIAN

A bank or other financial institution that keeps custody of stock certificates and other assets.

D

DEALER

Someone who acts as a principal in all transactions, including underwriting, buying, and selling securities, including from their own account.

DEFAULT RISK

The risk that issuers/borrowers will be unable to make the required payments on their debt obligations.

DEFEASED BOND ISSUES

Issues that have sufficient money to retire outstanding debt when due so that the agency is released from the contracts and covenants in the bond document.

DELIVERY VS. PAYMENT (DVP)

The payment of cash for securities as they are delivered and accepted for settlement.

DERIVATIVE

Securities that are based on, or derived from, some underlying asset, reference date, or index.

DISCOUNT

Discount means the difference between the par value of a security and the cost of the security, when the cost is below par. Investors purchase securities at a discount when return to the investor (yield) is higher than the stated coupon (interest rate) on the investment.

DISCOUNT RATE

The interest rate used in discounted cash flow (DCF) analysis to determine the present value of future cash flows. The discount rate in DCF analysis takes into account not just the time

value of money, but also the risk or uncertainty of future cash flows; the greater the uncertainty of future cash flows, the higher the discount rate.

DIVERSIFICATION

The allocation of different types of assets in a portfolio to mitigate risks and improve overall portfolio performance.

DURATION

A measure of the timing of the cash flows to be received from a security that provides the foundation for a measure of the interest rate sensitivity of a bond. Duration is a volatility measure and represents the approximate percentage change in price divided by the percentage change in interest rates. A high duration measure indicates that for a given level of movement in interest rates, prices of securities will vary considerably.

E

EFFECTIVE DURATION

Duration measures the weighted average of the present value of the cash flows of a fixed-income investment. Effective duration measures the price sensitivity of fixed-income investments, especially for those with embedded option features such as call options. As yields rise, the effective duration of a callable investment rises to reflect the fact that it has become less likely to be called. The more rates rise, the longer the effective duration will become, approaching the duration to maturity. The converse is true in a declining interest rate environment (that is, the more rates fall, the shorter the effective duration will become, approaching the duration to call). For securities without an embedded option, the duration to call, maturity, and effective duration

are all the same. The calculation for effective duration is complicated and involves averaging the duration under a simulation of many possible interest rate scenarios in the future.

EVENT RISK

The risk associated with a changing portfolio value due to a market event causing swings in market prices and/or spreads.

EXTENDABLE NOTES

Securities with maturity dates that can be extended by mutual agreement between the issuer and investor. When investing in these types of securities, the maturity date plus the stated extendable option must not exceed the time frames that are allowed in California Government Code or the investment policy for the investment type.

F

FIDUCIARY

An individual who holds something in trust for another and bears liability for its safekeeping.

FIRST TIER SECURITIES

Securities that have received short-term debt ratings in the highest category from the requisite nationally recognized statistical-rating organizations (NRSROs), or are comparable unrated securities, or are issued by money market funds, or government securities. [See SEC Rules: Paragraph (A)(12) of rule 2A-7.]

FLOATING RATE SECURITY

A security that has a variable or “floating” interest rate.

G

GOVERNMENT ACCOUNTING STANDARDS BOARD (GASB)

A standard-setting body, associated with the Financial Accounting Foundation, which prescribes standard accounting practices for governmental units.

GOVERNMENT SPONSORED ENTERPRISES (GSE)

Privately held corporations with public purposes created by the U.S. Congress to reduce the cost of capital for certain borrowing sectors of the economy. Securities issued by GSEs carry the implicit backing of the U.S. Government, but they are not direct obligations of the U.S. Government. For this reason, these securities will offer a yield premium over Treasuries.

GUARANTEED INVESTMENT CONTRACT (GIC)

An agreement acknowledging receipt of funds for deposit, specifying terms for withdrawal, and guaranteeing a rate of interest to be paid.

I

IRMA

An independent registered municipal advisor (IRMA) is registered as a municipal advisor with the SEC and MSRB and has a fiduciary duty to the issuer(s) that he/she advises on the issuance of municipal securities and investment of the proceeds of issued debt.

IRMA EXEMPTION

Pursuant to the Municipal Advisor Rule (MA Rule), underwriters may provide advice to municipal issuers only where certain exceptions or

exemptions apply. The Independent Registered Municipal Advisor Exemption (IRMA Exemption) applies where: (1) the issuer has retained an IRMA that is not recently associated (within the last two years of seeking to use the exemption) with the underwriter, (2) the underwriter receives a written notice from the issuer that they are represented by the IRMA and will rely on their advice, and the underwriter can reasonably rely on that notice, and (3) the underwriter provides a written notice to the issuer and IRMA stating that the underwriter is not a municipal advisor and has no fiduciary duty to the issuer, and the issuer must have adequate time to review that notice.

INDEX

An index is an indicator that is published on a periodic basis that shows the estimated price and/or yield levels for various groups of securities.

INTEREST

The amount a borrower pays to a lender for the use of his or her money.

INTEREST RATE RISK

Interest rate risk is the risk that an investment's value will change due to a change in the absolute level of interest rates, spread between two rates, shape of the yield curve, or any other interest rate relationship.

INVESTMENT AGREEMENTS

Investment agreements are contracts with respect to funds deposited by an investor. Investment agreements are often separated into those offered by banks and those offered by insurance companies. In the former case, they are sometimes referred to as “bank investment contracts.”

INVESTMENT OVERSIGHT COMMITTEE

A committee of three to eleven members formed under Section 27131 to monitor and review a county's investment policy by causing an annual audit and discussing its finding at an open meeting. Although cities and other local agencies are not required to compose an investment oversight committee, the State Legislature has declared that all local agencies “should participate in reviewing the policies that guide the investment of those funds.”

INSTITUTIONAL ACCOUNT

As defined by the Financial Industry Regulatory Authority (FINRA), an institutional account includes one of the following: (1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million.

L

LIBOR

Acronym for “London Interbank Offered Rate,” which represented the average rate at which a leading bank can obtain unsecured funding in the London interbank market. LIBOR served as a benchmark for various interest rates. Obligations of parties to such transactions are typically expressed as a spread to LIBOR. In response to concerns that the benchmark was being manipulated, the publication for one-week and

two-month LIBOR ceased at the end of 2021 and the remaining tenors of LIBOR ceased after June 30, 2023.

LIQUIDITY

The measure of the ability to convert an instrument to cash on a given date at full face or par value.

LIQUIDITY RISK

The risk that a security, sold prior to maturity, will be sold at a loss of value. For a local agency, the liquidity risk of an individual investment may not be as critical as how the overall liquidity of the portfolio allows the agency to meet its cash needs.

LOCAL AGENCY INVESTMENT FUND

A voluntary investment fund open to government entities and certain non-profit organizations in California that is managed by the State Treasurer's Office.

LOCAL GOVERNMENT INVESTMENT POOL (LGIP)

Investment pools that range from the State Treasurer's Office Local Agency Investment Fund (LAIF) to county pools, to Joint Powers Authorities (JPAs). These funds are not subject to the same SEC rules applicable to money market mutual funds.

M

MARKET RISK

The chance that the value of a security will decline as interest rates rise. In general, as interest rates fall, prices of fixed income securities rise. Similarly, as interest rates rise, prices fall. Market risk also is referred to as systematic risk or risk that affects all securities within an asset class similarly.

MARKET VALUE

The price at which a security is trading and presumably could be purchased or sold at a particular point in time.

MATURITY

The date on which the principal or stated value of an investment becomes due and payable.

MEDIUM-TERM NOTE

Corporate or depository institution debt securities meeting certain minimum quality standards (as specified in the California Government Code) with a remaining maturity of five years or less.

MONEY MARKET MUTUAL FUNDS

MMF's are mutual funds that invest exclusively in short-term money market instruments. MMF's seek the preservation of capital as a primary goal while maintaining a high degree of liquidity and providing income representative of the market for short-term investments.

MORTGAGE BACKED SECURITIES

Mortgage-backed securities (MBS) are created when a mortgagee or a purchaser of residential real estate mortgages creates a pool of mortgages and markets undivided interests or participations in the pool. MBS owners receive a prorata share of the interest and principal cash flows (net of fees) that are "passed through" from the pool of mortgages. MBS are complex securities whose cash flow is determined by the characteristics of the mortgages that are pooled together. Investors in MBS face prepayment risk associated with the option of the underlying mortgagors to pre-pay or payoff their mortgage. Most MBS are

issued and/or guaranteed by federal agencies and instrumentalities (e.g., Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA), and Federal Home Loan Mortgage Corporation (FHLMC)).

MORTGAGE PASS-THROUGH OBLIGATIONS

Securities that are created when residential mortgages (or other mortgages) are pooled together and undivided interests or participations in the stream of revenues associated with the mortgages are sold.

MUNICIPAL ADVISOR RULE (MA RULE)

A regulation of non-dealer "municipal advisors" such as financial advisors, swap advisors, GIC brokers, etc. In addition, the rule pertains to banks and broker dealers acting as municipal advisors. Municipal advisors have a fiduciary responsibility to the government agency receiving their services and they must register with the Securities Exchange Commission (SEC). Municipal finance professionals that do not have a fiduciary duty to issuers cannot provide advice to governments unless certain exemptions are met. The SEC has published a list of frequently asked questions: www.sec.gov/info/municipal/mun-advisors-faqs.pdf.

MUNICIPAL NOTES, BONDS, AND OTHER OBLIGATIONS

Obligations issued by state and local governments to finance capital and operating expenses.

MUTUAL FUNDS

An investment company that pools money and can invest in a variety of securities, including fixed-income securities and money market instruments.

N

NET ASSET VALUE

Net asset value (NAV) is a term used in the mutual fund industry to determine the average price per share of a pool or mutual fund. How this measure varies over time provides information on whether the pool is stable or variable. NAV is the market value of all securities in a mutual fund, less the value of the fund's liabilities, divided by the number of shares in the fund outstanding. Shares of mutual funds are purchased at the fund's offered NAV.

NET PRESENT VALUE

An amount that equates future cash flows with their value in present terms.

NEW ISSUE

Securities sold during the initial distribution of an issue in a primary offering by the underwriter or underwriting syndicate.

NOTE

A written promise to pay a specified amount to a certain entity on demand or on a specified date. Usually bearing a short-term maturity of a year or less (though longer maturities are issued—see "Medium-Term Note").

O

OPTIONS

An option is a contract that gives the buyer the right to buy or sell an obligation at a specified price for a specified time. Exchange Traded Options are standardized option contracts that are actively traded on the Chicago Board of Exchange on a daily basis whereas Over-the-Counter Options are traded directly between the buyer and seller at agreed upon prices and conditions (the former type of option is therefore more liquid than the latter).

P

PAR AMOUNT OR PAR VALUE

The principal amount of a note or bond which must be paid at maturity. Par, also referred to as the “face amount” of a security, is the principal value stated on the face of the security. A par bond is one sold at a price of 100% of its principal amount.

PLACEMENT SERVICE CERTIFICATES OF DEPOSIT

Certificates of deposit placed with a private sector entity that assists in the placement of certificates of deposit with eligible financial institutions located in the United States.

PLACEMENT SERVICE DEPOSIT

Deposits at depository institutions placed by a private sector placement service entity.

PORTFOLIO

Combined holding of more than one stock, bond, commodity, real estate investment, cash equivalent, or other asset. The purpose of a portfolio is to reduce risk by diversification.

PREMIUM

Premium means the difference between the par value of a security and the cost of the security, when the cost is above par. Investors pay a premium to purchase a security when the return to the investor (yield) is lower than the stated coupon (interest rate) on the investment.

PRICE

Price is the amount of monetary consideration required by a willing seller and a willing buyer to sell an investment on a particular date.

PRINCIPAL

The face value or par value of a debt instrument, or the amount of capital invested in a given security.

PROSPECTUS

A disclosure document that must be provided to any prospective purchaser of a new securities offering registered with the SEC that typically includes information on the issuer, the issuer’s business, the proposed use of proceeds, the experience of the issuer’s management, and certain certified financial statements (also known as an “official statement”).

PRUDENT INVESTOR STANDARD

A standard of conduct where a person acts with care, skill, prudence, and diligence when investing, re-investing, purchasing, acquiring, exchanging, selling, and managing funds. The test of whether the standard is being met is if a prudent person acting in such a situation would engage in similar conduct to ensure that investments safeguard principal and maintain liquidity.

PUBLIC BANK

A corporation, organized as either a nonprofit mutual benefit corporation or a nonprofit public benefit corporation for the purpose of engaging in the commercial banking business or industrial banking business, that is wholly owned by a local agency, as specified, local agencies, or a joint powers authority.

Q

QUALIFIED INSTITUTIONAL BUYER

Federal regulations define qualified institutional buyer (QIB) as any of the following entities, acting for its own account or the accounts of other QIBs, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the entity: insurance company, investment company, small business investment company, a Rural Business Investment Company, a plan (established and maintained by a public agency) for the benefit of its employees, employee benefit plan, trust fund (bank or trust company), business development company, 501(c)(3), investment adviser, and dealer, an institution that qualifies as an accredited investor. 17 CFR § 230.144A and 230.145

R

REINVESTMENT RISK

The risk that interest rates may be lower than the yield on a fixed income security when the investor seeks to reinvest interest income or repaid principal from the security.

REPURCHASE AGREEMENTS

An agreement of one party (for example, a financial institution) to sell securities to a second party (such as a local agency) and simultaneous agreement by the first party to repurchase the securities at a specified price from the second party on demand or at a specified date.

REVERSE REPURCHASE AGREEMENTS

An agreement of one party (for example, a financial institution) to purchase securities at a specified price from a second party (such as a public agency) and a simultaneous agreement by the first party to resell the securities at a specified price to the second party on demand or at a specified date.

RISK

The uncertainty of maintaining the principal or interest associated with an investment due to a variety of factors.

RULE G-37 OF THE MUNICIPAL SECURITIES RULEMAKING BOARD

Federal regulations to sever any connection between the making of political contributions and the awarding of municipal securities business.

S

SAFEKEEPING SERVICE

Offers storage and protection of assets provided by an institution serving as an agent.

SAFETY

In the context of investing public funds, safety relates to preserving the principal of an investment in an investment portfolio; local agencies address the concerns of safety by controlling exposure to risks.

SOFR

Acronym for “Secured Overnight Financing Rate,” which represents a broad measure of the cost of borrowing cash overnight collateralized by Treasury securities.

SECURITIES AND EXCHANGE COMMISSION (SEC)

The federal agency responsible for supervising and regulating the securities industry.

SECURITIES LENDING AGREEMENT

An agreement of one party (for example, a local agency) to borrow securities at a specified price from a second party (for example, another local agency) with a simultaneous agreement by the first party to return the security at a specified price to the second party on demand or at a specified date. These agreements generally are collateralized and involve a third party custodian to hold the securities and collateral. Economically similar to reverse repurchase agreement.

SETTLEMENT DATE

The date when a trade is final. The ownership of the security is transferred to the buyer and the payment of funds is transferred to the seller. The date establishes a legal transfer of ownership.

SUPRANATIONAL INSTITUTIONS

International institutions formed by two or more governments that transcend boundaries to pursue mutually beneficial economic or social goals. There are three supranational institutions that issue obligations that are eligible investments for California

local agencies: the International Bank for Reconstruction and Development (IBRD), International Finance Corporation (IFC), and Inter-American Development Bank (IADB).

T

TAX AND REVENUE ANTICIPATION NOTES (TRANS)

Notes issued in anticipation of receiving tax proceeds or other revenues at a future date.

TOTAL RETURN

Total return includes interest, realized gains and losses, and unrealized gains and losses over a given period of time.

TRUSTEE, TRUST COMPANY OR TRUST DEPARTMENT OF A BANK

A financial institution with powers to act in a fiduciary capacity for the benefit of the bondholders in enforcing the terms of the bond contract.

U

UNDERWRITER

A dealer that purchases a new issue of municipal securities for resale.

U.S. TREASURY OBLIGATIONS

Debt obligations of the U.S. Government sold by the Treasury Department in the forms of bills, notes, and bonds. Bills are short-term obligations that mature in one year or less and are sold at a discount. Notes are obligations that mature between one year and ten years. Bonds are long-term obligations that generally mature in ten years or more.

W

WEIGHTED AVERAGE MATURITY (WAM)

The average maturity of all the securities that comprise a portfolio, typically expressed in days or years.

Y

YIELD

The current rate of return on an investment security generally expressed as a percentage of the securities current price.

YIELD CURVE

A graphic representation that shows the relationship at a given point in time between yields and maturity for bonds that are identical in every way except maturity.

YIELD-TO-CALL

The rate of return to the investor earned from payments of principal and interest, with interest compounded semi-annually at the stated yield when the security is redeemed on a specified call date. In addition, if the security is redeemed at a premium call price, the amount of the premium is also reflected in the yield.

YIELD-TO-MATURITY

The rate of return to the investor earned from payments of principal and interest, with interest compounded semi-annually at the stated yield as long as the security remains outstanding until the maturity date.

YIELD-TO-WORST

For a given dollar price on a municipal security, the lowest of the yield calculated to the pricing call, par option or maturity.

Z

ZERO-COUPON BOND

A bond on which interest is not payable until maturity (or earlier redemption), but compounds periodically to accumulate to a stated maturity amount. Zero-interest bonds are typically issued at a discount and repaid at par upon maturity.

Index of Statutory Changes Effective 1996 to Present

1995

SB 564 **AUTHOR: JOHNSTON** **SECTION(S): 53646**

Summary of Changes: Requires treasurers to produce an annual investment policy and provide detailed quarterly investment reports.

SB 866 **AUTHOR: CRAVEN** **SECTION(S): 53601, 53635
AND 53859.02**

Summary of Changes: Authorizes the County Board of Supervisors to delegate investment authority to the County Treasurer and requires board to establish a treasury oversight committee (with specific membership requirements). Requires delivery of securities by book entry, physical delivery or third-party custodial agreement. Specifies funds invested for repayment of notes cannot exceed the term of the notes. Lastly, sets requirements for those elected or appointed to county auditor, director of finance and county treasurer.

1996

SB 864 **AUTHOR: CRAVEN
AND KILLEA** **SECTION(S): 27000.7,
27131, 27132.1, 27132.2,
27132.3, 27136, 53601,
53601.6, 53635 AND
53646**

Summary of Changes: Restricts campaign contributions by members of county oversight committees, relaxes restrictions on repurchase agreements, increases the amount of portfolio concentration for investment in mutual funds, and allows for greater use of account statements in quarterly investment reports.

1997

No changes

1998

SB 1793 **AUTHOR: GREENE**

**SECTION(S): 53601
AND 53635**

Summary of Changes: Authorizes that where there is a percentage limitation for a particular investment, that percentage is applicable only at the date of purchase. In addition, investments in repurchase agreements are considered to be in compliance if the value of the underlying securities is brought back up to 102% no later than the next business day.

1999

AB 323 **AUTHOR: BALDWIN**

SECTION(S): 27132.3

Summary of Changes: Prohibits a member of an oversight committee from securing employment with a financial service company that does business with the committee's county treasurer for one year after leaving the committee.

AB 343 **AUTHOR: CAMPBELL**

**SECTION(S): 53635.7,
53601.2 AND 53635.2**

Summary of Changes: Authorizes counties to increase the amount of commercial paper (CP) held in their portfolios from 15% to 40%, removes the 31-day dollar-weighted maturity requirement for purchases above the original 15%, limits CP investments with any single issuing corporation to 10% of the county's surplus money, and clarifies that "borrowing" does not include bank overdrafts.

AB 530 **AUTHOR: PAPAN**

**SECTION(S): 53601
AND 53635**

Summary of Changes: Authorizes local governments to enter into securities lending agreements provided they meet the same statutory requirements as reverse-repurchase agreements. No more than 20% of the investment portfolio may be comprised of securities lending agreements.

AB 1679 **AUTHOR: ASSEMBLY LOCAL
GOVERNMENT COMMITTEE** **SECTION(S): 53601
AND 53635**

Summary of Changes: Amends the definition of medium-term notes, specifying that these instruments shall have a remaining maximum maturity of 5 years or less. It also emphasizes that purchases of medium-term notes shall not include other investment instruments allowable under current state law.

2000

AB 2220 **AUTHOR: BATTIN** **SECTION(S): 53601,
53601.2, 53635 AND
53635.2**

Summary of Changes: Revises the maximum maturity for bankers acceptances from 270 to 180 days, and prime quality commercial paper from 180 to 270 days.

AB 2539 **AUTHOR: ASSEMBLY
JUDICIARY COMMITTEE** **SECTION(S): 53601 AND
53635**

Summary of Changes: Non-substantive, technical changes including punctuation.

2001

AB 609 **AUTHOR: KELLEY** **SECTION(S): 53601,
53601.5, 53601.6 AND
53635**

Summary of Changes: Authorizes local agencies to invest non surplus money in a sinking fund provided that the money is not required for immediate needs. The bill also revises the definition of commercial paper and prohibits the legislative body of a local agency and the treasurer or other official having custody of the county's money from investing in negotiable certificates of deposit of a state or federal credit union if a member of the legislative body or any other specified city officer or employee also serves on the board of directors or certain committees of that credit union.

2002

AB 2182 **AUTHOR: CAMPBELL** **SECTION(S): 53601.7**

Summary of Changes: Authorizes a county or city and county to invest in high quality money market funds (direct obligations of the United States Treasury or any other obligation guaranteed as to principal and interest by the United States government, bonds, notes, debentures, or other obligations of, or securities issued by, any federal government agency, instrumentality, or government-sponsored enterprise, and state treasury notes, bonds, or registered state warrants).

AB 3034 **AUTHOR: ASSEMBLY
JUDICIARY COMMITTEE** **SECTION(S): 53601**

Summary of Changes: Non-substantive, technical changes consisting of grammatical and other errors without substantively changing the law.

**SB 1326 AUTHOR: SENATE LOCAL SECTION(S): 53601, 53635
GOVERNMENT COMMITTEE AND 53646**

Summary of Changes: Renames the California Debt and Investment Advisory Commission (CDIAC), deletes a requirement to select a vice-chair and secretary, and requires, by May 1, 2006, a specified report to the Legislature. The bill makes related changes in provisions relating to municipal investments.

2003

**SB 787 AUTHOR: BATTIN SECTION(S): 53601 AND
53635**

Summary of Changes: Authorizes local agencies to purchase asset-backed commercial paper of prime quality to be of the highest ranking as provided by a nationally recognized statistical-rating organization and that the entity issuing the commercial paper must meet certain conditions as stated in 53601 (g).

2004

AB 969 AUTHOR: CORREA SECTION(S): 53601

Summary of Changes: Authorizes a local agency that has surplus money or a sinking fund in its treasury to invest that money in shares of beneficial interest issued by a JPA. In addition, the bill requires a JPA issuing the shares to retain an investment advisor that meets specified criteria.

2005

No changes

2006

**AB 1794 AUTHOR: DEVORE SECTION(S): 53635 AND
53601.7**

Summary of Changes: Extends the sunset date to January 1, 2011 for local agencies to invest in short-term unsecured promissory notes issued by corporations for maturities of 270 days or less, and amends statute to state that no more than 10% of the total assets of the investments that a local entity makes may be invested in any one issuer's commercial paper.

**AB 2011 AUTHOR: VARGAS SECTION(S): 53601.8 AND
53635.8**

Summary of Changes: The bill authorizes the investment of up to 30% of surplus funds in certificates of deposit at a commercial bank, savings bank, savings and loan association, or credit union that uses a private sector entity that assists in the placement of certificates of deposit under specified conditions, until January 1, 2012.

2007

AB 1745 **AUTHOR: ASSEMBLY** **SECTION(S): 53601**
REVENUE AND TAXATION
COMMITTEE

Summary of Changes: This bill authorizes local agencies to invest in registered treasury notes and bonds issued by any of the 50 states.

2008

SB 1124 **AUTHOR: SENATE LOCAL** **SECTION(S): 53601, 53635**
GOVERNMENT COMMITTEE **AND 53635.8**

Summary of Changes: Repeals the requirement for local governments to provide annual statements of investment policies, and quarterly investment reports to the CDIAC. In addition, the bill corrects various incorrect statutory cross-references regarding local agency investments.

SB 1498 **AUTHOR: SENATE JUDICIARY** **SECTION(S): 53601**
COMMITTEE

Summary of Changes: Non-substantive, technical changes consisting mostly of punctuation, correcting spelling errors, updating words, i.e., may to shall, any to a, money to moneys, and use of acronym for Nationally Recognized Statistical Rating Organization.

SB 344 **AUTHOR: MACHADO** **SECTION(S): 5925**

Summary of Changes: Authorizes state and local governments to repurchase or acquire instruments and outstanding bonds issued by or on their behalf.

2009

SB 113 **AUTHOR: SENATE LOCAL** **SECTION(S): 53601.6,**
GOVERNMENT COMMITTEE **53601.8 AND 53646**

Summary of Changes: Corrects an incorrect cross reference for local agency investments in certificates of deposits and repeals requirement to submit a statement of investment policy to the CDIAC.

2010

SB 1330 **AUTHOR: SENATE JUDICIARY** **SECTION(S): 53601**
COMMITTEE

Summary of Changes: Non-substantive, technical changes consisting of changes to references within 53601 due to re-numeration of subsections of 53601 and changing the word subdivision to subdivisions.

SB 1344 AUTHOR: KEHOE**SECTION(S): 53601.8
AND 53635.8**

Summary of Changes: Deletes the sunset date associated with the authorization for local agencies to investment up to 30% of their surplus funds in certificates of deposit at a commercial bank, savings bank, savings and loan association, or credit union that uses a private sector entity that assists in the placement of certificates of deposit.

2011

**SB 194 AUTHOR: SENATE
GOVERNANCE AND
FINANCE COMMITTEE****SECTION(S): 53601**

Summary of Changes: Authorizes local agencies to invest in negotiable certificates of deposit issued by a federally licensed branch of a foreign bank.

2012

**SB 1033 AUTHOR: SENATE BUDGET
AND FISCAL REVIEW
COMMITTEE****SECTION(S): 16340**

Summary of Changes: Establishes the Voluntary Investment Program Fund within the State Treasury for the receipt of voluntary deposits from local entities.

2013

AB 279 AUTHOR: DICKINSON**SECTION(S): 53601.8
AND 53635.8**

Summary of Changes: Authorizes local agencies to invest up to 30% of their surplus funds in deposits at a commercial or savings bank, savings and loan, or credit union using a private sector deposit placement service until January 1, 2017.

2014

AB 1933 AUTHOR: LEVINE**SECTION(S): 53601**

Summary of Changes: Authorizes local agencies to invest in United States dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by certain banks (supranationals), and would require these investments to be rated "AA" or better and to not exceed 30% of the agency's moneys that may be invested.

AB 2298 AUTHOR: RODRIGUEZ SECTION(S): 53663

Summary of Changes: Authorizes state chartered financial institutions that maintain local agency deposits to submit their weekly reports to the Administrator of Local Agency Security of the State of California electronically via email or other electronic means approved by the administrator.

2015

AB 283 AUTHOR: DABABNEH SECTION(S): 53601.8 AND 53635.8

Summary of Changes: Extends the authority to use a private sector entity to assist placing deposits to January 1, 2021; allows local agencies to invest up to 30% of its surplus funds in placement service certificates of deposit (CDs) and 30% in negotiable certificates of deposit; and enables a local agency to invest up to 30% with the same deposit placement service provider. Upon the sunset date of January 1, 2021, a public agency may no longer use a placement service provider to place deposits; however, the private entity would be able to assist a local agency with the placement of CDs.

2016

SB 974 AUTHOR: SENATE LOCAL GOVERNMENT COMMITTEE SECTION(S): 53601

Summary of Changes: Clarifies and amends the statutory rating requirements contained in Government Code 53601. Specifically rating requirements now refer to a rating category which is inclusive of any rating modifiers such as “+”/”-“ or numbers and to include equivalent ratings from Nationally Recognized Statistical Rating Organizations (NRSRO). The specific sections of code that are amended are Government Code Sections 53601(h)(1)(C) Commercial Paper, 53601(k) Medium Term Notes, 53601(o) Mortgage Passthrough Securities, and 53601(q) Supranationals.

2017

No changes

2018

AB 1770 AUTHOR: STEINORTH SECTION(S): 53601(O)

Summary of Changes: Clarifies the statutory maximum remaining maturity requirement of five years applies to all asset-backed securities enumerated in this subdivision and eliminates the issuer rating requirement.

2019

AB 857 **AUTHOR: CHIU**

SECTION(S): 53601(R), 53635(C) AND 53635.2

Summary of Changes: Adds to Government Code 53601: “(r) Commercial paper, debt securities, or other obligations of a public bank, as defined in Section 57600.” In addition, Government Code 53635 is amended by the addition of “(c) A local agency subject to this section may invest in commercial paper, debt securities, or other obligations of a public bank, as defined in Section 57600.” Lastly, Government Code 53635.2 is amended to add public banks to the list of depository institutions.

AB 945 **AUTHOR: MCCARTY**

SECTION(S): 53601.8 AND 53635.8

Summary of Changes: Amends a local agency’s authorization to invest and deposit surplus funds in deposits, certificates of deposit or another form, at specified types of financial institutions. Beginning January 1, 2020, until January 1, 2026, the percentage of surplus funds that can be invested by a city, district, or other local agency that does not pool money in deposits or investments with other local agencies with a different governing body increases to 50%. On and after January 1, 2026, the portfolio limitation of cities, districts, and agencies returns to 30% of the agency’s surplus funds.

2020

SB 998 **AUTHOR: MOORLACH**

SECTION(S): 53601(H), 53601(K) AND 53601.6

Summary of Changes: Amends the authorization of local agencies, other than counties or a city and county pursuant to subdivision (a) of Section 53635, to invest no more than 10% of its total investment assets in commercial paper and the medium-term notes of any single issuer. Authorizes federally recognized Indian tribes in California to invest in JPA investment pools. Beginning January 1, 2021, until January 1, 2026, local agencies that have \$100 million or more of investment assets, are authorized to invest up to 40% of their moneys in eligible commercial paper. Also, beginning January 1, 2021, until January 1, 2026, local agencies are authorized to invest in securities issued by, or backed by, the United States government that could result in zero- or negative-interest accrual if held to maturity, in the event of, and for the duration of, a period of negative market interest rates. Local agencies are authorized to hold these instruments until their maturity dates. On and after January 1, 2026, the portfolio limitation of local agencies authorized under 53601(h) returns to 25% of eligible commercial paper and local agencies are no longer permitted to invest any funds in securities that could result in zero interest accrual if held to maturity.

2021

No changes

2022

SB 1489 **AUTHOR: SENATE
GOVERNANCE AND
FINANCE COMMITTEE**

**SECTION(S): 53601
AND 53646**

Summary of Changes: Amends an investment's term or remaining maturity to be measured from the settlement forward date to final maturity. A security purchased pursuant to 53601 is prohibited from having a settlement date exceeding 45 days from the time of investment. In addition, Government Code 53646 is amended to extend the time that the treasurer or chief fiscal officer has to render a quarterly report to the chief executive officer, the internal auditor, and the legislative body of the local agency by 15 days, from 30 to 45, following the end of the quarter.

2023

SB 822 **AUTHOR: SENATE
GOVERNANCE AND
FINANCE COMMITTEE**

**SECTION(S): 53601(O)
AND 27000.7**

Summary of Changes: Clarifies that privately backed securities, which include a mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond, are permissible investments by local agencies. The security must be rated in a rating category of "AA" or its equivalent or better by an NRSRO, have a maximum remaining maturity of five years or less, and purchased securities shall not exceed 20% of the agency's surplus moneys. Security types identified in Section 53601(o) that are issued or backed by an issuer identified in subdivisions (b) & (f) are not subject to the limitations on privately issued securities authorized in Section 53601(o)(2)(A)(B). Furthermore, Government Code 27000.7 is amended to eliminate the requirement for the offices of county treasurer, county tax collector, or county treasurer-tax collector to have a valid certificate issued by the Treasury Management Association.

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CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: Consideration of a Tentative Parcel Map and Conditional Use Permit (PRC No. 21-2028-C) to Authorize Development of a Convenience Store Including an Automobile Service Station and Off-sale Beer and Wine Licensing

SOURCE: Community Development

BACKGROUND: n/a

COMMENT: The applicant proposes to subdivide the existing 8.52± acre parcel (Tulare County APN 243-190-018) into four parcels ranging from 0.86 acre to 3.94 acres for commercial development. At this time, the applicant only proposes development on Parcel 3, the southwestern parcel to be created.

The proposed development consists of a 7,200-sf commercial building for a convenience store, including off-sale beer and wine sales with a drive-thru facility. A service station with ten (10) multi-product fuel dispensers would be located along the North Grand Avenue frontage just south of the store.

Both service stations and uses involving the sale of alcohol are subject to approval of a conditional use permit. The request for alcohol sales is consistent with a Type 20 (Off sale Beer and Wine) license, subject to issuance by the California Department of Alcoholic Beverage Control (ABC).

If the CUP is approved, any future changes to the approved site plan and/or operation would require approval by the City Council. In the event that conditions of approval are violated, the City Council may modify or revoke this CUP at its discretion as outlined in Porterville Development Ordinance Section 601.10, Revocation of Approvals.

ANALYSIS: The site is designated CR (Retail Centers) by the General Plan Land Use Element and is zoned CR (Retail Centers). This designation and zone are intended to provide for a wide variety of commercial uses. The proposed project, including a convenience store, food and beverage retail sales, alcohol sales, and retail gasoline sales would suit the purpose of the zone designation. The convenience store is a permitted use in the CR Zone, and both alcohol sales and the service station may be permitted in that zone with approval of the requested conditional use permit. It is not anticipated that this use would have a negative impact on the surrounding properties. Conditions of approval are in place to protect the public safety and interest.

The project also proposes to subdivide the property into four parcels. The division of property would be required to comply to the development standards for the CR zone district, Development Ordinance Series 400, and the California Subdivision Map Act.

The applicant is conditioned to operate the establishment in such a manner as to preserve the public safety, health, and welfare, to prevent the use from becoming a nuisance and to operate the business in compliance with all laws, ordinances and regulations regarding the sale of alcohol. Furthermore, at all times the facility shall be operated and maintained to comply with State laws, the City of Porterville Development Ordinance, adopted Building Codes, and all other applicable laws and ordinances.

Porterville Development Ordinance Section 604.04 requires that the Council makes the following findings prior to approving a CUP:

A. Approval of the proposed project will advance the goals and objectives of and is consistent with the policies of the general plan and any other applicable plan that the city has adopted. The project will further the following General Plan policies:

- LU-G-1: Promote a sustainable balanced land use pattern that responds to existing needs and future needs of the city.
- LU-G-3: Promote sustainability in the design and development of public and private development projects.
- LU-G-5: Ensure that new development pays for the public pays for the public facilities and infrastructure improvements required to meet the demands resulting from that growth.
- ED-G-2: Retain, improve, and promote existing businesses in Porterville.
- ED-G-5: Retain existing local businesses and foster local start-ups.
- ED-G-7: Create an image for Porterville that will attract and retain economic activity.

B. The location, size, design, and operating characteristics of the proposed project are consistent with the purposes of the district where it is located and conform in all significant respects with the general plan, this development ordinance and with any other applicable plan adopted by the city council. Within the CR Zone District, the proposed use of a convenience store with alcohol sales and a service station is a permitted use with approval of a CUP and is consistent with the General Plan.

The California Department of Alcoholic Beverage Control allows a specific number of licenses per census tract population. Census Tract 35.04 allows four (4) on-sale and five (5) off-sale alcohol licenses. Currently this Census Tract contains four (4) on-sale and five (5) off-sale. At the time of the application, there is not an over-concentration of alcohol licenses, but with approval of this application it will exceed the allowable by one license for

the off-sale allowable licenses and a letter of public convenience or necessity will be required.

ENVIRONMENTAL REVIEW: On January 26, 2024, the Environmental Coordinator made a preliminary determination that the project is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Sections 15315, Minor Land Divisions for the tentative parcel map and 15303, New Construction or Conversion of Small Structures for development of the commercial use. Any future development of the remaining parcels will be subject to full review under CEQA.

If the City Council approves the project, staff will file a notice of exemption with the Tulare County Clerk and the State Clearinghouse.

RECOMMENDATION: That the City Council:

1. Hold a Public Hearing to receive public comments; and
2. Adopt the draft resolution approving the tentative parcel map and the conditional use permit (PRC 2021-028-C) subject to conditions of approval.
3. Authorize the Mayor to sign the Letter of Public Convenience and Necessity

ATTACHMENTS:

1. Locator Map
2. Site Plan
3. Existing License in Census Tract 35.04
4. Draft Resolution Northgrand TPM & CUP
5. Letter of Public Convenience and Necessity

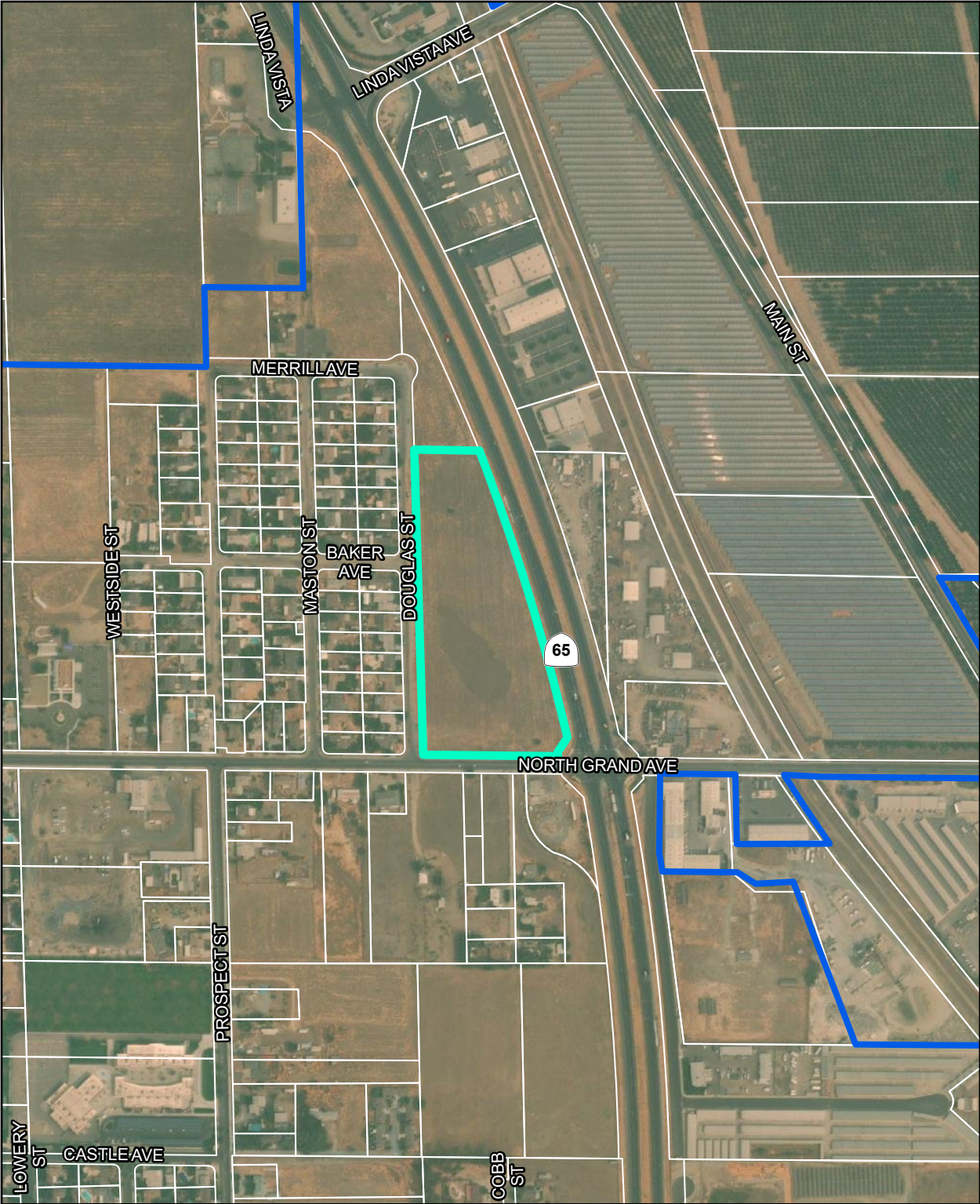
Appropriated/Funded:

Review By:

Department Director:
Claudia Calderon, Acting Community Development Director

Final Approver: Patrice Hildreth, City Manager

**Locator Map
PRC 2021-028**

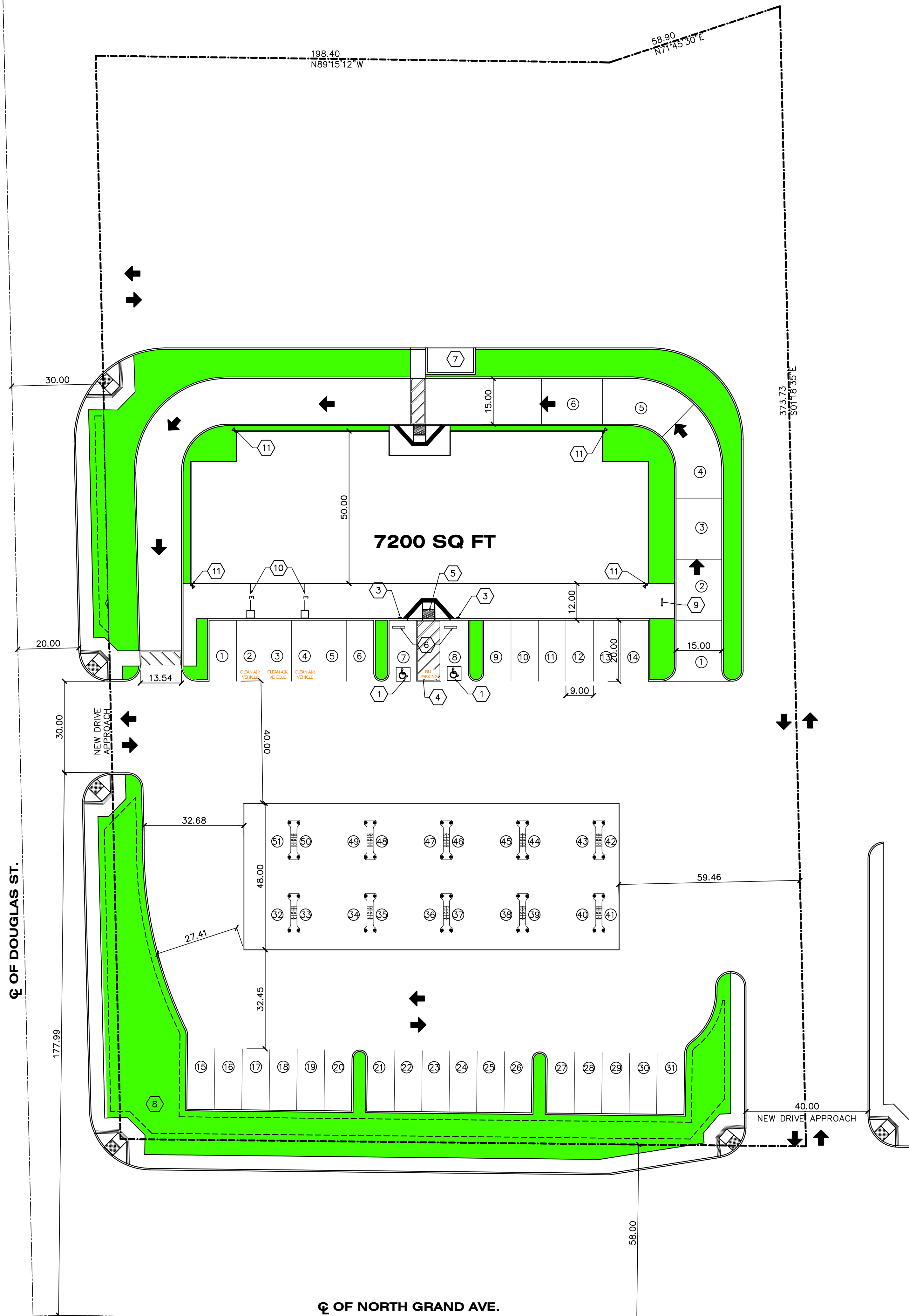


**North Grand
Commercial Complex**

-  Project Location
-  City Limits

1 in = 500 feet





PROPOSED USE
CONVENIENCE STORE AND FUEL ISLANDS

STATISTICS

1. SPECIFIC USE FOR THIS PROPERTY IS FOR A
CONVENIENCE STORE AND FUEL ISLANDS

2. SITE AREA: 98,030 SQFT

3. BUILDING DATA

3.1. HEIGHT - ONE (2) STORY, 24'-6" HEIGHT

3.2. BUILDING SQ FT - 7,200 SQFT

3.3. BUILDING COVERAGE/LOT = 7,200/98,030 = 7.3%

4. WATER SUPPLY: EXISTING

5. ELECTRICITY: PG&E

6. METHOD OF SEWAGE DISPOSAL: CITY SEWER

7. DRAINAGE: STORM WATER FROM SITE SHALL DRAIN TO STREET

8. LANDSCAPE 10% MIN(98,030)=10,206<9981 PROVIDED

ZONING CR			
PARKING TABULATION			
BUILDING	AREA S.F.	STALL REQUIREMENT	STALLS
CONV. STORE	7,200	1 / 200 S.F.	36
REQUIRED PARKING STALLS			36
REGULAR PARKING STALLS PROVIDED			29
HANDICAPPED STALLS PROVIDED			2
REQUIRED EV CAPABLE SPACES (26-50 SPACES)			8
REQUIRED EVCS SPACES (26-50 SPACES)			2
FUELING STALLS PROVIDED			20
DRIVE THOUGH QUEUE PROVIDED			6
SHORT TERM BICYCLE PARKING PROVIDED			**3

**BICYCLE PARKING DOES NOT COUNT TOWARD TOTAL PARKING STALLS PROVIDED

→→→→→
ACCESSIBLE PATH OF TRAVEL (4' MINIMUM WIDTH, <5% SLOPE IN DIRECTION OF TRAVEL, <2% CROSS SLOPE)

- ① NEW INTERNATIONAL SYMBOL OF ACCESSIBILITY AS PER SHEET HC-1, DETAIL 1
- ② NEW ENTRANCE TO OFF-STREET PARKING SIGN AS PER SHEET HC-1, DETAIL 2
- ③ NEW SIGN "RESERVED" FOR H.C. VAN ACCESSIBLE AS PER SHEET HC-1, DETAIL 3
- ④ ACCESSIBLE STALL SIZE/MARKING AS PER SHEET HC-1, DETAIL 5
- ⑤ NEW TRUNCATED DOMES PER SHEET HC-2, DETAIL 1
- ⑥ NEW 6" HIGH WHEEL STOP (TYP)
- ⑦ NEW 15x8 INSIDE CLEAR CONCRETE BLOCK TRASH ENCLOSURE
- ⑧ SUMP AREA
- ⑨ NEW BIKE RACK - ARCH, HITCH, HOOP, O-RACK, U-RACK, OR SIMILAR
- ⑩ 2" CONDUIT, 3-#4AWG, 1-#10AWG, 240V-3Ø INSTALLED PER CA ELEC. CODE
- NEMA 6B ENCLOSURE - TERMINATE WIRES, BOTH ENDS, & LABEL "EV CAPABLE" (LEVEL 2 EV CHARGING STATION - FUTURE)
- ⑪ ATLAS LIGHTING - WLM43LED

LANDSCAPE AREA

PROPOSED SITE PLAN

5' 10' 20'

SCALE: 1" = 20'



PASQUINI
ENGINEERING
INC.

661.328.8600
PADMIN@PASQUINIENGINEERING.COM
561 NORTH AMERICAN ST.
SHAFTER, CA 93263
MARC A PASQUINI RCE 46079

NO.	DATE

NORTH GRAND AVE LLC
CONVENIENCE STORE
NORTH GRAND AVE AND DOUGLAS ST
PORTERVILLE, CA.

DWG. BY	L.H.
CHK'D BY	
DATE	11-9-22
JOB NO.	9460
FILE NO.	946010

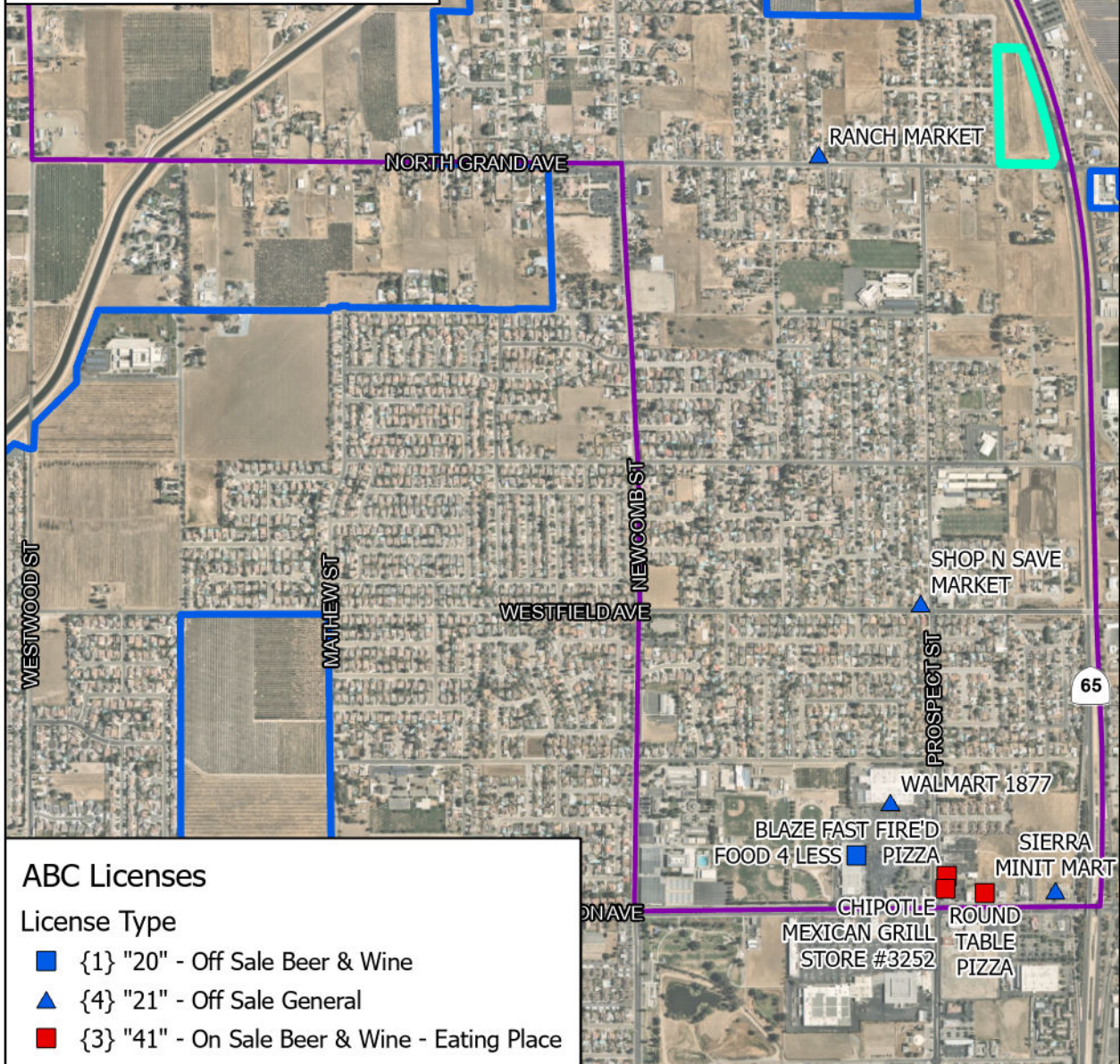


SHEET	A-1
OF	SHEET

ABC Map PRC 2021-0028

Current Allowances in Tract 35.04
On Sale - 4
Off Sale - 5

Current Permits in Tract 35.04
On Sale (41): 3
Off Sale (20, 21): 5



ABC Licenses

License Type

- {1} "20" - Off Sale Beer & Wine
- ▲ {4} "21" - Off Sale General
- {3} "41" - On Sale Beer & Wine - Eating Place

North Grand Commercial Complex

- Census Tract 35.04
- Project Location
- City Limits

1 in = 1,500 feet



RESOLUTION NO. ____-2024

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
CONTAINING FINDINGS AND CONDITIONS IN SUPPORT OF TENTATIVE
PARCEL MAP NO. 2024-001 AND CONDITIONAL USE PERMIT (PRC 2021-028-C),
AUTHORIZING THE DEVELOPMENT OF A COMMERCIAL TENTATIVE PARCEL
MAP PROPOSING LOTS WITHOUT STREET FRONTAGE, DEVELOPMENT OF A
SERVICE STATION AND THE SALE OF ALCOHOL UNDER A TYPE 20 OFF-SALE
(BEER AND WINE) ALCOHOL IN CONJUNCTION WITH A CONVENIENCE STORE
LOCATED AT THE NORTHEAST CORNER OF NORTHGRAND AVENUE AND
DOUGLAS STREET.**

WHEREAS: The City Council of the City of Porterville, at its regular scheduled meeting of March 5, 2024, conducted a public hearing to consider Tentative Parcel Map No. 2024-001 and Conditional Use Permit (PRC 2021-028-C), which proposes to divide Assessor's Parcel Number 243-190-018, containing a total of 8.52± acre (333,884.58SF) lot, into four parcels;

WHEREAS: On February 23, 2024, a notice was published in *The Porterville Recorder* setting the date, and place of a public hearing for March 5, 2024, and similar notices were sent to owners of property within 500 feet radius of the site and posted at City Hall and the City's website announcing the same; and

WHEREAS: Tentative Parcel Map No. 2024-001, which proposes to divide Assessor's Parcel Number 243-190-018, containing a total of 8.52± acre (333,884.58SF) lot, into four parcels, with Parcel 2 of the tentative parcel map does not have frontage on a public street, said frontage required pursuant to Porterville Development Ordinance (PDO) Section 407.03(h)(4);

<u>Parcel 1</u>	<u>Parcel 2</u>	<u>Parcel 3</u>	<u>Parcel 4</u>
37,686.03 SF	49,070.13 SF	75,270.59 SF	171,857.83 SF

WHEREAS: PDO Section 400.05 provides an avenue by which the City Council, upon making necessary findings, may vary the requirements for land division applications by approval of a Conditional Use Permit; and

WHEREAS: Conditional Use Permit (PRC 2021-028-C) to allow the approval of a tentative map consisting of a lot without a street frontage, development of a Service Station and the sale of alcohol under a Type 20 Off-Sale (Beer and Wine) alcohol license in conjunction with a convenience store located at the NEC of Northgrand Avenue and Douglas Street; and

WHEREAS: On January 29, 2024, the Environmental Coordinator made a preliminary determination that the project is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines 15315 Minor Land Division for the land division, said preliminary determination based on the requisite criteria and substantiated in the record:

1. The project consists of a division of property in urbanized areas zoned for commercial use into four or fewer parcels;
2. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations;
3. The site can be adequately served by all required utilities and public services; and
4. The parcel was not involved in a division of a larger parcel within the previous 2 years.

WHEREAS: The City Council of the City of Porterville received testimony from all interested parties related to said Conditional Use Permit and said Tentative Parcel Map; and

WHEREAS: The City Council made the following findings pursuant to PDO Section 400.05, the evidence for said findings substantiated in the record:

1. There are special circumstances or conditions affecting the property that make it impractical to conform to all of the provisions prescribed by this Series provided, however, that no exceptions may be granted to any requirements imposed by the Subdivision Map Act or any other applicable provision of State law;
2. That the modification is necessary for the preservation and enjoyment of a substantial property right of the petitioner;
3. That the granting of the modification will not be detrimental to the public welfare or injurious to other property in the territory in which such property is situated;
4. That the exception is appropriate for the proper design and/or function of the subdivision; and
5. That the granting of the exception is consistent with the General Plan.

WHEREAS: The City Council made the following findings pursuant to PDO Section 400.04, the evidence for said findings substantiated in the record:

1. That the proposed map is consistent with the general plan.
2. That the design or improvement of the proposed subdivision is consistent with the general plan.
3. That the site is physically suitable for the type of development.
4. That the design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
5. That the design of the subdivision or type of improvements is not likely to cause serious public health problems.
6. That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

WHEREAS: On January 29, 2024, the Environmental Coordinator made a preliminary determination that the project is exempt from the California Environmental Quality Act per CEQA Guidelines Section 15303 New Construction or Conversion of Small Structures; and

WHEREAS: The City Council of the City of Porterville authorized the Mayor to sign the Letter of Public Convenience or Necessity due to the over-concentration of alcohol licenses within Census Tract 35.04; and

WHEREAS: The City Council of the City of Porterville received testimony from all interested parties related to said Conditional Use Permit; and

WHEREAS: The City Council made the following findings:

1. That the proposed project will advance the goals and objectives of, and is consistent with, the policies of the General Plan and any other applicable plan that the City has adopted.
 - LU-G-1: Promote a sustainable balanced land use pattern that responds to existing needs and future needs of the city.
 - ED-G-2: Retain, improve, and promote existing businesses in Porterville.
 - ED-G-5: Retain existing local businesses and foster local start-ups.
 - ED-G-7: Create an image for Porterville that will attract and retain economic activity.

The subject site is consistent with the General Plan Land Use Designation and Zoning Standards for CR (Retail Centers). The CR designation is intended to maintain a full range of retail uses. The proposed convenience store with alcohol sales would suit the purpose of the zone designation. The convenience store is a permitted use in the CR Zone, and alcohol sales may be permitted in that zone with the requested Conditional Use Permit.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Porterville as follows:

1. The project is exempt from CEQA pursuant to CEQA Guidelines Section 15315, Minor Land Division and Section 15303 New Construction or Conversion of Small Structures; and
2. Tentative Parcel Map No. 2024-001 is hereby approved subject to the conditions; and
3. The Conditional Use Permit (PRC 2021-028-C) allowing for creation of lots without street frontage, service station and CUP for type 20 Off-Sale alcohol license is hereby approved subject to the following conditions:
 - a. Tentative Parcel Map No. 2024-001 shall be valid for a period of 24 months from the date of its conditional approval. Extensions to this period may be requested pursuant to Section 66453.3 of the Subdivision Map Act. Prior to expiration of the tentative map, the subdivider may submit a final parcel map prepared in accordance with Chapter 2, Article 3 of the Subdivision Map Act by a California-licensed land surveyor or civil engineer qualified to perform such service.

- b. The Parcel Map submittal shall include parcel closures and a preliminary title report dated no more than thirty (30) days prior to submission to the City Engineer. Copies of all easement documents referenced in the preliminary title report shall accompany the submittal.
- c. The developer/applicant shall record easements for ingress, egress, parking and public utilities between divided parcels.
- d. The developer/applicant shall install improvements consistent with comments received as part of PRC 2021-028 and/or any subsequent review of the map and development pursuant to PRC 2021-028.
- e. Prior to recording the final parcel map, the developer/applicant shall provide easements, permits, calculations, etc., if, in the opinion of the City Engineer, they are needed for the proper functioning or phasing of the development (e.g., water, sewer, drainage, "turn arounds", etc.). If the City Engineer determines that construction of improvements is needed to protect public health and safety or for orderly development of the surrounding area, the developer/applicant shall construct or provide a surety for said improvements.
- f. Prior to recording the Final Parcel Map, the developer/applicant shall provide improvements by the method indicated below:
 - Simultaneous recording of a separate legal instrument or placement of a statement on the Parcel Map, if appropriate, that reads as follows:

"In accordance with Section 66411.1 of the Government Code, the construction of on-site and off-site improvements, such as but not limited to, curbs, gutters, sidewalks, paveouts, pavement transitions, traffic signage and markings, median islands, utilities, grading, parking lot improvements, well abandonment (if any), removal of irrigation lines (if any), etc. has been deferred until such time as a permit or other grant of approval for development of the parcel is issued. Such construction may be phased when only a portion of the parcels shown herein receive such approval. The phased construction shall consist of all improvements related to the specific parcels plus those required to make the installed improvements function."
- g. The dedication of easements or any other potential dedications shall be clearly identified on the Final Parcel Map. A Dedications Statement shall be placed on the map that reads:

"Pursuant to the authority conferred by the City of Porterville, Ordinance No. 1590, adopted February 20, 2001, the undersigned, on behalf of the Public and City Council of the City of Porterville consents to the acceptance and recordation of the dedication(s) as shown on this map.

Dated this _____ day of _____, 20__

By Daniel Cervantez, City Engineer, RCE 75530

- h. The final Parcel Map shall clearly identify a City Surveyor's statement for compliance with Chapter 2, Division 2, Title 7 of the Government Code. The statement shall read:

"I hereby state that I have examined this map, and I am satisfied that it is technically correct, and that the subdivision as shown is substantially the same as it appeared on the approved Tentative Map, and that all of the provisions of the Chapter 2, Division 2, Title 7 of the Government Code and any Local Ordinance applicable to the time of approval of the tentative map, have been complied with.

Dated this _____ day of _____, 20__

By Dee Jaspar, RCE 23042

4. Unless otherwise noted, the developer/applicant shall comply with the City Master Plans and Standard Drawings, Standard Specifications for Public Works Construction, and Standard Plans and Specifications, except where they are in conflict with current access compliance regulations, the current California Building Code, the Tulare County Hazardous Waste Management Plan, the California Manual on Uniform Traffic Control Devices, the Porterville Circulation Element, and the Tulare County Congestion Management Program.
5. The developer/applicant shall pay all applicable fees according to the Municipal Code and State law. The developer/applicant is hereby notified that you have the right to pay fees, dedications, reservations or other exactions, under protest, pursuant to Government Code Section 66020(a). You have 90 days from the date fees are paid to file a written protest.
6. The developer/applicant shall comply with Appendix J, "Grading" of the current California Building Code, including provision of a grading and drainage plan signed by a licensed civil engineer or architect. The developer/applicant shall comply with City Retaining Wall Standards (adopted by City Council January 3, 1989) at lot lines where such standards are applicable.
7. The developer/applicant shall construct drainage facilities as required to serve the property (Ord. No. 1306). No existing storm drain facilities are in the vicinity so all runoff must be contained onsite, unless the developer/applicant constructs a City proposed drainage basin area available south of North Grand Avenue. A minimum amount of runoff must be contained onsite per the State's MS4 requirements. The parking lot is to be designed to convey water to the City drainage system without crossing driveways. The developer/applicant is required to install a sidewalk channel drain at the low side of the driveway, where applicable.
8. The developer/applicant shall construct and/or repair street, curb, gutter, sidewalk, etc. along the full parcel frontage, except where they exist and are determined to be in good condition and in compliance with current accessibility standards in the opinion of the City

Engineer (Ord. No. 1306). An accessible path of travel across the proposed drive approaches serving the property must be provided per the City's major commercial driveway standard plan. Driveway access/turn movements along North Grand Avenue may be impacted by future street improvements and/or traffic impacts caused by other development. The south edge of the southernmost drive approach along Douglas Street shall be at least 100' away from the north curb face of North Grand Avenue to account for vehicle stacking.

9. The developer/applicant shall comply with driveway vehicular sight distance requirements per Section 300.16 of the Development Ordinance and driveway separation from property line per City standards.
10. The developer/applicant shall design the parking lot in conformance with Chapter 304 of the Development Ordinance if the project includes establishment, alteration, expansion, or change in any use or structure. Minimum cross slopes within the parking lot shall be 1.5% for asphalt concrete or 1% for concrete paving areas.
11. The developer/applicant shall, under City inspection, remove all existing abandoned and unnecessary items, to the satisfaction of the City Engineer, before the issuance of a certificate of occupancy (for example, foundations, septic tanks, irrigation pipes, etc.).
12. The developer/applicant shall abandon existing wells, if any, after first getting an abandonment permit from the Tulare County Environmental Health Services Division. The developer/applicant is required to provide the City Engineer with proof of compliance with County regulations before performing any grading or issuance of the building permit, whichever comes first.
13. The developer/applicant shall assure compliance with Section 7-8, Work Site Maintenance of the Standard Specifications. Applicable requirements from both San Joaquin Valley Unified Air Pollution Control District Regulation VIII, Fugitive PM10 Prohibitions and the California Green Code Standards must also be met. During grading operations, the "Supervising Civil Engineer" shall be responsible for enforcing the dust control provisions of Section 7-8 or the developer/applicant shall pay inspection fees on the grading cost to compensate the City for dust control inspection.
14. The developer/applicant shall not allow onsite runoff or debris outside of the limits of the property during construction. Applicable best management practices (BMPs) shall be implemented to protect the City's drainage system and inhibit vehicle track-out onto City streets. The improvement plans shall show the location of BMPs and areas designated for erosion and waste control. The developer/applicant shall remove and properly dispose of waste and spills deposited in the project area.
15. The developer/applicant shall construct the pipe connecting to on-site fire hydrants (where necessary) to City water main standards and shall provide backflow prevention at the property line.

16. The developer/applicant is hereby notified that the installation of an additional water meter, servicing the irrigation system, is required for monitoring actual water. The City will require payment of impact fees based on estimated usage and will monitor actual water usage for one year. The City will bill/credit the owner the difference between the estimated impact fees paid and the actual water usage.
17. The developer/applicant shall design on-site water systems meeting the requirements of the current California Plumbing and Fire Codes. It shall be noted that the City water system complies with Title 22 of the California Administrative Code and any assurance to effectively provide water pressure for multi-story buildings is the sole responsibility of the owner/builder.
18. The developer/applicant shall dedicate right-of-way for a street width that matches the ultimate width in the adopted Land Use and Circulation Element and/or the width established by the City Council. In this area, North Grand Avenue is designated as a major arterial and requires a total right of way width of 116'. Douglas Street is designated as a local street and requires a total right of way width of 56'.
19. The developer/applicant shall move existing utility structures (i.e., poles, splice boxes, vaults, etc.) to a position that provides a minimum of four feet (4') of clear space in the sidewalk area and a minimum of two feet (2') of clear space from the curb face to the structure, unless the utility structures are below grade (Title 24 DSA). Service line poles serving the existing property are to be removed.
20. The developer/applicant shall provide 59W-3000K LED streetlights along North Grand Avenue and 29W-3000K LED streetlights along Douglas Street on Marbelite poles spaced at staggered 160' intervals following Southern California Edison Company specifications, as approved by the City Engineer. Wood poles are expressly prohibited without prior written approval of the City Engineer.
21. The developer/applicant is advised that they are obligated to comply with the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for discharge of Storm Water Associated with construction activity will be required (except operations that result in disturbance of less than one acre of total land area and which are not a part of a larger common plan of development or sale). Before construction begins, the proponent must submit a Notice of Intent (NOI) to comply with the permit, a site map, and appropriate fee to the State Water Resources Control Board (SWRCB). The proponent must also prepare a Storm Water Pollution Prevention Plan (SWPPP) for the entire project before construction begins. The SWPPP must contain at a minimum all items listed in Section A of the permit, including descriptions of measures to be taken to prevent or eliminate unauthorized non-storm water discharges and both temporary (e.g., fiber rolls, silt fences, etc.) and permanent (e.g., vegetated swales, detention basins, etc.) best management practices that will be implemented to prevent pollutants from discharging with storm water into water of the United States. If portions of the project area are to be sold off before the entire project is completed, the proponent must submit to the California Regional Water Quality Control Board a change of information form identifying the new owners along with a revised site map clearly depicting those portions that were sold and

those that are remaining. The proponent is also responsible for informing each new owner of their responsibility to submit their own NOI, site map, and appropriate fee to the SWRCB and to prepare their own SWPPP.

NOW, THEREFORE, BE IT FURTHER RESOLVED: That the City Council of the City of Porterville does hereby approve Conditional Use Permit (PRC 2021-028-C) subject to the following conditions:

1. No alcohol advertising shall be displayed and/or viewed from the outside of the building.
2. Upon approval of the conditional use permit, any future change in operation which substantially alters the conditions or nature of the subject business will require approval by the City Council. Further, any future violations of regulations of the codes relating to the sales or consumption of alcohol, and/or excessive service calls by the Police Department resulting from the sales of alcohol may result in revocation of the Conditional Use Permit.
3. Unless an extension of time is granted by the City Council, the conditional use permit shall expire two years after the date of approval if the on-sale alcohol license is not active or actively pursued. The City Council may approve a one-year extension of any permit or approval granted under this ordinance upon receipt of a written application with the required fee before the permit expires.
4. The applicant shall operate the establishment in such a manner as to preserve the public safety, health and welfare, to prevent the use from becoming a nuisance and operate the business in compliance with all laws, ordinances and regulations regarding the sale of alcohol. In the event that this or any other condition of approval is violated, the City Council may modify or revoke the conditional use permit as provided in Section 601.10 of the Porterville Development Ordinance.
5. Pursuant to Section 601.10(d) the City Council may revoke the permit if it makes any of the following findings:
 - That approval was obtained by means of fraud or misrepresentation of a material fact;
 - That the use in question has ceased to exist or has been suspended for one year or more;
 - That there is or has been a violation of or failure to observe the terms or conditions of the permit or variance, or the use has been conducted in violation of the provisions of this ordinance, law or regulation; or
 - That the use to which the permit or variance applies has been conducted in a manner detrimental to the public safety, health and welfare or so as to be a nuisance.
6. Based on site plan parking provide shall meet the following parking requirements:
 - Retail-Restaurant: Minimum 2 spaces. 1 per 75 square feet of customer seating area; no parking is required for outdoor seating when seats provided equal 50 percent or less of total indoor seating.

- Automobile/vehicle Washing: Minimum 1 space for automatic facilities, minimum 3 spaces for other facilities, plus 1 space per 250 sq. ft. of any indoor sales, office, or lounge areas
 - Service Station: 2 per service bay, if service bays are included on site. 1 per 200 sq. ft. of any convenience store on site.
7. Site parking designs shall comply with PDO §304.10. Specific items are summarized below:
- 304.10(e) All parking stalls shall be clearly outlined with striping, and all aisles, approach lanes and turning areas shall be clearly marked with directional arrows and lines as necessary to provide for safe traffic movement.
 - 304.10(g) Parking Lot Lighting: Public parking areas designed to accommodate ten (10) or more vehicles shall be provided with a minimum of one-half (0.5) foot-candle and a maximum average of three (3) foot-candles of light over the parking surface during the hours of use from one-half (0.5) hour before dusk until one-half (0.5) hour after dawn. Lighting design shall be coordinated with the landscape plan to ensure that vegetation growth will not substantially impair the intended illumination. Parking lot lighting shall, to the maximum extent feasible, be designed and installed so that light and glare is not directed onto residential use areas or adjacent public rights of way, consistent with article 306, "Performance Standards", of this series.
 - 304.10(i)(1) Landscape Area: A minimum of ten percent of any parking lot area shall be landscaped. For the purpose of calculating required parking lot landscaping, parking lot areas are deemed to include parking and loading spaces as well as aisles, vehicle entry and exit areas, and any adjacent paved areas. Parking lot area does not include enclosed vehicle storage areas.
 - 304.10(i)(3) Layout: Landscaped areas shall be well distributed throughout the parking lot area. Parking lot landscaping may be provided in any combination of:
 - Landscaped planting strips at least four feet (4') wide between rows of parking stalls;
 - Landscaped planting strips between parking areas and adjacent buildings or internal pedestrian walkways;
 - Landscaped islands located between parking stalls or at the ends of rows of parking stalls; and
 - On site landscaping at the parking lot perimeter.
 - 304.10(i)(4) Required Landscaped Islands: A landscaped island at least six feet (6') in all interior dimensions and containing at least one 15-gallon size tree shall be provided at each end of each interior row of parking stalls and between all consecutive parking stalls in the following ratios:
 - Between every eight (8) stalls in any nonresidential development;
 - 304.10(i)(7) Trees shall be planted to result in fifty percent (50%) shading of parking lot surface areas within fifteen (15) years.
 - Distribution: Trees shall be distributed relatively evenly throughout the parking area.
 - Species: Required trees for parking lots shall be selected from a list of recommended trees maintained by the community development department or are listed in Sunset's "Western Garden Book, Region No. 9".

- Minimum Planter Size: Any planting area for a tree shall have a minimum interior dimension of five feet (5'). Additional space may be required for some tree species.
8. Site shall comply with PDO 300.10 site screening standards:
- Screening of Mechanical Equipment. All mechanical and electrical equipment and antennas shall be screened or incorporated into the design of buildings so as not to be visible from the street, freeway, or adjacent residential districts. Such equipment includes, but is not limited to, all roof-mounted equipment, utility meters, cable equipment, telephone entry boxes, backflow prevention devices, irrigation control valves, electrical transformers and pull boxes. Screening devices shall be consistent with the exterior colors and materials of the buildings to which they are attached.
 - Parking Areas. Parking areas shall be screened from view from public streets and adjacent residential properties according to the following standards:
 - Height. Screening of parking lots from adjacent public streets shall be three (3) feet in height. Screening along interior lot lines that abut residential districts shall be six (6) feet in height, except within the required front setback of the applicable zoning district, where screening shall be three (3) feet in height.
 - Materials. Screening may consist of one (1) or any combination of the methods listed below.
 1. Walls. Low-profile walls consisting of decorative concrete, stone, or masonry materials.
 2. Fences. An open fence of wrought iron or similar material combined with plant materials to form an opaque screen. This option does not include the use of chain-link or vinyl fencing.
 3. Planting. Plant materials consisting of compact evergreen plants that form an opaque screen. Such plant materials shall achieve a minimum height of two (2) feet within eighteen (18) months after initial installation.
 4. Berms. Berms planted with grass, ground cover, or other low-growing plant materials.
 - Drive-Through Facilities. Vehicle lanes for drive-throughs shall be screened from public streets to a height of three and one-half (3.5) feet. Screening devices shall consist of walls and/or berms.
9. The drive-through lanes shall be required to conform to PDO 304.04(h) in that the queuing area shall provide space for a minimum of six (6) vehicles from the menu board to the drive way entry. The stacking area shall not interfere with other on-site circulation and parking facilities. Where required, queuing areas shall be measured as twenty (20) feet per car.
10. The developer/applicant shall comply with the PDO §305 Signs.
- Allowable permanent signage types include: awning and canopy, marquee, monument, freestanding, projecting, wall, and window. Total sign allowance is

calculated at 3 square feet per one linear foot of building frontage within the CR zone. Signs require building permit.

- §305.11(a) Temporary signs. Banners, handheld signs, portable signs and other similar temporary advertising devices shall be prohibited, except for business openings, special events, promotional events and new subdivisions being developed in the city and are subject to the following:
 - A temporary sign permit shall be secured prior to the installation or display of any such sign. Issuance of a temporary sign permit may be contingent upon the overall permissible area available for temporary signs within a geographic area as identified in subsection A6 of this section. In addition, the application would be reviewed in light of other temporary sign permit applications submitted for the same area, which may put such signs in conflict with subsection A6 of this section.
- §305.10(h) Other Sign Types
 - Commercial Center Identification Signs. One Commercial Center Identification sign per Center may be erected in the Commercial and Employment districts, subject to the following limitations:
 1. Allowable Areas. The center shall consist of a commercial or industrial development with an integrated site and design plan creating a single unified development with four (4) or more uses.
 2. Area Not Counted. The area of the sign shall not count towards the sign area allowed for the individual tenant space or building on the lot.
 3. Sign Area Allowed. The maximum sign area may be no more than one (1) square foot for each linear foot of street frontage, but in no case shall the total sign area exceed two hundred (200) square feet. If more than one (1) entrance to the lot exists, the maximum sign area permitted will be divided among the number of entryways and signs requested.
 4. Sign Height. The maximum sign height shall not exceed twenty (20) feet in the CMX, CN and PO zone districts; thirty-five (35) feet in all other Commercial and Employment zone districts.
 5. Sign Base. The sign base is to be located within a planter box or planting area at least twenty-four (24) square feet in area and the design and location is to be approved by the Zoning Administrator.

- All signage including temporary signs require permit prior to installation.

11. The developer/applicant shall comply with Section 300.07 of the Porterville Development Ordinance (Lighting and Illumination). Light fixtures shall not exceed 16 feet within 100 feet of any street frontage; 20 feet in any other location. Aisles, passageways, and pedestrian recesses related to and within the building complex shall be illuminated with an intensity of at least 0.25 foot-candles at the ground level during the hours of darkness. Lighting devices shall be protected by weather and vandal-resistant covers. A photometric plan shall be included with the building permit submittal to determine compliance.

- All lighting fixtures shall be shielded in accordance with table 300.07B of this section so as not to produce obtrusive glare onto the public right of way or adjoining properties. All luminaries shall meet the most recently adopted criteria of the Illuminating Engineering Society of North America (IESNA) for "cutoff" or "full cutoff" luminaries, as illustrated in figure 300.07 of this section.

12. Development shall comply with the PDO §306 Performance Standards.

- 306.07 Lighting and Glare, particularly subsection (b) Lighting: Lights shall be placed to deflect light away from adjacent properties and public streets, and to prevent adverse interference with the normal operation or enjoyment of surrounding properties. Direct or sky reflected glare from floodlights shall not be directed into any other property or street. Except for public streetlights, no light or combination of lights, or activity shall cast light on a public street exceeding one foot-candle as measured from the centerline of the street. No light, combination of lights, or activity shall cast light onto a residentially zoned property, or any property containing residential uses, exceeding one-half (1/2) foot-candle. Refer to section 300.07, "Lighting and Illumination", and subsection 304.10G, "Parking Lot Lighting", of this series for additional lighting standards required by this code.
- 306.08 Maintenance: Sites and facilities shall be maintained free of refuse, debris, or other accumulated matter and shall be kept in good repair at all times.

13. The developer/applicant shall comply with the Porterville Development Ordinance.

14. Unless otherwise noted, the developer/applicant shall comply with the City Master Plans and Standard Drawings, Standard Specifications for Public Works Construction, and Standard Plans and Specifications, except where they are in conflict with current access compliance regulations, the current California Building Code, the Tulare County Hazardous Waste Management Plan, the California Manual on Uniform Traffic Control Devices, the Porterville Circulation Element, and the Tulare County Congestion Management Program.

15. The developer/applicant shall pay all applicable fees according to the Municipal Code and State law. The developer/applicant is hereby notified that you have the right to pay fees, dedications, reservations or other exactions, under protest, pursuant to Government Code Section 66020(a). You have 90 days from the date fees are paid to file a written protest.

16. The developer/applicant shall comply with Appendix J, "Grading" of the current California Building Code, including provision of a grading and drainage plan signed by a licensed civil engineer or architect. The developer/applicant shall comply with City Retaining Wall Standards (adopted by City Council January 3, 1989) at lot lines where such standards are applicable.

17. The developer/applicant shall construct drainage facilities as required to serve the property (Ord. No. 1306). No existing storm drain facilities are in the vicinity so all runoff must be contained onsite, unless the developer/applicant constructs a City proposed drainage basin area available south of North Grand Avenue. A minimum amount of runoff must be contained onsite per the State's MS4 requirements. The parking lot is to be designed to convey water to

the City drainage system without crossing driveways. The developer/applicant is required to install a sidewalk channel drain at the low side of the driveway, where applicable.

18. The developer/applicant shall construct and/or repair street, curb, gutter, sidewalk, etc. along the full parcel frontage, except where they exist and are determined to be in good condition and in compliance with current accessibility standards in the opinion of the City Engineer (Ord. No. 1306). An accessible path of travel across the proposed drive approaches serving the property must be provided per the City's major commercial driveway standard plan. Driveway access/turn movements along North Grand Avenue may be impacted by future street improvements and/or traffic impacts caused by other development. The south edge of the southernmost drive approach along Douglas Street shall be at least 100' away from the north curb face of North Grand Avenue to account for vehicle stacking.
19. The developer/applicant shall comply with driveway vehicular sight distance requirements per Section 300.16 of the Development Ordinance and driveway separation from property line per City standards.
20. The developer/applicant shall design the parking lot in conformance with Chapter 304 of the Development Ordinance if the project includes establishment, alteration, expansion, or change in any use or structure. Minimum cross slopes within the parking lot shall be 1.5% for asphalt concrete or 1% for concrete paving areas.
21. The developer/applicant shall, under City inspection, remove all existing abandoned and unnecessary items, to the satisfaction of the City Engineer, before the issuance of a certificate of occupancy (for example, foundations, septic tanks, irrigation pipes, etc.).
22. The developer/applicant shall abandon existing wells, if any, after first getting an abandonment permit from the Tulare County Environmental Health Services Division. The developer/applicant is required to provide the City Engineer with proof of compliance with County regulations before performing any grading or issuance of the building permit, whichever comes first.
23. The developer/applicant shall assure compliance with Section 7-8, Work Site Maintenance of the Standard Specifications. Applicable requirements from both San Joaquin Valley Unified Air Pollution Control District Regulation VIII, Fugitive PM10 Prohibitions and the California Green Code Standards must also be met. During grading operations, the "Supervising Civil Engineer" shall be responsible for enforcing the dust control provisions of Section 7-8 or the developer/applicant shall pay inspection fees on the grading cost to compensate the City for dust control inspection.
24. The developer/applicant shall not allow onsite runoff or debris outside of the limits of the property during construction. Applicable best management practices (BMPs) shall be implemented to protect the City's drainage system and inhibit vehicle track-out onto City streets. The improvement plans shall show the location of BMPs and areas designated for erosion and waste control. The developer/applicant shall remove and properly dispose of waste and spills deposited in the project area.

25. The developer/applicant shall construct the pipe connecting to on-site fire hydrants (where necessary) to City water main standards and shall provide backflow prevention at the property line.
26. The developer/applicant is hereby notified that the installation of an additional water meter, servicing the irrigation system, is required for monitoring actual water. The City will require payment of impact fees based on estimated usage and will monitor actual water usage for one year. The City will bill/credit the owner the difference between the estimated impact fees paid and the actual water usage.
27. The developer/applicant shall design on-site water systems meeting the requirements of the current California Plumbing and Fire Codes. It shall be noted that the City water system complies with Title 22 of the California Administrative Code and any assurance to effectively provide water pressure for multi-story buildings is the sole responsibility of the owner/builder.
28. The developer/applicant shall dedicate right-of-way for a street width that matches the ultimate width in the adopted Land Use and Circulation Element and/or the width established by the City Council. In this area, North Grand Avenue is designated as a major arterial and requires a total right of way width of 116'. Douglas Street is designated as a local street and requires a total right of way width of 56'.
29. The developer/applicant shall move existing utility structures (i.e., poles, splice boxes, vaults, etc.) to a position that provides a minimum of four feet (4') of clear space in the sidewalk area and a minimum of two feet (2') of clear space from the curb face to the structure, unless the utility structures are below grade (Title 24 DSA). Service line poles serving the existing property are to be removed.
30. The developer/applicant shall provide 59W-3000K LED streetlights along North Grand Avenue and 29W-3000K LED streetlights along Douglas Street on Marbelite poles spaced at staggered 160' intervals following Southern California Edison Company specifications, as approved by the City Engineer. Wood poles are expressly prohibited without prior written approval of the City Engineer.
31. The developer/applicant is advised that they are obligated to comply with the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for discharge of Storm Water Associated with construction activity will be required (except operations that result in disturbance of less than one acre of total land area and which are not a part of a larger common plan of development or sale). Before construction begins, the proponent must submit a Notice of Intent (NOI) to comply with the permit, a site map, and appropriate fee to the State Water Resources Control Board (SWRCB). The proponent must also prepare a Storm Water Pollution Prevention Plan (SWPPP) for the entire project before construction begins. The SWPPP must contain at a minimum all items listed in Section A of the permit, including descriptions of measures to be taken to prevent or eliminate unauthorized non-storm water discharges and both temporary (e.g., fiber rolls, silt fences, etc.) and permanent (e.g., vegetated swales, detention basins, etc.) best management practices that will be implemented to prevent pollutants from discharging with storm water into water of the

United States. If portions of the project area are to be sold off before the entire project is completed, the proponent must submit to the California Regional Water Quality Control Board a change of information form identifying the new owners along with a revised site map clearly depicting those portions that were sold and those that are remaining. The proponent is also responsible for informing each new owner of their responsibility to submit their own NOI, site map, and appropriate fee to the SWRCB and to prepare their own SWPPP.

32. Caltrans confirmed that the comments provided in the review letter dated September 24, 2021 would still be applicable to the updated site plan. The comments were the following:

“After further review of attached revised “site plan A-1” proposing to add 8 gas pumps (16 dispensers) to Building #3 in Phase 2, Caltrans comment letter dated 9/24/2021 (attached) is still valid”

Caltrans provided the following comments consistent with the State’s smart mobility goals that support a vibrant economy and sustainable communities:

- 1. Caltrans anticipates that the Project will increase car and truck traffic at the SR 65/Grand Avenue intersection.
- 2. Caltrans recommends that a focused Traffic Analysis be completed for the SR 65/Grand Avenue intersection and provided to Caltrans for review.
- 3. The project proponent shall provide the following opening day improvements for the SR 65/Grand Avenue intersection:
 - a. Construct a dedicated right turn lane on southbound SR 65 to west bound Grand Avenue.
 - b. Construct a left turn lane and modify existing signal to add a protected left-turn phase to the signalized intersection on both the eastbound and westbound approach of Grand Avenue.
- 4. Caltrans requires adequate turning radius will be needed at SR 65/Grand Avenue intersection.
- 5. Caltrans requires truck turning templates be shown (super-imposed) on the design plans for the above opening day improvements for the intersection.
- 6. According to the Caltrans Transportation Concept Report (TCR), segment 8 of SR 65 in the vicinity of the proposed project is currently planned as a 4-lane conventional Freeway and ultimately planned to be a 6-lane Freeway with Auxiliary lanes within a total of 240 feet of right-of-way (120 feet from the centerline). Caltrans right-of-way maps shows this segment of SR 65 existing at 166 feet with 83 feet from the centerline on the west side of SR 65.
- 7. A Right-of-Way (ROW) Dedication in Fee Title to Caltrans for 37 feet of right-of-way is needed to accommodate the ultimate configuration of SR 63. Dedications required by the Lead Agency need to be shown on a revised site plan and forwarded

for our review. Right-of-way dedicated to the State due to the proposed project or work proposed in the State right-of-way, will need to be dedicated and conveyed to the State (in a form approved by the State) before an encroachment permit is issued for any work in the State right-of-way. A summary of the requirements for right-of-way dedications is enclosed.

- 8. Alternative transportation policies should be applied to the development. An assessment of multi-modal facilities should be conducted to develop an integrated multi-modal transportation system to serve and help alleviate traffic congestion caused by the project and related development in this area of the City or County. The assessment should include the following:
 - a. Pedestrian walkways should link this proposal to an internal project area walkway, transit facilities, as well as other walkways in the surrounding area.
 - b. The Project might also consider coordinating connections to local and regional bicycle pathways to further encourage the use of bicycles for commuter and recreational purposes. c. If transit is not available within ¼-mile of the site, transit should be extended to provide services to what will be a high activity center.
- 9. Caltrans recommends the Project implement “smart growth” principles regarding parking solutions, providing alternative transportation choices to residents and employees. Alternative transportation choices may include but are not limited to parking for carpools/vanpools, car-share and/or ride-share programs.
- 10. Based on Caltrans VMT-Focused Transportation Impact Study Guide, dated May 20, 2020 and effective as of July 1, 2020, Caltrans seeks to reduce single occupancy vehicle trips, provide a safe transportation system, reduce per capita Vehicle Miles Traveled (VMT), increase accessibility to destinations via cycling, walking, carpooling, transit and reduce greenhouse gas (GHG) emissions. Caltrans recommends that the project proponent continue to work with the City or County to further implement improvements to reduce vehicles miles traveled and offer a variety of transportation modes for its employees.
- 11. Caltrans recommends the project provide charging stations for electric vehicles as part of the statewide efforts to reduce greenhouse gas emissions

PASSED, APPROVED, AND ADOPTED this 5th day of March, 2024.

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Martha A. Flores, Mayor

ATTEST:
Patrice Hildreth, City Clerk

By _____
Fernando Gabriel-Moraga,
Acting Chief Deputy City Clerk

March 5, 2024

California Department of Alcoholic Beverage Control
Fresno District Office
3640 East Ashlan Ave
Fresno, CA 93726
ATTN: Christine Weldon

RE: PRC 2021-028-C

Dear Ms. Weldon:

The City Council of the City of Porterville has elected to approve the submittal of this letter regarding the public convenience or necessity, to be served through issuance of a Type 20 (Off-sale beer and wine) for a convenience store, located on parcel 3 at the NEC of Northgrand Avenue and Douglas Street (APN 243-190-018), Porterville, CA.

Approval of this letter was based on the following:

1. Per Section 23958.4 of the “Business and Professions Code,” the subject site is located within Census Tract 35.04, which allows four (4) on sale and five off-sale licenses. At the present time five (5) off-sale licenses currently exist in this tract. Due to the over concentration of off-sale licenses a Letter of Public Convenience or Necessity was required.
2. On March 5, 2024, the City Council conditionally approved Conditional Use Permit (PRC 2021-028-C), review attached resolution, to allow the sale of beer and wine, for a convenience store to be located on parcel 3 at the NEC of Northgrand Avenue and Douglas Street (APN 243-190-053), Porterville, CA. As a condition of approval, a Letter of Public Convenience or Necessity was required to be approved by the City Council.
3. In consideration of the above, the City Council determined that public convenience or necessity would be served by the issuance of a Type 20 (On-Sale General – Public Premises) alcohol license in conjunction with a convenience store.

Further issuance of an off-sale license allowing the sale of beer and wine represents a viable economic asset to the community which will contribute tax revenues to the local economy. The site is consistent with the General Plan Land Use Designation of Retail Centers policies. The proposed Type 20 (Off-Sale Beer and Wine), alcohol license for a convenience store would suit the purpose of the zone designation as well as meeting the economic development guiding policy needed to retain, improve and promote existing businesses in Porterville. The convenience store is permitted in the CR (Retail centers) land use designation and alcohol sales may be permitted with review and approval of a Conditional Use Permit.

For these reasons, the City Council of the City of Porterville supports issuance of a Type 20 (Off-Sale Beer and Wine license for convenience store located on parcel 3 at the Northeast corner of Northgrand Avenue and Douglas Street (APN 243-190-018), Porterville, CA.

Sincerely,

Martha A. Flores, Mayor

Attachment: Resolution



CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: Porterville Veterans Homecoming Queen/Miss Porterville

SOURCE: Parks and Leisure Services

COMMENT: Since 1946, the City of Porterville has crowned a Queen and Court to represent the Veterans of the Porterville community. The first Veterans Homecoming Queen Pageant started to honor Porterville's Veterans in the aftermath of WWII. To show gratitude to those who sacrifice so much to keep our nation safe and free, the tradition continues each year on the last Saturday of October. The pageant gives high school senior girls the opportunity to express their patriotism, give back to their community, and be a role model to those around them. The young women in the pageant are judged in five categories: interview, essay, talent, poise/personality and participation. The Queen and her Court then participate in a variety of civic events throughout Porterville, including the Annual Porterville Veterans Day Parade and Band-A-Rama. The pageant is sponsored by the American Legion Post 20 of Porterville, the Veterans Homecoming Committee, and the Porterville Memorial District.

At the request of the Veterans Homecoming Committee, Mayor Flores and City staff met on February 21, 2024, during which time the Committee spoke of their interest in fostering a closer relationship and connection between the City of Porterville and the Miss Porterville program in light of its shared vision of promoting Porterville. In order to further this relationship, the concept of including Miss Porterville in the advertising campaigns for City events in which Miss Porterville is involved was discussed, as was coordinating the program's potential involvement in other City events. A tentative schedule of events for which the Queen and Her Court attend is provided for Council's reference. City staff recommends approval of a partnership in which the City includes the Miss Porterville program in advertising campaigns for City events of which Miss Porterville is involved, and coordinating the program's potential involvement in other City's events.

RECOMMENDATION: That the City Council consider partnering with the Porterville Homecoming Queen/Miss Porterville Pageant program for the promotion of Porterville.

ATTACHMENTS:

1. 2023 VHQ Program Final-4
2. 2024 VHQ Pageant Application

Appropriated/Funded:

Review By:

Department Director:
Donnie Moore, Parks and Leisure Services Director

Final Approver: Patrice Hildreth, City Manager

SPONSORS 2023

Bombshell Boutique
In Memoria - Cam Hamilton
Javier & Jessy Camacho
Carolina Coast Pressure Wash
Dowling Trucking
Earth Angel
Fab's & Son Heating and Cooling
Grape Man Labor Inc.
Greg Trejo
J. Poonian Limited Partnership
J&R Meats
JV Auto Repair
Lamb, Cruess & Sutherland
Laux Family
Maximo's Taqueria
Jesse & Sally Mireles
Benny Mireles & Maria Mireles
The Modern Savage
Mom & Pop's Lunch Box Diner
Mountain Aviation
Oacys Technology
Pacific Coast Cabinets
Pizza Factory
Poor Richard's Pizza
Rainbow House of Carpets
Sacred Space Counseling
Salon Shae
Gladis & George Soto
Spin Academy
White Eagle Concrete

American Legion Post 20 Presents:



77TH ANNUAL VETERANS HOMECOMING QUEEN PAGEANT

October 28, 2023

PORTERVILLE MEMORIAL AUDITORIUM



VETERANS HOMECOMING QUEEN PAGEANT 2023



Welcome & Opening Remarks - Robert Lassotovitch:

American Legion Post 20 Commander

Posting of National Colors & Pledge of Allegiance -

American Legion Post 20

National Anthem - Caiden Wallace

Introduction of 2022-2023 Queen & Court

Introduction of Master of Ceremonies - Dennis Townsend

Spirit Dance - Performed By Contestants

Introduction of Judges

"American Soldier" - Caiden Wallace

Enchanted Dance Studio Performance

Contestant Introductions

A Musical Tribute to our Military -The Fabulous Studio Band

Contestant Interviews & Talent Performances

Reflection from 2022-2023 Veterans Homecoming Queen/Miss

Porterville - Briar Rose Tillery

Deenie's Dance Workshop Performance

The Fabulous Studio Band

**CROWNING OF 2023-2024
VETERANS HOMECOMING QUEEN
MISS PORTERVILLE & COURT**

SPECIAL THANKS



Master of Ceremonies - Dennis Townsend

Kevin Standifer and the Amazing Auditorium Staff

Panel of Judges

The Fabulous Studio Band

Caiden Wallace

Deenie's Dance Workshop

Enchanted Dance Studio

**PORTERVILLE VETERANS HOMECOMING
COMMITTEE:**

RUBEN BONILLA

BRIAN ADAMS

MIKE SMITH

EMMYLOU DOWLING

JESSICA DOWLING

PATTY DOWLING



VETERANS HOMECOMING QUEEN PAGEANT CONTESTANTS 2023



VETERANS HOMECOMING QUEEN PAGEANT CONTESTANTS 2023



1. *Cambria Rose Arias-Rodriguez - Harmony Magnet Academy - Singing the Armed Forces Medley*
2. *Marissa Denise Martin Mireles - Porterville High School - Folklorico Dance to a Patriotic Polka*
3. *Isabelle Rose Miller - Butterfield Charter High School - Baton and Flag Routine to Ray Charles "America the Beautiful"*
4. *Gabrielle Ava Nicole Sutherland - Monache High School - Singing "God Bless America"*
5. *Olivia Geraldine Christman - Porterville High School - Traditional Powwow Jingle Dress Dance*





2024-2025 Veterans Homecoming Queen Miss Porterville Pageant

Quick Info

What: Beginning in 1946, the Porterville veterans have sponsored this annual pageant, giving high school senior girls the opportunity to express their patriotism, give back to their community, and be a role model to those around them. The pageant is a celebration of America and a homage to those who have served in the US Armed Forces.

Where: The Porterville Memorial Auditorium

When: Saturday, October 26, 2024 @ 6:30pm

Weekly rehearsals will be held Monday nights leading up to the pageant, beginning Monday, September 9th, and dress rehearsal will be held the Thursday before the pageant.

Why: If you have a love and respect for the country you live in, if you are grateful for our Veterans who have served sacrificially, and if you like to be involved in your community and interacting with people of all ages... then this pageant is for you!

Fill out the attached application and come to the Queens Tea (our first meeting) on **Tuesday, September 3rd @ 7:00pm.** It will be a **semi-formal** event, located at the Veterans Memorial Building: 1900 W. Olive St. Porterville, Ca.

You are welcome and encouraged to bring a parent/guardian

Please RSVP by texting Pageant Co-Director:

Miss Briar Rose Tillery @ 559-542-7010 or

Mrs. Jessie Dowling @ 559-361-3642

veteranshomecomingqueen@gmail.com

veteranshomecomingqueen.com



Pageant Pre-Qualification Checklist

In order to participate in the pageant, you must meet the following criteria:

- ✓ United States citizen or lawful permanent resident
- ✓ High school senior girl, attending school within the Porterville school districts (home school included)
- ✓ Cumulative GPA of 2.0 or higher
- ✓ Of good moral character
- ✓ Unmarried and without children



Estimated Expenses

- ★ Spirit dance costume \$30 - \$50
- ★ New Court Formal Dress **(if selected for the court)**
\$600 - \$900
 - **This cost can be covered by the sponsorship money that each contestant will be responsible for acquiring. It does NOT have to come out of pocket. This dress will be the “uniform” of the court during the entire year.**
- ★ Purchasing a pageant formal (to be worn the night of the pageant) is an unnecessary expense. We recommend re-using one that you already have or borrowing one.

Sponsorship

It will be required for you to find at least 1 sponsor (you may have up to 5) to give you a \$250 donation. The sponsor (local business, family friend, etc.) would write two checks: \$50 to the Veterans Homecoming Committee who is organizing the event, and \$200 to you, the contestant, to help cover the pageant expenses listed above.

Sponsorships will be due Monday, October 7th

For questions, contact Briar Rose Tillery at 559-542-7010 or Jessie Dowling at 559-361-3642



Application for Veterans Homecoming Queen Miss Porterville 2024-2025

Sponsored by Porterville Memorial District and American Legion Post 20

Name: _____

Address: _____

Date of Birth: _____

High School: _____

Email: _____

Phone Number: _____

Pageant Date: October 26, 2023 @ 6:30pm

Parent or Guardian

Signature: _____

Applications must be turned in on **September 3rd at 7:00pm, at the Queens Tea**. It will be a **semi-formal** event, located at the Veterans Memorial Building:

1900 W. Olive St. Porterville, Ca.

You are welcome and encouraged to bring a parent/guardian.

For questions call/text:

Briar Rose Tillery
Pageant Co-Director
559-542-7010

Jessie Dowling
Pageant Co-Director
559-361-3642



CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: Consideration of Draft Ordinance Regulating Unsafe and Unauthorized Camping and Storage of Personal Property, Protecting Critical Infrastructure, and Mitigating Harm to the Public Health, Safety and Welfare; and Consideration of Administrative Options to Address Homelessness Within the City of Porterville

SOURCE: City Manager's Office

COMMENT: At the study session on January 30, 2024, the City Council reviewed information provided by City Staff related to potential regulations to regulate camping within the City and to protect critical infrastructure, and considered the further development of resources to serve individuals experiencing homelessness in the City. Staff provided a preliminary assessment of critical infrastructure and facilities that should be protected, and provided draft maps and a list of public buildings and facilities to consider. The City Attorney provided additional regulatory examples/options for the purposes of providing guidance in the development of the regulations.

At the session, the City Council considered the information and staff's input and provided direction on the development of an ordinance regulating camping and the protection of various public works and facilities, and as discussed, attached is a draft Ordinance for further consideration. Staff requests that the City Council provide comments with regard to the draft and consider scheduling a public hearing and consideration and first reading of the ordinance at a future meeting.

The draft ordinance would make it unlawful and a public nuisance for any person to camp on Public Property when there is available space for the person at a shelter location where the person is eligible and qualified to go. If there is no available shelter space, persons experiencing homelessness or who do not have a permanent residence are permitted to camp on certain public property, provided that the camping is occurring in compliance with certain time, place, and manner regulations. The ordinance includes detailed location limitations, some specifically defined by ordinance (such as a prohibition within residential areas or mixed-use areas or on public right of way), and may be later determined by the City to be "critical infrastructure." Generally, there is a restricted buffer designated of 200-feet around those facilities or properties, but the City Council may wish to consider establishing a different requirement or establishing that as the maximum area restriction, with the ability to set all buffers by resolution. For any areas or properties to be designated by Resolution as Critical Infrastructure or otherwise restricted, distance requirements can also be set at that time.

In addition to the location restrictions, camping is also proposed to only be allowed for a maximum period of 24 hours at any one location. There are also additional proposed manner restrictions, such as limiting the spatial footprint to 144 sq. feet, 150-foot radius separate requirement between camps, restrictions on open flames and fires, restrictions on excavations or the building of structures, and other proposed regulations to protect public health and safety. The draft also contains a restriction on the number of individuals per camp, limiting it to two persons and two animals. The draft contains highlighted areas where the Council Members may wish to focus their attention and consideration.

With regard to enforcement, as discussed, the draft ordinance proposes an emphasis on obtaining voluntary compliance. If voluntary compliance is not achieved, it is proposed that 72-hour written notice be provided. If there is still a refusal to comply (or failure to respond), the personal property can be removed subject to the storage requirements specified in the ordinance. Shorter time frames would be allowed due to a reasonable determination of a potential danger to human life or safety. The enforcement of the ordinance will require additional personnel and equipment for the Police Department and Parks and Leisure Services Department to effectively enforce the ordinance and clean up unauthorized camping locations. Staff will provide specific detail in the 2024/25 budget discussions.

This draft ordinance would also repeal and replace the City's current regulations concerning "Squatter Camps." Consequently, this draft also includes restrictions on unlawful camping on private property, defined as camping without the property owner's consent, camping in a manner that violates applicable law, or in a manner that causes blight or a public nuisance. This ordinance would not supersede the City's ability to also enforce trespass laws.

In the development of any regulations designating specific locations where camping will be prohibited, the City must balance the constitutional rights of individuals experiencing homelessness with the City's obligation to protect the public health and safety. The draft regulations have been developed so as not to restrict locations for camping in such a manner that individuals have no alternative places to go. The draft ordinance also includes specific findings substantiating determinations of public health and safety concerns related to the proposed restricted locations and identifies certain public health and safety dangers being addressed by the location restrictions.

If the Council approves the draft (as presented or modified at the meeting), Staff recommends that the City Council authorize staff to set a public hearing for a specific future City Council meeting, for consideration and first reading of the ordinance.

RECOMMENDATION: That the City Council consider the draft ordinance and provide any further comments or direction, and that the City Council

authorize staff to set a public hearing at a specific future City Council meeting, for consideration and first reading of the ordinance.

ATTACHMENTS:

1. Draft Ordinance - Regulating Unsafe Camping Storage
2. Staff Report with Attachments_10-17-23
3. Staff Report with Attachments_12-19-23
4. Expansion Options Summary
5. San Diego 2023 Unsafe Camping Fact Sheet
6. San Diego Muni Code-Ch 6
7. Morro Bay Staff Report 12-12-23
8. Morro Bay Ord No. 665 re Camping
9. Morro Bay Ord No. 666 re Overnight Habitation of Vehicles
10. Proposed Critical Infrastructure List

Appropriated/Funded:

Review By:

Department Director:
Patrice Hildreth, City Manager

Final Approver: Patrice Hildreth, City Manager

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE REPEALING CHAPTER ARTICLE VII OF CHAPTER 18 (SECTIONS 18-76 THROUGH 18-83) OF THE CITY OF PORTERVILLE MUNICIPAL CODE AND REPLACING IT WITH CHAPTER 18, ARTICLE VII, REGULATING UNSAFE AND UNAUTHORIZED CAMPING AND STORAGE OF PERSONAL PROPERTY, PROTECTING CRITICAL INFRASTRUCTURE, AND MITIGATING HARM TO THE PUBLIC HEALTH, SAFETY AND WELFARE

WHEREAS, the City of Porterville (“City”) encourages the use of open spaces and facilities within the City by all members of the community; and

WHEREAS, camping in undesignated campsites within the City limits creates unsanitary, unhealthy, disorderly, and dangerous conditions that may affect both the campers and the general public, for example when the camping has occurred in the Tule Riverbed or along the embankments, where there has been both severe flood and fire dangers to those camping and the public depending on the season; and

WHEREAS, camping in undesignated campsites within the City limits tends to degrade and even destroy the property upon which the camping is occurring, particularly in situations where an encampment is large and ongoing; and

WHEREAS, camping in undesignated campsites within the City limits not only detracts from the use of the property for its intended purposes but also can create dangerous conditions for the public; and

WHEREAS, the City has the authority to adopt regulations to ensure the public’s health, safety, and general welfare, and desires to regulate camping within the City; and **WHEREAS**, a federal Ninth Circuit Court of Appeals decision, *Martin v. City of Boise*, 920 F.3d 584 (9 th Cir. 2019) (“*Martin*”), prohibits criminal prosecution for sleeping outside on public property when adequate shelter is not reasonably available for persons involuntarily experiencing homelessness, based upon an interpretation of the Cruel and Unusual Punishments Clause of the U.S. Constitution’s Eight Amendment; and

WHEREAS, the federal Ninth Circuit court suggested in its decision in *Martin* that the prohibition on criminal prosecution would not apply to individuals who have reasonable access to adequate temporary shelter; and

WHEREAS, the Ninth Circuit court in *Martin* suggested that even when adequate shelter is unavailable, an ordinance establishing reasonable time, place and manner regulations on sitting, lying or sleeping may be allowed under the U.S. Constitution when the regulations are to address legitimate public health and safety concerns; and

WHEREAS, the federal Ninth Circuit court in the case of *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023) (“*Grants Pass*”) (to be heard and considered by the U.S. Supreme Court in April 2024), expanded upon its decision in *Martin* to prohibit civil enforcement for sleeping outside when adequate shelter is not reasonably available for persons involuntarily experiencing homelessness if civil enforcement can lead to criminal enforcement; and

WHEREAS, there are available low barrier overnight shelters operating within the City, that as of the date of the adoption of this Ordinance have had space available nightly; and

WHEREAS, the City has invested significant funds, resources and time to assist persons experiencing homelessness to find temporary and permanent shelter and necessary public health services to address the causes of their homelessness, has sought to address the underlying issues contributing to homelessness and has striven to be a part of the solution. These City of Porterville actions and efforts have included:

1. City Council, City Manager and staff participation on committees and sub-committees with service groups, regional non-profits, County Public Health Services, and other agencies to address causes of homelessness and work towards solutions.
2. The Police Department's creation of a SMART team to operate as a homeless liaison to address needs of the unhoused within the City limits and encourage coordination or facilitate connections with available resources.
3. The City's development of low-barrier shelters, a Navigation Center, and permanent supportive housing to help support the needs of persons experiencing homelessness.
4. The City's support and collaboration with local service providers to assist individuals and families experiencing homelessness, with funding focused on emergency shelters, housing navigators, bridge housing and permanent supportive housing.
5. The City has transferred the City's portion of the National Opioid Settlement back to Tulare County to manage a regional effort to combat opioid-related issues that directly impact our unhoused population.

WHEREAS, despite the City's efforts the Police Department has found that a significant number of the City's homeless population routinely decline the City's offers of help for various reasons including, and many people experiencing homelessness refuse to accept services and refuse to move from encampments; and

WHEREAS, the City has experienced significant and continuing threats to public health and safety resulting from persons experiencing homelessness sleeping and camping in unauthorized locations in the City, including the following:

1. Homeless encampments raise a number of public health concerns related to waste, sanitation and disease transmission. Unhoused people, like all other people, generate solid waste during their daily activities of food preparation and consumption, shelter building and maintenance and storing their possessions. Without any place or method of proper storage or disposal, the resulting piles of trash become food sources for rodents, breeding grounds for pathogens, fuel for fires, and unattractive nuisances to the public.
2. The opportunity for the spread of communicable diseases is increased in homeless encampments lacking basic sanitation services and waste collection, with some diseases such as hepatitis A and typhus more likely to occur in homeless populations.

3. Health and safety issues are presented by the violation of fire, building, electrical and other codes and standards for public health and safety, including the unauthorized and unpermitted use of electrical and utility connections, due to the potential and reality of unsafe and unhealthy conditions in encampments, posing life, safety, fire and health threats to both the occupants of the encampments, the general public and emergency responders.

4. Health and safety issues are exacerbated and compounded by larger encampments as there is an exponential increase in these health and safety issues the larger the encampment, including but not limited to both accumulation of trash and debris as well as the greater likelihood of the spread of disease.

5. The City regularly receives a large volume of emails, phone calls and in-person complaints regarding the encampments in the City, and the frequency and number of these complaints has been increasing greatly, recently and in the last year.

6. The homelessness problem in Porterville impacts crime rates. Homelessness-related crime rates are significant both in terms of crimes against the homeless and also crimes committed by the homeless. The Porterville Police Department estimates a call volume of 17% of total calls for service are related to our unhoused population (with this percentage including complaints as well as arrests).

7. Business owners and residents near encampments are confronted by trash, used needles, and human waste, and increased instances of open drug use, property damage, theft, and break-ins. They have seen their property values decline, their small businesses fail, and their public spaces become uninhabitable.

8. Businesses and residences near encampments experience physical impediments to access to public and private property which both impedes emergency responses, evacuation of occupants during an emergency, and general public access, as well as exacerbates the likelihood of conflict, intimidation and threats to the public safety for both the unhoused as well as all members of the public, and furthermore the collection of biohazard materials, human waste, trash and rubbish near businesses and residential areas contributes to a general decline in public health, safety and welfare.

9. Encampments near emergency shelters established for emergency evacuations during events such as winter rainstorms can cause barriers to access for evacuees.

10. Encampments near active construction sites, trash enclosures, areas with heavy vehicle use, and similar areas pose unique threats to both the unhoused as well as the operators of construction equipment and vehicles through unintentional yet predictable collisions and threats to health and safety.

11. Encampments on or near public utilities and critical infrastructure, such as stormwater, water and sewer infrastructure, fire stations, electrical wires and natural gas pipelines, pose unique safety, environmental and security issues and are generally closed to the public or have limited public access for safety, environmental and security reasons.

12. Unauthorized connections or taps to public utilities, as well as violation of fire, building, electrical and other codes and standards, create unsafe conditions and a potential life safety hazard for the occupant, the general public and emergency responders.

13. Encampments pose immense public health concerns as the rates of overdoses from drugs like fentanyl and heroin have increased substantially among the unhoused and encampments can provide an environment conducive to illegal drug consumption.

14. Abandoned encampment cleanups are performed by City Police officers and Parks and Leisure services department staff with police equipment, fire and City code enforcement officers and staff in an attempt to maintain and or control the spread of large encampments and this taxes public resources while unnecessarily exposing first responders and City staff to unhealthy and unsafe situations.

15. Fires in unsafe locations for cooking and warming occur at encampments increasing the risk of fires posing a threat to safety and health, and the City has had to respond directly to major fires caused by such activities over the years.

16. Accumulation of biohazard and medical waste occurs in and around encampments and these items end up in our creeks, storm drains, waterways, and beaches posing a direct threat to health and safety.

17. Severe blockage of storm drains and also the Tule Riverbed, due to excessive encampment debris and/or degradation of the river embankments leads to increased roadway and stream flooding and drain blockages during storms causing threats to health and safety.

18. During times of severe storms, unhoused camps are located in and must be evacuated from riverbeds; sloughs; embankments; low lying, unsafe areas; and storm drains due to increased risk of flooding, rapid water movement, and blockage of storm drains, posing safety threats to the residents of the encampments; and

WHEREAS, in light of these significant and continuing threats to public health and safety, the City seeks to adopt reasonable time, place and manner regulations in a manner consistent with the federal Ninth Circuit court's decisions in Martin and Grants Pass; and

WHEREAS, the City finds that reasonable camping regulations for public property will best serve the public's health, safety, and general welfare.

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

SECTION 1. RECITALS. The recitals set forth above are true and correct and are hereby adopted as findings in support of this Ordinance as if fully set forth herein.

SECTION 2. CHAPTER 18, ARTICLE VII REPEALED AND REPLACED IN ITS ENTIRETY. Article VII of Chapter 18 (Sections 18-76 through 18-83), entitled "Squatter Camps," is hereby repealed in its entirety and is replaced with the following:

CHAPTER 18. ARTICLE VII – UNAUTHORIZED CAMPING REGULATIONS

Section 18-76 FINDINGS AND PURPOSE

A. As the City continues to offer assistance and services to persons experiencing homelessness, the City must appropriately consider various interests and formulate policy to best protect public health, safety, welfare, property, and the environment, with its limited resources.

B. The City Council acknowledges that at the time of the adoption of this ordinance, although there has been available nightly shelter space within the City, there is a lack of nightly shelter beds and housing available regionally for persons experiencing homelessness and recognizes the systemic lack of state and federal investment in shelter and public health services for those experiencing homelessness.

C. The City Council acknowledges that it is currently unavoidable that some persons will live or shelter for survival outdoors until they are able or willing to access affordable or free shelter or housing. In Porterville, this has typically meant sheltering, sometimes for extended periods of time, on City rights-of-way and City property, and at times on other public agency property owned by other public agencies.

D. Public rights-of-way and public property are generally intended for public use and travel. The City Council is the authority for rights-of-way within the City; as such, the City must consider the safety of motorists and pedestrians travelling on roadways and sidewalks, including to and from neighboring properties, businesses, and residences.

E. The City owns limited property where camping can or should be allowed for reasons including but not limited to public health and safety concerns and issues created by the impact of camping on public property.

F. The City has had increasing concerns regarding public health and safety due to instances of camping on or in rights-of way and public property in or near waterways, streets, roads, sidewalks, schools, residences, businesses, critical infrastructure, public access points and similar locations. Public utility properties (e.g., stormwater, water, sewer) are environmentally and operationally sensitive and generally closed to the public or have limited access for safety, environmental and security reasons.

G. Over the long term and working with other governmental agencies and non-profit organizations, the City's goal is that people should not have to live outside and there should be safer options.

H. It is the purpose and intent of the City Council to provide standards for camping and sheltering for survival on City rights-of-way and public property, which are intended to be as compatible as possible with the needs of everyone in Porterville to be healthy, safe, and have access to public places.

I. Smaller camp sites support both the health and safety of people who are camping for survival on public property as well as the health and safety of the public.

J. It is the purpose and intent of the City Council to provide standards for camping and sheltering for survival on City rights-of-way and public property which will address issues such as fire risk, unsanitary conditions, health risks, public infrastructure security, public access impediments, trash, waste and public safety hazards to both people camping as well as neighboring businesses, residents and community members, as well as environmental degradation, which have occurred with longer-term camping in the City.

K. It is the intent of the City to evaluate each removal of an Established Campsite with considerations of public health and safety, including for the people who are sheltering in the camps, potential user conflicts, and available resources. The City intends to use a team approach and coordinate with other governmental agencies and non-profit organizations as appropriate. When the City requires a person experiencing homelessness to remove an Established Campsite, through these regulations, it intends to provide the person adequate time to remove the Established Campsite before the City removes the Established Campsite, to secure any personal property with reasonable utility or reasonable value for the person to retrieve at a later date, and to clean the former Established Campsite to address threats to public health and safety.

Section 18-77 DEFINITIONS

The following words and phrases, when used in this Chapter, shall have the meaning ascribed to them by this section unless it is apparent from the context that another meaning is intended.

A. “Camp” or “Camping” means residing in or using any public property for one or more nights for living accommodation purposes, such as sleeping activities or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or using any tents, or storing personal belongings (including but not limited to clothing, sleeping bags, bedrolls, blankets, sheets, luggage, backpacks, kitchen utensils, cookware, and similar material), or making any fire using Bunsen burners or other heating items, or regularly cooking meals. These activities constitute camping when it reasonably appears, in light of all the circumstances, that a person is using public property as a living accommodation for one or more nights, with the intent to camp.

B. “Camp Facilities” include, but are not limited to, tents, huts, or similar temporary shelters consisting of any material with a top or roof or any other upper covering or that is otherwise enclosed by sides that is of sufficient size for a person to fit underneath or inside while sitting or lying down and includes the use of a tarp or other material tied or affixed to a structure or bush to create an enclosed area.

C. “Camp Materials” includes but is not limited to, tarpaulins, cots, beds, sleeping bags, hammocks, shopping carts, recyclable material and/or non-City designated cooking or heating facilities and similar equipment, or personal possessions that would facilitate one’s use of a park, public property, or any portion of the public right-of-way as a temporary residence.

D. “Critical Infrastructure” means real property or a facility, whether privately or publicly owned, that the City Council (with recommendations from the City Manager) by Resolution designates, from time to time, as being so vital and integral to the operation or functioning of the City or in need of protection that its damage, incapacity, disruption, or destruction would have a debilitating impact on the public health, safety, or welfare. Critical infrastructure may include, but is not limited to, government buildings, such as fire stations, police stations, jails, or courthouses; hospitals; structures, such as antennas, bridges, roads, train tracks, drainage systems, or levees; or systems, such as computer networks, public utilities, electrical wires, natural gas pipes, telecommunication centers, or water sources.

E. "Enforcement Personnel" means the employee(s) of the City, including but not limited to sworn police officers, and code enforcement officers authorized by the City to seek compliance with, and enforce, the regulations, requirements and rules of this.

F. "Established Campsite" means a location or locations in the public right-of-way or on City property where a Camp, Camps, and/or Camp Materials have been set up for twenty-four (24) hours or more.

G. "Fire Severity Zones" means mapped area as defined by the Office of State Fire Marshal that designates zones (based on factors such as fuel, slope, and fire weather) with varying degrees of fire hazard (i.e., moderate, high, and very high).

H. "Greywater" means untreated wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines and the like. It does not include any toilet discharge, unhealthy bodily wastes, or manufacturing wastes.

I. "Hazardous Water" means sewage, toilet discharge, unhealthy bodily wastes, manufacturing wastes and the like.

J. "Landscaped Area" means any manicured or natural ground covered areas including but not limited to flower beds, bushes, brush areas, or shrubs.

K. "Personal Property" means any tangible property and includes, but is not limited to, goods, materials, merchandise, tents, tarpaulins, bedding, blankets, sleeping bags, personal items such as household items, luggage, backpacks, clothing, food, documents, and medication.

L. "Playground" means any park or recreational area specifically designed to be used by children that has play equipment installed, or any similar facility located on public or private school grounds, or on City, county, or State park grounds.

M. "Public Property" means any publicly owned property in the City, whether improved or unimproved, including, but not limited to, any of the following: public alleyways; public parking lots; public passageways; public streets; public rights-of-way; freeway on-ramps and off-ramps; publicly owned, maintained, or operated parks and/or playgrounds; publicly owned, maintained, or operated landscaped areas or greenbelts; publicly owned fences, trees, light poles, or equipment boxes; publicly owned, maintained, or operated open spaces including, but not limited to, public facilities or buildings of any kind; public sidewalks, curbs, and gutters; public educational institutions; or other government owned, maintained, or operated properties located within the City.

N. "Public Utilities" means every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof, as defined by Public Utilities Code section 216, and as amended.

O. "Rights-of-Way" means all City-owned or controlled rights-of-way, whether in fee title or as holder of a public easement for right-of-way or public access purposes. Public rights of-way include but are not limited to any public road, street, sidewalk, or private street or other property that is subject to a public access easement dedicated or granted to the City for vehicular use, pedestrian use, utilities or

other means, and any planter strip or landscaped area located adjacent to or contained within streets that is part of the public right-of-way.

P. "School" means any institution, facility or organization, whether public or private, that offers instruction on those courses of study required by the California Education Code or that is maintained pursuant to standards set by the State Board of Education. School for purposes of this section does not include vocational or professional institutions of higher education, including a community or junior college, college, or university. The setback shall be calculated from the school property boundaries.

Q. "Store" means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.

R. "Transportation Facility Loading Area" means that area within 200 feet of where trains, buses or any form of public transportation loads or unloads passengers.

S. "Vehicle" means a "motor vehicle" as defined by California Vehicle Code, section 415 and includes a "recreational vehicle" as defined by California Health and Safety Code, section 18010(a).

Section 18-78 RESTRICTIONS AND TIME, PLACE AND MANNER REGULATIONS

It is unlawful and a public nuisance for any person to camp on Public Property when there is available space for the person(s) at a shelter location where the person(s) is eligible and is qualified to go. If there is no available shelter space, persons who do not have any other permanent residence or domicile and/or are involuntarily experiencing homelessness are permitted to camp on certain public property, provided the camping is occurring in compliance with the following time, place and manner regulations and consistent with any administrative rules and policies promulgated by the City Manager, or designee, adopted after the Effective Date of this Ordinance, in accordance with this Article. Notwithstanding the specific time, place and manner restrictions set forth in this Section or Article, camping, lodging (or other activities) in a public place in violation of any applicable State or Federal law is prohibited.

A. Time. Unless otherwise specified, any Camping or Camp, where allowed, may only occur for 24-hours at a time in any one location. After 24 hours in one location, the Camp and all associated Camp Materials must be moved at least one street block or 600 feet, whichever is greater, to another allowed location.

B. Place. Camping is not allowed at any time in any of the following places:

1. Within a residentially zoned property boundary or within any area zoned Residential, as determined by the City of Porterville Zoning Map and the Porterville Municipal Code.
2. Within any Mixed-Use Overlay Zone, as determined by the City of Porterville Zoning Map and the Porterville Municipal Code.
3. Any place where Camping, a Camp, or Camp Materials create a physical impediment preventing emergency or non-emergency ingress, egress or access to public or private property, including but not limited to, on public sidewalks, alleyway or other public rights-of-way, driveways providing access to vehicles, and entrances or exits from buildings and/or other real property; and, within 15 feet of any fire hydrant.

4. Any vehicle lane, bicycle lane, roundabout within any public right-of-way, or Transportation Facility Loading Area.
5. Within 1000 feet from any shelter both established for emergency evacuations as well as approved under the Porterville Municipal Code and/or approved consistent with any applicable provision of State or federal law.
6. On any street or public rights-of-way, unless expressly authorized by the City.
7. Within, or within 200 feet of, any School.
8. Within, or within 200 feet of, any Playground.
9. At the following public property: Porterville City Hall, any City-operated Community Center, Porterville Veterans Hall, Porterville Public Library, and Zalud House.
10. On or within 200 feet of riverbeds, river embankments, sloughs, waterways, levies, water wells, storm basins or any publicly owned water, sewer or storm drain infrastructure (e.g. sewer lift stations, storm water pump stations or structures).
11. Within, or within 200 feet of, Critical Infrastructure.
12. Within, or within 200 feet of, either a very high Fire Severity Zone or a high Fire Severity Zone.
13. In or within 200 feet of Refuse Service Containers (all bin and curbside service containers, in addition to designated Refuse trash enclosures).
14. On or within a certain specified distance of any other Public Property as may be designated from time to time by Resolution of the City Council, with recommendations from the City Manager, Police Chief and Fire Chief, or their designees.

C. Manner. Camping, when and where allowed, is subject to all of the following limitations and regulations:

1. Individuals, Camp Materials, Camps, or personal property may not obstruct, block, prevent access to, or impede: sidewalk accessibility or passage; clear vision of moving vehicles or bicycles; usage of fire hydrants; usage or function of Public Utilities, Critical Infrastructure, or other City infrastructure; or, otherwise obstruct, block, prevent access to, or impede the use of the Rights-of-Way for vehicular, pedestrian, bicycle, or other passage.
2. A Camp or Camping shall be limited to a spatial footprint of no greater than 12 feet by 12 feet, or 144 square feet, and shall have a smaller footprint if necessary to comply with the restrictions set forth in this Chapter. The intent of this section is to allow a person to sleep protected from the elements and maintain the essentials for living, while still allowing others to use public spaces as designed and intended.
3. To prevent larger Camping sites from forming and the impacts to public health and safety that can result, a Camp shall not be within a one hundred fifty (150) foot radius of

any other Camp, unless otherwise explicitly authorized by City regulation, and only under such conditions adopted by the City and permitted by this Code.

4. Individuals may not accumulate, discard, or leave behind garbage, debris, unsanitary or hazardous materials, or other items of no reasonable utility or reasonable value, as determined by the City, in public rights-of-way, on City property, or on any adjacent public or private property.

5. Open flames, recreational fires, burning of garbage, bonfires, or other fires, flames, or heating deemed unsafe by the Porterville Fire Department, or the Porterville Police Department, are prohibited. Types of flameless cooking stoves and other flameless devices for keeping warm, as consistent with this subsection, are permitted. Additionally, any and all fires, to the extent allowed by this Section, must comply with all State and local laws.

6. Dumping of Greywater or Hazardous Water into any facilities or places not intended for Greywater or Hazardous Water disposal is prohibited. This includes but is not limited to City streets, public rights-of-way, public waterways and storm drains, which are not intended for disposal of Greywater or Hazardous Water.

7. Unauthorized connections or taps to Public Utilities, including but not limited to such connections or taps that cross over City property, roadways, rights-of-way, driveways, streets, sidewalks, and fences, and private property are prohibited.

8. Violations of building codes, fire codes, and other relevant codes or standards for health and safety are prohibited.

9. Obstruction of, or attachment of Camp Materials or personal property to, fire hydrants, utility poles, Public Utilities infrastructure, public infrastructure, fences, trees, vegetation, vehicles, bridges/infrastructure, or buildings is prohibited.

10. Individuals may not build or erect structures, whether by using plywood, wood materials, pallets, or other materials. Items such as tents, and similar items used for shelter that are readily portable, are not structures for purposes of this section.

11. Storage of personal property such as vehicle tires, bicycles, or associated components (except as needed for an individual's personal use), gasoline, generators, lumber, household furniture, propane tanks, combustible material or gases, or other items or materials, is prohibited, other than what is related to camping, sleeping, or keeping warm and dry, and only to the extent that such items are used in a safe manner.

12. Digging, excavation, terracing of soil, alteration of ground, water or infrastructure, or damage to vegetation or trees is prohibited.

13. All animals in the custody, ownership or companionship of an individual, must be leashed or crated at all times.

14. Camps shall consist of no more than two persons, two animals (e.g., dogs) that are leashed or crated at all times, and one tent.

Section 18-79 ENFORCEMENT

A. Voluntary Compliance. Before enforcement actions are taken in respect to this Chapter (with the exception of enforcement of subsection (B)(3) below), the enforcement personnel shall make a good faith effort to contact the person violating this Chapter and provide a reasonable opportunity to cure or remedy the alleged violation. Enforcement Personnel shall make a good faith effort to determine whether the person subject to enforcement has been referred to service providers and/or local non-profit assistance organizations and make a referral if it appears none has been made. The following shall be communicated to the person in a manner designed to help them understand the alleged violation:

1. A written or verbal description or identification of the activity constituting the alleged violation and identification of the recipient as being the person responsible for the violation;
2. A written or verbal statement that the enforcement personnel has determined the activity to be a violation;
3. A written or verbal statement of the action required to fix the violation and the time and/or date by which the violation must be fixed; and
4. A written or verbal statement advising that if the violation is not fixed within the time specified, enforcement actions may be imposed.

B. Notice of Violation

1. 72 Hour Notice. Prior to implementing any of the enforcement mechanisms provided for in this Chapter to remove an Established Campsite and/or Camp Facilities because of violations of this Chapter, the Enforcement Personnel shall provide occupants of an Established Campsite or Camp Facilities, at least 72 hours in advance of any action to remove the Established Campsite or Camp Facilities, notice both to remove the camp within 72 hours consistent with the requirements of this Chapter as well as of the intent by the City to remove the Established Campsite or Camp Facilities in no less than 72 hours (the "notice"). The notice shall be in writing and shall be posted on or near the Established Campsite or Camp Facilities, so as to reasonably communicate the notice to persons living at the Established Campsite or Camp Facilities but not present during the attempt to provide notice. In addition, the Enforcement Personnel shall make a good faith effort to personally provide the written notice to the occupant(s) of the Established Campsite or Camp Facilities present at the time the Enforcement Personnel posts the notice. Failure of the occupant(s) of the encampment to comply with the notice's requirements to remove the camp within 72 hours consistent with the requirements of this Chapter shall constitute a violation of this Chapter. The notice shall contain the following information:

- a. The location of the Established Campsite or Camp Facilities;
- b. The date and time notice was posted;
- c. A statement that the Established Campsite or Camp Facilities violates this Chapter;
- d. An advisement that the City will remove the Established Campsite or Camp Facilities 72 hours after the date and time of the notice;

e. Information about any housing, shelter or homeless services available for occupants of the Established Campsite or Camp Facilities, the phone number and address to contact in order to obtain such housing, shelter or homeless services, if available, and information about obtaining free transportation, if available, to such housing, shelter or homeless services;

f. An advisement that any personal property remaining at the Established Campsite or Camp Facilities site when the Enforcement Personnel returns to remove the Camp Facilities will be impounded for no fewer than 90 days, or as provided for by applicable law, and will be discarded thereafter if not claimed; and

g. The address, phone number, and operating hours of the location where the personal property will be stored and may be retrieved, being a staging or storage area managed by the Porterville Fire Department – Code Enforcement Unit, or as otherwise designated by the City, and that the City will charge no fee for storage or retrieval.

2. Less Than 72 Hour Notice. The notice detailed above may establish a shorter time for the removal of the encampment if the Enforcement Personnel have determined the conditions at the Established Campsite or Camp Facilities requires removal of the Established Campsite or Camp Facilities in less than 72 hours to avoid a potential emergency or threat to public health or safety, such as possible site contamination by hazardous materials or when there is reasonable potential danger to human life or safety. Failure of the occupant(s) of the encampment to comply with the notice's requirements to remove the camp consistent with the requirements of this Chapter shall constitute a violation of this Chapter.

3. Illegal Activity or Exceptional Emergency. Enforcement personnel may remove an Established Campsite or Camp Facilities without providing the notice described above in the following circumstances:

a. When there is probable cause for law enforcement officials to believe that illegal activity, other than camping, is occurring at an Established Campsite or Camp Facilities, or in the immediate vicinity of an Established Campsite or Camp Facilities; or

b. When there is probable cause for law enforcement officials to believe that the property that comprises an Established Campsite or Camp Facilities is being used or is intended to be used to commit or facilitate the commission of otherwise illegal activity; or

c. In the event of an exceptional emergency, such as significant evidence of site contamination by hazardous materials or when there is immediate danger to human life or safety.

C. Removal of an Established Campsite or Camp Facilities. If the occupant(s) fail to comply with the request for voluntary compliance set forth in subsection A above, and after the enforcement personnel comply with the requirements set forth in subsection B above, any Camp, Camp Materials, or personal property in violation of any of the standards in this Chapter may be removed or cleaned-up by the City or its designated contractors, and the enforcement personnel may take appropriate actions to

remove an Established Campsite or Camp Facilities and enforce this Chapter, consistent with the following:

1. When removing Camp Facilities, or individuals, Camp Materials, or personal property from an Established Campsite, enforcement personnel will make reasonable efforts to remove individuals without the use of force or citation.
2. When removing personal property, the City shall make reasonable efforts to determine if the property belongs to an individual and has any reasonable utility or reasonable value. The City shall make reasonable efforts to identify which Established Campsite the property was removed from, to aid in connecting people with their property. Items that are perishable, that have no reasonable use or value, that are not identifiable as belonging to an individual, or that are in an unsanitary condition due to saturation or contamination from bodily fluids, whether human or animal, or other contamination, will be considered garbage, discarded, and need not be stored.
3. Weapons, drug paraphernalia, or other contraband, and items that appear to be either stolen or evidence of a crime, shall be provided to law enforcement officials.
4. Following removal of personal property from City property or rights-of-way, the City shall post a notice at or as near as possible to the location the property was collected and on the City's website, stating where the personal property is being stored, and listing the phone number and hours a person claiming ownership can collect or make arrangements to collect their personal property.
5. After an Established Campsite or Camp Facilities has been removed, then at the recommendation of the Police Chief or Fire Chief on the basis of public health and safety, the City Manager may order that **no camp be set up in that same location or a 100-foot radius for up to 30 days.** The City shall post signs informing the public that camping is prohibited at the location for the specified period of time.

D. Removal and Storage of Personal Property or Camp Materials During Removal of an Established Campsite or Camp Facilities. Personal property or Camp Materials may be removed from City rights-of-way, City property, or a Camp, during removal of an Established Campsite or Camp Facilities pursuant to Section C above, if in violation of the provisions of this Chapter, as provided for herein.

1. Personal property removed from City rights-of-way or City property and unclaimed at the time of removal will be stored by the City for a minimum of ninety (90) days, or the duration (if shorter in time) allowed by applicable State or federal law, counting from the day of the removal as day one.
2. Items that are perishable, that have no reasonable use or value, that are not identifiable as belonging to an individual, or that are in an unsanitary condition due to saturation or contamination from bodily fluids, whether human or animal, or other contamination, will be considered garbage, discarded, and will not be stored. Property discarded, dumped, or otherwise abandoned in the City rights-of-way or on public property may be immediately discarded.

3. The City will store personal property at a storage facility at or near a designated City facility, where people can reasonably retrieve belongings. Notwithstanding any otherwise applicable City policy or procedure, all items collected and stored pursuant to this Chapter that reasonably appear to have a monetary value at the time of collection of less than one thousand dollars (\$1,000) shall be stored at a storage facility, and items that reasonably appear to have a monetary value at the time of collection of one thousand dollars (\$1000) or more shall be separately stored for safekeeping with the Porterville Police Department ("MBPD").

4. The City will make reasonable efforts to provide a range of times the storage facility will be available for people to collect their personal property. The City may dispose of any personal property that remains unclaimed after ninety (90) days, or the duration (if shorter in time) allowed by applicable State or federal law, counting from the day of the removal as day one.

Section 18-80 VIOLATIONS

A citation for a violation of this Article shall be for an infraction. At the City's discretion, it may issue Administrative Citations under Chapter 2, Article 14 of this Code. Citations will be issued only when other means of achieving compliance have been unsuccessful or are not practicable for the particular situation. Additionally, the City reserves the right to enforce this Article in accordance with Chapter 1, Sections 1-9 and 1-10 of this Code, to the extent consistent with this Article and Section.

Section 18-81 SUSPENSION OF ENFORCEMENT

The City Council, Manager, or designee, as otherwise specified is specifically authorized to modify or suspend enforcement of any section or part of this Article in the event of a declared emergency, pursuant to applicable State or Federal Law, City regulations, administrative rules or policies, weather conditions (including but not limited to extreme heat or cold), or for any other reason within the City Council or City Manager's authority, regardless of whether an emergency has been declared. In addition, the City Manager may suspend the enforcement of regulations contained in this Chapter when the City Manager, or designee, has determined a person does not have access to shelter and is engaged in case management or behavioral health services, or when necessary or appropriate to respond to a person's disability, or as further set forth in any administrative policies implementing this Article adopted by the City Manager, or designee pursuant to Section 18-82.

Section 18-82 ADOPTION OF ADMINISTRATIVE RULES

The City Manager, or designee may adopt administrative rules or policies governing or guiding enforcement of this Chapter, consistent with the intent of this Chapter, including but not limited to ensuring consistent and appropriate enforcement for various circumstances. These administrative rules or policies should ensure that enforcement is tailored to various circumstances, including but not limited to situations where a person has a disability under the Americans with Disabilities Act, where minor children are present or otherwise involved, where a person has employment obligations that may relate to their ability to comply with this Chapter, or for other reasons that may support discretion in enforcement.

Section 18-83 METHODS OF ENFORCEMENT NOT EXCLUSIVE

Methods of enforcement for violations of this Chapter are not exclusive and may consist of multiple enforcement mechanisms where legally authorized and appropriate. However, the intent of the City is to always resolve violations at the lowest possible level, and to engage to seek compliance and solve problems while maintaining the dignity of all involved.

Section 18-84 OVERNIGHT CAMPING ON PRIVATE PROPERTY

It is unlawful to camp on private property without the property owner's consent, or to camp on private property in such a manner in violation of applicable law or this Code or as to cause blight or a public nuisance, or to disturb the peace and quiet enjoyment of the adjacent property owners and neighbors. For the purposes of this section, an unlawful encampment includes but is not limited to an area of private property, upon which any person has settled or located, or which they occupy, without having a bona fide claim or color of title thereto, or without the express consent of the owner or person legally in charge thereof or the agent of the same, and/or which is occupied or inhabited by such person in violation of section 103 of the California Building Code or Chapter 7 of this Code (Uniform Building Codes as adopted by the City). Camping inside a motor vehicle shall only be permitted if done in a manner otherwise consistent with this Section and if otherwise (and to the extent) permitted under this Code or applicable law.

Notwithstanding the other restrictions in this Section, camping shall not be permitted on private property where it is conducted in such a manner as to create inadequate sanitation, any trafficking in illegal drugs, or with such frequency, intensity or duration as to constitute a use of land prohibited under Chapter 21 of this Code (zoning regulations), nor where any fee, charge or other monetary consideration is collected for the privilege of Camping or for any services or the use of any facilities related thereto (unless such use/activity has been expressly permitted by the City).

Notwithstanding this Section or other applicable regulations in this Code, camping, lodging (or other activities) on private property in violation of any applicable State or Federal law is prohibited.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 4. POTENTIAL CONFLICTS. All ordinances, parts of ordinances, City resolutions or policies, and the like, in conflict with those sections amended or added herein to the Porterville Municipal Code, are hereby expressly superseded by this ordinance.

SECTION 5. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after its passage and adoption.

SECTION 6. CERTIFICATION. The City Clerk shall certify as to the passage and adoption of this ordinance, and the City Clerk shall cause the same to be posted and codified in the manner required by law.



CITY COUNCIL AGENDA – OCTOBER 17, 2023

SUBJECT: Consideration of Potential Local Regulations Addressing Regulation of Camping and the Protection of Critical Infrastructure

SOURCE: City Attorney

COMMENT: The population of individuals experiencing homelessness in the state of California has increased exponentially in the past five years, and the city of Porterville as well as the regional area have experienced the impacts of these increases along with the rest of the state. Cities and Counties are looking at ways to better address the effects of this crisis, on both the housed and the unhoused residents, and have taken a variety of legal and policy approaches in an effort to better address the health, safety and welfare of their entire communities. These approaches generally include the development of additional resources and shelter opportunities for the unhoused, along with the adoption of regulatory restrictions with an aim to protect critical infrastructure, wildfire risk areas, and other sensitive areas from damage or the threat of damage due to fire, flooding, and other potential causes of destruction; and regulations balancing access of the entire community to public open spaces.

The City of Porterville has undertaken several projects in its effort to mitigate the effects of the crisis, including the development of the Porterville Navigation Center and the operation of the overnight shelter located at the Porterville Army National Guard Armory, as well as the development of permanent supportive housing for those who have experienced homelessness. These projects help to provide needed resources to the city's unhoused population.

This Office recommends that the Council consider whether it wishes to adopt regulations in order to better protect the City's infrastructure, and whether it wishes to adopt additional camping restrictions in light of better shelter availability. Over the past few years, the City's Fire Department has had to respond to several fires set in areas where encampments have been present. Additionally, last year's historical rainfall caused serious flood risks and hazards along the Tule River and other waterways and channels. The City's Public Works Department crews worked diligently to clear items and debris left by individuals from those waterways, and to shore up and repair damage to the river embankments caused by a variety of factors, including camping.

LEGAL FRAMEWORK AND RESTRICTIONS

Approximately five years ago, the 9th Circuit Court of Appeals issued its
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decision in *Martin v. City of Boise* (9th Cir. 2018) 902 F.3d 1031, superseded by *Martin v. City of Boise* (9th Cir. 2019) 920 F.3d 584. In that case, the Court reviewed two separate City ordinances – one that prohibited the use of any streets, sidewalks, parks, or public places as a camping place at any time, and a second ordinance that prohibited the occupation, lodging, or sleeping in any building, structure or public place, whether private or public, without the owner’s permission. The Court, in reading the two ordinances together, found that the City had completely criminalized sleeping outside on public property. The Court also found that the City did not have available sheltering due to current shelters being at full capacity, or there being impracticable limits, policies, or religious mandates. The Court held that criminalizing sleeping on public property throughout the city, with no shelter available, was prohibited and in violation of the Eighth Amendment (cruel and unusual punishment clause), because the City was prohibiting actions or conditions that were “universal and unavoidable consequences of being human.” (Id. at 1048). The 9th Circuit, in making the ruling, also expressly found that its ruling was NOT stating that cities could never criminalize the act of sleeping outdoors, and the Court also stated that an ordinance that prohibited the obstruction of public rights of way, or prohibited the erection of certain structures, could be allowable.

While the 9th Circuit attempted to provide an extremely narrow ruling, it also left a lot of substantial open questions. The Court did not provide for the specific circumstances where the available sheltering would be considered to be inadequate, what it meant for sheltering to be “practically available,” or whether shelter could be available in a nearby city. Since the issuance of the decision, there have only been seven lower district court cases in the 9th Circuit further interpreting the decision. Many of those cases did provide some helpful clarifications and solidified that public agencies may remove encampments from specific areas of public property without running afoul of the Eighth Amendment (as defined by the 9th Circuit). The subsequent cases also clarified that agencies could undertake temporary encampment closures, could evict individuals from particular places, and could prohibit camping in a particular park without a permit (if sleeping was allowed in some other public place(s)).

Finally, in *Johnson v. City of Grants Pass* (9th Cir. 2022) 50 F.4th 787, the 9th Circuit looked at whether the City’s four core ordinances, when taken together, violated the Eighth Amendment. The court found that the ordinances (which included regulations that prohibited sleeping in public places with the use of any material used for bedding purposes) in their totality did not pass constitutional muster. The City is currently petitioning the U.S. Supreme Court for review, with a lot of support from other major metropolitan jurisdictions.

LOCAL REGULATORY APPROACHES

California cities have taken a variety of regulatory approaches. The following are some examples.

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ATASCADERO. The City of Atascadero, which originally had in place a ban on camping on any public land within the City (dating back to 2013), just adopted comprehensive revisions that now prohibit camping within five hundred (500) feet of government buildings, certain parks, underpasses and riverbanks. The regulations contain a general prohibition with regard to camping, except as otherwise provided within the ordinance. Prior to directing any individual to remove camp facilities (or prior to the city removing those facilities), the City must offer information concerning available housing or shelter, and other services that are believed to be relevant to that individual. The ordinance then defines as an exception to the camping prohibition, individuals who are “camping by necessity” and who are following the time, place and manner restrictions the City has imposed. Those restrictions provide that camp facilities shall not be erected or maintained between the hours of 7:00 a.m. to 8:00 p.m. (unless during stormy weather), shall not obstruct streets, sidewalks, park playgrounds, etc., shall not exceed a size of one hundred (100) square feet (10 x 10), and shall not excavate/alter the ground or infrastructure. Finally, there is a list of specific areas contained within the ordinance where camping is prohibited, unless the City posts signs designating permissible camping locations as part of a City-established overnight sleeping program. Atascadero additionally references that it will continue to “respond compassionately with a multi-disciplinary team” in an effort to connect its unhoused population with housing and other needed services, and during the City Council meeting where the proposed regulations were discussed and approved, staff represented to the Council that the updated ordinance would mainly serve as a tool for dealing with large, uncooperative public encampments. Attached to this report is the staff report and ordinance from Atascadero’s October 10, 2023, City Council Meeting.

ELK GROVE. The City of Elk Grove adopted its regulations in July 2022. Its regulations prohibit camping within five hundred (500) feet of schools, day care centers, playgrounds or youth centers, prohibit occupying a camping area of greater than 150 sq. ft., and prohibit four or more people from camping together (defined to be an “encampment.”) The ordinance allows for the temporary seizure of personal property, with seventy-two (72) hours-notice, as a penalty for violation of the camping restrictions along with other remedies for violations. In reviewing the City’s online list of available resources related to the unhoused community in Elk Grove, it appears that the City does not have an available shelter, but that there is some transitional housing and a navigation center. The City’s ordinance is attached to this report.

SANTA CRUZ. The City of Santa Cruz has taken a different approach than the Cities described above. In 2021, the City adopted its “Camping Services and Standards Ordinance,” as a way to better balance the community’s health, safety and environmental concerns to ensure shared access by the community to the City’s parks and open spaces. This ordinance requires the City’s creation and operation of a safe sleeping program with a minimum of 150 sleeping

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spaces for overnight use and requires the operation of an unsheltered person's storage program for personal items. In conjunction with those requirements, the City then prohibits daytime camping once the storage program is operational (or if there is a 24/7 shelter available) and prohibits nighttime camping when alternative sleeping locations are available, including shelters and City-sanctioned safe sleeping locations. With regard to enforcement, the City focuses more on outreach, education and voluntary compliance, but criminal citations are permitted. At around the same time these proposed regulations were considered by the City Council, the City also authorized Request for Qualifications for outside organizations to operate daytime storage facilities, safe nighttime sleeping facilities, and/or managed encampment facilities. The City's ordinance is attached to this report.

SACRAMENTO. The City of Sacramento, with an unhoused population of approximately 10,000 people, has been at the forefront in the development of regulations balancing the requirements set forth in the federal cases interpreting the *Boise* decision, the needs of the community, and the protection of critical public infrastructure. In 2019, the City dealt with over 1000 fires associated with encampments occupied by individuals experiencing homelessness, damage to various utilities including the City's water treatment plant, and encampment related damage to levees. As a result, in 2020, the City adopted an ordinance that prohibits camping and storing property 1) on or within twenty-five (25) feet of "critical infrastructure," 2) on portions of public right of way that must by law remain free from obstruction for first responders, 3) within "hollow sidewalks," and 4) in wildfire risk areas. "Critical infrastructure" is defined as levees and any other real property or facility that the city manager designates and that the City Council approves by resolution, "as being so vital and integral to the operation of functioning of the city that is damage, incapacity, disruption, or destruction would have a debilitating impact on the public health, safety, or welfare." (See Sac. City Code, Section 8.140.020.) The City has thus far designated as "critical infrastructure" certain facilities that house vulnerable populations, government operations, utilities, healthcare providers, public safety and transportation infrastructure, and public gathering spaces.

Additionally, in 2022, the City put in place (after approval from the voters) an initiative ordinance that provided that once there was a certain level of available shelter spaces, a person could be cited for unlawful camping on public property if a shelter space was available and offered, but the offer is rejected and the person refuses to relocate. This ordinance also made it unlawful in an encampment (four or more persons camping together or within fifty (50) feet of each other) to camp, occupy camp facilities, etc. These most recent camping regulations were adopted along with a self-imposed requirement for 1) the City to identify and authorize a certain number (%) of new emergency shelter spaces and require the creation of additional spaces if warranted in light of utilization rates; 2) the creation of a right of nuisance abatement action against the City; and 3) a City funding requirement prioritizing external sources, and if insufficient requiring the allocation of unobligated General Fund Revenues (not

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to exceed \$5 million dollars). Borrowing from the City's regulations, please find attached sample provisions related to critical infrastructure and camping, along with the City's most recent staff report and resolution determining the specific protected "critical infrastructure." Given the crisis Sacramento has faced, it has set up a stand alone City Department (the Department of Community Response), and it contracts to fund twelve (12) shelter programs (1,214 units of shelter, transitional housing, and safe ground/respice on any given night) in addition to other more specialized programs. Additionally, the City has a 5-year partnership agreement and a "Collaboration Protocol" with the County of Sacramento.

CONCLUSION

There are pros and cons associated with each of the aforementioned approaches, and each City has different priorities, areas of focus and concern, and of course varying levels of available outside funding and resources. This Office recommends that the City Council discuss the priorities, the facilities and property that the City believes needs to be protected, and the issues related to the community's access to open spaces, and provide direction concerning the development of regulations that address camping and the protection of critical public infrastructure.

RECOMMENDATION: That the City Council discuss the priorities, the facilities and property that the Council believes needs to be protected, and provide direction to the City Attorney concerning the development of regulations that address camping, the protection of critical public infrastructure and public access to open spaces.

ATTACHMENTS:

1. Sample Camping Restriction Ordinance
2. Sample Critical Infrastructure Ordinance
3. City of Atascadero
4. City of Elk Grove
5. City of Santa Cruz
6. City of Sacramento

Appropriated/Funded:

Review By:

Department Director:
Julia Lew, City Attorney

Final Approver: John Lollis, City Manager

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Chapter _____ CAMPING

- Purpose.
- Definitions.
- Unlawful camping.
- Storage of personal property on public and private property.
- Permit for special events required.
- Posting copy of permit.
- Power of the city manager to make rules and regulations.
- Current ordinance provisions.

_____ Purpose.

The streets and public areas within the city should be readily accessible and available to residents and the public at large. The use of these areas for camping purposes or storage of personal property interferes with the rights of others to use the areas for which they were intended. Such activity can constitute a public health and safety hazard which adversely impacts neighborhoods and commercial areas. Camping on private property without the consent of the owner, proper sanitary measures and for other than a minimal duration adversely affects private property rights as well as public health, safety, and welfare of the city. The purpose of this chapter is to maintain streets, parks and other public and private areas within the city in a clean, sanitary and accessible condition and to adequately protect the health, safety and public welfare of the community, while recognizing that, subject to reasonable conditions, camping and camp facilities associated with special events can be beneficial to the cultural and educational climate in the city. Nothing in this chapter is intended to interfere with otherwise lawful and ordinary uses of public or private property.

_____ Definitions.

Unless the particular provisions or the context otherwise requires, the definitions contained in this section shall govern the construction, meaning, and application of words and phrases used in this chapter.

“Camp” means to place, pitch or occupy camp facilities; to live temporarily in a camp facility or outdoors; to use camp paraphernalia.

“Camp facilities” include, but are not limited to, tents, huts, vehicles, vehicle camping outfits or temporary shelter.

“Camp paraphernalia” includes, but is not limited to, bedrolls, tarpaulins, cots, beds, sleeping bags, hammocks or cooking facilities and similar equipment.

“City manager” means the city manager or designee.

“Establish” means setting up or moving equipment, supplies or materials on to public or private property to “camp” or operate camp facilities.

“Maintain” means keeping or permitting equipment, supplies or materials to remain on public or private property in order to camp or operate camp facilities.

“Operate” means participating or assisting in establishing or maintaining a camp or camp facility.

“Park” means and includes all parks, parkways, medians, pedestrian malls, plazas, greenbelts, gardens, lakes, and any other property owned or controlled by the city, including structures thereon and off-street parking areas that are used in connection therewith, that are operated or maintained for passive or active recreational purposes. The term “park” also includes any property owned or controlled by the city as open space, including undeveloped sites for future parks. The term “park” does not include the City Hall facility

“Private property” means all private property including, but not limited to, streets, sidewalk, alleys, and improved or unimproved land.

“Public property” means all public property including, but not limited to, streets, sidewalks, alleys, improved or unimproved land and parks.

“Store” means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.

“Street” means a street, alley, way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. “Street” includes highway, as that term is defined in the California [Vehicle Code](#).

Unlawful camping.

It is unlawful and a public nuisance for any person to camp, occupy camp facilities, or use camp paraphernalia in the following areas:

A. Any public property; or

B. Any private property.

1. It is not intended by this section to prohibit overnight camping on private residential property by friends or family of the property owner, so long as the owner consents and the overnight camping is limited to not more than one consecutive night.

2. Nothing in this chapter is intended to prohibit or make unlawful, activities of an owner of private property or other lawful user of private property that are normally associated with and incidental to the lawful and authorized use of private property for residential or other purposes; and provided further, nothing is intended to prohibit or make unlawful, activities of a property owner or other lawful user if such activities are expressly authorized by the Planning and Development Code or other laws, ordinances and regulations.

3. The city manager may, as provided in Section _____ of this chapter, issue a temporary permit to allow camping on public or private property in connection with a special event.

A violation of this section is a misdemeanor. In addition to the remedies set forth in Penal Code Section 370, the city attorney may institute civil actions to abate a public nuisance under this chapter.

_____ Unlawful camping enforcement.

Section _____ (unlawful camping) may not be enforced against any individual on public property unless and until all the following have occurred:

- A. The city manager has determined that an emergency shelter space for the individual is currently available;
- B. The city manager has offered the individual an emergency shelter space; and
- C. The individual has rejected the city's offer of an emergency shelter space and refuses to move from the public property.

_____ Unlawful encampments.

- A. It is unlawful and a public nuisance for any person to do the following in an encampment located on any public or private property:
 - 1. Camp, occupy camp facilities, or use camp paraphernalia; or
 - 2. Accumulate or fail to properly dispose of waste including, but not limited to, hazardous waste, human waste, garbage, debris, and used needles.

- B. This section does not prohibit encampments on private residential property by friends or family of the property owner, so long as the owner consents and the encampment is limited to not more than one consecutive night.
- C. This section does not prohibit or make unlawful, activities of an owner of private property or other lawful user of private property that are normally associated with and incidental to the lawful or authorized use of the private property for residential or other purposes; and provided further, this section does not prohibit or make unlawful, activities of a property owner or other lawful user if such activities are expressly authorized by the Development Code or other laws, ordinances, and regulations.
- D. The city manager may, in his or her discretion, issue a permit to establish, maintain, and operate an encampment in connection with a special event. A special event is intended to include, but not be limited to, programs operated by the departments of the city, youth or school events, marathons or other sporting events, and scouting activities. The city manager may consult with various city departments and the public prior to issuing any temporary permit. Each department or person consulted may provide comments regarding issuance denial, or conditioning of the permit. A reasonable fee, to be set by the city council shall be paid, in advance, by the applicant. The fee shall be returned if the application is denied. In exercising his or her discretion to issue a temporary permit, the city manager may consider any facts or evidence bearing on the sanitary, health, safety and welfare conditions on or surrounding the areas or tract of land upon which the proposed temporary camp or camp facility is to be located.
- E. Notwithstanding the provisions of Section _____, subsection A of this section may be enforced to prohibit encampments on public or private property without regard to the provisions of section _____.
- F. A violation of this section is a misdemeanor. In addition to remedies set forth in California Penal Code 370 and in Sections 1-9 and Chapter 2 of this Code, the city attorney may institute civil actions to abate a public nuisance under this chapter.

_____ Storage of personal property on public and private property.

It is unlawful and a public nuisance for any person to store personal property, including camp paraphernalia, in the following areas, except as otherwise provided by resolution of the city council:

- A. Any public property; or
- B. Any private property without the written consent of the owner.

A violation of this section is a misdemeanor. In addition to the remedies set forth in Penal Code Section 370 the city attorney may institute civil actions to abate a public nuisance under this chapter.

Permit for special events required.

The city manager may, in his or her discretion, issue a permit to establish, maintain and operate a camp or a camp facility in connection with a special event. A special event is intended to include, but not be limited to, programs operated by the departments of the city, youth or school events, marathons or other sporting events and scouting activities. The city manager may consult with various city departments, the health officer and the public prior to issuing any temporary permit. Each department or person consulted may provide comments regarding any health, safety or public welfare concerns and provide recommendations pertaining to the issuance, denial or conditioning of the permit. A reasonable fee, to be set by the city council shall be paid, in advance, by the applicant. The fee shall be returned if the application is denied. In exercising his or her discretion to issue a temporary permit, the city manager may consider any facts or evidence bearing on the sanitary, health, safety and welfare conditions on or surrounding the area or tract of land upon which the proposed temporary camp or camp facility is to be located.

Any person who establishes, maintains or operates a camp or camp facility without a permit is guilty of a misdemeanor and constitutes a public nuisance. In addition to remedies provided in Penal Code Section 370 the city attorney may institute civil actions to abate a public nuisance under this chapter.

Posting copy of permit.

It is unlawful for any person to establish, maintain, conduct or carry on any camp or camp facility unless there shall be at all times posted in a conspicuous place upon the area or tract of land upon which the camp or camp facility is located a permit obtained from the city manager in accordance with the provisions of Section _____ of this chapter.

Power of the city manager to make rules and regulations.

The city manager is further empowered to ascertain that the operation or maintenance of any camp or camp facilities to which a temporary permit shall apply will in no way jeopardize the public health, safety or welfare and for this purpose may make additional rules and regulations pertaining to their establishment, operation or conduct. The city manager may also impose conditions on the establishment, maintenance and operation of the camp or camp facility, including, but not limited to, security, sanitation facilities, the number of occupants, posting of bonds or deposits, insurance, quiet hours, duration of the permit, and permitted activities on the premises. When the city manager shall issue any permit under the terms of Section _____ of this chapter, the same may be revoked at any time thereafter by the city manager if the city manager becomes satisfied that the maintenance or continuing operation of the camp or camp facilities is adverse to the public health, safety and welfare.

Current ordinance provisions.

Neither the adoption of the ordinance codified in this chapter nor the repeal hereby of any ordinance shall in any manner affect the prosecution for violation of ordinances, which violations were committed prior to the effective date hereof, nor be construed as affecting any of the provisions of such ordinance relating to the collection of any such license or penalty or the penal provision applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof, required to be posted, filed or deposited pursuant to any ordinance, and all rights and obligations thereunder appertaining shall continue in full force and effect.

Chapter _____ PROTECTION OF CRITICAL INFRASTRUCTURE AND WILDFIRE RISK AREAS

- Findings and purpose.
- Definitions.
- Prohibited activities.
- Summary abatement.
- Interference with summary abatement.
- Violation—Penalty.

Findings and purpose.

The City Council finds as follows: (1) a principal threat to the public health, safety, and welfare is the potential destruction of, damage to, or interference with, infrastructure that is critical to the provision of public services such as law enforcement, fire prevention, transportation, and utilities including communication, water, and waste disposal; (2) destruction of, damage to, or interference with, critical infrastructure is caused by fire, contamination, restricting access, or other causes; and (3) destruction of, damage to, or interference with, critical infrastructure is often caused by persons whose activities are not permitted or authorized in, on, or near critical infrastructure.

The purpose of this chapter to mitigate the threat of fire and other potential causes of destruction and damage to and interference with, critical infrastructure, in order to protect the health, safety, and welfare of the public, by authorizing the removal of persons and their personal property in, on, or near critical infrastructure.

Definitions.

When used in this chapter, the following words and phrases have the following meanings:

“Camp” means to place, pitch or occupy camp facilities; to live temporarily in a camp facility or outdoors; to use camp paraphernalia.

“Camp facilities” include, but are not limited to, tents, huts, vehicles, vehicle camping outfits or temporary shelter.

“Camp paraphernalia” includes, but is not limited to, bedrolls, tarpaulins, cots, beds, sleeping bags, hammocks or cooking facilities and similar equipment.

“Critical infrastructure” means each of the following:

1. Levees; or
2. Real property or a facility, whether privately or publicly owned, as approved by resolution of the city council, that the city manager designates as being so vital and integral to the operation or functioning of the city that its damage, incapacity, disruption, or destruction would have a debilitating impact on the public health, safety, or welfare.

Critical infrastructure may include, but is not limited to, government buildings, such as fire stations, police stations, jails, or courthouses; hospitals; structures, such as antennas, bridges, roads, train tracks, drainage systems, or levees; or systems, such as computer networks, public utilities, electrical wires, natural gas pipes, telecommunication centers, or water sources.

“Debris” means building and construction materials, garbage, refuse, wreckage, spoiled or ruined household goods, and similar material.

“Facility” means a building, structure, equipment, system, or asset.

“Fire prevention official” means the fire chief, a deputy fire chief, the fire marshal, or a fire prevention officer.

“Garbage” means discarded nonputrescible or putrescible household items, objects, or materials for which there is no use or reuse intended. Garbage does not include source-separated recyclables, food waste, or yard waste. “Garden refuse” has the same meaning as yard waste.

“Hazardous waste” has the same meaning as in California Public Resources Code section 40141.

“Hollow sidewalk” means a sidewalk that has been determined to be a hollow sidewalk in “Raised Streets & Hollow Sidewalks” survey report of _____, prepared by Page & Turnbull, Inc. for the City.

“Infectious waste” has the same meaning as in California Code of Regulations, title 14, section 17225.36.

“Solid waste” means all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage; ashes; industrial waste; demolition and construction waste; discarded home and industrial appliances; abandoned vehicles and vehicle parts; dewatered, treated, or chemically fixed sewage sludge that is not hazardous waste; manure; dirt; soil, rock, gravel, sand, or other aggregate material; and other discarded solid and semisolid waste; but not including recyclables, food waste, or yard waste.

“Wildfire risk area” has the same meaning as in California Code of Regulations, title 24, part 9, section 202.

Prohibited activities.

A. It is unlawful and a public nuisance for any person to camp, occupy camp facilities, or use camp paraphernalia at the following locations:

1. Critical infrastructure;
2. Within 25 feet of critical infrastructure;
3. Within 25 feet of a vehicular or pedestrian entrance or exit of critical infrastructure;
4. On those portions of a right-of-way that are required by local, state, or federal law to be free of obstruction to first responders, including but not limited to members of law-enforcement, fire-prevention, or emergency-medical-services agencies;
5. Within a hollow sidewalk; or
6. Wildfire risk area.

B. It is unlawful and a public nuisance for any person to store personal property, including camp facilities and camp paraphernalia, in the following locations without the written consent of the owner, except as otherwise provided by resolution of the city council:

1. Critical infrastructure;

2. Within 25 feet of critical infrastructure;
 3. Within 25 feet of a vehicular or pedestrian entrance or exit of critical infrastructure;
 4. On those portions of a right-of-way that are required by local, state, or federal law to be free of obstruction to first responders, including but not limited to members of law-enforcement, fire-prevention, or emergency-medical-services agencies;
 5. Within a hollow sidewalk; or
 6. Wildfire risk area.
- C. It is not intended by this section to prohibit overnight camping on private residential property by friends or family of the property owner, so long as the owner consents and the overnight camping is limited to not more than one consecutive night.
- D. Nothing in this chapter is intended to prohibit or make unlawful the activities of an owner of private property or other lawful user of private property that are normally associated with and incidental to the lawful and authorized use of private property for residential or other purposes; and nothing is intended to prohibit or make unlawful the activities of a property owner or other lawful user if such activities are expressly authorized by the Planning and Development Code or other laws, ordinances, and regulations.

Summary abatement.

A. Any violation of section _____ may be abated by the city upon 24 hours of prior notice; but a violation of section _____ may be abated immediately by the city without prior notice, if the violation poses an imminent threat to public health or safety.

B. Abatement pursuant to subsection A may include, but is not limited to, removal of camp facilities, camp paraphernalia, personal property, garbage, hazardous waste, infectious waste, junk, or debris; and securing the perimeter of the property with fencing, gates, or barricades to prevent further occurrences of the nuisance activity.

C. Regardless of the city's authority to conduct abatement pursuant to this section, every owner, occupant, or lessee of real property, and every holder of any

interest in real property, is required to maintain the property in compliance with local, state, and federal law; and is liable for violations thereof.

D. The cost of abatement, including all administrative costs of any action taken hereunder, may be assessed against the subject premises as a lien, made a personal obligation of the owner, or both, in accordance with procedures in Chapter 1 Section 1-10, Chapter 2 Section 2.152 and any other enforcement provisions provided for in this Code.

Interference with summary abatement.

No person shall willfully prevent, delay, resist, obstruct, or otherwise interfere with a city official, employee, contractor, or volunteer in their execution of an abatement pursuant to this chapter.

Violation—Penalty.

A. In addition to any other remedy allowed by law, any person who violates a provision of this chapter is subject to criminal sanctions, civil actions, and administrative penalties pursuant to Chapter 1 Sections 1-9 and 1-10, and Chapter 2 Article XIV of this Code.

B. Violations of this chapter are hereby declared to be a public nuisance.

C. Any person who violates a provision of this chapter is liable for civil penalties of not less than \$250 or more than \$25,000 for each day the violation continues.

D. All remedies prescribed under this chapter are cumulative and the election of one or more remedies does not bar the city from the pursuit of any other remedy to enforce this chapter.



Atascadero City Council

Staff Report – City Manager’s Office

Ordinance Regulating Camping in Areas of the City (Atascadero Municipal Code Title 5, Chapter 15)

RECOMMENDATION:

Council adopt, on second reading, a Draft Ordinance repealing and replacing, in its entirety, Title 5, Chapter 15 (Prohibited Camping) of the Atascadero Municipal Code, to better define prohibited camping on public and private property; define time, manner, and place for legal camping; regulate storage of personal property on public property; and establish time, manner, and place regulations for camping by necessity.

DISCUSSION:

At the September 26, 2023, meeting, Council introduced the attached Draft Ordinance on a 5:0 vote, which repeals and replaces Title 5, Chapter 15 (Prohibited Camping) of the Atascadero Municipal Code, and said Draft Ordinance is before Council for adoption and final approval tonight.

This ordinance was developed to set forth standards for camping and sheltering on City rights-of-way and public and private property in response to legislative and court decisions limiting the City’s ability to take enforcement action for violation of the City’s previously adopted Prohibited Camping Ordinance.

This new ordinance seeks to address public peace, health, and safety issues by clearly defining camping and when and where camping by necessity is not permitted, as well as defining unlawful storage of personal property on public property and the process for notification for abatement of stored property. The updated Ordinance will provide City staff with additional tools where enforcement action becomes necessary. City staff will continue to respond compassionately with a multi-disciplinary team to address the needs of the homeless population with the goal being to connect the unhoused to services and housing.

FISCAL IMPACT:

None.

ATTACHMENT:

1. Draft Ordinance

DRAFT ORDINANCE B

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF ATASCADERO, CALIFORNIA, REPEALING AND
REPLACING, IN ITS ENTIRETY, TITLE 5, CHAPTER 15 (PROHIBITED
CAMPING), OF THE ATASCADERO MUNICIPAL CODE TO ADDRESS
PROHIBITED CAMPING ON PUBLIC AND PRIVATE PROPERTY,
REGULATE STORAGE OF PERSONAL PROPERTY ON PUBLIC
PROPERTY, AND ESTABLISH TIME, MANNER AND PLACE
REGULATIONS FOR CAMPING BY NECESSITY**

WHEREAS, homelessness continues to be a significant challenge not only in the City of Atascadero but throughout the entire county and state; and

WHEREAS, the City Council originally adopted a Prohibited Camping Ordinance in 2013 to address camping on public property; and

WHEREAS, the United States Ninth Circuit Court of Appeals decisions in *Martin v. Boise* and *Johnson v. City of Grants Pass*, combined with voter-approved ballot measures and state legislation, have severely limited the City's ability to take enforcement action for violation of the City's Prohibited Camping Ordinance; and

WHEREAS, the City has received numerous complaints from, and appeals to address camping throughout the City by, residents impacted by campers in their residential neighborhoods, local businesses and places of worship expressing health and safety concerns due to encampments encroaching near and or on their properties, and the Atascadero Unified School District to address camping in and around school properties; and

WHEREAS, the Atascadero Mutual Water Company, concerned with pollution of the City's water source caused by human waste contamination as a result of camping in and around waterways, recently appealed to the City to prohibit camping near Atascadero Creek, Graves Creek, and the Salinas River; and

WHEREAS, in response to these requests and the *Boise* and *Grants Pass* decisions, staff researched many communities' recently adopted prohibited camping ordinances to assist in developing an updated ordinance that meets the health and safety needs of all residents in the community (housed and unhoused) as well as complies with these United States Ninth Circuit Court of Appeals decisions; and

WHEREAS, the proposed draft ordinance was developed to regulate the time, place, and manner of camping on public and private property given enforcement limitations, regulate vehicle habitation on public property and rights-of-way, vehicle camping on private property, and camping on public property; and

WHEREAS, it is staff's intention to continue to respond compassionately, with a multi-disciplinary team to address the needs of the homeless population.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ATASCADERO
HEREBY ORDAINS AS FOLLOWS:**

SECTION 1. Recitals: The above recitals are true and correct.

SECTION 2. Determination. The City Council has determined that Title 5, Chapter 15 is repealed and replaced in its entirety, as set forth in Exhibit “A” of this Ordinance, attached hereto and incorporated herein by reference.

SECTION 3. CEQA. The proposed Title 5, Chapter 15 is exempt from the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq., because it can be seen with certainty that there is no possibility that the enactment of this Ordinance would have a significant effect on the environment (Pub. Resources Code § 21065; CEQA Guidelines §§ 15378(b)(4), 15061(b)(3)).

SECTION 4. Interpretation. This Ordinance must be broadly construed in order to achieve the purposes stated in this Ordinance. It is the City Council’s intent that the provisions of this Ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Ordinance.

SECTION 5. Preservation. Repeal of any provision of the AMC or of any previous Code Sections, does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance’s effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 6. Effect of Invalidation. If this entire Ordinance or its application is deemed invalid by a court of competent jurisdiction, any repeal or amendment of the AMC or other City Ordinance by this Ordinance will be rendered void and cause such previous AMC provision or other City Ordinance to remain in full force and effect for all purposes.

SECTION 7. Severability. If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 8. Notice. The City Clerk is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Atascadero’s book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

SECTION 9. Effective Date. This Ordinance will take effect on the 30th day following its final passage and adoption.

ITEM NUMBER: A-2
DATE: 10/10/23
ATTACHMENT: 1

INTRODUCED at a regular meeting of the City Council held on _____, 2023, and **PASSED, APPROVED** and **ADOPTED** by the City Council of the City of Atascadero, State of California, on _____, 2023.

CITY OF ATASCADERO:

Heather Moreno, Mayor

ATTEST:

Lara K. Christensen, City Clerk

APPROVED AS TO FORM:

Brian A. Pierik, City Attorney

CHAPTER 15. - CAMPING AND STORAGE OF PERSONAL PROPERTY

5-15.101. - PURPOSE.

This Chapter is intended to protect the public health, welfare, and safety by reserving open spaces and facilities within the City limits for their intended purposes. Public property within the City should be readily accessible and available to residents and the general public at large. Unregulated use of public property for camping or storage of personal property interferes with the rights of others to make use of such shared public spaces for their intended purposes and frequently contributes to blight or pollution, and causes damage to public property. This Chapter is intended to avoid unsafe and potentially disorderly conditions, unsanitary and unhealthful conditions, and the degradation or destruction of open spaces and facilities within the City, and preserve such open spaces and natural resources.

5-15.102. - DEFINITIONS.

The following words and phrases, when used in this Chapter, shall have the below meanings unless it is readily apparent from the context that another meaning is intended.

- (a) "Camp" or "Camping" means—the conduct of more than one of the following activities on public property, when it reasonably appears, in light of all circumstances, that a person is using such public or private property for living accommodation purposes:
- i. sleeping or preparing to sleep (including the laying down of bedding for the purpose of sleeping), including undertaking such activities in a vehicle (including any motorhome, camp trailer, camper, coach, fifth wheel travel trailer, house car, recreational vehicle, mobile home), or obscuring some or all of the vehicle's windows;
 - ii. erecting or using any tent, camp facilities, or building any other form of shelter;
 - iii. unattended storage of personal belongings (including but not limited to clothing, sleeping bags, bedrolls, blankets, sheets, luggage, backpacks, kitchen utensils, cookware) or camp paraphernalia;
 - iv. possessing inside or on a vehicle items that are not associated with ordinary vehicle use, such as a sleeping bag, bedroll, blanket, sheet, pillow, kitchen utensils, cookware, or cooking equipment;
 - v. making or using any fire, for purpose of heating or cooking, or using any flame, grill, portable stove, or similar flame producing device for cooking of meals on public property, except for in City parks with designated barbeque and cooking areas while using City-provided cooking facilities designed for such purposes; or

- vi. doing any digging or earth breaking activities for purpose of creating or improving a shelter.

Camping shall be deemed to occur regardless of whether a full night is actually spend occupying any specific location on public property.

- (b) "Camp facilities" include, but are not limited to, tents, huts, or similar temporary shelters consisting of any material with a top or roof or any other upper covering or that is otherwise enclosed by sides that is of sufficient size for a person to fit underneath or inside while sitting or lying down and includes the use of a tarp or other material tied or affixed to a structure or bush to create an enclosed area.
- (c) "Camp paraphernalia" includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, hammocks, or non-City designated cooking or heating equipment.
- (d) "Public property" means any publicly owned property in the City, whether improved or unimproved, including, but not limited to, any of the following: public alleyways; public parking lots; public passageways; public streets; public rights-of-way; park playgrounds; freeway on-ramps and off-ramps; publicly owned, maintained, or operated parks; publicly owned, maintained, or operated landscaped areas or greenbelts; publicly owned fences, trees, light poles, or equipment boxes; publicly owned, maintained, or operated open spaces including, but not limited to, public facilities or buildings of any kind; public sidewalks, curbs, and gutters; public educational institutions; or other government owned, maintained, or operated properties located within the City.
- (e) "Public utilities" means any outdoor water, sewer, or electrical outlets or fixtures on government owned, maintained, or operated properties located within the City.
- (f) "Vehicle" means a vehicle as defined in California Vehicle Code section 670.
- (g) "Very High Fire Severity Zones" means such areas as are designated by the City pursuant to Government Code Section 51179.

5-15.103. UNLAWFUL CAMPING.

It shall be unlawful for any person to camp on any public property within the City, except as otherwise provided herein.

5-15.104. STORAGE OF PERSONAL PROPERTY ON PUBLIC PROPERTY.

It shall be unlawful for any person to store any personal property, including camp facilities and camp paraphernalia, on any public property within the City, except as otherwise provided in this chapter.

Prior to removing any personal property, any enforcing employee shall attempt to provide any apparent owners with notice of intent to remove the personal property at least 24 hours in advance of any action to remove any personal property. Notice shall be in writing and shall be served personally on the owners of such property if readily apparent, or otherwise shall be left on or with the property. In addition, the enforcing employee shall post the notice on or near the personal property so as to reasonably communicate the notice to persons living at the camp facility but not present during the attempt to serve notice. The notice shall contain the following information:

- A. The location of the personal property;
- B. The date and time notice was served or posted;
- C. A statement that the storage of personal property violates this Chapter;
- D. An advisement that the City will remove the personal property 24 hours after the date and time of the notice;
- E. Information about any housing or shelter and homeless services available for the owners of the personal property, the phone number and address to contact in order to obtain the housing or shelter or other health and human services;
- F. An advisement that any personal property remaining at the site when the enforcing employee returns to remove the personal property and it will be impounded for no fewer than 90 days and will be discarded thereafter if not claimed; and
- G. The address, phone number, and operating hours of the location where the personal property will be stored and may be retrieved, and that the City will charge no fee for storage or retrieval.

A person occupying a camp facility who is present at the time the enforcing employee is removing the personal property can retain his or her personal property except items that constitute an immediate threat to the health or safety of the public or items that constitute evidence of a crime or contraband that may be seized, as permitted by law.

5-15.105. OFFER OF HOUSING, SHELTER AND SERVICES.

Prior to directing a person to remove camp facilities or prior to removing the camp facilities, the enforcing employee shall offer information to the occupant(s) regarding any available housing or shelter and other health and human services that said employee reasonably believes are relevant to the occupant(s) and their individual circumstances.

5-15.106. EXEMPTION FOR NECESSITY – TIME, PLACE, AND MANNER REGULATIONS.

The provisions of this Chapter shall not apply, except as stated below, to any individual camping by necessity, including, for example, those instances in which every shelter in the local area is at capacity. The City Manager may establish local guidelines to determine whether an individual is camping by necessity.

If an individual is camping by necessity, the following time, manner and place requirements shall apply and strict compliance with them shall be required in order to avoid the prohibitions otherwise specified in this Chapter, and the imposition of penalties as otherwise specified in this code:

- A. Time. No person shall erect, configure, or construct any camp facilities from 7:00 a.m. to 8:00 p.m. (except during stormy weather). A person must take down, fold, and completely remove or put away any camp facilities erected, configured, or constructed on any public property between the hours of 7:00 a.m. and 8:00 p.m. (except during stormy weather).
- B. Manner. At no time shall any person obstruct access to a street, sidewalk, park playground, public utility, public property, or other public right-of-way open for pedestrian travel or governmental use:
 - 1. By sitting, lying or sleeping, or by storing, using, maintaining or placing personal property in a manner that does not allow for passage as required by the Americans with Disabilities Act of 1990, as amended from time to time; or
 - 2. By sitting, lying or sleeping, or by storing, using, maintaining or placing personal property within ten feet of any operational or utilizable entrance, exit, driveway, or loading dock; or
 - 3. By creating any barrier with string, wire, rope, or chain, or other attachments or appurtenances upon City owned trees, light poles, fences, equipment, or other public facilities.
 - 4. A camp or camping, including outside stored personal property, must be limited to a spatial footprint of no more than ~~ten~~100 square feet, or ten-foot by ten-foot area. The intent of this provision is to allow a person to sleep protected from the elements and maintain the essentials for living, while still allowing others to use public spaces as designed and intended.
 - 5. Individuals may not:
 - a. Accumulate, discard, or leave behind garbage, debris, unsanitary or hazardous materials, or other items of no apparent utility in a public right-of-way, on city property, or on any adjacent public or private property.

- b. Start or maintain any fire for the purposes of burning any combustible material or use a gas heater in or around a campsite.
 - c. Erect, install, place, leave, or set up any type of permanent or temporary fixture or structure of any material(s) in or upon public property or a public right-of-way. Items such as tents and similar items used for shelter that are readily portable are not structures for purposes of this section.
 - d. Dig, excavate, terrace soil, alter the ground or infrastructure, cause environmental damage, or damage vegetation or trees in and around a campsite.
 - e. Accumulate, discard, or leave behind garbage, debris, unsanitary or hazardous materials, sewage, drug paraphernalia, improperly disposed of syringes, other evidence of conspicuous drug use in the public right-of-way, on city property, or any adjacent public or private property.
- C. Place. Camping is prohibited on the following public property, which shall be deemed to include the entire parcel, unless signage is posted designating permissible camping locations on the parcel as part of an overnight sleeping program established by the City:
- 1. Atascadero City Hall
 - 2. Centennial Plaza
 - 3. Atascadero Public Library
 - 4. Atascadero Transit Center
 - 5. Colony Park Community Center
 - 6. Atascadero Lake Park Pavilion
 - 7. Atascadero Zoo
 - 8. Faces of Freedom Veterans Memorial
 - 9. The Plaza on El Camino
 - 10. Within 500 feet of any school
 - 11. Within 500 feet of the banks of the Salinas River, Atascadero Creek, or Graves Creek
 - 12. On the entirety of the Juan Bautista de Anza trail and Historic Trail corridor
 - 13. Areas of City parks: athletic fields and sports courts, irrigated or landscaped areas, park playgrounds, synthetic turf areas, and park picnic areas including tables, bleachers, benches, and pavilions
 - 14. Within 500 feet of any bridge, highway underpasses or highway overpasses, or any freeway onramps and off-ramps
 - 15. In all Very High Fire Severity Zones
 - 16. Within 500 feet of all Atascadero government buildings
- D. Camping shall be prohibited within 100 feet of any public property where signs are posted stating that camping is prohibited at that location. The City Manager or their designee is authorized under this subsection to post signage on public

property prohibiting camping for periods of 30 days upon determining that camping or storage of personal property at such location has created nuisance conditions that affects the health and safety of the public or occupants.

5-15.107. OVERNIGHT CAMPING ON PRIVATE PROPERTY

Notwithstanding any other provision of this code, a total of three vehicles per parcel, may be used by people who lack access to permanent or safe shelter and who cannot obtain other housing for overnight camping in a parking lot or paved or gravel surface of a parcel of any size owned or leased by a faith based institution, non-profit, or a business, with permission of the property owner and lessee, and only after the owner is issued a City permit by the Community Development Department.

- A. A property owner or lessee who allows overnight camping on a property, pursuant to this section shall:
 - a. Provide persons camping overnight with access to sanitary facilities, including, but not limited toilet, hand washing and trash disposal facilities at all times when people are authorized to be present for overnight camping.
 - b. Not require payment of any fee, rent or other monetary charge for overnight camping authorized by this section.
 - c. Restrict the use of the owner's or lessee's property for no longer ~~that~~ than 72 hours for each vehicle.
 - d. Not allow the dumping of wastewater or trash on the property unless sufficient city approved receptacles are available.
 - e. Not allow for the storage of personal property outside of or adjacent to the vehicle.
 - f. Not allow on-site storage or personal property when the personal property owner or lessee is no longer staying on the property being used for camping.
- B. A property owner or lessee who permits overnight camping pursuant to this section may revoke that permission at any time and for any reason. Any person who has permission to sleep on that property as provided in this section shall leave the property immediately after permission has been revoked.
- C. The provisions of this section are not intended to limit or otherwise change any permitted land use on a property.
- D. This section shall not apply when the camping by tent or other removable structure is by minor children, under the direct care and supervision of a parent or guardian who is related to or visiting the owner of such property, or the lessee of such property, or the person in lawful possession of the property. This exception is only intended to cover short term and temporary camping in no event longer than three days.

5-15.108. OTHER EXEMPTIONS.

The provisions of this Chapter shall not apply in the event of a declared state of emergency, nor to any persons participating in organized and supervised recreational activities in parks within the City, if approved by the City's Recreation Supervisor or City Manager, nor to camping in public accommodations that are properly zoned, legally established and designated for camping purposes.

ORDINANCE NO. 16-2022

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
ADDING CHAPTER 9.38 TO THE ELK GROVE MUNICIPAL CODE**

WHEREAS, the City Council recognizes that unlawful camping by unhoused persons, and the activities often attendant with unlawful camping, have created public health and safety problems within the City; and

WHEREAS, the City Council wishes to adopt an ordinance seeking to address unlawful camping in the City of Elk Grove.

NOW, THEREFORE, the City Council of the City of Elk Grove does hereby ordain as follows:

Section 1: Purpose and Findings

The purpose of this ordinance is to amend the Elk Grove Municipal Code to enact regulations to address unlawful camping and homelessness in the City. The City Council has authority to adopt this ordinance pursuant to California Constitution Article XI, Section 7.

In adopting this ordinance, the City Council makes the following findings:

- A. There are currently approximately 150 unsheltered persons experiencing homelessness within the City.
- B. The living conditions of persons experiencing homelessness in the City are unhealthy and unsafe, and negatively impact the health, safety, and welfare of City residents and the homeless community in the City.
- C. According to Homelessness in Sacramento County (which documents the results from the 2019 Point-in-Time Count), 21 percent of unsheltered respondents reported having a severe psychiatric condition and 9 percent of respondents reported that their use of alcohol or drugs prevents them from keeping a job or maintaining stable housing.
- D. Research indicates that nationally approximately one-third of individuals who are homeless experience alcohol and drug problems. (Gillis, Dickerson, & Hanson, 2010).
- E. Homeless camping areas and encampments generate hazardous waste, including human waste, creating dangerous health conditions within the City. Such unsanitary conditions can lead to infestation of vermin and the spread of communicable diseases.
- F. Some homeless persons in the City live in makeshift shelters on both private and public property, such as tents, tarps, non-permanent boarded structures, and other non-substantial temporary structures creating a public health and safety hazard.
- G. The City's police department and other City departments regularly receive calls for service related to homeless activities.
- H. Criminal activity may be present in and near homeless camping areas or encampments, which creates potential victimization of all residents, housed and unhoused. The prevalence of substance abuse and mental health disorders can also lead to an increase in low-level offenses due to individuals being disconnected from support and housing opportunities.

- I. The City is the owner of a Municipal Separate Storm Sewer System (MS4) that includes, without limitation, storm drains, detention basins, creeks, and channels; and is subject to the requirements of the Clean Water Act National Pollutant Discharge Elimination System (NPDES) Permit, which requires controls to reduce the discharge of pollutants in storm water from MS4s to the maximum extent practicable. Unlawful camping activity can lead to pollutants in runoff, and pollutants in runoff can threaten and adversely affect human health and aquatic organisms.
- J. Unlawful camping can lead to damage to and/or hindrance of operation of public infrastructure in the City, creating a potential health and safety hazard.
- K. Unlawful camping can have a deleterious impact on businesses, private property, and economic development within the City.
- L. By this ordinance, the City Council seeks to implement enforcement efforts to address the health and safety concerns presented by unlawful camping and the homelessness issue in the City, while seeking to provide those experiencing homelessness with potentially available resources to ameliorate their condition.

Section 2: California Environmental Quality Act (CEQA)

Finding: Adoption of this ordinance is exempt from environmental review under the California Environmental Quality Act (California Public Resources Code, Sections 21000, et. seq., hereafter “CEQA”) pursuant to state CEQA Guidelines Sections 15060(c)(2), 15061(b)(3), 15307, and 15308.

Evidence: CEQA requires analysis of government agency approvals of discretionary “projects.” A “project,” under CEQA, is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” (CEQA Guidelines, §15378.) The proposed project includes discretionary amendments to the City’s Municipal Code and is a project under CEQA; but it is exempt from CEQA review as set forth below.

CEQA Guidelines section 15060(c)(2) states that a project is not subject to CEQA review where the activity will not result in a direct or reasonably foreseeable indirect physical change to the environment. CEQA Guidelines Section 15061(b)(3) states that a project is exempt from CEQA “where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” The approval of the code amendments set forth in this ordinance does not approve any physical development project, and it would not result in a direct or indirect adverse physical changes in the environment. Rather, this action is directed toward addressing homeless issues in the City, including improving conditions within the City through enforcement efforts.

Because the ordinance is aimed at improvement or restoration of the environment through enforcement efforts directed to improve public health and safety, adoption of the ordinance is also exempt from CEQA under CEQA Guidelines 15307 and 15308, as an action taken by the City to assure the maintenance, restoration, or enhancement of a natural resource and/or the environment.

Section 3: Action

Elk Grove Municipal Code Title 9 is hereby amended by the addition of Chapter 9.38 as shown in Exhibit A, incorporated herein by this reference.

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 or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 5: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 6: Savings Clause

The provisions of this ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and effect to all intents and purposes as if such ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by said Code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.

Section 7: Effective Date and Publication

This ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

ORDINANCE: **16-2022**
INTRODUCED: June 8, 2022
ADOPTED:
EFFECTIVE:

BOBBIE SINGH-ALLEN, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: _____

Exhibit A
Municipal Code Amendments

Additions are shown in underlined text.

Chapter 9.38 is added to the Elk Grove Municipal Code to read as follows:

Chapter 9.38

UNLAWFUL CAMPING

9.38.010 Definitions

9.38.020 Prohibitions

9.38.030 Temporary Seizure of Property

9.38.040 Administration

9.38.050 Violations

9.38.010 Definitions.

As used in this chapter, the following terms shall have the following meaning:

- A. “Day care center” means a child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school-age child care centers.
- B. “Camp” or “camping” means to engage in any of the following activity at a single camping area within the City for a period longer than twenty-four (24) consecutive hours: place, pitch, or occupy camp facilities; live temporarily in a camp facility or camping area or outdoors; and/or to use camp paraphernalia.
- C. “Camping area” includes the primary physical area of occupation of a single camping person.
- D. “Camp facilities” includes, but is not limited to, tents, huts, vehicles, or temporary shelter.
- E. “Camp paraphernalia” includes, but is not limited to, bedrolls, tarpaulins, cots, beds, sleeping bags, hammocks, or cooking facilities and similar equipment.
- F. “City” means the City of Elk Grove, including its employees and agents.
- G. “City manager” means the city manager of the City of Elk Grove or their designee.
- H. “Encampment” means four (4) or more persons camping together within fifty (50) feet of each other and without permitted electrical power, permitted running water, and/or permitted bathroom facilities that serve that encampment.
- I. “Housing support services” means housing support services intended to connect a person with temporary or permanent housing resources.

- J. “Playground” means any recreational area specifically designed to be used by children which has play equipment installed, including, without limitation, public grounds designed for athletic activities such as baseball, football, soccer, or basketball, or any similar facility located on public or private school grounds, or on city, county, or state parks.
- K. “Public property” means any real property located in the City and owned in fee title, or its equivalent, by the City or any federal, state, or local government agency.
- L. “Public facility” means any building, structure, or area enclosed by a fence located on public property, whether secured, unsecured, locked, unlocked, open, or enclosed.
- M. “Private property” means any real property located in the City and owned in fee title, or its equivalent, by a private person or entity. The fact that private property may contain an easement, lien, or other interest less than fee title, or its equivalent, by a governmental or public agency does not negate the status of the property as private property.
- N. “School” means the buildings and grounds of any public or private school used for the purposes of the education of children in kindergarten or any of the grades one (1) through twelve (12) inclusive.
- O. “Sidewalk” means any area in the City provided for the use of pedestrians, including planting areas, driveway approaches or parking strips, between the public vehicular roadway and the edge of right-of-way bordering fronting or adjacent private property.
- P. “Youth center” means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

9.38.020 Prohibitions.

- A. It shall be unlawful and a violation of this chapter for any person or persons to do any of the following on any public property within the City:
 - 1. Camp within 500 feet of the grounds of any day care center, school, playground, or youth center.
 - 2. Occupy a camping area greater than 150 square feet measured from the center of the primary living area of the total camping area.
 - 3. Occupy any encampment.

4. Fail to keep any camping area clean and free of garbage, debris, waste, including without limitation, hazardous waste and/or human waste.
 5. Camp in any structure or structures that an authorized City official finds is unsafe for human occupation.
 6. Break or damage any lock on any public facility in order to access the public facility, and/or to camp within a public facility.
 7. Lock or otherwise impair or impede access of public employees or agents to any public facility.
 8. Block, obstruct, or otherwise interfere with access to, a public facility, sidewalk, and/or other public right-of-way.
- B. It shall be unlawful and a violation of this chapter for any person to camp on private property without the consent of the owner of the private property.
- C. Notwithstanding the foregoing, it shall not be a violation of this section or this chapter for a person to camp on public or private property with the express permission of the owner of the property.

9.38.030 Temporary Seizure of Property.

- A. Subject to section 9.38.050, any person who violates section 9.38.020 shall be subject to having their personal property temporarily seized by the City pursuant to this section.
- B. Prior to any seizure of personal property pursuant to this section, the City shall provide the owner/possessor of the personal property not less than seventy-two (72) hours' written notice, on a form prescribed by the City Manager. The written notice may be personally served on the owner of the personal property or posted at the location where the personal property is stored or located.
- C. Upon seizure of any personal property pursuant to this section, the City shall provide the owner/possessor with a written receipt itemizing the personal property seized, advising that the personal property will be held by the City for not less than 90 days, that the owner/possessor of the seized property may retrieve such personal property within that 90-day period at an address provided on the receipt, during normal business hours, and that the City may destroy or otherwise dispose of that personal property if not reclaimed and retrieved by the owner/possessor within that 90-day period. Nothing herein shall require the City to store or maintain personal property that is determined by the City to present a health or safety hazard, is soiled by human waste or other contamination, is illegal, illegally possessed, and/or that is used or intended to be used in furtherance of illegal activity, including, without limitation, paraphernalia used or intended to be used for illegal drugs.

- D. Following seizure of any personal property pursuant to this section, the City shall secure and store the personal property seized, at the City's expense, for a period of not less than ninety (90) days. Such personal property shall be returned to the owner/possessor upon presentation of the receipt identified in subsection (C), or such other proof satisfactory to the City that person seeking return of the property is the owner or otherwise has a viable claim to reclaim the personal property. Any personal property not reclaimed within ninety (90) days of its seizure may be destroyed or disposed of by the City, in its discretion.

9.38.040 Administration.

The City Manager shall be authorized to administer the provisions of this chapter including, without limitation, developing all documentation and forms, and taking all actions reasonably necessary and consistent with this chapter, to administer the provisions of this chapter.

9.38.050 Violations.

- A. Any person violating this chapter shall be subject to the following penalty.
1. Temporary seizure of personal property, as set forth at section 9.38.030.
 2. Prior to the City pursuing the remedy set forth at subsection A.1., above, the City shall provide the violator, orally or in writing, with information about housing support services. Nothing in this section or this chapter shall require the City to provide housing to such violator.
- B. Notwithstanding subsection A of this section:
1. Any violation of this chapter may be remedied by a civil action brought by the City Attorney.
 2. Violations of this chapter are hereby declared to be public nuisances subject to abatement by the City by any lawful means.
- C. The remedies set forth in this chapter shall be cumulative and in addition to any and all other remedies, civil, equitable, or criminal, afforded to the City under the law.
- D. Notwithstanding any other provision of this chapter or this Code, a person violating a provision of this chapter shall not be subject to any monetary fine or fines.

ORDINANCE NO. 2021-12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ AMENDING CHAPTER 6.36 PREVIOUSLY ENTITLED “REGULATIONS FOR TEMPORARY OUTDOOR LIVING” AND HEREAFTER ENTITLED “CAMPING SERVICES AND STANDARDS” OF THE SANTA CRUZ MUNICIPAL CODE

WHEREAS, the City of Santa Cruz is currently experiencing a large number of encampments in public spaces. With a sheltered population of only about 65,000 and an unhoused population likely exceeding 1,200, Santa Cruz has one of the highest per-capita populations of homeless individuals in the State of California and the United States.

WHEREAS, the City’s experience is that large, unsanctioned, long-term encampments are almost always associated with a host of major health and safety impacts, including: open and obvious drug use and related crimes, serious fire safety concerns, major impacts related to human and animal waste and accumulation of trash, vandalism, and related nuisance conditions. When longer term encampments within the City are vacated, it is common for City staff to observe extreme environmental degradation, and the City typically removes hypodermic needles, human and animal waste, and substantial amounts of trash and debris.

WHEREAS, when encampments remain for long periods, the costs of supporting hygiene services, refuse management, hypodermic needle disposal, increased calls for service, and property repair are substantial. Moreover, the environmental degradation caused by long term encampments is often substantial, and sometimes is irreparable.

WHEREAS, longer term encampments have the effect of essentially privatizing property that is intended for public use, as the greater community is no longer able to use public spaces that are used for round-the-clock encampments.

WHEREAS, during the COVID-19 pandemic, shelter capacity has significantly expanded within City limits. The City and County have partnered together to add shelter capacity within the City at the Veterans’ Hall, the Golflands, the Pavilion, and four motels within the City. Despite this expanded shelter capacity, many individuals remain unsheltered within the City limits.

WHEREAS, the City of Santa Cruz has been disproportionately impacted by encampments. Unsheltered individuals living in encampments are present within the City’s limits at much higher rates than are present within neighboring jurisdictions. As the county seat, with county courts, jail, mental health services, and shelters all located here, the City of Santa Cruz has become a de facto hub of encampments within county, state, and country. The City’s experience is that a significant percentage of unsheltered individuals actually come to the City from other places with a plan to live outdoors on public property within the City, and the City’s experience is that this occurs even more once large encampments are established.

WHEREAS, the City’s experience is that much of the local housed community will only be accepting of sanctioned sleeping areas, managed encampments, and shelters in their communities if camping can be prohibited elsewhere in the City. Without a camping prohibition, the City is perceived

as attracting even more unsheltered people to a highly desirable community without the ability to provide adequate services to them.

WHEREAS, unlike some larger cities within the state, the City of Santa Cruz generally does not receive significant funding from the state or federal government to provide housing, health, or other services to persons experiencing homelessness. Instead, the County of Santa Cruz serves as the conduit for various funds, some of which have been allocated through the countywide Homeless Action Partnership. The City has collaboratively partnered with the County in an effort to address homelessness both through and outside of the Homeless Action Partnership, the County's Continuum of Care.

WHEREAS, the City is aware of the County's position that funding received by the County is insufficient to address all homeless needs in the County.

WHEREAS, on top of the City's general lack of funding for homeless services, due to the COVID-19 pandemic, for the 2020-2021 fiscal year, the City had a substantial budget shortfall that was addressed with several cost-cutting measures. The measures included layoffs, furloughing staff, eliminating or freezing vacant positions, using reserves, and delaying several capital projects. The City also identified structural deficits affecting future fiscal years.

WHEREAS, the City has recently approved affordable and supportive housing projects which, if built, would add approximately 400 affordable units, approximately 180 of which will be supportive housing units, to the City's inventory, and at least 60 deed-restricted, affordable units are currently under construction. However, these types of projects take years of work before they are occupied by residents, and even after the units are constructed, they will not add adequate housing capacity to shelter even the current number of unsheltered individuals in the City.

WHEREAS, the City intends to facilitate the creation of a homeless persons' storage program, sanctioned safe nighttime sleeping locations, and managed encampments. With that said, the City is mindful that, at this time, it has neither the funds, the real estate, the legal mandate, nor the substance abuse/psychiatric expertise necessary to, in a more permanent way, house all of the City's unsheltered population in addition to all of the individuals who, based on the City's past experience, could reasonably be expected to move to Santa Cruz, if the City were to provide those services.

WHEREAS, the City must appropriately consider competing interests and formulate policy to best protect public health, safety, welfare, property, and the environment, with limited resources.

WHEREAS, the City Council recognizes the systemic lack of state and federal investment in shelter and public health services for those experiencing homelessness.

WHEREAS, it is the purpose and intent of the City Council to establish standards for sheltering outdoors, which are intended to be as compatible as possible with the protection and preservation of health, safety, and welfare of the inhabitants of the City of Santa Cruz.

WHEREAS, this Chapter is intended to address issues such as fire risk, unsanitary conditions, public safety hazards, environmental degradation, and round-the-clock privatization of public property.

WHEREAS, mindful of the decision of United States Court of Appeals for the Ninth Circuit in *Martin, et al., v. City of Boise* (2019) 920 F. 3d 584, this ordinance conditions enforcement of prohibitions on overnight and daytime encampments on the availability of overnight shelter and daytime storage for homeless individuals.

WHEREAS, the City Council has evaluated the environmental effects of this municipal code chapter and ordinance and finds the chapter and the adoption of the ordinance to be exempt under Sections 15307 and 15308 of the Guidelines for the Implementation of the California Environmental Quality Act and under Section 15061(b)(3) of the California Code of Regulations.

WHEREAS, the City Council calls on the County, the State, and the Federal Government to expand shelter-capacity and very low income long-term housing options regionally, statewide, and nationally, and also to provide street outreach, case management, diversion, housing problem-solving, mental health support, and drug rehabilitation services to adequately address and solve homelessness.

WHEREAS, the City Council believes that sheltering outdoors should be done in a way that is temporary, respectful of neighbors and the environment, and not conducted in a way that creates a sustained privatization of public spaces.

WHEREAS, the Council previously adopted Chapter 6.36 “Regulations for Temporary Outdoor Living,” but also determined that the chapter needed to be substantially revised before implementation. The purpose and intent of this ordinance is to repeal the “Regulations for Temporary Outdoor Living” (also known as the Temporary Outdoor Living Ordinance, or “the TOLO”) and replace Chapter 6.36 with this new “Camping Services and Standards” ordinance.

BE IT ORDAINED By the City of Santa Cruz as follows:

Section 1. Chapter 6.36 “Regulations for Temporary Outdoor Living” (also known as the Temporary Outdoor Living Ordinance, or the TOLO) is hereby repealed and replaced with the following Chapter 6.36, “Camping Services and Standards,” as follows:

**“Chapter 6.36
CAMPING SERVICES AND STANDARDS**

6.36.010 PURPOSE AND INTENT.

The purpose and intent of this Chapter is to provide standards for sheltering outdoors which: (i) are intended to be as compatible as possible with the protection and preservation of health, safety, and welfare of the inhabitants of the City of Santa Cruz, including homeless individuals; (ii) will address issues such as fire risk, unsanitary conditions, public safety hazards, environmental degradation, and round-the-clock privatization of public property that have been associated with longer-term encampments in the City; (iii) establish allowances for, and in some instances, minimum thresholds for provision of storage, managed encampments, and safe sleeping programs that will feasibly allow unsheltered individuals to engage in basic life sustaining activities without criminal citation; (iv) generally prohibit the establishment of unregulated encampments on public property during daytime hours, but only when there is an Available 24/7 Sanctioned Sheltering Location or Available Homeless Persons' Storage; and (v) generally prohibit the establishment of unregulated encampments on public

property during nighttime hours, but only when there is an Available Overnight Sanctioned Sleeping Location or an Available 24/7 Sanctioned Sheltering Location.

6.36.020 DEFINITIONS.

When used in this chapter, the following words and phrases have the following meanings:

“Available 24/7 Sanctioned Sheltering Location” means a public or private facility, with available 24/7 space for an indigent, homeless individual to stay, at no charge. The term Available 24/7 Sanctioned Sheltering Location includes a shelter, a managed encampment, and/or a hotel/motel voucher. The term Available 24/7 Sanctioned Sheltering Location does not include the following: (a) Shelter space where an individual cannot stay because the individual has exceeded a shelter’s maximum stay rule or because shelter is unavailable due to the individual’s gender; (b) Shelter space that cannot reasonably accommodate the individual’s mental or physical needs or disabilities; (c) Shelter space that does not permit a minor child to be housed in the same facility with at least one parent or legal guardian, assuming the individuals seeking such shelter are at least one parent or legal guardian with a minor child; (d) Shelter space for which an individual is required to attend or participate in religious activities or programs as a condition of utilizing the shelter space.

“Available Homeless Persons' Storage” means a public or private facility, with available daytime and nighttime space for an indigent, homeless individual to, free of charge, store a reasonable quantity of Personal Effects and/or survival items, such as tents, sleeping bags, tarps, and blankets.

“Available Overnight Sanctioned Sleeping Location” means a public or private facility, with available overnight space for an indigent, homeless individual to stay, at no charge. The term Available Overnight Sanctioned Sleeping Location includes a shelter, a managed encampment, a managed safe sleeping zone for overnight tent encampments, and/or a hotel/motel voucher. The term Available Overnight Sanctioned Sleeping Location does not include the following: (a) an overnight sanctioned sleeping location space where an individual cannot stay because the individual has exceeded a location’s maximum stay rule or because location is unavailable due to the individual’s gender; (b) an overnight sanctioned sleeping location that cannot reasonably accommodate the individual’s mental or physical needs or disabilities; (c) an overnight sanctioned sleeping location that does not permit a minor child to be housed in the same facility with at least one parent or legal guardian, assuming the individuals seeking such shelter are at least one parent or legal guardian with a minor child; (d) an overnight sanctioned sleeping location for which an individual is required to attend or participate in religious activities or programs as a condition of utilizing the shelter space.

“Camping” means to place, pitch or occupy camp facilities; to live temporarily in a camp facility or outdoors; to use camp paraphernalia.

“Camping Facilities” include, but are not limited to, tents, huts, or temporary shelter.

“Camping Paraphernalia” includes, but is not limited to, bedrolls, tarpaulins, cots, beds, sleeping bags, hammocks or cooking facilities and similar equipment.

“Encampment” means a collection of items that are used or intended to be used for temporary habitation outdoors. Encampments contain Camping Facilities and/or Camping Paraphernalia. This definition of

Encampment specifically does not include a collection of items that reasonably appear to be for less than 12-hour, daytime only use, such items brought to a park or beach for a picnic, nap, or daytime party. If items have in fact been maintained in the same approximate location for a period in excess of 12 hours, then the collection shall be considered an Encampment as provided in this section. For the purposes of this chapter, the term Encampment does not include a vehicle used for habitation.

“Personal Effects” means personal property consisting of the following items.

1. ID/Social Security cards
2. Medications, medical devices, eyeglasses
3. Photos/Photo Albums
4. Tax/medical records
5. Reasonably usable, not overly soiled, non-verminous items that are reasonably believed to have value to persons experiencing homelessness, including tents, sleeping bags, clothes, and functional bicycles (although bicycle parts shall not be considered Personal Effects).

“Qualifying Disability” means a physical or mental disability that prevents that person from being able to, on a daily basis, construct, de-construct, and put away an Encampment.

“Urgent Circumstances” are facts and circumstances that would cause a reasonable person to believe that, for the benefit of public safety and welfare, an Encampment needs to be urgently removed with less than 24 hours’ notice. Urgent Circumstances include, but are not limited to, increased fire risk, obstructing or interfering with the flow of pedestrian or vehicular traffic, and blocking access to a parking lot of a building.

6.36.030 PRIVATE PROPERTY.

(a) Private property. It is unlawful for any person to, on private property, erect, configure, construct, maintain, or store an Encampment, or to use a vehicle for Camping, except as expressly authorized below:

- (1) In the yard of a residence with the consent of the owner or occupant of the residence, where the camping is in the rear yard, or in an area of a side yard or front yard that is separated from view from the street by a fence, hedge or other obstruction; or
- (2) Inside of a licensed and registered motor vehicle in the parking lot on the site of a religious institution with the written consent of such institution, where the driver/occupant of such vehicle is in possession of a valid driver’s license, provided that no more than six vehicles shall be permitted at any one location; or
- (3) Inside of a licensed and registered motor vehicle in the parking lot on the site of a business institution in a non-residential district with the written consent of both the business institution and property owner, where the driver/occupant of such vehicle is in possession of a valid driver’s license, provided that no more than three vehicles shall be permitted at any one location; or

- (4) Inside a licensed and registered vehicle in a residential off-street driveway with the written consent of the owner and occupant of the residence, where the driver/occupant of such vehicle is in possession of a valid driver's license, provided that no more than one vehicle shall be permitted at any one location.
- (b) Camping shall not be permitted on private property where it is conducted in such a manner as to create inadequate sanitation, any trafficking in illegal drugs, a public or private nuisance, or other matters offensive to persons of ordinary sensibility; nor where the Camping is of such frequency, intensity or duration as to constitute a use of land prohibited by any provision of Title 24 of this code; nor where the Camping activity would be prohibited under any other provision of this code concerning use of mobile homes; nor where any fee, charge or other monetary consideration is collected for the privilege of Camping or for any services or the use of any facilities related thereto; nor where the covenants, conditions and restrictions of a duly organized homeowners association would prohibit the activity in the residential area subject to the covenants, conditions, and restrictions.

6.36.040 OVERNIGHT ENCAMPMENTS PROHIBITED WHEN THERE IS AN AVAILABLE OVERNIGHT SANCTIONED SLEEPING LOCATION OR AN AVAILABLE 24/7 SANCTIONED SHELTERING LOCATION; DAYTIME ENCAMPMENTS PROHIBITED WHEN THERE IS AN AVAILABLE 24/7 SANCTIONED SHELTERING LOCATION OR AVAILABLE HOMELESS PERSONS' STORAGE.

- (a) Nighttime Prohibition. Except where expressly authorized by Section 6.36.050, it is unlawful and a public nuisance for any person to place, erect, configure, construct, maintain, or store an Encampment on public property anywhere in the City of Santa Cruz between one hour before sunset and one hour after sunrise (but no later than 8:00 a.m.) when there is either an Available Overnight Sanctioned Sleeping Location or an Available 24/7 Sanctioned Sheltering Location.

This subsection 6.36.040(a) shall not be enforced against indigent homeless persons unless:

- (1) There is either an Available Overnight Sanctioned Sleeping Location or an Available 24/7 Sanctioned Sheltering Location that is promptly available and offered to a person found in violation of Subsection (a); and
 - (2) The City (potentially in cooperation with homeless service providers, mutual aid groups, neighborhood groups, and faith communities) establishes and is operating programs providing not less than 150 additional shelter, managed camp, or safe sleeping spaces in the City of Santa Cruz on City-owned or operated properties or facilities. These facilities are to include water, handwashing stations, and portable toilets. Safe-sleeping facilities shall not be located in or adjacent to residential neighborhoods or schools.
- (b) Daytime Encampment Prohibition.
 - (1) When there is an Available 24/7 Sanctioned Sheltering Location or Available Homeless Persons' Storage, no person shall erect, configure, construct, and/or maintain an Encampment on public property between the hours of one hour after sunrise (but no later than 8:00 a.m.)

until one hour before sunset. During circumstances where there is no Available 24/7 Sanctioned Sheltering Location, this daytime Encampment prohibition shall neither apply nor be enforced during rainfall, sleet, snow, or when the projected daily high temperature, as noted by the National Weather Service, is 50 degrees Fahrenheit or lower.

- (2) When there is an Available 24/7 Sanctioned Sheltering Location or Available Homeless Persons' Storage, a person must take down, fold, deconstruct, and put away any Encampment erected, configured, or constructed on public property between the hours of one hour after sunrise (but no later than 8:00 a.m.) until one hour before sunset. When there is no Available 24/7 Sanctioned Sheltering Location, this requirement shall neither apply nor be enforced during rainfall, sleet, snow, or when the projected daily high temperature, as noted by the National Weather Service, is 50 degrees Fahrenheit or lower
- (3) The City plans to sponsor or arrange for the sponsorship of an unsheltered persons' storage program within the City of Santa Cruz, which would provide unsheltered persons with a reasonable quantity of storage for Personal Effects and/or survival items, such as tents, sleeping bags, tarps, and blankets. As City personnel encounter individuals who are camping in prohibited areas or at prohibited times, the City shall have a service available to assist individuals with on-street transportation to Available Homeless Persons' Storage. The prohibitions above in Subsections 6.36.040(b)(1) and 6.36.040(b)(2) shall not be enforced unless and until the above-described unsheltered persons storage program is operational and reasonably available to unsheltered persons in the City of Santa Cruz. The City Manager is hereby authorized to administratively establish and authorize operation of such storage facility or facilities within any zoning district within the City.
- (c) If there is no Available 24/7 Sanctioned Sheltering Location, the encampment prohibitions above in Subsections 6.36.040(a), 6.36.040(b)(1), and 6.36.040(b)(2) shall not be enforced against families with one or more children under the age of 18 years old. In cases of a homeless family, staff shall work with the County, including Child Protective Services, the State, and/or non-profit partners to attempt to find families temporary shelter or housing. If it is not reasonably apparent to City staff that a family unit has a member under the age of 18, City staff may request reasonable documentation to confirm that there is a minor in the family.
- (d) If an indigent, homeless person who has a Qualifying Disability is maintaining an Encampment on public property, then City staff shall work with the County, State, and/or nonprofit partners to attempt to find the disabled person an Available 24/7 Sanctioned Sheltering Location. The prohibitions above in Subsections 6.36.040(a), 6.36.040(b)(1), and 6.36.040(b)(2) shall not be enforced against an indigent, homeless person with a Qualifying Disability nor against a single caregiver for a person with a Qualifying Disability, unless these individuals have access to an Available 24/7 Sanctioned Sheltering Location. Or, if there is no Available 24/7 Sanctioned Sheltering Location, but there is Available Overnight Sanctioned Sleeping Location and Available Homeless Persons' Storage, Subsections 6.36.040(a), 6.36.040(b)(1), and 6.36.040(b)(2) may be enforced if reasonable assistance is available that would allow for an indigent, homeless person with a Qualifying Disability to pack, unpack, and store their belongings daily..
- (e) The City Manager may, but is not required to, establish standard procedures, forms, or administrative regulations that are consistent with this Chapter.

- (f) The City may prioritize individuals with Qualifying Disabilities, one caretaker for each such individual, and families with minor children for occupancy at an Available 24/7 Sanctioned Sheltering Location and/or an Available Overnight Sanctioned Sleeping Location, to the extent that the City has control over such facilities.
- (g) In no event (including circumstances where there is a lack of an Available 24/7 Sanctioned Sheltering Location, Available Homeless Persons' Storage, and/or an Available Overnight Sanctioned Sleeping Location) may any individual, including individuals with Qualifying Disabilities, consistently occupy the same public space for a period exceeding 96-hours. With respect to individuals with Qualifying Disabilities, prior to enforcement of this 96-hour rule, the City shall provide reasonable assistance, if necessary, in helping a person with a Qualifying Disability to comply with this rule.
- (h) The City shall not enforce any portion of this Chapter in a way that would cause it to violate any currently applicable order or injunction issued by the court in the matter of Santa Cruz Homeless Union et al v. City of Santa Cruz et al, Case 5:20-cv-09425-SVK.
- (i) The City shall not enforce any portion of this Chapter in a way that would cause the City to not abide by the Center for Disease Control's guidance on encampments during the COVID-19 pandemic, unless either (i) Santa Cruz County is in the "yellow tier" (or a lower tier, if established) of California's Blueprint for a Safer Economy tiering structure, or (ii) California ends its tiering system and more fully re-opens the economy on a broader scale, as is currently expected to occur on or around June 15, 2021.
- (j) If a need is verified, the City manager may establish one or more managed daytime sleeping areas, to be used by unsheltered individuals with a documented need to work at night and sleep during the day. Subsections 6.36.040(a), 6.36.040(b)(1), and 6.36.040(b)(2) shall not be enforced against indigent, homeless persons who have provided such reasonable documentation unless there is either: (i) an Available 24/7 Sanctioned Sheltering Location, or (ii) available managed daytime sleeping areas and Available Homeless Persons' Storage.

6.36.050 CAMPING PERMITTED.

Camping is permitted in the City of Santa Cruz under the following circumstances:

- (a) in public areas that the City has, as permitted by this Chapter, specifically set aside or clearly marked for public camping purposes, if conducted in a manner consistent with other provisions of this Chapter;
- (b) at events authorized and permitted by the Santa Cruz City Parks and Recreation Department. Generally, under this subsection, no person or group may camp in a City park under authority of this subsection for more than three nights in any twelve months. However, where the camping activity is taking place in conjunction with an authorized and permitted restoration or conservation project being performed by campers at or near the campsite, the Director of Parks and Recreation may permit an individual or group to camp in one of the afore-referenced City parks for a period of time in

excess of that prescribed above. Additionally, no permit shall be required for security guards who camp in City parks incident to a lawful event. For fair and consistent application of this section, the director of Parks and Recreation may promulgate guidelines defining the criteria for permit issuance contained in this section.

Under this subsection, the Director of Parks and Recreation may issue a permit authorizing persons or groups to Camp in the improved areas of Harvey West Park, the improved area known as lower De Laveaga Park adjacent to Branciforte Drive, and San Lorenzo Park benchlands upon finding that the applicant has met the City's requirements for:

- (1) Parking and traffic control;
 - (2) Toilet and other sanitary facilities;
 - (3) Security;
 - (4) Liability insurance;
 - (5) Garbage collection and cleanup;
 - (6) Security and cleanup deposits;
 - (7) Such other public health, safety and general welfare matters as may be raised by the camping application; and
 - (8) Environmental compliance according to the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines.
- (c) at events or in a manner that is authorized by the City Council or City Manager, such as managed encampments and/or a managed safe sleeping zones for overnight tent encampments, , which may be managed by the City, the County, or by an approved non-profit. These may be authorized on any public or private property, in any zoning district, and in areas that would otherwise prohibit such uses. Facilities noted in this subsection, with the exception of religious assembly uses and school-sponsored programs, shall not be located in or adjacent to residential neighborhoods or schools.
- (d) in a part or all of a City-owned parking lot, closed portion of a public right-of-way, on private property, or in an alternative space or area designated by the City Manager for safe sleeping. The City Manager, or his or her designee, is directed to establish not less than 150 additional shelter, managed camp, or safe sleeping spaces in the City of Santa Cruz on City-owned or operated properties or facilities, subject to all criteria set forth in Section 6.36.060. The hours of operation of safe sleeping sites may be determined by the City Manager, consistent with any other uses of the properties that will be hosting nighttime safe sleeping. The City Manager is hereby authorized to administratively establish and authorize operation of safe sleeping spaces within any zoning district within the City. Facilities noted in this subsection, with the exception of religious assembly uses and school-sponsored programs, shall not be located in or adjacent to residential neighborhoods or schools.

6.36.060 ADDITIONAL CRITERIA FOR ENCAMPMENTS ON PUBLIC AND PRIVATE PROPERTY

If Encampments on public or private property are permitted for any reason to remain in place, they must meet the following criteria:

- (a) Encampments shall not impede emergency ingress/egress routes on public sidewalks or rights-of-way, such as driveways providing access to emergency vehicles and entrances or exits from buildings.
- (b) Under no circumstances, may persons dump gray water (i.e., waste water from baths, sinks, washing machines, and other kitchen appliances) or black water (i.e., sewage water) onto sidewalks, streets, parks, open spaces, storm drains, or any other facilities not intended for gray water or black water disposal. In addition to any other penalties or fines available to address this conduct, gray water and black water dumping is also an infraction under this chapter.
- (c) Under no circumstances, may persons create unpermitted electrical connections or “taps.”
- (d) Public property shall not be used as storage for extra car tires, bicycles or bicycle parts (except as needed for an individual’s personal use), gasoline, generators, household furniture, extra propane tanks, or combustible materials, including combustible waste.
- (e) No open fires are allowed. This subsection prohibits fires (such as camp fires, bonfires, recreational fires, burning of garbage, or portable outdoor fireplaces) that are lit in any public open space or park, except for a fire lawfully created wholly within a designated fire pit or other permanent receptacle provided by the City in a public park or beach for the purpose of allowing fires in said location. In addition, it shall be unlawful to intentionally or negligently set fire to or cause the burning of combustible material in such a manner as to endanger the safety of persons or property. A violation of this subsection is a misdemeanor.
- (f) Encampments shall be maintained in a reasonably safe, tidy, and sanitary/hygienic fashion, free from litter, debris, waste, discarded food products, discarded property, and garbage unless contained within an enclosed container or trash receptacle. Encampments shall be maintained free from discarded hypodermic needles surrounding the Encampment. All refuse and recyclables shall be contained within a bag, box, or similar vessel and shall be removed from the Encampment by the occupant(s) on a regular basis. An Encampment location shall be cleared of all personal belongings, camp paraphernalia, and refuse by the occupant(s) at the end of the stay.
- (g) Encampments shall not occupy an area greater than 12 feet by 12 feet per person who is occupying the location. For individuals with one or more Qualifying Disability and their caretakers, City staff shall permit reasonable deviation from this requirement if additional space is needed.
- (h) Outdoor Living Encampments shall not cause direct damage to the environment through activities such as excavating or terracing soil, harming trees, cutting vegetation, or disturbing wildlife dens, burrow, or nests.

6.36.070 PENALTIES FOR VIOLATION.

- (a) If a person has violated or is in violation of this Chapter (for example, by erecting or maintaining an Encampment in a way that is prohibited under this Chapter), City staff shall give the person a verbal or written warning before an infraction citation is issued. City staff shall seek opportunities, particularly when public safety/life safety is not under immediate/urgent threat, through coordination with City, County, non-governmental organizations, or faith-based groups, for outreach to precede or occur simultaneously to enforcement of this Chapter so that, when feasible, non-enforcement personnel can contact identified individuals on a complaint basis or within a structured, proactive program. The warning shall provide the person with information about any Available 24/7 Sanctioned Sheltering Location, Available Homeless Persons' Storage, and Available Overnight Sanctioned Sleeping Location. City staff also may, but shall not be required to, transport the person to Available 24/7 Shelter, Available Homeless Persons' Storage, and/or Available Overnight Sanctioned Sleeping Location.
- (b) Unless a different penalty is explicitly noted elsewhere in this Chapter, if a person violates this Chapter, then that person is guilty of an infraction. The City's fine for the infraction shall not exceed \$20. If acceptable to the court, in lieu of a fine, the City encourages the court to allow infractions under this Chapter to be satisfied with a reasonable amount of community service.
- (c) Unless a different penalty is explicitly noted elsewhere in this Chapter, if, after receiving an infraction citation, a person who is in violation of this Chapter fails or refuses to come into reasonably prompt compliance with this Chapter (for example by failing to take reasonably prompt action to remove an Encampment that is not permitted under this Chapter), then that person is guilty of a misdemeanor. Misdemeanor enforcement under this subsection (c) and subsection (d) below may only be used only after outreach, warning, and infraction citation, and only when (i) camping violations are exacerbated by other illegal behaviors, or (ii) the subject willfully refuses to vacate, or (iii) the subject interferes with the closure or removal of an illegal Encampment.
- (d) Additionally, any person who violates any section in this Chapter and receives an infraction citation for such violation, and who, between 1-30 days from receiving such infraction citation, again violates this Chapter or is still violating this Chapter, is guilty of a misdemeanor.
- (e) If a misdemeanor arrest is permitted under this Chapter, the arresting officer shall be permitted to seize and store items within an Encampment if necessary to prevent items from being stolen and/or if deemed necessary to prevent the immediate re-establishment of an Encampment that is violative of this Chapter. Unless the property is contraband or evidence of a Penal Code crime, persons who have been arrested and have had property seized pursuant this subsection may recover their property at the Santa Cruz Police Department, anytime within 90 days after that property is seized.

6.36.080 PROPERTY REMOVAL AND STORAGE.

- (a) The establishment of an Encampment that is contrary to this chapter is declared to be a public nuisance, and appropriate City staff is authorized and empowered to remove any such Encampment after providing reasonable notice.

- (b) What length of time is reasonable will depend on the size of the Encampment, the presence of any Urgent Circumstances, whether individual(s) are present to receive notification, and the abilities of the person who maintains the Encampment, if known to the City. Unless a seizure of property and arrest occur related to a misdemeanor violation (as described in subsection 6.36.070(e) above) or unless Urgent Circumstances exist, at least 24-hours written notice shall be given before the City removes property found to be in violation of this Chapter.
- (c) Personal property that poses an imminent threat to public health or safety, is contraband, is evidence of a Penal Code crime, is obstructing or interfering with the flow of pedestrian or vehicular traffic, is removed pursuant to Section 6.36.070(e), and/or is blocking access to a parking lot or a building shall not be subject to the above described notice requirements and may be promptly removed by appropriate City staff, in accordance with the law and generally accepted law enforcement procedures. In other circumstances, unless this Chapter provides otherwise, City staff shall make a good faith attempt to identify and remove Personal Effects, and if Personal Effects are identified, City staff shall cause a Notice of the Personal Effects to be posted, as provided in subsection (f) below. Personal Effects shall be stored, as provided below.
- (d) When Urgent Circumstances or circumstances described in Section 6.36.070(e) do not exist, prior to removing an Encampment found to be in violation of this Chapter, a written notice with the following content shall be provided:
1. The date and time of written notice,
 2. The location of the notice,
 3. A direction that:

“PERSONS IN THIS AREA MUST VACATE AND REMOVE ALL BELONGINGS ON OR BEFORE: [insert reasonable date and time to vacate]

THE CITY WILL CLEAN THIS SITE ON OR AFTER THE TIME AND DATE SPECIFIED ABOVE.

UNACCOMPANIED ITEMS ARE SUBJECT TO REMOVAL AND MAY BE DISCARDED OR DESTROYED.

4. A phone number and a physical address for property related inquiries.
5. A phone number for other questions or concerns.
- (e) If items remain at an Encampment site after the relevant notice period has expired, prior to discarding items, appropriate City staff shall make a good faith attempt to identify and remove Personal Effects from the Encampment. Any Personal Effects identified by City personnel shall not be discarded.
- (f) At the time of removal of any Personal Effects from an Encampment, City personnel shall conspicuously post a dated notice (either at the exact location from which the Personal Effects were removed or at another nearby location) with the following information:
1. A statement that Personal Effects were removed;
 2. A telephone number for information on retrieving Personal Effects;

3. An address where the Personal Effects are temporarily stored;
4. That Personal Effects will be stored for 90 days.

The posting of notice required under this section shall not apply if removal property is conducted pursuant to Section 6.36.070(e) and the arresting officer has reasonable reason to believe that all items belong to the individual(s) being arrested. In such cases, the individual(s) being arrested shall be provided with written notification of the where their items are being stored and how to retrieve them at a later date.

- (g) Following removal of any Personal Effects, City personnel shall place the removed Personal Effects in containers labeled in a manner facilitating identification by City personnel and owner and which reasonably protect such property from damage or theft.
- (h) Personal Effects stored by the City which are claimed within ninety (90) days from removal shall be released to the person claiming ownership providing they identify the property and the approximate location where the property was left.
- (i) Personal Effects that remain unclaimed after 90 days may be discarded, recycled, dedicated for public use, or given to a nonprofit agency for charitable use.
- (j) In situations where the City has reasonable, good faith reason to believe that an Encampment has been abandoned and is not occupied, the City may promptly remove any items that reasonably appear to be trash/garbage. For items that do not reasonably appear to be trash or garbage, the City may post a written "Notice of Apparently Abandoned Property" which notifies potentially interested parties that the City believes the site to be abandoned and will discard unclaimed items in no fewer than 72 hours. Under this scenario, the City shall have no obligation to attempt to identify, remove, and/or store Personal Effects. If unattended items remain at an apparently abandoned site after a notice period of 72 hours or greater, the City may simply discard, recycle, or donate items that remain, as they are most likely abandoned.
- (k) Regardless of the City's authority to remove an Encampment pursuant to this section, every owner, occupant, or lessee of private property, and every holder of any interest in private property, is required to maintain the property in compliance with local, state, and federal law; and is liable for violations thereof.
- (l) The cost of Encampment removal on property not owned by the City, including all administrative costs of any action taken hereunder, may be assessed against the subject premises as a lien, made a personal obligation of the owner, or both, in accordance with procedures in Title 4 of the Santa Cruz Municipal Code.
- (m) It shall be a misdemeanor to willfully prevent, delay, obstruct, or otherwise interfere with a City official, employee, contractor, or volunteer in their execution of property and/or Encampment removal pursuant to this section.

6.36.090 INTERPRETATION OF CHAPTER.

- (a) If any subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this section, and each and every subsection, sentence, clause, and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.
- (b) Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.
- (c) In enacting and implementing this ordinance, the City is assuming an undertaking to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Section 2. This ordinance shall take effect and be in force thirty (30) days after final adoption.

PASSED FOR PUBLICATION this 11th day of May, 2021, by the following vote:

AYES: Councilmembers Watkins, Kalantari-Johnson, Golder; Vice Mayor Brunner; Mayor Meyers.

NOES: Councilmembers Brown, Cummings.

ABSENT: None.

DISQUALIFIED: None.

APPROVED: _____
Donna Meyers, Mayor

ATTEST: _____
Bonnie Bush, City Clerk Administrator

ORDINANCE NO. 2021-12

PASSED FOR FINAL ADOPTION this ____ day of _____, 2021 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Donna Meyers, Mayor

ATTEST: _____
Bonnie Bush, City Clerk Administrator

This is to certify that the above and foregoing document is the original of Ordinance No. 2021-12 and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.

Bonnie Bush, City Clerk Administrator

File ID: 2023-00991

8/1/2023

Consent Item 1.

Critical Infrastructure List Resolution (2023)

File ID: 2023-00991

Location: Citywide

Recommendation: Adopt a **Resolution:** 1) acknowledging receipt of the City Manager's Critical Infrastructure Summary Memorandum of 2023, including the attached Critical Infrastructure List; 2) recognizing said Critical Infrastructure List as the complete listing of locations officially designated by the City Manager as "critical infrastructure" for purposes of Chapter 8.140 of the City Code; 3) approving any and all locations on the Critical Infrastructure List as "critical infrastructure" for purposes of Chapter 8.140 of the City Code; and 4) repealing Resolution No. 2022-0322.

Contact: Daniel Bowers, Director of Emergency Management, (916) 808-1833, dbowers@cityofsacramento.org, Office of the City Manager

Presenter: Daniel Bowers, Director of Emergency Management, (916) 808-1833, dbowers@cityofsacramento.org, Office of the City Manager

Attachments:

- 1-Description/Analysis
- 2-Summary Memorandum Critical Infrastructure List
- 3-Resolution Critical Infrastructure List 2023
- 4-Critical Infrastructure List and Justifications

Description/Analysis

Issue Detail: The City Council adopted Ordinance No. 2020-0009 on February 25, 2020, which added Chapter 8.140 to the City Code for the protection of critical infrastructure and wildfire risk areas in the interests of public safety. Pursuant to Section 8.140.020 of the City Code, "critical infrastructure may include, but is not limited to, government buildings, such as fire stations, police stations, jails, or courthouses; hospitals; structures, such as antennas, bridges, roads, train tracks, drainage systems, or levees; or systems, such as computer networks, public utilities, electrical wires, natural gas pipes, telecommunication centers, or water sources." It is imperative that critical infrastructure across the City of Sacramento be protected to ensure operational readiness and continuity of essential services during all-hazards. Real property or a facility does not become "critical infrastructure" for the purpose of Chapter 8.140 until so designated by the City Manager and

subsequently approved by the City Council through a resolution.

Following passage of the Critical Infrastructure Ordinance, the City's Director of Emergency Management led deliberate and thorough coordination, which brought together subject matter experts and stakeholders to recommend, justify, and validate key facilities and property parcels across the City to be designated as Critical Infrastructure by the City Manager, pursuant to direction received by City Council. Each component of critical infrastructure was additionally validated, based on reference guidance from the Department of Homeland Security and Federal Emergency Management Agency. The result was the first Critical Infrastructure List of June 8, 2021, which the City Council adopted on July 20, 2021 through Resolution No. 2021-0227.

Thereafter, to extend explicit protection to local schools after several reported incidents of students be accosted to and from school, the City Manager issued a memorandum of October 11, 2022, including a revised Critical Infrastructure List. On October 18, 2022, the City Council adopted the revised Critical Infrastructure List through Resolution No. 2022-0322.

The City Manager has issued a new memorandum on July 25, 2023, which updates the locations on the Critical Infrastructure List that are designated as "critical infrastructure" for purposes of Chapter 8.140 of the City Code of courthouses and government law offices, including those of criminal prosecutors. This matter is before the City Council for approval of the City Manager's updated designation.

Policy Considerations: Not applicable.

Economic Impacts: Not applicable.

Environmental Considerations: This action is not a project that is subject to CEQA because it is an administrative activity that will not result in direct or indirect physical changes in the environment. (CEQA Guidelines §15378(b)(5)).

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: The City Manager deems the locations on the Critical Infrastructure List to be vital and integral to the operation or functioning of the City. The City Manager further finds that their damage, incapacity, disruption, or destruction would have a debilitating impact on the public health, safety, or welfare. The approval of the updated Critical Infrastructure List will save lives, protect property, reduce maintenance costs, and bolster the City's resiliency to all-hazards affecting our community and region.

Financial Considerations: Not applicable.

Local Business Enterprise (LBE): Not applicable.

MEMORANDUM

DATE: July 25, 2023

TO: Mayor and City Council Members

FROM: Howard Chan, City Manager

SUBJECT: CRITICAL INFRASTRUCTURE SUMMARY (2023)

On February 25, 2020, the City Council adopted the Protection of Critical Infrastructure and Wildfire Risk Areas Ordinance (No. 2020-0009), which added Chapter 8.140 to the Sacramento City Code. “critical infrastructure may include, but is not limited to, government buildings, such as fire stations, police stations, jails, or courthouses; hospitals; structures, such as antennas, bridges, roads, train tracks, drainage systems, or levees; or systems, such as computer networks, public utilities, electrical wires, natural gas pipes, telecommunication centers, or water sources.” (Sac. City Code, § 8.140.020.) The Ordinance recognizes the necessity for the City of Sacramento to ensure the operational readiness and continuity of essential services from certain real property and facilities during all-hazards.

The City Council has previously adopted designated parcels or facilities as “critical infrastructure” through Resolutions Nos. 2021-0227 and 2022-0322. The designation of a parcel or facility as “critical infrastructure” is a thoughtful and deliberate process. The City Manager designates a location as critical infrastructure, but the location becomes critical infrastructure for the purposes of Chapter 8.140 only after approval by the City Council.

The City’s Director of Emergency Management can receive input from subject-matter experts and stakeholders to recommendation, justification, and validation of key parcels and facilities in the City for designation as critical infrastructure by the City Manager. Each component of potential critical infrastructure was additionally validated, based on guidance from publicly available reference materials of the United States Department of Homeland Security and the Federal Emergency Management Agency regarding federally designated critical infrastructure. The result is the attached Critical Infrastructure List, which was developed over several months as city leaders and subject-matter experts conducted a comprehensive assessment of facilities and property parcels that serve critical purpose to preserve public safety.

Therefore, as City Manager, I designate any and all locations on the 2023 City of Sacramento Critical Infrastructure List as updated “critical infrastructure” for the purposes of Chapter 8.140 of the Sacramento City Code. The locations on the 2023 City of Sacramento Critical Infrastructure List are so vital and integral to the operation or functioning of the City of Sacramento that their damage, incapacity, disruption, or destruction would have a debilitating impact on the public health, safety, or welfare.

RESOLUTION NO. 2023-

Adopted by the Sacramento City Council

August 1, 2023

Resolution Approving City Manager's Designation of Specified Locations as Critical Infrastructure for Purposes of Chapter 8.140 of the City Code

BACKGROUND

- A. The City Council adopted Ordinance No. 2020-0009 on February 25, 2020, which added Chapter 8.140 to the City Code for the protection of critical infrastructure and wildfire risk areas in the interests of public safety.
- B. Pursuant to Section 8.140.020 of the City Code, "critical infrastructure may include, but is not limited to, government buildings, such as fire stations, police stations, jails, or courthouses; hospitals; structures, such as antennas, bridges, roads, train tracks, drainage systems, or levees; or systems, such as computer networks, public utilities, electrical wires, natural gas pipes, telecommunication centers, or water sources."
- C. Real property or a facility does not become "critical infrastructure" for the purpose of Chapter 8.140 until so designated by the City Manager and subsequently approved by the City Council through a resolution.
- D. On July 20, 2021, the City Council adopted Resolution 2021-0227, which ratified a previous listing of critical infrastructure from the City Manager.
- E. On October 18, 2022, the City Council adopted Resolution 2022-0322, which ratified the City Manager's current listing of critical infrastructure.
- F. The City Manager presented the attached Critical Infrastructure Summary Memorandum of 2023 (Memorandum) (Attachment 1) to the City Council. The Memorandum includes the attached 2023 City of Sacramento Critical Infrastructure List (List) (Attachment 2), which contains the updated locations that have been designated "critical infrastructure" by the City Manager for purpose of Chapter 8.140.
- G. The City Manager deems the locations on the List to be so vital and integral to the operation or functioning of the City of Sacramento that their damage, incapacity, disruption, or destruction would have a debilitating impact on the public health, safety, or welfare.
- H. Pursuant to direction received by City Council, the City's Director of Emergency Management brought together subject-matter experts and stakeholders to recommend, justify, and validate key parcels and facilities in the City to be

designated as critical infrastructure by the City Manager. Stakeholders and key leaders included both internal city staff and external partnering agencies. The process also included consideration of publicly available reference materials of the United States Department of Homeland Security and the Federal Emergency Management Agency regarding federally designated critical infrastructure.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Council acknowledges receipt of the City Manager's Critical Infrastructure Summary Memorandum of 2023, including the attached "2023 City of Sacramento Critical Infrastructure List."
- Section 2. The City Council recognizes said Critical Infrastructure List as the complete listing of locations officially designated by the City Manager as "critical infrastructure" for purposes of Chapter 8.140 of the City Code.
- Section 3. The City Council hereby approves any and all locations on said Critical Infrastructure List as critical infrastructure for purposes of Chapter 8.140 of the City Code.
- Section 4. Sacramento City Council Resolution No. 2022-0322 is hereby repealed.

2023 City of Sacramento Critical Infrastructure List						
Vulnerable Population Sites	Government Operations	Utilities and Public Works	Healthcare	Public Safety	Transportation	Gathering Areas
Adult Residential (parcel)	City Corporate Yards (parcel)	Air Release Station (parcel)	General Acute Care Hospital (parcel)	Evacuation Shelters (facility)	Airport (parcel)	Arena/Stadium (facility)
Child Care (parcel)	City Fleet Maintenance (parcel)	Booster Station (parcel)	Medical Health Facility (parcel)	Fiber and Communication Network (facility)	Bridges (facility)	College/University (facility)
Navigation Centers (parcel)	City Hall (facility)	Combined Sewer System Vault (parcel)		Fire Stations (parcel)	Bus Terminal (facility)	Convention Center (facility)
Social Rehabilitation Facility (parcel)	City Operation Centers (facility)	Dewatering Station (parcel)		Jail (facility)	Light Rail Stop (facility)	pre-K-12 Schools (parcel +500ft)
	Community Centers (facility)	Drainage Canals (parcel)		Police Stations (parcel)	Light Rail Tracks	
	Official Fueling Stations (parcel)	Flood Protection Barrier/Gate (parcel)		Program Logic Controls (facility)	Rail Lines	
	Courthouses (facility)	Landfill Gas Extraction System (parcel)		Servers, Switches, Firewalls (facility)	Train Station (facility)	
	Legal System Offices (facility)	Levees (parcel)				
		PG&E Gasline Infrastructure				
		Potable Wells (parcel)				
		Retention/Detention Basin (parcel)				
		Rivers/Creeks				
		SMUD Power Infrastructure (Facilities)				
		Storage Facility (parcel)				
		Sump Station (parcel)				
		Treatment Plant (parcel)				
		Turnout (parcel)				
External County Data						
Internal City Data						
Other External Data						
Critical Infrastructure List Supporting Summaries		7/25/2023				
Air Release Station		Air release valves are appurtenances located on water transmission mains throughout the City. A portion of the piping of an air release valve is above ground. There are over 650 air release valves located throughout Sacramento within City right-of-way.			These facilities are located within City ROW or easements.	
Basins		Basins constitute a facility for producing, storing, diverting, conserving, treating, or conveying water. Drainage flood control and water quality detention basins are a part of the City's drainage system and prevent flooding and protect the City's local creeks and rivers as required by the City's State NPDES Permit.			Drainage collection currently maintains 164 basins throughout the City as part of the critical infrastructure conveyance system.	
Booster Station		One potable water booster pump station exists within the City of Sacramento at 4299 Astoria Street. It maintains the pressure in a historically lower pressure area of the city.			The facility and parcel are critical.	
Combined Sewer System Vaults		There are four stormwater vaults within the City of Sacramento Combined Sewer System, designed to provide additional storage capacity during large rain events. All four vaults are in high profile areas and located underground. If these vaults not accessible, become damaged or unusable, the impact will create safety and public health hazards throughout the system. There will be a risk of			These facilities can be on a parcel or part of another critical facility.	
Drainage Canals		Drainage canals and channels are critical conveyance elements that deliver rainfall runoff from urban areas to receiving waterways. Channels can have multiple pump stations pumping flows into them. It's critical to maintain channel side slope integrity to prevent erosive action. Failure in channels/canals can lead to significant flooding for large areas of the city.			these facilities are located over long stretches and pass through multiple neighborhoods.	
Fire Stations		Fire Stations provide critical services for fire and emergency medical responses in our city and community. If there is a disruption of service, due to the fire department's inability to access or leave from the location, or damage to the station, the city and community would suffer due to delays in emergency response.			These facilities are typically on a parcel associated with a critical facility.	
Flood Protection Barrier – Floodgates, Sluice gates, Flap gates		A flood protection barrier is a specific type of floodgate that is designed to prevent water from entering through a primary or secondary levee. Floodgates are installed or closed to block water from entering the city. Sluice gates are closed to prevent water, stormwater, or wastewater from entering or backing up into the city. Flap gates prevent water from entering the city through pipes			There are several sites across the city; many have components that are stored elsewhere and deployed as needed to safeguard the city.	
Gathering Areas		Gathering areas across the City often consolidate the largest number of persons in a confined area, which have historically been ideal targets for extremist and terror attacks. Gathering areas are also often ideal locations to conduct mass care and shelter for evacuees given the range of onsite support to host large groups of people.			Typically just the facility is critical and the parcel consists of parking lots and/or additional business enterprise.	
Government Operations		This includes key locations where governance is conducted, and support to the community is administered from. This oft includes administration buildings where plans, procedures, and fees may be processed; additionally, this can include locations that host community services, such as: sheltering, childcare, youth programs, etc.			These facilities can be on a parcel or part of another critical facility.	
Landfill Gas Extraction System		The City owns and operates an extensive landfill gas extraction system, including two flare stations on the east and west side of Sutter's Landing Regional Park. This system prevents the release of landfill gas that would be harmful to the environment and nearby communities. Operation of this infrastructure is vital to the safety of the surrounding homes and businesses, who would be potentially exposed to risk should this equipment fail.			These facilities are typically on a parcel associated with a critical facility.	
Levees		Levees protect the Sacramento area from flooding due to high river or creek/stream levels caused by rainfall events that produce high volumes of runoff. Without the ability to maintain these facilities the flood risk to Sacramento residents is increased.			Most levees around Sacramento have flood control easements along rivers/creeks/streams. Levees are not typically on a single parcel or within the right-of-way.	
PG&E Gas line infrastructure		PG&E provides gas service to DOU Water, Wastewater, and Drainage facilities. Loss of PG&E service may result in potential flooding, sanitary sewer overflows, and no water production and treatment.			These facilities are typically on a parcel associated with a critical facility.	
Police Stations and Facilities		Police Stations and Facilities are critical to the safety of the community as they house dispatch communication, peace officers, their vehicles, and equipment. If those facilities are damaged or prevented from being used, it would negative impact the Police Departments ability to provide community services, thereby threatening the safety of our City.			These facilities are typically on a parcel associated with a critical facility.	
Potable Wells		The City currently is permitted to operate 28 groundwater wells. Twenty-six (26) are located in the northern portion of the City, north of the American River and two are located south of the American River. Two additional wells are currently under construction south of the American River. Groundwater wells provides 20% of the annual potable water supply for the City of Sacramento and wholesale customers.			Potable wells are facilities and are located at 28 city owned parcels throughout Sacramento.	
Rivers/Creeks		Rivers and Creeks are important elements of the City's drainage system as they pass storm flows from distant areas through our city as well as collect drainage from city neighborhoods. The City is protected from high flows in rivers and streams by the levee systems that border these water courses. Maintaining levees per guidelines is mandated by regulating State and Federal agencies. Access for monitoring during high flows is critical. Failure of this asset can lead to catastrophic flooding in our City.			Rivers and Creeks traverse through or are adjacent to much of our City.	
SMUD Power Infrastructure		SMUD provides electrical service to DOU Water, Wastewater, and Drainage facilities. Loss of SMUD service may result in potential flooding, sanitary sewer overflows, and no water production and treatment.			These facilities are typically on a parcel associated with a critical facility.	
Storage Facility		The City currently has 16 water storage facilities: 11 distributed storage tanks located throughout the City, and five clear wells located at the water treatment plants (three at the SRWTP and two at the FWTP). The storage facilities, or reservoirs, store water and pump water into the transmission main system for distribution into neighborhoods, mostly during periods of high demands.			The storage facilities, or reservoirs, are facilities and are located at 14 different sites.	
Sump Station		Wastewater and drainage is collected in underground pipes and flows to a collection point at a lower elevation which is a sump station. At the sump station wastewater is pumped to a force main pipe that conveys wastewater to a treatment plant for treatment. At the drainage sump, the water is pumped to a force main pipe that conveys the water to creeks and rivers. These facilities are essential to prevent flooding during rain events and to reduce sewer outflows.			Sump are facilities and are located on city owned parcels.	
Treatment Plant		The City treats surface water diverted from the Sacramento and American Rivers through the Sacramento River Water Treatment Plant and the E.A. Fairbairn Water Treatment Plant. These two water treatment plants provides 80% of the annual potable water supply for the City of Sacramento and wholesale customers.			The WTPs are facilities and are located at 301 Water Street and 7501 College Town Drive.	
Turnout		The City maintains seven metered wholesale/wheeling connections to other adjacent agencies and 21 additional emergency interties. The turnouts are located throughout Sacramento within City right-of-way. The turnouts/interties are used for emergency water supply.			These facilities are located within City ROW or easements.	
Courthouses and Legal System Offices		These facilities facilitate legal proceedings and house files and personnel that are part of the public legal system.			These facilities are located within City ROW or easements.	



CITY COUNCIL AGENDA – DECEMBER 19, 2023

SUBJECT: Update Regarding Consideration of Potential Local Regulations Addressing Regulation of Camping, the Protection of Critical Infrastructure and Public Access to Open Spaces, and Request to Schedule Study Session

SOURCE: City Attorney

COMMENT: As discussed by the City Council at its meeting on October 17, 2023, this item has been brought back to provide additional information to the Council regarding questions the Council Members posed. Staff recommends that the Council schedule a Study Session (potentially January 30, 2024) for further consideration and to provide direction concerning the development of local regulations and potential expanded resources.

At its October 17th meeting, members of Council asked about the regulations the City currently has within its Municipal Code that address camping. Questions were also raised concerning the regulation of shopping carts and the City's determinations and handling of abandoned property. Finally, there were questions concerning whether the City could set camping boundary restrictions at a lesser amount than 500 feet (such as 250 feet).

CITY'S CURRENT REGULATIONS

This office reviewed the City's current Municipal Code for regulations that directly or indirectly affect individuals experiencing homelessness. Three areas in the Code were identified – 1) Section 19-11, pertaining to Park Closing Hours, 2) Article VII related to "Squatter Camps," and 3) Article X, "Shopping Carts" (which will be discussed separately).

Currently, per Section 19-11 the City restricts individuals from entering, remaining in, or refusing to leave Murry Park, Westview Park, Olivewood Park, Noon Lions' Park or Zalud Park between 10:00p.m. and 5:00a.m. (with the Zalud Park tennis courts excluded). This section was last adopted/revised in 1980 and apparently has not been modified. Additional parks/hours restrictions may have been established via Resolution. The regulation on its face would be legal, so long as there are other public places where individuals experiencing homelessness can sleep.

Article VII, "Squatter Camps," was adopted in 2007, predating the recent case law affecting camping. The camps are defined as areas of public or private land upon which an individual has settled, located or occupied, without having a bona fide claim or color of title to, or without express consent of the owner or legal occupant, AND which are occupied or inhabited in violation of certain uniform building or housing codes (which included any tent camp space, shelter

structure, vacant structure, or structure deemed to be substandard or unsuitable for habitation by City building officials). The Article purports to prohibit individuals from occupying any land without proper claim or title, or without express permission from the owner, or from constructing any tent or structure on the property. The Article, aside from deeming violations to be misdemeanors or infractions, also declares the violations public nuisances and establishes a specific abatement process, which after posting and “serving” notice purports to allow removal of personal belongings after three days and discard unclaimed belongings after ten (10) days. This Article is clearly outdated and has some issues. For example, in addition to the case law previously discussed at the last meeting, the uniform building and housing code sections referred to have also been modified since the adoption of this Ordinance back in 2007. Additionally, the property disposal provisions in this Ordinance are no longer appropriate. As discussed at the last meeting, absent an immediate threat to public health or safety, seized property cannot be disposed of without first maintaining the property in a secure location for a period of at least ninety (90) days. In *Lavan v. City of Los Angeles* (9th Cir. 2012) the Court affirmed that the notice and timing procedures established via lower court cases including one involving the City of Fresno apply. Under those cases, public entities may only seize personal property that the entity reasonably believes has been abandoned, presents an immediate threat to the public health and safety, or is evidence of a crime or contraband; AND absent an immediate threat to the public health or safety, the seized property cannot be destroyed without holding the property in a secure location for no less than ninety (90) days. These cases also provide that entities should establish policies that require notification of pending removal prior to the seizure, and opportunity for the individual to remove and store their personal property, and if the entity removes items the entity must document the particular items removed along with where those items can be recovered.

SHOPPING CARTS

The City made comprehensive additions/revisions to its shopping cart regulations via Ordinance adopted in 2018. Article X of the Municipal Code provides that the cart owners are responsible for keeping their carts contained to the business premises and provides that it is unlawful for a person to remove a cart from a business premises. If carts are removed, cart owners (the businesses) are required to retrieve abandoned carts that have been retrieved by the City, after receiving notice. For repeat offenders (businesses), the City may require that the business operate and maintain an onsite cart containment system. Business owners are also required to affix cart identification signs.

CRITICAL INFRASTRUCTURE PROXIMITY RESTRICTIONS

At the October 17th meeting, questions were raised concerning the “500 foot” proximity requirement that several jurisdictions have adopted, and whether this could be reduced to 250 feet. The Council can determine what the appropriate restriction should be. For example, some jurisdictions have utilized a much smaller boundary restriction, such as the City of Stockton which adopted a distance of thirty (30) feet from critical infrastructure (levees, sloughs, river, canals, waterways, council-designated property or facilities) or within thirty

(30) feet of the property line of any parcel enclosing critical infrastructure, or within thirty (30) feet of a vehicular or pedestrian entrance or exit of critical infrastructure. Stockton also prohibits camping on portions of right of way required by authorities to be free of obstruction for first responders, or in a wildfire risk area.

CURRENT SHELTERS AND SERVICES AND LONG-TERM PLANNING

There are currently four shelters within the city that provide emergency beds for individuals experiencing homelessness. The projects are supported with federal and state funds accessed through the Continuum of Care on Homelessness, County of Tulare, private donations, health plans, and the City of Porterville. In addition to those shelters, there are other projects that are scattered sites that provide permanent supportive housing (PSH) and a multi-family housing project that is dedicated PSH housing. The City directly supports the Porterville Navigation Center with a current capacity for fifteen (15) emergency beds and fifteen (15) bridge housing beds. The City also currently supports the Porterville Armory Temporary Evacuation Point and Shelter, although not a homeless shelter, serves to house individuals who are homeless as a result of the 2023 atmospheric flood, providing overnight shelter to approximately thirty (30) individuals every night with a capacity of fifty (50) beds.

Additionally, the City supports and collaborates with local service providers, to assist homeless individuals and families. Funding priorities concentrate on supporting existing projects that support the Housing First model, Permanent Supportive Housing (PSH), Bridge Housing, Navigation Centers, Emergency Shelters, Housing Navigators, and other programs that help individuals experiencing housing move from an unhoused situation to permanent housing.

RECOMMENDATION: That the City Council consider scheduling a Study Session early next calendar year to consider and provide further direction concerning proposed changes to the City's current regulations, and the development and planning for additional shelter space.

ATTACHMENTS:

1. Municipal Code - Chapter 19, Section 11: Closing Hours in Parks
2. Municipal Code - Chapter 18, Article VII. Squatter Camps
3. Municipal Code - Chapter 18, Article X. Shopping Carts
4. City of Stockton Ordinance

Appropriated/Funded:

Review By:

Department Director:
Julia Lew, City Attorney

Final Approver: John Lollis, City Manager

19-11: CLOSING HOURS IN PARKS:

A. It shall be unlawful for any person to enter, to remain in, or to refuse to leave Murry park, Westview park, Olivewood park, Noon Lions' park, North park, or Zalud park between the hours of ten o'clock (10:00) P.M. and five o'clock (5:00) A.M.

B. The Zalud park tennis courts shall be excluded from such restriction as stated in subsection A of this section.

C. Any person in violation of this section shall be guilty of a misdemeanor. (Ord. 1219 §§ A–C, 10-28-1980)

ARTICLE VII. SQUATTER CAMPS

SECTION:

18-76: Purpose

18-77: Definitions

18-78: Unlawful Occupancy

18-79: Enforcement

18-80: Nuisance

18-81: Procedure For Abatement Of Nuisance

18-82: Penalty

18-83: Severability

18-76: PURPOSE:

The purpose of this article is to assist code/law enforcement in minimizing the impact that squatter camps have on the city's quality of life. Squatter camps are unsightly, accumulating over time on public and private property causing blight and similar conditions resulting in depreciation of property values and deterioration of the city's neighborhoods. Such encampments are also detrimental to the public health, safety, and welfare, and constitute a public nuisance and, hence, the city herewith provides a means by which they can be eliminated. (Ord. 1719 § 1, 4-17-2007)

18-77: DEFINITIONS:

Unless otherwise stated herein, whenever used in this article, the following terms shall be defined as follows:

HEALTH OFFICER: The health officer of the city, as appointed by the city manager, and the health officer's duly authorized representatives and deputies.

SQUATTER: One who settles or locates on land enclosed or unenclosed with no bona fide claim or color of title or without the express consent of the owner or person legally in charge of the land.

SQUATTER CAMP: An area of land, public or private, upon which any person has settled or located, or which he/she occupies, without having a bona fide claim or color of title thereto, or without the express consent of the owner or person legally in charge thereof or the agent of the same, and which is occupied or inhabited in violation of section 103 of the California building code or chapter 10 of the uniform housing code as adopted by the city of Tulare. It includes any tent camp space, house court and every other kind of camp, tent, shelter, structure, or collection of tents, shelters, or structures of any kind established, constructed, maintained, or operated thereon. It also includes the inhabiting of any vacant structure without permission of the property owner, or the inhabiting of any structure deemed substandard and/or unsuitable for habitation by city building officials. (Ord. 1719 § 1, 4-17-2007)

18-78: UNLAWFUL OCCUPANCY:

No person shall settle or locate on or occupy any land without a bona fide claim or color of title thereto, or without the express consent of the owner or person legally in charge of said land, or erect or construct any tent, shelter, or structure of any kind thereon. (Ord. 1719 § 1, 4-17-2007)

18-79: ENFORCEMENT:

It shall be the duty of the chief of police or the city health officer to enforce the provisions of this article. (Ord. 1719 § 1, 4-17-2007)

18-80: NUISANCE:

Every "squatter camp" as defined in this article is hereby declared to be a public nuisance, and may be abated by the city in the manner provided in this article. (Ord. 1719 § 1, 4-17-2007)

18-81: PROCEDURE FOR ABATEMENT OF NUISANCE:

The health officer and the chief of police are hereby authorized to abate such a nuisance as follows:

A. **Service Of Notice:** Notice must be served upon the owner or person in charge of the property upon which said squatter camp is located. Such notice shall be in writing, signed by the health officer or chief of police, and served upon the owner or the person in charge of the property upon which said squatter camp is located according to the provisions of section 1162 of the Code of Civil Procedure of California. Such notice shall require that said squatter camp be completely abandoned, abated, closed and vacated and demolished within three (3) days from the date of service of notice upon the owner or operator or person in charge thereof. Failure or refusal on the part of any such owner or person in charge of such squatter camp to abate, vacate, and close it in compliance with such written notice shall constitute a violation of this article. Where public property is involved, the notice shall be served upon the squatter(s).

B. **Posting Of Notice:** Upon the failure or refusal on the part of the owner or person in charge of the land, upon which the squatter camp is located, to comply with the notice, the health officer or chief of police may post notices notifying all squatters that said squatter camp is condemned as a public nuisance and that all persons shall, within three (3) days, vacate the premises upon which such squatter camp space is located. Any person who shall thereafter enter in or upon or make any use of such squatter camp shall be guilty of a violation of this article.

C. **Notice Of Condemnation; Removal Of Belongings:** If the health officer or chief of police is unable to ascertain or find the owner

of the land upon which any such squatter camp is located, or where no person is in charge of the same, the health officer or chief of police may notify all squatters within such squatter camp, in writing, that the same has been condemned and to remove all personal belongings therefrom within three (3) days. In addition, the health officer or chief of police shall post a written notice in a conspicuous place, within said squatter camp, notifying all squatters to remove all personal belongings and vacate said squatter camp within three (3) days, after which the city may remove all remaining personal belongings and shall hold such for ten (10) days. The city may discard all items not claimed within the ten (10) day holding period.

D. Failure To Comply A Violation: Failure or refusal of any person to comply with any notice provided according to this article shall be a violation of this article. (Ord. 1719 § 1, 4-17-2007)

18-82: PENALTY:

Every "squatter camp", as defined by this article, is hereby declared a public nuisance, and as such may be abated in the manner provided for in this article. Furthermore, all violations of this article shall be considered misdemeanors, punishable according to section 1-9 of this code. Upon the recommendation of the prosecuting attorney, the court may reduce the charged offense from a misdemeanor to an infraction, punishable under California Penal Code section 19.8. (Ord. 1719 § 1, 4-17-2007)

18-83: SEVERABILITY:

If any provision, clause, sentence, or paragraph of this article or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions or application of the provisions of this article which can be given effect without the invalid provisions or application and, to this end, the provisions of this article are declared to be severable. (Ord. 1719 § 1, 4-17-2007)

ARTICLE X. SHOPPING CARTS

SECTION:

18-100: Findings And Purpose

18-101: Definitions

18-102: Enforcement Authority And Remedies

18-103: Prohibition Against Removing, Possessing And Altering Carts

18-104: Prohibition Against Abandoning Carts

18-105: Impoundment Of Abandoned Carts

18-106: Cart Identification Signs

18-107: Cart Containment System Required

18-108: Retrieval Services

18-109: Penalty

18-110: Prosecution For Theft Not Precluded

18-111: Severability

18-100: FINDINGS AND PURPOSE:

The City Council finds that abandoned shopping carts on public and private property create conditions that are unsightly, interfere with pedestrian and vehicular traffic, accumulate over time on public and private property, promote blight, resulting in reduction of property values and deterioration of neighborhoods, are detrimental to the public health, safety and welfare, and constitute a public nuisance. This article is intended to ensure that measures are taken to prevent the removal of the shopping carts from the owner's premises and facilitate the retrieval of abandoned shopping carts in a manner consistent with State law. (Ord. 1848, 8-7-2018)

18-101: DEFINITIONS:

ABANDONED CART: Shall mean any cart that has been removed, without the written consent of the owner, from the owner's business premises or parking area of the retail establishment on which the cart owner's business premises are located, is located on either public or private property, and is no longer in the possession or under the physical control of the person who removed the cart. A cart abandoned by a person, other than the owner, shall not constitute a relinquishment of ownership of the cart by the owner.

BUSINESS PREMISES: Means the interior of a cart owner's commercial establishment, adjacent walkways, any loading area, and parking areas, as defined herein. The owner's business premises may include a multi-store shopping center with shared areas of parking and public access. The entire area owned, rented, leased or utilized by a business establishment that provides shopping carts for customer use, including parking areas.

CART: A basket or platform which is mounted on wheels or a similar device generally used in a business establishment by a customer for the purpose of transporting goods of any kind or used in a coin-operated laundry or dry-cleaning retail establishment by a customer or an attendant for the purpose of transporting fabrics and the supplies necessary to process them. This includes, but is not limited to, laundry, grocery or shopping carts.

CART IDENTIFICATION SIGN: Means a sign or engraved surface which is permanently affixed to a shopping cart containing all of the information specified in section 22435.1 of the California Business and Professions Code.

CART OWNER: Means the owner or operator of a commercial establishment which provides carts for use by its customers for the purpose of transporting goods of any kind. Any person, business establishment or entity that owns, possesses or has the power to make a shopping cart available to customers. For the purpose of this article, owner includes, but is not limited to, the store owner, manager, on-site manager, on-duty manager or other designated agent of a business establishment providing shopping carts for customer use.

CART REMOVAL WARNING: Means a placard, sign or painted text which meets the requirements specified in section 18-106 of this article.

CART RETRIEVAL SERVICE: Means a third party commercial service in the business of retrieving and returning shopping carts.

DIRECTOR: The City Manager or his or her designee.

ENFORCEMENT OFFICER: Means any officer or employee of the City designated with the authority to enforce the applicable provisions of this Code.

INDIVIDUAL CART IDENTIFICATION NUMBER: Means a number unique to each cart owned or provided by a cart owner.

ON-SITE CART CONTAINMENT PROGRAM: Means one or more of the following measures:

A. Disabling devices on all shopping carts which prevent them from being removed from the business premises by locking the wheels or otherwise preventing the movement of the carts.

B. An on-site security guard to deter customers who attempt to remove carts from the business premises.

C. Bollards and chains around the business premises to prevent cart removal, if permitted by the applicable zoning and the site plan, and if approved by the Fire Marshal.

D. Obtaining a security deposit from customers for the on-site use of shopping carts.

E. The rental or sale of carts that can be temporarily or permanently used for the transport of goods.

F. Any other measure approved by Community Development as a means to contain carts on the premises.

PARKING AREA: Means a parking lot or other property provided by a commercial establishment for use by a customer for parking an automobile or other vehicle. In a multi-store complex or shopping center, "parking area" includes the entire parking area used by or controlled by the complex or center.

PERSON: Any person, corporation, partnership, association, joint- stock company, limited liability company, limited liability partnership and other entity capable of being sued.

PHYSICAL CONTAINMENT SYSTEM: Means one of the following, as approved by the Director of Community Development:

A. Disabling devices on all shopping carts which prevent them from being removed from the business premises by locking the wheels or otherwise preventing the movement of the carts.

B. Any other system of equipment approved by the Community Development Director or designee which physically contains shopping carts on the premises.

SHOPPING CART OR CART: Means a basket which is mounted on wheels or a similar device provided by the operator of a commercial establishment for the use of customers for the purpose of transporting goods of any kind. A cart sold by a commercial establishment to a retail customer for that customer's personal use is not a shopping cart for the purposes of this article.

SHOPPING CART OR LAUNDRY CART RETRIEVAL BUSINESS: To search for, gather and restore possession to the owner, or an agent thereof, for compensation or in expectation of compensation, of shopping carts or laundry carts located outside the premises or parking area of a retail establishment.

STREET: Any street, avenue, road, alley, lane, highway, boulevard, concourse, driveway, culvert, crosswalk, sidewalk, park, parking lot, parking area and place used by the general public. (Ord. 1848, 8-7-2018)

18-102: ENFORCEMENT AUTHORITY AND REMEDIES:

A. This article shall be administered and enforced by the Director with the assistance of the Police Chief, Fire Chief and their designated agents and Code Enforcement Officers. The Director is hereby authorized and directed to promulgate and implement rules, regulations and procedures necessary or appropriate for the enforcement of this article. The Director, Police Chief, Fire Chief and their designated agents and Code Enforcement Officers are authorized as follows:

1. To enter upon and inspect any public and private property or premises to ascertain whether the provisions of this article or applicable State laws are being obeyed. As used herein, public property includes the outdoor common area of any building, business premises, apartment building or complex or other premises or portion thereof which is adjacent to public property, open to the public and which contains a shopping cart or shopping carts visible at street or ground level from the adjacent public property. All inspections, entries and examinations shall be done in a reasonable manner. If an owner, tenant, occupant or agent or other responsible party refuses to grant the City permission to enter or inspect, the City may seek an inspection warrant pursuant to the procedures provided for in the California Code of Civil Procedure. Nothing contained in this section shall be deemed a limitation upon the Director to enter private property pursuant to permission from the owner or occupant thereof or pursuant to a duly issued inspection warrant or other court order;

2. To examine a shopping cart or parts thereof, or to obtain information as to the identity of the owner of any shopping cart, or to retrieve shopping carts in accordance with the provisions of this article;

3. To determine whether a violation of this article exists and to take appropriate action to gain compliance with the provisions of this article and applicable State laws; and

4. To issue administrative citations and to impose civil penalties for any violation of this article.

B. The Police Chief, City police officers and designated City employees, who shall be designated by a separate resolution pursuant to the provisions of California Penal Code section 836.5, shall have the authority to issue criminal citations for violations of this article. The City Attorney and the District Attorney shall have the authority to file criminal complaints to enforce this article.

C. In addition to the above listed authority, the City may exercise the following remedies:

1. Pursuant to Business and Professions Code section 22435.7, any owner that fails to retrieve its abandoned cart(s) within three (3) business days after receiving notice from the City, shall pay the City's administrative costs for retrieving the cart(s) and providing the notification to the owner. Any owner who fails to retrieve abandoned carts in accordance with this article in excess of three (3) times during a specified six-month period shall be subject to a fifty dollar (\$50.00) fine for each occurrence. An occurrence includes all carts owned by the owner that were impounded by the City for a one-day period.

2. If a cart is not retrieved by its owner within thirty (30) days after the owner has received notice of the cart being impounded, including a failure to pay costs and fines, or if the cart's owner cannot be determined, the cart will be sold, destroyed or otherwise disposed of as the City sees fit.

3. Following the City having retrieved more than ten (10) carts in any thirty-day period or the issuance of more than ten (10) administrative citations in any twelve-month period, the Director of Community Development may require the owner to install a physical containment system.

4. Violations by any person of section 18-103 of this article may be enforced through any of the penalties for violations of this Code specified in section 1-9 of this Code. (Ord. 1848, 8-7-2018)

18-103: PROHIBITION AGAINST REMOVING, POSSESSING AND ALTERING CARTS:

It is unlawful for any person except the owner of a cart or the owner's agent to do any of the following acts:

A. No person shall be deemed to be authorized to remove a cart with cart identification from the business premises unless he or she possesses written authorization from the cart owner. Removal authorization shall be valid for a period not to exceed twelve (12) hours. The authorization shall include: the date and time of removal, the name, address, and phone number of the store where the cart was removed, as well as the name, title and signature of the person authorizing the removal. This section shall not apply to the possession of a shopping cart removed from the business premises at the direction of the cart owner for the purposes of repair, maintenance, or when found in the possession of a cart retrieval service returning it to the cart owner;

B. To be in possession of any cart while that cart is not located on the premises or parking lot of the owner of the cart without the express written consent of the owner. Written permission to remove a shopping cart shall be valid for a period not to exceed twelve (12) consecutive hours;

C. It shall be unlawful for a person to possess a shopping cart with a cart identification sign on sidewalks, streets, trails, other public property open to the public, or on private property open to public view, without written authorization from the cart owner, unless the person has written permission of the cart owner to repair or maintain the cart, is a cart retrieval service in the process of returning an empty cart to the cart owner, or is moving the cart so it can be picked up by a cart retrieval service;

D. To be in possession of any shopping cart with serial numbers removed, obliterated or altered; or

E. To alter, convert or tamper with a cart, or to remove any part or portion thereof or to remove, obliterate or alter serial numbers or the cart identification sign on a cart. (Ord. 1848, 8-7-2018)

18-104: PROHIBITION AGAINST ABANDONING CARTS:

It is unlawful for any person to leave, abandon or store any cart upon any sidewalk, street or other public place, or upon private property exposed to public view, at a location other than the premises of the owner. (Ord. 1848, 8-7-2018)

18-105: IMPOUNDMENT OF ABANDONED CARTS:

A. The City of Porterville hereby adopts California Business and Professions Code section 22435 in reference to the impoundment of abandoned carts. Pursuant to the provisions of the Business and Professions Code, a cart that has a sign affixed to it in accordance with California Business and Professions Code section 22435.1 may be impounded by the City provided both of the following conditions have been satisfied:

1. The shopping cart is located outside the premises or parking area of a retail establishment. The parking area of a retail establishment located in a multi-store complex or shopping center shall include the entire parking area used by the complex or center.

2. Except as provided in subsection G of this section, the shopping cart is not retrieved within three (3) business days from the date the owner of the shopping cart, or his or her agent, receives actual notice from the City of the shopping cart's discovery and location.

B. In instances where the location of a shopping cart will impede emergency services, the City is authorized to immediately retrieve the shopping cart from public or private property.

C. When the City impounds a shopping cart under the authority provided in subsections A and B of this section, the City is authorized to recover its actual costs for providing this service.

D. Any shopping cart that is impounded by the City pursuant to subsections A and B of this section shall be held at a location that is both:

1. Reasonably convenient to the owner of the shopping cart; and
2. Open for business at least six (6) hours of each business day.

E. The City shall fine the owner of a shopping cart in an amount as set by the Porterville City Council for each occurrence in excess of three (3) during a specified six-month period for failure to retrieve shopping carts in accordance with this section. An occurrence includes all shopping carts impounded in accordance with this section in a one-day period.

F. The City may sell or otherwise dispose of any shopping cart not reclaimed from the City within thirty (30) days of receipt of a notice of violation by the owner of the shopping cart.

G. Notwithstanding subsection A2 of this section, the City may impound a shopping cart that otherwise meets the criteria set forth in subsection A1 of this section without complying with the three-day advance notice requirement provided that all of the following occur:

1. The owner of the shopping cart, or his or her agent, is provided actual verbal or written notice within twenty four (24) hours following impound of the cart and that notice informs the owner, or his or her agent, as to the location where the shopping cart may be claimed.

2. Any shopping cart so impounded shall be held at a location in compliance with subsection D of this section.

H. Any shopping cart reclaimed by the owner or his or her agent, within three (3) business days following the date of actual notice as provided pursuant to subsection G1 of this section, shall be released and surrendered to the owner or agent at no charge whatsoever, including the waiver of any impound and storage fees or fines that would otherwise be applicable pursuant to subsection C or E of this section. Any cart reclaimed within the three (3) business day period shall not be deemed an occurrence for purposes of

subsection E of this section.

I. Any shopping cart not reclaimed by the owner or his or her agent, within three (3) business days following the date of actual notice as provided pursuant to subsection G1 of this section, shall be subject to any applicable fee or fine imposed pursuant to subsection C or E of this section commencing on the fourth business day following the date of the notice.

J. Any shopping cart not reclaimed by the owner or his or her agent, within thirty (30) days of receipt following the date of actual notice as provided pursuant to subsection G1 of this section, may be sold or disposed of in accordance with subsection F of this section. (Ord. 1848, 8-7-2018)

18-106: CART IDENTIFICATION SIGNS:

A. Removal Prevention And Retrieval: Every owner who provides or intends to provide carts to be used by customers shall do the following:

1. Pursuant to Business and Professions Code section 22435.1, each shopping cart owned or used within the City shall have permanently affixed to it and easily visible a cart identification sign or engraved surface which includes all of the following information: the name of the cart owner; the telephone number of the cart owner and/or commercial establishment to which the cart belongs; a valid toll-free phone number for cart retrieval; the procedure (if any) to be followed to obtain permission to remove the cart from the business premises; and a notice to the public that unauthorized removal of the cart from the business premises is a violation of State law and City ordinance.

2. In addition to the cart identification and cart removal notice required on each cart, the cart owner shall post a notice in substantially the following form prominently and conspicuously in the area where carts are stored for customer use. Post prominently and conspicuously at all public entrances and exits where there is frequent cart activity, a notice no smaller than 12 inches by 18 inches, or approved by the Director, in the following form:

REMOVAL OF SHOPPING CARTS (OR LAUNDRY CARTS, IF APPLICABLE,) FROM THESE PREMISES IS PROHIBITED BY LAW (PMC § 18-103) AND WILL SUBJECT THE VIOLATOR TO A FINE OF UP TO \$1,000.00 OR SIX MONTHS IN JAIL OR BOTH THE FINE AND THE JAIL TERM.

The notice required by this section shall be considered exempt from chapter 21, article 305 of this Code.

B. Maintenance Of Signs: It shall be the responsibility of each cart owner to comply with subsections A1 and A2 of this section, and to continuously maintain, or cause to be maintained all signs so that all of the required information is accurate and clearly legible.

C. Identification Of Ownership Required: A cart without a sign attached, pursuant to subsection A of this section, shall bear some form of identification to establish ownership. Every business that utilizes shopping carts during normal operations within the City of Porterville shall provide the Director with a valid, current telephone number of the owner or provider of the cart.

D. Chain Stores: Carts provided by individual stores or retailers that are owned by or affiliated with the same company and share the same name (chain stores) shall bear some form of identification which identifies the specific store that the cart is assigned to.

E. Presumption Of Abandonment: A cart that does not have a sign attached as required by subsection A of this section or fails to provide information to the Director as required in subsection C of this section is presumed to be abandoned if it has been left standing unattended on any public or private property other than the owner's or the owner's agent. The City may impound, sell or otherwise dispose of such a cart immediately upon discovery of the cart. (Ord. 1848, 8-7-2018)

18-107: CART CONTAINMENT SYSTEM REQUIRED:

Every cart owner shall operate and maintain an on-site cart containment program as defined in section 18-101 of this article. A cart owner may be exempted from this requirement if he or she provides proof of contracting with a qualified cart retrieval service and submits information to the Community Development Director or designee which demonstrates to the satisfaction of the Director that the qualified cart retrieval service will: a) actively locate shopping carts within the City limits of Porterville seven (7) days per week, eight (8) hours per day; and b) respond to complaints from the public in a manner which results in the retrieval of shopping carts within twenty four (24) hours after receiving complaint(s). (Ord. 1848, 8-7-2018)

18-108: RETRIEVAL SERVICES:

A. Any person who engages in the business of shopping cart or laundry cart retrieval, as defined in this article, in the City shall have a City business license and shall retain records showing written authorization from the cart owner, or an agent thereof, to retrieve the cart or carts and to be in possession of the cart or carts retrieved, unless the person is an employee of the cart owner.

B. A copy of the record showing written authorization shall be maintained in each vehicle used for shopping cart or laundry cart retrieval.

C. Each vehicle employed for the retrieval of shopping carts or laundry carts shall display a sign that clearly identifies the retrieval service or the cart's owner.

D. Any person who violates the provisions of this section is guilty of a misdemeanor and subject to punishment in accordance with section 1-9 of this Code. (Ord. 1848, 8-7-2018)

18-109: PENALTY:

Any person who violates any provision of this Code, or the California Business and Professions Code as referenced above shall be guilty of a misdemeanor and subject to punishment in accordance to California Penal Code section 19. Upon recommendation of the Prosecuting Attorney, the court may reduce the charged offense from a misdemeanor to an infraction, punishable under section 1-9 of this Code. An administrative fine may also be imposed as set forth in section 2-144 of this Code. Nothing in this article shall prevent the City from pursuing criminal, civil, administrative or any other legal remedy to address violations of this article. (Ord. 1848, 8-7-2018)

18-110: PROSECUTION FOR THEFT NOT PRECLUDED:

The provisions of this article are not intended to preclude the application of any other laws relating to prosecution for theft. (Ord. 1848, 8-7-2018)

18-111: SEVERABILITY:

If any provision, clause, sentence or division of this article or the application thereof to any person or circumstance shall be held invalid, the invalidity shall not affect the other provisions or application of the provisions of this article which can be given effect without the invalid provisions or application and, to this end, the provisions of this article are declared to be severable. (Ord. 1848, 8-7-2018)

ORDINANCE NO. 2022-09-27-1202

AN ORDINANCE ADDING TITLE 8, CHAPTER 8.100, TO THE STOCKTON MUNICIPAL CODE RELATING TO PROTECTION OF CRITICAL INFRASTRUCTURE AND WILDFIRE RISK AREAS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

SECTION I. AMENDMENT OF CODE

Title 8, Chapter 8.100, Sections 8.100.010, 8.100.020, 8.100.030, 8.100.040, 8.100.050, and 8.100.060 are added to the Stockton Municipal Code and shall read as follows:

8.100.010 Findings and purpose.

The City Council finds as follows: (1) a principal threat to the public health, safety, and welfare is the potential destruction of, damage to, or interference with, infrastructure that is critical to the provision of public services such as law enforcement, fire prevention, transportation, and utilities including communication, water, wastewater, stormwater, and waste disposal; (2) destruction of, damage to, or interference with, critical infrastructure is caused by fire, contamination, obstructing access, or other causes; and (3) destruction of, damage to, or interference with, critical infrastructure is often caused by persons whose activities are not permitted or authorized in, on, or near critical infrastructure.

The purpose of this chapter is to mitigate the threat of fire and other potential causes of destruction and damage to, and interference with, critical infrastructure, in order to protect the health, safety, and welfare of the public, by authorizing the removal of persons and their personal property in, on, or near critical infrastructure.

8.100.020 Definitions.

When used in this chapter, the following words and phrases have the following meanings:

“Camp” means to place, pitch or occupy camp facilities; to live temporarily in a camp facility or outdoors; to use camp paraphernalia.

“Camp facilities” include, but are not limited to, tents, huts, vehicles, vehicle camping outfits or temporary shelter.

“Camp paraphernalia” includes, but is not limited to, bedrolls, tarpaulins, cots, beds, sleeping bags, hammocks, cooking facilities, and similar equipment.

“Critical infrastructure” means each of the following:

1. Levees;

2. Sloughs, rivers, canals, and waterways; or

3. Real property or a facility, whether privately or publicly owned, as approved by action of the City Council, that the City Manager designates as being so vital and integral to the operation or functioning of the City that its damage, incapacity, disruption, or destruction would have a debilitating impact on the public health, safety, or welfare.

Critical infrastructure may include, but is not limited to, government buildings, such as fire stations, police stations, jails, or courthouses; hospitals; structures, such as antennas, bridges, roads, train tracks, or drainage systems; or systems, such as computer networks, public utilities, electrical wires, natural gas pipes, telecommunication centers, or water sources; and parks.

“Debris” means building and construction materials, garbage, refuse, wreckage, spoiled or ruined household goods, and similar material.

“Facility” means a building, structure, equipment, system, or asset.

“Garbage” means discarded household items, objects, or materials for which there is no use or reuse intended.

“Hazardous waste” has the same meaning as in California Public Resources Code section 40141.

“Infectious waste” has the same meaning as in California Code of Regulations, title 14, section 17225.36.

“Solid waste” means all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage; ashes; industrial waste; demolition and construction waste; discarded home and industrial appliances; abandoned vehicles and vehicle parts; dewatered, treated, or chemically fixed sewage that is not hazardous waste; manure; dirt; soil, rock, gravel, sand, or other aggregate material; and other discarded solid and semisolid waste.

“Wildfire risk area” has the same meaning as in California Code of Regulations, title 24, part 9, section 202.

8.100.030 Prohibited activities.

A. It is unlawful and a public nuisance for any person to camp, occupy camp facilities, or use camp paraphernalia, or for a property owner to allow such activity to occur, at the following locations:

1. Critical infrastructure;
2. Within 30 feet of critical infrastructure;
3. Within 30 feet of the property line of any parcel enclosing critical infrastructure;
4. Within 30 feet of a vehicular or pedestrian entrance or exit of critical infrastructure;
5. On those portions of a right-of-way that are required by local, state, or federal law to be free of obstruction to first responders, including but not limited to members of law enforcement, fire prevention, or emergency medical services agencies; or
6. In a wildfire risk area.

B. It is unlawful and a public nuisance for any person to store personal property, including camp facilities and camp paraphernalia, in the following locations without the written consent of the owner, except as otherwise provided by action of the City Council:

1. Critical infrastructure;
2. Within 30 feet of critical infrastructure;
3. Within 30 feet of the property line of any parcel enclosing critical infrastructure;
4. Within 30 feet of a vehicular or pedestrian entrance or exit of critical infrastructure;
5. On those portions of a right-of-way that are required by local, state, or federal law to be free of obstruction to first responders, including but not limited to members of law-enforcement, fire-prevention, or emergency-medical-services agencies; or
6. Wildfire risk area.

C. Nothing in this chapter is intended to prohibit or make unlawful the activities of an owner of private property or other lawful user of private property that are normally associated with and incidental to the lawful and authorized use of private property for residential or other purposes; and nothing is intended to prohibit or make unlawful the activities of a property owner or other lawful user if such activities are expressly authorized by the Stockton Development Code or other laws, ordinances, and regulations.

8.100.040 Summary abatement.

A. Any violation of section 8.100.030 may be abated by the City upon 24 hours of prior notice by way of posting notice conspicuously on or in front of property; but a violation of section 8.100.030 may be abated immediately by the City without prior notice, if the violation poses an imminent threat to public health or safety.

B. Abatement pursuant to subsection A may include, but is not limited to, removal of camp facilities, camp paraphernalia, personal property, garbage, hazardous waste, infectious waste, junk, or debris; and securing the perimeter of the property with fencing, gates, or barricades to prevent further occurrences of the nuisance activity.

8.100.050 Interference with summary abatement.

No person shall willfully prevent, delay, resist, obstruct, or otherwise interfere with a City official, employee, contractor, or volunteer in their execution of an abatement pursuant to this chapter.

8.100.060 Violation—Penalty.

A. In addition to any other remedy allowed by law, any person who violates a provision of this chapter is guilty of a misdemeanor and subject to criminal sanctions pursuant to Chapter 1.08.

B. Violations of this chapter are hereby declared to be a public nuisance.

C. Any person who violates a provision of this chapter is liable for civil penalties in the minimum amount of \$250 and a maximum amount of \$25,000 for each day a violation continues.

D. Any person who violates a provision of this chapter is subject to administrative penalties to reimburse the City for all costs, including time, services, and materials, needed to abate a violation of this chapter and hold violator(s) accountable unless the City waives such reimbursement in whole or in part. The hourly rate used to compute the time spent to investigate, document, and abate a violation for purposes of reimbursement shall be the actual costs. Costs may be assessed against the violator and the owner of property where the violation occurred as a personal obligation, lien against the subject premises, or both. Administrative penalties may be appealed within 10 calendar days from the date of a notice of violation in accordance with Chapter 1.44.

E. All remedies prescribed under this chapter are cumulative and the election of one or more remedies does not bar the City from the pursuit of any other remedy to enforce this chapter.

//

SECTION II. CRITICAL INFRASTRUCTURE LIST

The City Council approves of the Critical Infrastructure List included as Attachment A to this ordinance. Properties and facilities on the Critical Infrastructure List shall be included in the definition of critical infrastructure for Chapter 8.100 of the code.

SECTION III. SEVERABILITY

If any section of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given without the invalid provisions or application, and to this end the provisions of this act are severable.

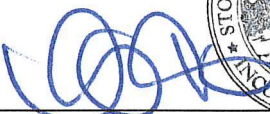
SECTION IV. EFFECTIVE DATE

This ordinance shall take effect and be in full force thirty (30) days after its passage.

ADOPTED: 9/27/2022

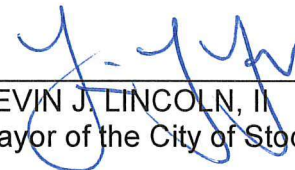
EFFECTIVE: 10/27/2022

ATTEST:



ELIZA R. GARZA, CMC
City Clerk of the City of Stockton





KEVIN J. LINCOLN, II
Mayor of the City of Stockton

City of Stockton - Critical Infrastructure List

In addition to those properties and facilities already defined as critical infrastructure by Chapter 8.100 of the Stockton Municipal Code (SMC), the following properties and facilities are deemed critical infrastructure for purposes of that chapter:

Utilities	Gov't Operations	Public Safety	Transportation	Gathering Areas	Vulnerable Pop.
- Storm and sanitary pump stations - Storm system access locations (e.g., catch basins, manholes, lampholes) - Open storm conveyances (e.g., ditches, lake structures, retentions, and detention basins) - Sanitary system access locations (e.g., manholes and lampholes) - Pipes, valves, meters, vaults, hydrants, and appurtenances - Water sampling stations and associated equipment - Well sites, all equipment, and tanks - Water storage reservoirs, all equipment, and sites - Intake pumping stations and pipes - Delta Water Treatment Plant (entire site) - North Stockton Pipeline Ammonia Facility - Groundwater Recharge Basin site, structure, and equipment - All Water Division sites and property - Regional Wastewater Control Facility - Sewer pump stations - Back-flow preventers, whether public or private - All discharge pipes, and associated appurtenances, into area waterways - All sewer system access (e.g., manholes, clean-outs, lampholes, etc.) - All underground pipe systems (with the H2S levels in the collection system a match or cigarette dropped in a manhole could trigger an explosion).	- City Permit Center - City Hall - Community centers	- Police stations and training facilities - Fire stations and training facilities	- Roads¹ - Sidewalks¹ - Bike paths¹ - Bridges - Underpasses - Parking lots	- Parks² - Sports fields and complexes - Stockton Civic Auditorium	- Libraries - Child Care Facilities (as defined in SMC § 16.240.020) - Schools and Colleges (as "Academic Schools" are defined in SMC § 16.240.020)

Footnotes:

¹ SMC section 8.100.030(A)(2)-(4) and (B)(2)-(4) do not apply.

² If there is no shelter space available in the City then for that particular day and the next day, SMC section 8.100.030 shall not be enforceable at parks with respect to the following: bedroll, cot, sleeping bag, and personal property (but not other camp facilities or camp paraphernalia), all occupying no greater than 75 square feet measured from the center of the primary living space, but not within 30 feet of any playground, restroom, or picnic shelter. All other restrictions apply.

Expansion Options Summary

	Current	Expansion Option 1	Expansion Option 2	Expansion Option 3
Amenities	2 Modular Shelter Units (15 beds)	1 Kitchen/Dining building	1 Kitchen/Dining building	1 Kitchen/Dining building
	1 Office Building	Additional Office Space	Additional Office Space	Additional Office Space
	1 Laundry room	1 Public Bathrooms/ Shower building (4)	1 Public Bathrooms/ Shower building (4)	1 Public Bathrooms/ Shower building (4)
		(Does not include Site work)	(Does not include Site work)	(Does not include Site work)
Additional Beds		Emergency Bed Overnight Overflow (Max Capacity 50)	10 Emergency/Bridge Beds	30 Emergency/Bridge Beds
Initial Capital Investments	\$ -	\$ 1,100,000	\$ 1,500,000	\$ 2,500,000
Annual Operation Expenses	\$ 1,641,236	\$ 1,856,384	\$ 2,063,145	\$ 2,667,892
Total	\$ 1,641,236	\$ 2,956,384	\$ 3,563,145	\$ 5,167,892
Difference		\$ 215,148	\$ 421,909	\$ 1,026,656

UNSAFE CAMPING ORDINANCE

San Diego Municipal Code – Chapter 6, Article 3, Division 4

OVERVIEW

The City of San Diego's Unsafe Camping Ordinance, approved in June 2023, established **new regulations prohibiting encampments on public property** and codifying how, when and where the City may abate or conduct enforcement related to violations of the regulations. **Enforcement of the ordinance will begin July 31, 2023.**

This document is meant to provide an overview of SDMC 63.0404. To read the full ordinance, please visit sandiego.gov/city-clerk. If you are experiencing homelessness and would like to access shelter or services, please dial 2-1-1 or visit 211sandiego.org.



IMPLEMENTATION

The City of San Diego is implementing the Unsafe Camping Ordinance in a way that is coordinated across all City departments.

Outreach: For weeks leading up to the start of enforcement, the City's non-law enforcement outreach teams worked to educate individuals living in encampments near schools and parks that the ordinance was passed and enforcement may begin soon.

Scaled Approach: Enforcement of the ordinance will be a scaled approach – starting first near schools and parks most impacted by encampments.

Signage: Per the ordinance, the City is installing signage in several locations citywide identified as being sensitive areas impacted by homeless encampments that may cause a risk to public health and safety near schools and parks. These locations will be addressed first, then additional locations throughout the city will be evaluated for signage.

PROGRESSIVE ENFORCEMENT

The San Diego Police Department uses a **"progressive enforcement"** model to provide a consistent approach to enforcement. Officers are trained to always offer shelter to individuals prior to taking enforcement action and continue to provide offers for shelter and services at each subsequent interaction. Enforcement related to SDMC 63.0404 is outlined as follows. Other quality of life crimes may follow other enforcement procedures.

SHELTER IS OFFERED AT EVERY POINT OF CONTACT



UNSAFE CAMPING ORDINANCE

San Diego Municipal Code – Chapter 6, Article 3, Division 4

If shelter is available, officers may enforce for violations of SDMC 63.0404 on any person camping on public property.

Regardless of shelter availability, officers may enforce violations in the following locations:

- Within two blocks of K-12 schools.
- Within two blocks of a shelter.
- Along trolley tracks and transportation hubs.
- In City parks, where a substantial public health and safety risk is determined.
- In any open space, waterway or banks of a waterway.

Officers may enforce violations of other laws throughout the city related to homeless encampments, including when there is an immediate threat to public safety or the person is wanted in connection to another crime.

ABATEMENT PROCEDURE

The Unsafe Camping Ordinance standardized a citywide process for how the City's Environmental Services Department notices and addresses encampments and property found at encampments. The following steps outline how abatements will be carried out:

- 24 hours written notice posted at the encampment.
- Crews perform abatement of the encampment after the 24-hour notice period.
- Store any items of value* and post a notice for how to retrieve items.
- Abate any debris or items remaining in the area.

Crews document the following:

- Photograph or video of the site before abatement.
- Items eligible for storage as outlined in the ordinance.
- Photograph or video of the cleanup process.
- Photograph or video the site after the abatement.

***Items eligible for storage include items with apparent utility such as identification and paperwork, medication, art, musical instruments and other items.**



Article 3: Public Parks, Playgrounds, Beaches, Tidelands and other Property**Division 4: Encampments on Public Property**

(*“Encampments on Public Property” added 6-29-2023
by O-21674 N.S.; effective 7-29-2023.*)

§63.0401 Purpose

The Council finds that the City is committed to protecting the life, health, and safety of all people in the City and finds that certain public lands within the geographical boundaries of the City pose significant health and safety hazards to the people who make shelter or stay overnight in these areas. Additionally, the Council finds that some of these public lands are environmentally sensitive and may be significantly damaged by unregulated human activity. The Council is committed to protecting the rights of individuals related to their personal property and to treating such property with respect and consideration. It is the purpose of this Division to set standards for the preservation and protection of human life, health, and safety, to further the preservation and protection of sensitive public lands to prevent destruction of these assets, and to establish a process for the collection, storage, and disposal, recycling, or reuse of personal property found in *encampments* on public property.

(*“Purpose” added 6-29-2023 by O-21674 N.S.; effective 7-29-2023.*)

§63.0402 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Abatement means the process of documenting and collecting eligible items for storage, and removing and disposing of, recycling, or reusing of *waste* at an *encampment* according to the process in section 63.0406.

Camp means to pitch, erect, or occupy an *encampment*, or to use *camp paraphernalia* or both, for the purpose of, or in a way that facilitates outdoor sheltering for living accommodation purposes or for remaining outdoors overnight.

Camp paraphernalia means personal property used to facilitate occupancy of an area and includes personal property typically associated with camping such as tarps, cots, beds, sleeping bags, hammocks, bedding, camp stoves, cooking equipment, buckets, and similar equipment, mattresses, couches, dressers, or other furniture.

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Encampment means one or more temporary, makeshift, or hand-built structures not intended for long-term continuous occupancy, including tents, that are used to shelter one or more persons or their belongings and that are not authorized by the property owner. *Encampment* includes any *camp paraphernalia* and personal property associated with or located in or around the structures or tents.

Open space has the same definition as in San Diego Municipal Code section 63.0102(b).

Park has the same definition as in San Diego Municipal Code section 63.0102(b).

Shelter means any City-funded shelter or shelter provided as part of the City's Coordinated Intake System for shelter placements where individuals or families experiencing homelessness can access beds and other services or an area designated by the City Manager for use by individuals or families experiencing homelessness. A list of current *shelters* is provided on the City's website and is available through 2-1-1 San Diego.

Waste has the same definition as in San Diego Municipal Code section 54.0202.

Waterway means all the portions of Chollas Creek, Los Peñasquitos Creek, San Diego River, San Dieguito River, and Tijuana River found within the boundaries of the City of San Diego.

(“Definitions” added 6-29-2023 by O-21674 N.S.; effective 7-29-2023.)

§63.0403 Protection of Waterways

- (a) It is unlawful for any person to do any of the following:
- (1) build or erect a structure of any type along the banks of any *waterway*, or drive a nail or other object into any tree or other natural area vegetation for the purpose of building an *encampment* or any other structure, or to affix an object to any tree or other natural vegetation,
 - (2) move boulders or large rocks, destroy vegetation, paved roads or paths created by the City, or otherwise reconfigure the natural landscape in the waters of or along the banks of a *waterway*,
 - (3) drive, park, or bring any vehicle along the banks of a *waterway*, except in places specifically provided and designated for vehicular use,
 - (4) dig on the banks of a *waterway*, or

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- (5) discharge or store *waste*, including garbage, refuse, or human or animal *waste*, along the banks or into the waters of a *waterway*.

- (b) Nothing in section 63.0403 is intended to prohibit the activities of an owner of private property or other lawful user of private property that are normally associated with and incidental to the lawful and authorized use of private property; and nothing is intended to prohibit the activities of a lawful user if such activities are expressly authorized by the City Manager or by any law, regulation, permit, order or other directive from a regulatory authority.

(“Protection of Waterways” added 6-29-2023 by O-21674 N.S.; effective 7-29-2023.)

§63.0404 Unauthorized Encampments on Public Property

- (a) It is unlawful for any person to *camp* or to maintain an *encampment* in or upon any public property, including in any street, sidewalk, *park*, beach, *open space*, *waterway*, and banks of a *waterway*, unless specifically authorized by the City Manager.
- (b) At all times, regardless of the availability of *shelter* space or beds, it is unlawful for any person to *camp* or to maintain an *encampment* where such activity poses:
 - (1) an immediate threat or an unreasonable risk of harm to any natural person,
 - (2) an immediate threat or an unreasonable risk of harm to public health or safety, or
 - (3) disruption to vital government services.
- (c) At all times, regardless of the availability of *shelter* space or beds, it is unlawful for any person to *camp* or to maintain an *encampment* in the following locations:
 - (1) within two blocks of a school that offers instruction on those courses of study required by the California Education Code or that is maintained pursuant to standards set by the State Board of Education provided that signs are posted prohibiting camping that are clearly visible to pedestrians. School for purposes of section 63.0404(c) does not include a vocational or professional institution of higher education, including a community or junior college, college, or university;

(7-2023)

- (2) within two blocks of any *shelter* provided that signs are posted prohibiting camping that are clearly visible to pedestrians;
- (3) in any *open space*, *waterway*, or banks of a *waterway*;
- (4) within any transit hub, on any trolley platform, or along any trolley tracks provided that signs are posted prohibiting camping that are clearly visible to pedestrians; and
- (5) in any *park* where the City Manager determines there is a substantial public health and safety risk and provided that signs are posted prohibiting camping that are clearly visible to pedestrians. For purposes of this section 63.0404(c)(5), the definition of *park* does not include *open space* or *beach areas*, as defined in section 63.0102(b), or beaches, bays, or wetlands.

(“Unauthorized Encampments on Public Property” added 6-29-2023 by O-21674 N.S.; effective 7-29-2023.)

§63.0405 Enforcement

- (a) Violations of this Division may be prosecuted as misdemeanors subject to the fines and custody provisions in San Diego Municipal Code section 12.0201.
- (b) Law enforcement officers shall not issue a criminal citation to enforce a violation of section 63.0404(a) between the hours of 9:00 p.m. and 5:30 a.m. or when the person is on public property at a time when there is no available *shelter*. For purposes of this Section 63.0405(b), available *shelter* means the *shelter* is reasonably available to the person at the time enforcement is taking place and taking into consideration any disability or other specific circumstances applicable to that person.
- (c) Sections 63.0403 and 63.0404(b) and (c) are enforceable at all times regardless of *shelter* availability.

(“Enforcement” added 6-29-2023 by O-21674 N.S.; effective 7-29-2023.)

§63.0406 Abatement of Encampments

The City Manager may remove personal property, *camping paraphernalia*, and all other property, contraband, litter, and *waste* found at an *encampment* or at a location where a person is engaged in unlawful camping in compliance with the following procedures:

(a) Written Notice Required Prior to Abatement

- (1) A written Notice of Clean-Up will be posted on each tent or structure and in any other distinct areas of the *encampment* providing notice of the date of clean-up and giving a minimum of 24 hours for persons to remove their personal property. The written notice shall also include the following statement, which may be updated by the City Manager to provide accurate and current information:

You must remove your belongings from the site within 24 hours. You should not leave behind any belongings you want to keep. All belongings left behind will be removed by the City. The City will post an Impound Notice if belongings are stored during the clean-up process.

If you wish to minimize the risk of losing valued belongings, you should try to keep those belongings on your person at all times, in a storage facility, or in visible, sanitary, and safely accessible bags or bins.

If you think your belongings were stored, you can claim them by following the directions on the Impound Notice after the clean-up is complete. Information about how to claim your belongings is also available on the City's website. You may retrieve any stored belongings without being asked about your criminal background or outstanding warrants.

You may access shelter or services, including access to storage for your personal belongings, through the City of San Diego's website or by calling 2-1-1 San Diego.

- (2) After 24 hours, the City Manager shall conduct *abatement* of the site on the date posted on the Notice of Clean-Up. If *abatement* is delayed or rescheduled, the City Manager may conduct *abatement* within 48 hours of the posted Notice of Clean-Up without reposting a new Notice of Clean-Up. If *abatement* is delayed longer, the City Manager shall repost a Notice of Clean-Up with a new date.
- (b) The City Manager shall follow these additional procedures when persons are present at an *encampment* during *abatement*:
 - (1) When *shelter* is available, the City Manager shall provide any person at an *encampment* with *shelter* and service information and direct them to remove their belongings from the site. The City Manager shall evaluate reasonable requests for additional time or assistance to remove items and may accommodate those requests to the extent practicable.
 - (2) Any person who returns to an *encampment* during *abatement* shall be allowed to remove their personal property from the site. Personal property left behind will be deemed abandoned.
 - (3) Any person arrested for a criminal offense or an outstanding warrant shall not be required to abandon personal property they identify as their own. Unless the person requests the personal property be discarded or entrusted to another, all personal property of apparent value will be taken to the San Diego Police Department for impoundment in accordance with existing policy and procedure. Where the owner of the items cannot be readily identified or discovered, the City Manager shall follow the *abatement* process in this Division.
- (c) The City Manager shall document the *abatement* process as follows:
 - (1) photograph or video record the site before any abatement begins,
 - (2) open backpacks, purses, suitcases, and other small storage containers to determine whether they contain items eligible for storage,
 - (3) set out items contained in bags or suitcases and photograph the items,
 - (4) photograph or video record all items to be stored,
 - (5) photograph or video record the cleanup process, and
 - (6) photograph or video record the site after abatement has concluded.

- (d) Unclaimed items found in *abatement* shall be eligible for storage if:
- (1) circumstances indicate that the item belongs to a person,
 - (2) the item has apparent utility in its current condition and circumstances, and
 - (3) the item can be safely retrieved from the site.

Examples of items potentially eligible for storage include identification and associated paperwork, medication stored in medication bottles with identifying information, art, art supplies, musical instruments, and items that reasonably appear to have sentimental value in their current condition. An item need not be in a new or perfect condition to have apparent utility.

- (e) An eligible item found during an *abatement* shall be put into storage, unless it meets one the following disqualifying conditions:
- (1) hazardous, including items contaminated with human *waste*, animal *waste*, or bugs, explosives, weapons, liquids, drug paraphernalia, or mold;
 - (2) likely to become hazardous in storage, including perishables, wet materials that might become moldy, and items covered in mud;
 - (3) practically un-storable, due to large size, weight, or other similar characteristic;
 - (4) contraband or stolen; or
 - (5) is on the City Manager's current list, published on the City's website, of common types of items that, in the experience of City staff, individuals regularly abandon during *abatement*, and there is no contrary indication as to the specific item.
- (f) The City Manager shall record each eligible item to be stored, including the location it was found and the date of storage. Any stored items shall be kept in storage at least 90 calendar days and then may be disposed of, recycled, or reused following the process in San Diego Municipal Code section 54.0212.

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- (g) After *abatement* has concluded and when eligible items are collected and will be placed in storage, the City Manager shall post notices at the location of the *abatement* that includes information how a person can claim stored items. Information about retrieval of stored items shall also be available on the City's website. A person may retrieve stored items based on a description with sufficient specificity to demonstrate ownership. A person may retrieve stored items without inquiry into the person's criminal background or outstanding warrants.
- (h) Expedited Abatement
- (1) In an expedited *abatement*, the City Manager shall follow the same *abatement* and storage procedures in section 63.0406, but shall post a Notice of Clean-Up giving a minimum of three hours for all persons to remove their personal property.
- (2) The City Manager shall prioritize and expedite the removal of an *encampment* if:
- (A) the City receives direction from County of San Diego or other governmental authority that *abatement* of the *encampment* is necessary to preserve public health or safety, including to address known or suspected outbreaks of diseases; or
- (B) the City Manager observes or reasonably suspects the *encampment* creates a condition that presents a significant risk of property damage, bodily injury or death.

(“*Abatement of Encampments*” added 6-29-2023 by O-21674 N.S.; effective 7-29-2023.)



AGENDA NO: C-2

MEETING DATE: December 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: December 6, 2023

FROM: Amy Watkins, Police Chief
Dan McCrain, Fire Chief
Chris F. Neumeyer, City Attorney

SUBJECT: For Mitigation of Harms to Public Health, Safety and Welfare: Adoption of Urgency Ordinance No. 664, and Introduction of Regular Ordinance No. 665, to add Chapter 8.26 to the Morro Bay Municipal Code (MBMC) for Regulation of Camping and Storage of Personal Property on Public Property; and, Introduction of Regular Ordinance No. 666 to add Chapter 8.27 to the MBMC for Regulation of Overnight Human Habitation of Vehicles on Private Property Used for Business or Nonprofit Organization Operations

RECOMMENDATION

1. Adoption, by title only and with further reading waived, of Urgency Ordinance No. 664, entitled "An Urgency Ordinance of the City Council of the City of Morro Bay, California Adding Chapter 8.26 to Title 8 of the Morro Bay Municipal Code Regulating Camping and Storage of Personal Property on Public Property to Mitigate Harm to Public Health, Safety and Welfare"; and
2. Introduction, by title only and with further reading waived, of regular Ordinance No. 665, entitled "An Ordinance of the City Council of the City of Morro Bay, California Adding Chapter 8.26 to Title 8 of the Morro Bay Municipal Code Regulating Camping and Storage of Personal Property on Public Property to Mitigate Harm to Public Health, Safety and Welfare"; and
3. Introduction, by title only and with further reading waived, of regular Ordinance No. 666, entitled "An Ordinance of the City Council of the City of Morro Bay, California Adding Chapter 8.27 to Title 8 of the Morro Bay Municipal Code Regulating Overnight Human Habitation of Vehicles on Private Property Used for Business or Nonprofit Organization Operations to Mitigate Harm to Public Health, Safety and Welfare."
4. Direct staff to subsequently return with budget adjustments required to support the implementation of these ordinances. Eligible funding sources would include General Fund or Measure Q&E funds. Expected initial budget allocation of no less than \$50,000 to begin the cleanup and securing storage containers for the retention of personal property collected during cleanups.

01181.0001/943022.8

Prepared By: AW/CFN

Dept Review: _____

City Manager Review: YK

City Attorney Review: CFN

FISCAL IMPACT

Failure to adopt the ordinances will predictably see a steady increase in an ongoing and continuing drain on City resources, time and money. This is from ever increasing City staff responses (including from Police Department, Fire Department, Code Enforcement Division and Public Works Department) to the growing public health, safety and welfare harms generated by lack of regulations like those in the proposed ordinances. The findings in the ordinances document these conditions.

Adoption of the ordinances will result in upfront additional City enforcement costs, including the costs of retaining personal property held under the ordinance and cleanup of encampments, which may involve the collection and disposal of trash and potential hazardous material response. The Police Department and Code Enforcement Division will be primarily responsible for enforcement and handling of personal property, while the Public Works Department will provide support for coordinating the pickup and disposal of trash and hazmat response through its contractors.

An initial budget of approximately \$50,000 is expected to begin the cleanup and securing storage containers for the retention of personal property during cleanups. This budget allocation is not included in the FY 2023-24 Adopted Budget. If Council adopts the ordinances, Council should also direct staff to return later in time with budget allocations required to support the implementation of these ordinances. Eligible funding sources would include General Fund or Measure Q&E funds.

Future costs are unknown and are dependent on changes in the resident homeless population and the amount of enforcement associated with the proposed ordinance.

BACKGROUND

I. Introduction

In November of 2022, the City Manager created a City Homeless Working Group dedicated to discussing issues related to the unhoused or those experiencing homelessness. The working group was comprised of City department directors, staff, and homeless outreach service groups and began to focus on addressing the underlying issues and seeking solutions.

Addressing the unhoused continues to be a challenge locally, regionally, and statewide. In Morro Bay, concerns are often raised at public meetings, through calls for service to Police and Code Enforcement, to City administrators, to Council Members, and in public forums such as Facebook or NextDoor. During the pandemic, encampments expanded while more residents used the trails, pathways, and public infrastructure where persons experiencing homelessness often reside. Pandemic-related impacts, historically low vacancy rates, rising rents, and conversion of rental housing into ownership housing have all contributed to increasing homelessness. Staff estimates there are approximately 100 people experiencing homelessness in Morro Bay at any given time.

A primary public health and safety concern is camping on public property, especially (but not limited to) when an encampment site develops and spreads out over large areas, generates considerable garbage or waste, or when unlawful camping, coupled with other illegal activity, impacts a sensitive land use such as schools, degrades and destroys environmental areas, and creates dangerous water shed into waterways and the ocean. Camping on public property creates public health and safety hazards for City residents and for people living in encampment sites, including impacts related to the disposal of hazardous materials and unsanitary conditions that can lead to an infestation of vermin and the spread of communicable diseases. Camping on public property has also been a problem for

Public Works staff. Access to public facilities has been impeded by individuals camping, and trash and debris have accumulated in creeks and other storm drain facilities, in some cases reducing flood control capacity and/or threatening the environment, affecting the City's ability to comply with state permitting requirements.

II. City Efforts to Address Homelessness

For many years the City has invested significant funds, resources and time to assist persons experiencing homelessness. These efforts include assistance seeking temporary and permanent shelter, as well as assistance finding necessary public health services to address the causes of their homelessness. The City has sought to address the underlying issues contributing to homelessness and has striven to be a part of the solution. These City of Morro Bay actions and efforts have included:

1. City staff and City Manager participation on committee and sub-committees with service groups, county non-profits, and County Public Health Services to address causes of homelessness and work towards solutions.
2. Assignments of officers to the police department as a homeless liaison to address needs of the unhoused within the City limits.
3. Provision of connections to County Public Health Nurse and Doctors.
4. Facilitating connections to local and regional outreach services to assist with mental health needs, drug and alcohol counselors, probation and parole services, connections to permanent housing (THEMA, CAPSLO, 805 Street Outreach, Esteros Bay Alliance for Care, Salvation Army, SLO Food Bank, County Public Health and Behavioral Health services).
5. Monthly meetings with Estero Bay Alliance for Care (EBAC), a local, ad-hoc volunteer organization started in 2011 by Morro Bay Council Members to include different agencies and community organizations with the intent to study and address social issues in the Estero Bay area. EBAC membership includes a current Morro Bay City Council member, representatives from the Police Department, Social Services, local churches, health care organizations, the Food Group, various other active organizations, such as the Community Resource Connections office, and legal services organizations.
6. The City of Morro Bay supports a one-of-a kind weekly community dinner - where all are welcome - with financial and staffing resources in an effort to support our community needs.
7. In 2022, the Morro Bay City Manager created a City homeless working group comprised of City department heads, staff and homeless outreach service groups to address homelessness in Morro Bay. One of the first items the team addressed was the need for continued outreach and case management. The City conducted a recruitment for Homeless Outreach Case Manager. The Homeless Outreach Case Manager is one step in the city's efforts to meet the San Luis Obispo Countywide plan to address homelessness adopted by the County Homeless Services Oversight Council in 2022.
8. The Homeless Outreach Case Manager assists those experiencing homelessness to navigate services and to connect to resources that they need to secure housing, as well as shelter and transitional housing resources when available (e.g., ID Cards, financial benefits, transportation to service meetings and appointments). Duties include to make contact with unhoused or people struggling with housing in the field, build rapport and provide opportunities for assistance to those seeking help. The case manager schedules and provides

transportation to appointments for drug and alcohol services, county probation, state parole, behavioral health, CAPSLO, ECHO, and THMA.

9. City of Morro Bay provides annual funding to San Luis Obispo County Department of Social Services and Public Health.
10. Regular meetings with homeless outreach groups such as CAPSLO, THMA, County Public Health, Salvation Army, Veteran Services, 805 Street Outreach, and EBAC.
11. The City committed \$25,000 in housing impact in lieu fees to the HASLO Atascadero Rd Housing Project.
12. The City has transferred the City's portion of the National Opioid Settlement back to San Luis Obispo County to manage a regional effort to combat opioid related issues that directly impact our unhoused population.

III. Public Health and Safety Issues Presented by Camping on Public Property

Despite these efforts, and efforts from other agencies, the City of Morro Bay continues to experience significant and continuing threats to public health and safety resulting from persons experiencing homelessness sleeping and camping in unauthorized locations in the City, including the following:

1. Homeless encampments raise a number of public health concerns related to waste, sanitation and disease transmission. Homeless people, like all other people, generate solid waste during their daily activities of food preparation and consumption, shelter building and maintenance and storing their possessions. Though without any place or method of proper storage or disposal, the resulting piles of trash become food sources for rodents, breeding grounds for pathogens, fuel for fires, and unattractive nuisances to the public.
2. The opportunity for the spread of communicable diseases is increased in homeless encampments lacking basic sanitation services and waste collection, with some diseases such as hepatitis A and typhus more likely to occur in homeless populations.
3. Health and safety issues are presented by the violation of fire, building, electrical and other codes and standards for the public health and safety, including the unauthorized and unpermitted use of electrical and utility connections, due to the potential and reality of unsafe and unhealthy conditions in encampments, posing life, safety, fire and health threats to both the occupants of the encampments, the general public and emergency responders.
4. Health and safety issues are exacerbated and compounded by larger encampments as there is an exponential increase in these health and safety issues the larger the encampment, including but not limited to both accumulation of trash and debris as well as the greater likelihood of the spread of disease.
5. The City regularly receives a large volume of emails, phone calls and in-person complaints regarding the encampments in the City, and the frequency and number of these complaints has been increasing greatly recently and in the last year.
6. The homelessness problem in Morro Bay impacts crime rates. Homelessness related crime rates are significant both in terms of crimes against the homeless and also crimes committed by the homeless. The Morro Bay Police Department estimates a call volume of 60% of total calls for service are related to our unhoused population.
7. Business owners and residents near encampments are confronted by trash, used needles, and human waste, and increased instances of open drug use, property damage, theft, and break-ins. They have seen their property values decline, their small businesses fail, and their public spaces become uninhabitable.

8. Businesses and residences near encampments experience physical impediments to access to public and private property which both impedes emergency responses, evacuation of occupants during an emergency, and general public access, as well as exacerbates the likelihood of conflict, intimidations and threats to the public safety for both the unhoused as well as all members of the public, and furthermore the collection of biohazard materials, human waste, trash and rubbish near businesses and residential areas contributes to a general decline in public health, safety and welfare.
9. Encampments near emergency shelters established for emergency evacuations during events such as winter rain storms can cause barriers to access for evacuees.
10. Encampments near active construction sites, areas with heavy vehicle use, and similar areas pose unique threats to both the unhoused as well as the operators of construction equipment and vehicles through unintentional yet predictable collisions and threats to health and safety.
11. Encampments on or near public utilities and critical infrastructure, such as stormwater, water and sewer infrastructure, fire stations, electrical wires and natural gas pipelines, pose unique safety, environmental and security issues and are generally closed to the public or have limited public access for safety, environmental and security reasons.
12. Unauthorized connections or taps to public utilities, as well as violation of fire, building, electrical and other codes and standards, create unsafe conditions and a potential life safety hazard for the occupant, the general public and emergency responders.
13. Encampments pose immense public health concerns as the rates of overdoses from drugs like fentanyl and heroin have increased substantially among the unhoused and encampments can provide an environment conducive to illegal drug consumption.
14. Abandoned encampment cleanups are performed by police officers with police equipment and City staff in an attempt to maintain and or control the spread of large encampments and this taxes public resources while unnecessarily exposing first responders and City staff to unhealthy and unsafe situations.
15. Fires in unsafe locations for cooking and warming occur at encampments increasing the risk of fires posing a threat to safety and health.
16. Accumulation of biohazard and medical waste occurs in and around encampments and these items end up in our creeks, storm drains, waterways, and beaches posing a direct threat to health and safety.
17. Severe blockage of storm drains due to excessive encampment debris leads to increased roadway and stream flooding and drain blockages during storms causing threats to health and safety.
18. During times of severe storms, unhoused camps are located in and evacuated from low lying, unsafe areas, and storm drains due to increased risk of flooding, rapid water movement, and blockage of storm drains, posing safety threats to the residents of the encampments.

IV. Federal Court Decisions

Under applicable State and federal law, the City has limitations on the scope of its enforcement efforts regarding camping on public property.

A federal Ninth Circuit Court of Appeals decision, *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) ("Martin"), prohibits criminal prosecution for sleeping outside on public property when adequate shelter is not reasonably available for persons involuntarily experiencing homelessness, based upon

an interpretation of the Cruel and Unusual Punishments Clause of the U.S. Constitution's Eight Amendment. The federal Ninth Circuit court suggested in its decision in *Martin* that the prohibition on criminal prosecution would not apply to individuals who have reasonable access to adequate temporary shelter.

The court also suggested that even when adequate shelter is unavailable, an ordinance establishing reasonable time, place and manner regulations on sitting, lying or sleeping may be allowed under the U.S. Constitution when the regulations are to address legitimate public health and safety concerns. The federal Ninth Circuit court in the case of *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023) expanded upon its decision in *Martin* to prohibit civil enforcement for sleeping outside when adequate shelter is not reasonably available for persons involuntarily experiencing homelessness if civil enforcement can lead to criminal enforcement.

These federal Ninth Circuit court decisions are at present on appeal to the U.S. Supreme Court.

V. Vehicle Camping on Private Property

In addition to the health and safety problems generated by unregulated camping on public property, the use of vehicles for human habitation overnight on private property used for business or nonprofit organization operations also impacts public health and safety, including for the following reasons:

1. Damage to private property, theft, the accumulation of trash, food waste, human waste and contaminated medical waste and the unauthorized discharge of Greywater and Hazardous Water. The accumulation of trash, food waste and human waste has the potential to spread disease and result in infestations by vermin and insects.
2. The accumulation of discarded contaminated medical waste, including used hypodermic needles, has the potential to harm patrons of the businesses or non-profits located where the overnight human habitation of vehicles is occurring who are exposed to this waste, and is an attractive nuisance for children.
3. The collection of contaminated medical waste, human waste and trash and the discharge of Greywater and Hazardous Water has the potential to contaminate the City's waterways and beaches due to the proximity to storm drains.
4. Overnight human habitation in vehicles on private property used by business or nonprofit establishments has resulted in a significant number of police calls for service related to vandalism, property damage and criminal activity, including narcotics usage, noise violations, excessive debris around the vehicles, prowling, parking violations, private property trespassing, and loitering.
5. Unregulated overnight human habitation in vehicles on private property used by business or nonprofit establishments creates increased public health and safety risks such as those from overdoses, fire hazards, and death.

DISCUSSION

With all of these considerations in mind, and in consultation with the City homeless working group, staff has prepared the proposed ordinances for the City Council's consideration. Draft ordinances were reviewed by the City's homeless working group and then finalized by City staff. They add Chapter 8.26 and Chapter 8.27 to the MBMC concerning, respectively, public property camping regulations, as well as overnight camping in vehicles parked on private property with businesses or nonprofits.

I. Ordinance for Public Property Camping Regulations

A. Urgency Adoption

Government Code section 36937(b) provides that an “ordinance takes effect immediately, if it is an ordinance ... [f]or the immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency, and is **passed by a four-fifths vote of the city council.**” (Emphasis added.)

The basis for an urgency adoption of this ordinance are articulated in the findings for the urgency ordinance. These include immediate threats from unregulated camping on public property, which continue to grow, to public health and safety from improper waste disposal and sanitation, disease transmission, fire risks, criminal activity (such as property damage, theft and break-ins), and impediment of emergency responses. The proposed regulations are intended to address these immediate threats so as to preserve public health and safety.

There is also the matter, as articulated more fully in the urgency ordinance findings, of the pending threats to public peace, health and safety posed by multiple encampments in the City when anticipated heavy winter storms arrive in the near future. The City needs adequate time to clean up these encampments before the winter storm season commences. Last year during heavy rainfall in the winter season, debris from encampments obstructed storm drains downstream and exacerbated roadway flooding, and a repeat of these events is imminent. Areas of multiple campsites of persons experiencing homelessness in the City are also in waterways intended for stormwater runoff or in low lying areas, and there is immediate concern for the safety of the occupants. The anticipated increased rain also has the very real potential of carrying the ongoing human waste, medical waste, accumulated trash and items containing and emitting dangerous chemicals, from the campsites if they are not removed, to the City’s residential areas, business areas, community areas, the beaches and to the ocean, potentially causing contamination and injury.

The same amendment to the local code is also proposed for introduction by first reading as a regular ordinance. Notwithstanding the articulated findings and reasons for the passage of this code amendment on an urgency basis, simultaneous introduction of the same ordinance (and then a subsequent second reading for adoption) provides for the further codification of the MBMC amendment on a non-urgency basis, thereby providing the fullest basis under state law for the codification of this ordinance.

B. Summary of Ordinance

The proposed ordinance mitigates harms to public health, safety and welfare through time, place and manner regulation of camping on public property. Below is a summary.

1. **Regulations.** Provides persons who do not have a permanent residence or domicile and/or are involuntarily experiencing homelessness the ability to camp on public property or rights-of-way, provided the camping is occurring in compliance with time, place, and manner regulations and consistent with any administrative rules and policies. Provides for authority for City to adopt administrative rules or policies governing or guiding enforcement of the chapter, including but not limited to ensuring consistent and appropriate enforcement for various circumstances.

- a. **Time Regulations.** Camping on public property, where allowed, may only occur for 24 hours at a time in any one location.
 - b. **Place Regulations.** Camping on public property is not allowed in certain places in the City, including:
 - i. in or within 200 feet of residential areas, schools, playgrounds, visitor serving commercial areas, critical infrastructure, or high/very high fire zones.
 - ii. where creates physical impediments preventing emergency or non-emergency access to public or private property
 - iii. vehicle and bicycle lanes within public rights-of-way
 - iv. certain public property such as City Hall, Community Center and Veterans Hall
 - c. **Manner Regulations.** Camping, when and where allowed, is subject to regulations, including:
 - i. cannot impede sidewalk accessibility or use of public rights-of-way
 - ii. camping limited to space of not more than 12x12 feet (144 square feet)
 - iii. a camp may not be located within a 150 foot radius from another camp
 - iv. requires areas to be kept clean and free of garbage, debris, and waste
 - v. open flames, recreational fires, and the like are prohibited (some flameless warming and cooking devices permitted)
 - vi. dumping of greywater or hazardous water prohibited
 - vii. no unauthorized connections or taps to public utilities
 - viii. building structures out of plywood, pallets, etc. not allowed (portable tents used for shelter not included in this prohibition)
 - ix. limited storage of personal property related to what is necessary for camping, sleeping, or keeping warm and dry
 - x. camps limited to no more than two persons, two animals and one portable tent used for shelter
2. **Enforcement.** The ordinance provides for gradual and humane enforcement seeking to respect the dignity of all involved. The intent is to always resolve violations at the lowest possible level, and to engage to seek compliance and solve problems while maintaining the dignity of all involved.
- a. **Voluntary Compliance.** The first step is seeking voluntary compliance. Good faith efforts will be made to determine whether the person subject to enforcement has been referred to service providers and/or local non-profit assistance organizations and make a referral if it appears none has been made.
 - b. **72 Hour Notice.** After that if the violation persists, a 72 hour notice will be provided (with limited exceptions including for emergencies) in advance of any action to remove an established campsite or camp facilities in violation of the regulations. That notice (among other requirements) will provide information about any available housing, shelter or homeless services available, the phone number and address to contact in order to obtain such housing, shelter or homeless services, if available, and information about obtaining free transportation, if available, to such housing, shelter or homeless services.

- c. **Removal of Established Campsites.** Finally, if both of these steps occur and violations continue, City officials are authorized to remove established campsites or camp facilities not in compliance with the time, place and manner regulations. When removing camp facilities, or individuals, camp materials, or personal property from an established campsite, enforcement personnel will make reasonable efforts to remove individuals without the use of force or citation. Personal property removed, of reasonable value or utility and that is not hazardous, will be held by the City, at the City's expense, for no less than 90 days (or as required by applicable law), for retrieval. Property not retrieved within the applicable time frame is subject to disposition or destruction by the City.

C. Mapping Restricted Places and Review of Buffer Zones

The proposed ordinance provides for a 200 foot buffer from certain places such as residential zones, visitor serving commercial, critical infrastructure, etc. These are in Section 8.26.030(B)(1,7,8,9,11 and 12).

Three maps are provided (attached) which summarize the place restrictions in the new ordinance with the proposed 200 foot buffer, and then alternative buffers of 150 feet and 100 feet.

Council may direct staff to amend the ordinance on the floor to change the buffer distance. Or, the ordinance as presented may be adopted with the proposed 200 foot buffer used for many of the place restrictions.

II. Ordinance Regulating Overnight Vehicle Camping on Private Property With Business and Nonprofit Operations

The proposed ordinance provides for regulation of overnight human habitation of vehicles on private property used for business or nonprofit organization operations. Such activity would be prohibited without the consent of the property owner or the lessee. However, such camping is allowed if done with the permission of the property owner or the lessee. If permission is received, then such overnight vehicle camping is allowed subject to following certain regulations, which include:

1. Access to sanitary facilities at all times.
2. No payment of any fee, rent or other monetary charge.
3. Restricted to no more than 3 overnight stays, within a ten day period, per vehicle.
4. No dumping of wastewater, greywater, hazardous water, or trash on the property unless sufficient City approved receptacles or hook-ups are available.
5. Reasonable personal property restrictions.

This ordinance also provides for authority for City to adopt administrative rules or policies governing or guiding enforcement of the chapter, including but not limited to ensuring consistent and appropriate enforcement for various circumstances.

CONCLUSION

Staff recommends City Council, to mitigate harms to public health, safety and welfare, adopt the urgency ordinance to regulate camping on public property, and introduce for first reading both a regular ordinance regulating camping on public property as well as a regular ordinance to regulate

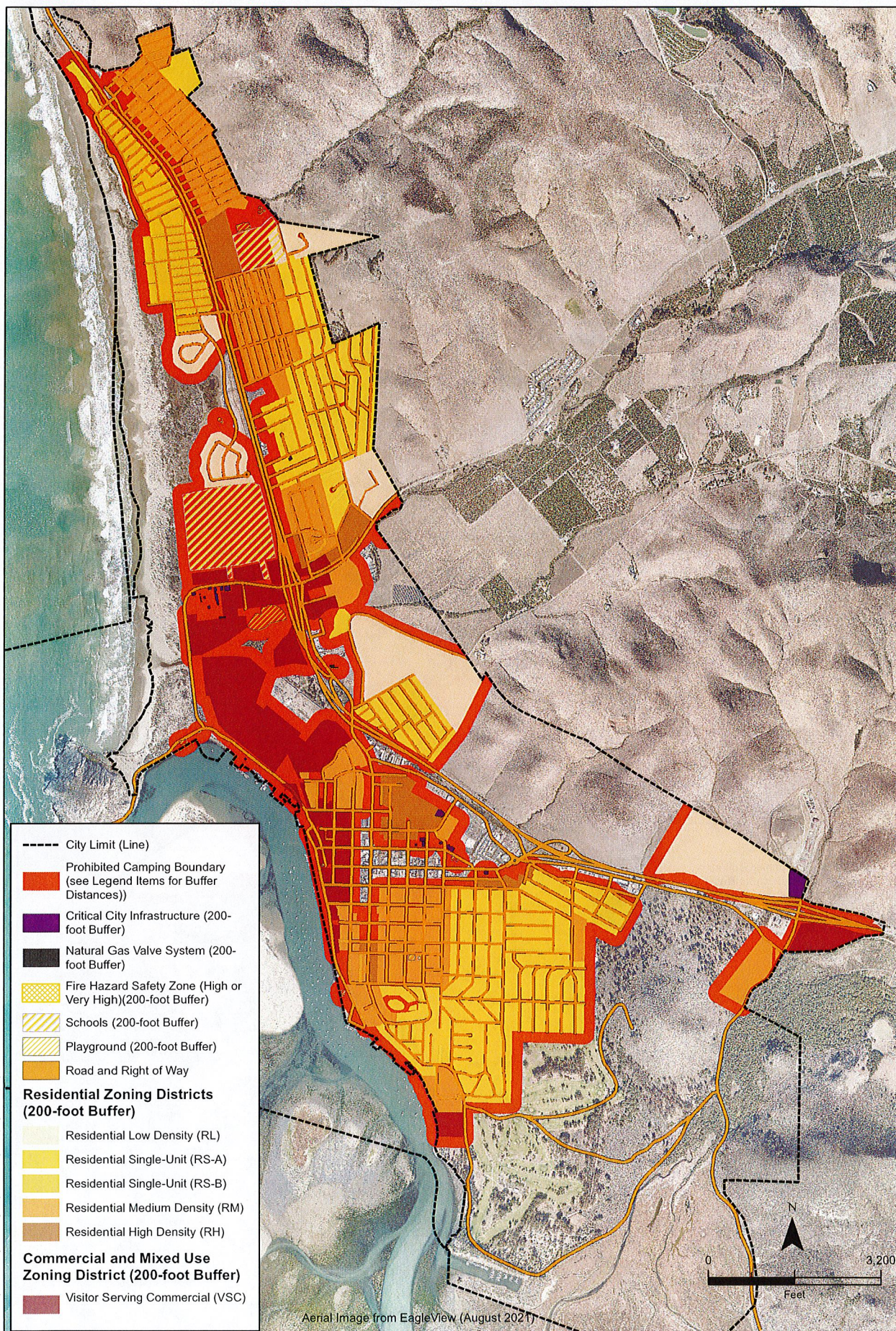
use of vehicles for human habitation on private property with businesses or nonprofits.

ATTACHMENTS

1. Ordinance 664, An Urgency Ordinance of the City Council of the City of Morro Bay, California Adding Chapter 8.26 to Title 8 of the Morro Bay Municipal Code Regulating Camping and Storage of Personal Property on Public Property to Mitigate Harm to Public Health, Safety and Welfare.
2. Ordinance 665, An Ordinance of the City Council of the City of Morro Bay, California Adding Chapter 8.26 to Title 8 of the Morro Bay Municipal Code Regulating Camping and Storage of Personal Property on Public Property to Mitigate Harm to Public Health, Safety and Welfare.
3. Ordinance 666, An Ordinance of the City Council of the City of Morro Bay, California Adding Chapter 8.27 to Title 8 of the Morro Bay Municipal Code Regulating Overnight Human Habitation of Vehicles on Private Property Used for Business or Nonprofit Organization Operations to Mitigate Harm to Public Health, Safety and Welfare.
4. Maps, "City of Morro Bay Prohibited Camping Boundary," with 200, 150 and 100 foot buffers



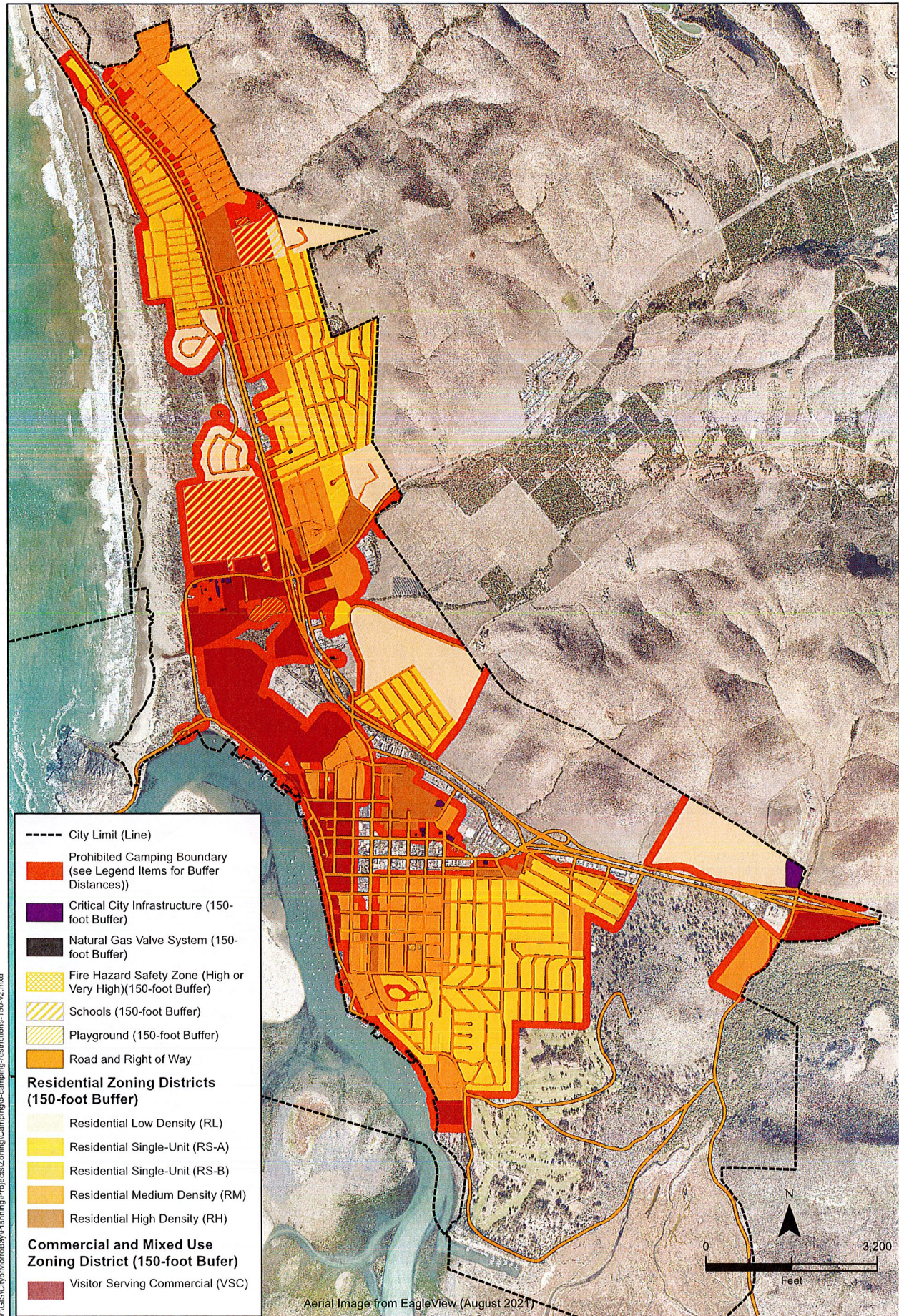
City of Morro Bay Prohibited Camping Boundary





City of Morro Bay

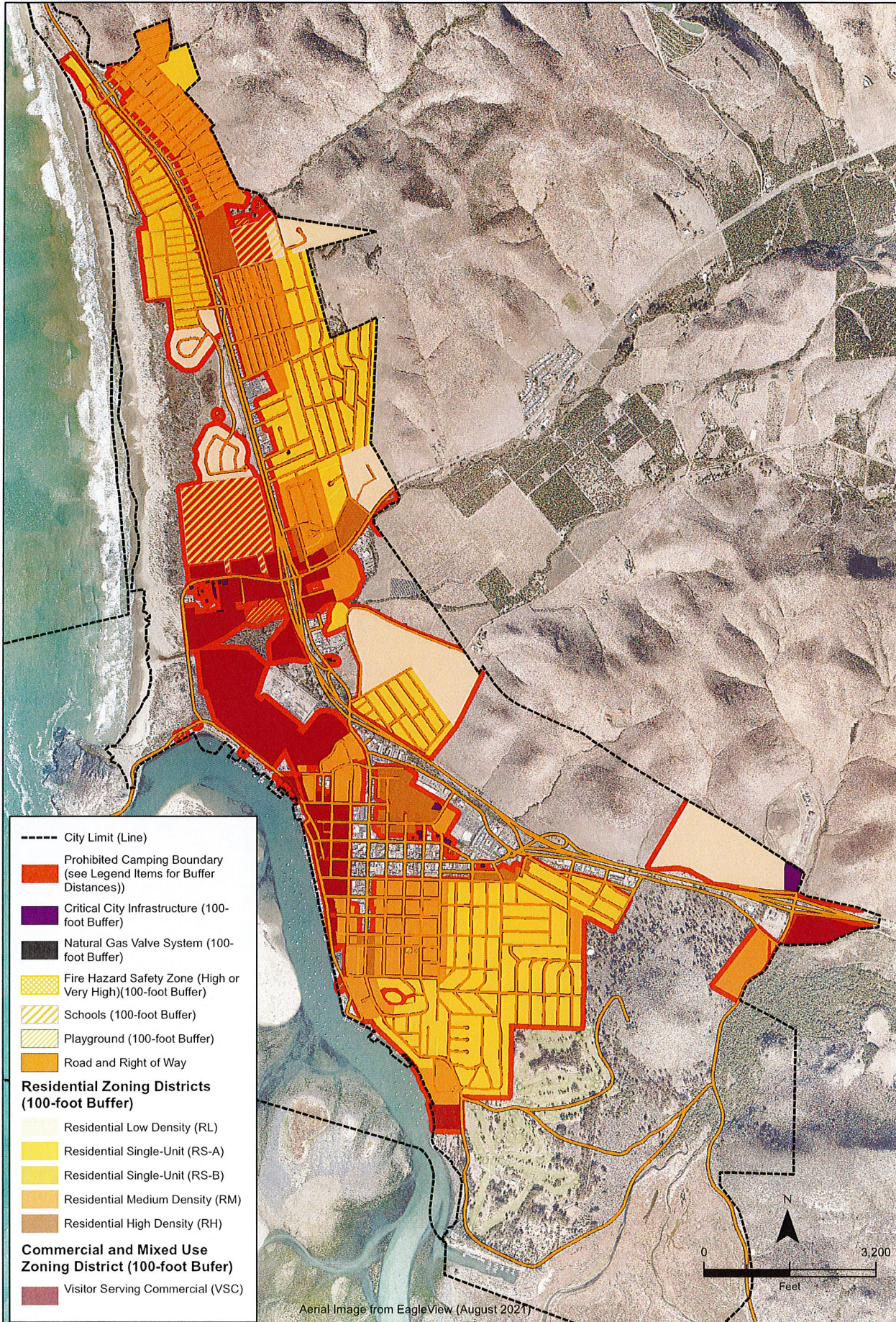
Prohibited Camping Boundary



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City of Morro Bay Prohibited Camping Boundary



ORDINANCE NO. 665

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
ADDING CHAPTER 8.26 TO TITLE 8 OF THE MORRO BAY
MUNICIPAL CODE REGULATING CAMPING AND STORAGE OF
PERSONAL PROPERTY ON PUBLIC PROPERTY TO MITIGATE HARM
TO PUBLIC HEALTH, SAFETY AND WELFARE**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the City of Morro Bay ("City") encourages the use of open spaces and facilities within the City by all members of the community; and

WHEREAS, camping in undesignated campsites within the City limits creates unsanitary, unhealthy, disorderly, and dangerous conditions that may affect both the campers and the general public; and

WHEREAS, camping in undesignated campsites within the City limits tends to degrade and even destroy the property upon which the camping is occurring, particularly in situations where an encampment is large and ongoing; and

WHEREAS, camping in undesignated campsites within the City limits detracts from the use of the property for its intended purposes; and

WHEREAS, the City has the authority to adopt regulations to ensure the public's health, safety, and general welfare, and desires to regulate camping within the City; and

WHEREAS, a federal Ninth Circuit Court of Appeals decision, *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) ("Martin"), prohibits criminal prosecution for sleeping outside on public property when adequate shelter is not reasonably available for persons involuntarily experiencing homelessness, based upon an interpretation of the Cruel and Unusual Punishments Clause of the U.S. Constitution's Eight Amendment; and

WHEREAS, the federal Ninth Circuit court suggested in its decision in *Martin* that the prohibition on criminal prosecution would not apply to individuals who have reasonable access to adequate temporary shelter; and

WHEREAS, the Ninth Circuit court in *Martin* suggested that even when adequate shelter is unavailable, an ordinance establishing reasonable time, place and manner regulations on sitting, lying or sleeping may be allowed under the U.S. Constitution when the regulations are to address legitimate public health and safety concerns; and

WHEREAS, the federal Ninth Circuit court in the case of *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023) (“Grants Pass”) expanded upon its decision in *Martin* to prohibit civil enforcement for sleeping outside when adequate shelter is not reasonably available for persons involuntarily experiencing homelessness if civil enforcement can lead to criminal enforcement; and

WHEREAS, for many years the City has invested significant funds, resources and time to assist persons experiencing homelessness to find temporary and permanent shelter and necessary public health services to address the causes of their homelessness, has sought to address the underlying issues contributing to homelessness and has striven to be a part of the solution. These City of Morro Bay actions and efforts have included:

1. City staff and City Manager participation on committees and sub-committees with service groups, County non-profits, and County Public Health Services to address causes of homelessness and work towards solutions.
2. Assignments of officers to the police department as a homeless liaison to address needs of the unhoused within the City limits.
3. Provision of connections to County Public Health Nurse and Doctors.
4. Facilitating connections to local and regional outreach services to assist with mental health needs, drug and alcohol counselors, probation and parole services, connections to permanent housing (THEMA, CAPSLO, 805 Street Outreach, Esteros Bay Alliance for Care, Salvation Army, SLO Food Bank, County Public Health and Behavioral Health services).
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7. In 2022, the Morro Bay City Manager created a City homeless working group comprised of City department heads, staff and homeless outreach service groups to address homelessness in Morro Bay. One of the first items the team addressed was the need for continued outreach and case management. The City conducted a recruitment for Homeless Outreach Case Manager. The Homeless Outreach Case Manager is one step in the City’s efforts to meet the San Luis Obispo Countywide plan to address homelessness adopted by the County Homeless Services Oversight Council in 2022.
8. The Homeless Outreach Case Manager assists those experiencing homelessness to navigate services and to connect to resources that they need to secure housing, as well as

shelter and transitional housing resources when available (e.g., ID Cards, financial benefits, transportation to service meetings and appointments). Duties include to make contact with unhoused or people struggling with housing in the field, build rapport and provide opportunities for assistance to those seeking help. The case manager schedules and provides transportation to appointments for drug and alcohol services, county probation, state parole, behavioral health, CAPSLO, ECHO, and THMA.

9. City of Morro Bay provides annual funding to San Luis Obispo County Department of Social Services and Public Health.
10. Regular meetings with homeless outreach groups such as CAPSLO, THMA, County Public Health, Salvation Army, Veteran Services, 805 Street Outreach, and EBAC.
11. The City committed \$25,000 in housing impact in lieu fees to the HASLO Atascadero Rd Housing Project.
12. The City has transferred the City's portion of the National Opioid Settlement back to San Luis Obispo County to manage a regional effort to combat opioid related issues that directly impact our unhoused population.

WHEREAS, despite the City's efforts the Police and Fire Departments have found that a significant number of the City's homeless population routinely decline the City's offers of help for various reasons including many people experiencing homelessness refuse to accept services and refuse to move from encampments. Some of the homeless actually have access to temporary shelter but choose not to use it, and, therefore, of the City's estimated population of persons experiencing homelessness, the Police and Fire Departments estimates less than ten percent of the City's homeless population would be categorized as involuntarily homeless; and

WHEREAS, the City has experienced significant and continuing threats to public health and safety resulting from persons experiencing homelessness sleeping and camping in unauthorized locations in the City, including the following:

1. Homeless encampments raise a number of public health concerns related to waste, sanitation and disease transmission. Homeless people, like all other people, generate solid waste during their daily activities of food preparation and consumption, shelter building and maintenance and storing their possessions. Though without any place or method of proper storage or disposal, the resulting piles of trash become food sources for rodents, breeding grounds for pathogens, fuel for fires, and unattractive nuisances to the public.
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3. Health and safety issues are presented by the violation of fire, building, electrical and other codes and standards for the public health and safety, including the unauthorized and unpermitted use of electrical and utility connections, due to the potential and reality of unsafe and unhealthy conditions in encampments, posing life, safety, fire and health threats to both the occupants of the encampments, the general public and emergency responders.

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5. The City regularly receives a large volume of emails, phone calls and in-person complaints regarding the encampments in the City, and the frequency and number of these complaints has been increasing greatly recently and in the last year.
6. The homelessness problem in Morro Bay impacts crime rates. Homelessness related crime rates are significant both in terms of crimes against the homeless and also crimes committed by the homeless. The Morro Bay Police Department estimates a call volume of 60% of total calls for service are related to our unhoused population.
7. Business owners and residents near encampments are confronted by trash, used needles, and human waste, and increased instances of open drug use, property damage, theft, and break-ins. They have seen their property values decline, their small businesses fail, and their public spaces become uninhabitable.
8. Businesses and residences near encampments experience physical impediments to access to public and private property which both impedes emergency responses, evacuation of occupants during an emergency, and general public access, as well as exacerbates the likelihood of conflict, intimidations and threats to the public safety for both the unhoused as well as all members of the public, and furthermore the collection of biohazard materials, human waste, trash and rubbish near businesses and residential areas contributes to a general decline in public health, safety and welfare.
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10. Encampments near active construction sites, areas with heavy vehicle use, and similar areas pose unique threats to both the unhoused as well as the operators of construction equipment and vehicles through unintentional yet predictable collisions and threats to health and safety.
11. Encampments on or near public utilities and critical infrastructure, such as stormwater, water and sewer infrastructure, fire stations, electrical wires and natural gas pipelines, pose unique safety, environmental and security issues and are generally closed to the public or have limited public access for safety, environmental and security reasons.
12. Unauthorized connections or taps to public utilities, as well as violation of fire, building, electrical and other codes and standards, create unsafe conditions and a potential life safety hazard for the occupant, the general public and emergency responders.
13. Encampments pose immense public health concerns as the rates of overdoses from drugs like fentanyl and heroin have increased substantially among the unhoused and encampments can provide an environment conducive to illegal drug consumption.
14. Abandoned encampment cleanups are performed by police officers with police equipment and City staff in an attempt to maintain and or control the spread of large

encampments and this taxes public resources while unnecessarily exposing first responders and City staff to unhealthy and unsafe situations.

15. Fires in unsafe locations for cooking and warming occur at encampments increasing the risk of fires posing a threat to safety and health.
16. Accumulation of biohazard and medical waste occurs in and around encampments and these items end up in our creeks, storm drains, waterways, and beaches posing a direct threat to health and safety.
17. Severe blockage of storm drains due to excessive encampment debris leads to increased roadway and stream flooding and drain blockages during storms causing threats to health and safety.
18. During times of severe storms, unhoused camps are located in and evacuated from low lying, unsafe areas, and storm drains due to increased risk of flooding, rapid water movement, and blockage of storm drains, posing safety threats to the residents of the encampments; and

WHEREAS, in light of these significant and continuing threats to public health and safety, the City seeks to adopt reasonable time, place and manner regulations in a manner consistent with the federal Ninth Circuit court's decisions in *Martin* and *Grants Pass*; and

WHEREAS, the City finds that reasonable camping regulations for public property will best serve the public's health, safety, and general welfare.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. RECITALS. The recitals set forth above are true and correct and are hereby adopted as findings in support of this Ordinance as if fully set forth herein.

SECTIONS 2. NEW CHAPTER 8.26 ADDED TO CODE. Chapter 8.26 is added to Title 8 of the Morro Bay Municipal Code to read as follows:

"CHAPTER 8.26 – PUBLIC PROPERTY CAMPING REGULATIONS

8.26.010 FINDINGS AND PURPOSE

- A. As the City continues to offer assistance and services to persons experiencing homelessness, the City must appropriately consider various interests and formulate policy to best protect public health, safety, welfare, property, and the environment, with its limited resources.
- B. The City Council acknowledges that at the time of the adoption of this ordinance, there is a lack of nightly shelter beds and housing available regionally for persons experiencing homelessness and recognizes the systemic lack of state and federal investment in shelter and public health services for those experiencing homelessness.

- C. The City Council acknowledges that it is currently unavoidable that some persons will live or shelter for survival outdoors until they are able to access affordable or free shelter or housing. In Morro Bay, this has typically meant sheltering, sometimes for extended periods of time, on City rights-of-way and City property, and at times on other public agency property such as the California Department of Parks and Recreation property.
- D. Public rights-of-way and public property are generally intended for public use and travel. The City Council is the authority for rights-of-way within the City; as such, the City must consider the safety of motorists and pedestrians travelling on roadways and sidewalks, including to and from neighboring properties, businesses, and residences.
- E. The City owns limited property where camping can or should be allowed for reasons including but not limited to public health and safety concerns and issues created by the impact of camping on public property.
- F. The City has had increasing concerns regarding public health and safety due to camping on or in rights-of way and public property in or near streets, roads, sidewalks, schools, residences, businesses, critical infrastructure, public access points and similar locations. Public utility properties (e.g., stormwater, water, sewer) are environmentally and operationally sensitive and generally closed to the public or have limited access for safety, environmental and security reasons.
- G. Over the long term and working with other governmental agencies and non-profit organizations, the City's goal is that people should not have to live outside and there should be safer options because long-term camping for survival and sheltering outside is not a solution for people without homes.
- H. It is the purpose and intent of the City Council to provide standards for camping and survival sheltering on City rights-of-way and public property, which are intended to be as compatible as possible with the needs of everyone in Morro Bay to be healthy, safe, and have access to public places.
- I. Smaller camp sites support both the health and safety of people who are camping for survival on public property as well as the health and safety of the public.
- J. It is the purpose and intent of the City Council to provide standards for camping and survival sheltering on City rights-of-way and public property which will address issues such as fire risk, unsanitary conditions, health risks, public infrastructure security, public access impediments, trash, waste and public safety hazards to both people camping as well as neighboring businesses, residents and community members, as well as environmental degradation, which have occurred with longer-term camping in the City.
- K. It is the intent of the City to evaluate each removal of an Established Campsite with considerations of public health and safety, including for the people who are sheltering in the camps, potential user conflicts, and available resources. The City intends to use a team approach and coordinate with other governmental agencies and non-profit organizations as appropriate. When the City requires a person experiencing homelessness to remove an Established Campsite, through these regulations, it intends to provide the person

adequate time to remove the Established Campsite before the City removes the Established Campsite, to secure any personal property with reasonable utility or reasonable value for the person to retrieve at a later date, and to clean the former Established Campsite to address threats to public health and safety.

8.26.020 DEFINITIONS

The following words and phrases, when used in this Chapter, shall have the meaning ascribed to them by this section unless it is apparent from the context that another meaning is intended.

- A. "Camp" or "Camping" means residing in or using any public property for one or more nights for living accommodation purposes, such as sleeping activities or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or using any tents, or storing personal belongings (including but not limited to clothing, sleeping bags, bedrolls, blankets, sheets, luggage, backpacks, kitchen utensils, cookware, and similar material), or making any fire using Bunsen burners or other heating items, or regularly cooking meals. These activities constitute camping when it reasonably appears, in light of all the circumstances, that a person is using public property as a living accommodation for one or more nights, with the intent to camp.
- B. "Camp Facilities" include, but are not limited to, tents, huts, or similar temporary shelters consisting of any material with a top or roof or any other upper covering or that is otherwise enclosed by sides that is of sufficient size for a person to fit underneath or inside while sitting or lying down and includes the use of a tarp or other material tied or affixed to a structure or bush to create an enclosed area.
- C. "Camp Materials" includes but is not limited to, tarpaulins, cots, beds, sleeping bags, hammocks, shopping carts, recyclable material and/or non-City designated cooking or heating facilities and similar equipment, or personal possessions that would facilitate one's use of a park, public property, or any portion of the public right-of-way as a temporary residence.
- D. "Critical Infrastructure" means real property or a facility, whether privately or publicly owned, that the City Manager designates as being so vital and integral to the operation or functioning of the City or in need of protection that its damage, incapacity, disruption, or destruction would have a debilitating impact on the public health, safety, or welfare. Critical infrastructure may include, but is not limited to, government buildings, such as fire stations, police stations, jails, or courthouses; hospitals; structures, such as antennas, bridges, roads, train tracks, drainage systems, or levees; or systems, such as computer networks, public utilities, electrical wires, natural gas pipes, telecommunication centers, or water sources.

- E. "Enforcement Personnel" means the employee(s) of the City, including but not limited to sworn police officers, authorized by the City to seek compliance with, and enforce, the regulations, requirements and rules of this Chapter.
- F. "Established Campsite" means a location or locations in the public right-of-way or on City property where a Camp, Camps, and/or Camp Materials have been set up for twenty-four (24) hours or more.
- G. "Fire Severity Zones" means mapped area as defined by the Office of State Fire Marshal that designates zones (based on factors such as fuel, slope, and fire weather) with varying degrees of fire hazard (i.e., moderate, high, and very high).
- H. "Greywater" means untreated wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines and the like. It does not include any toilet discharge, unhealthy bodily wastes, or manufacturing wastes.
- I. "Hazardous Water" means sewage, toilet discharge, unhealthy bodily wastes, manufacturing wastes and the like.
- J. "Landscaped Area" means any manicured or natural ground covered areas including but not limited to flower beds, bushes, brush areas, or shrubs.
- K. "Personal Property" means any tangible property and includes, but is not limited to, goods, materials, merchandise, tents, tarpaulins, bedding, blankets, sleeping bags, personal items such as household items, luggage, backpacks, clothing, food, documents, and medication.
- L. "Playground" means any park or recreational area specifically designed to be used by children that has play equipment installed, or any similar facility located on public or private school grounds, or on City, county, or State park grounds.
- M. "Public Property" means any publicly owned property in the City, whether improved or unimproved, including, but not limited to, any of the following: public alleyways; public parking lots; public passageways; public streets; public rights-of-way; park Playgrounds; freeway on-ramps and off-ramps; publicly owned, maintained, or operated parks; publicly owned, maintained, or operated landscaped areas or greenbelts; publicly owned fences, trees, light poles, or equipment boxes; publicly owned, maintained, or operated open spaces including, but not limited to, public facilities or buildings of any kind; public sidewalks, curbs, and gutters; public educational institutions; or other government owned, maintained, or operated properties located within the City.

- N. "Public Utilities" means every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof, as defined by Public Utilities Code section 216, and as amended.
- O. "Rights-of-Way" means all City-owned or controlled rights-of-way, whether in fee title or as holder of a public easement for right-of-way or public access purposes. Public rights-of-way include but are not limited to any public road, street, sidewalk, or private street or other property that is subject to a public access easement dedicated or granted to the City for vehicular use, pedestrian use, utilities or other means, and any planter strip or landscaped area located adjacent to or contained within streets that is part of the public right-of-way.
- P. "School" means any institution, facility or organization, whether public or private, that offers instruction on those courses of study required by the California Education Code or that is maintained pursuant to standards set by the State Board of Education. School for purposes of this section does not include a vocational or professional institutions of higher education, including a community or junior college, college, or university. The setback shall be calculated from the school property boundaries.
- Q. "Store" means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.
- R. "Transportation Facility Loading Area" means that area within 200 feet of where trains, buses or any form of public transportation loads or unloads passengers.
- S. "Vehicle" means a "motor vehicle" as defined by California Vehicle Code, section 415 and includes a "recreational vehicle" as defined by California Health and Safety Code, section 18010(a).

8.26.030 TIME, PLACE AND MANNER REGULATIONS

Persons who do not have any other permanent residence or domicile and/or are involuntarily experiencing homelessness are permitted to camp on public property or rights of-way, provided the camping is occurring in compliance with the following time, place and manner regulations and consistent with any administrative rules and policies promulgated by the City Manager, or designee, adopted after the Effective Date of this Ordinance, in accordance with this Chapter.

- A. Time.** Unless otherwise specified, any Camping or Camp, where allowed, may only occur for 24-hours at a time in any one location. After 24 hours in one location, the Camp and all

associated Camp Materials must be moved at least one street block or 600 feet, whichever is greater, to another allowed location.

B. Place. Camping is not allowed at any time in any of the following places:

1. Within 200 feet of a residentially zoned property boundary or within any area zoned Residential, as determined by the City of Morro Bay Zoning Map and the Morro Bay Municipal Code.
2. Within any Mixed Use Overlay Zone, as determined by the City of Morro Bay Zoning Map and the Morro Bay Municipal Code.
3. Any place where Camping, a Camp, or Camp Materials create a physical impediment preventing emergency or non-emergency ingress, egress or access to public or private property, including but not limited to, on public sidewalks or other public rights-of-way, driveways providing access to vehicles, and entrances or exits from buildings and/or other real property.
4. Any vehicle lane, bicycle lane, or roundabout within any public rights-of-way or Transportation Facility Loading Area.
5. Within 1000 feet from any shelter both established for emergency evacuations as well as approved under the Morro Bay Municipal Code and/or approved consistent with any applicable provision of State or federal law.
6. On any street or public rights-of-way, the City has closed to camping due to construction, heavy vehicle use, or other use of the roadway that is incompatible with camping in the rights-of-way. The City does not need to close a street to vehicle traffic, to close a street to camping under this section.
7. Within, or within 200 feet of, any School.
8. Within, or within 200 feet of, any Playground.
9. Within, or within 200 feet of, any area designated as Visitor Serving Commercial (VSC), as determined by the City of Morro Bay Zoning Map and the Morro Bay Municipal Code.
10. At the following public property: Morro Bay City Hall, Morro Bay Community Center, Morro Bay Veterans Hall, Morro Bay Public Library, Morro Bay Centennial Parkway and Stairway, and such further designations made in writing by the City Manager, or her or his designee, upon the written recommendation of the Morro Bay Police Chief and the Morro Bay Fire Chief.
11. Within, or within 200 feet of, Critical Infrastructure.
12. Within, or within 200 feet of, either a very high Fire Severity Zone or a high Fire Severity Zone.

C. Manner. Camping, when and where allowed, is subject to all of the following limitations and regulations:

1. Individuals, Camp Materials, Camps, or personal property may not obstruct, block, prevent access to, or impede: sidewalk accessibility or passage; clear vision of moving vehicles or bicycles; usage of fire hydrants; usage or function of Public Utilities, Critical Infrastructure, or other City infrastructure; or, otherwise obstruct, block, prevent access to, or impede the use of the Rights-of-Way for vehicular, pedestrian, bicycle, or other passage.
2. A Camp or Camping shall be limited to a spatial footprint of no greater than 12 feet by 12 feet, or 144 square feet, and shall have a smaller footprint if necessary to comply with the restrictions set forth in this Chapter. The intent of this section is to allow a person to sleep protected from the elements and maintain the essentials for living, while still allowing others to use public spaces as designed and intended.
3. To prevent larger Camping sites from forming and the impacts to public health and safety that can result, a Camp shall not be within a one hundred fifty (150) foot radius of any other Camp.
4. Individuals may not accumulate, discard, or leave behind garbage, debris, unsanitary or hazardous materials, or other items of no reasonable utility or reasonable value, as determined by the City, in public rights-of-way, on City property, or on any adjacent public or private property.
5. Open flames, recreational fires, burning of garbage, bonfires, or other fires, flames, or heating deemed unsafe by the Morro Bay Fire Department, or the Morro Bay Police Department, are prohibited. Types of flameless cooking stoves and other flameless devices for keeping warm, as consistent with this subsection, are permitted.
6. Dumping of Greywater or Hazardous Water into any facilities or places not intended for Greywater or Hazardous Water disposal is prohibited. This includes but is not limited to City streets, public rights-of-way, public waterways and storm drains, which are not intended for disposal of Greywater or Hazardous Water.
7. Unauthorized connections or taps to Public Utilities, including but not limited to such connections or taps that cross over City property, roadways, rights-of-way, driveways, streets, sidewalks, and fences, are prohibited.
8. Violations of building codes, fire codes, and other relevant codes or standards for health and safety, are prohibited.
9. Obstruction of, or attachment of Camp Materials or personal property to, fire hydrants, utility poles, Public Utilities infrastructure, public infrastructure, fences, trees, vegetation, vehicles, or buildings is prohibited.

10. Individuals may not build or erect structures, whether by using plywood, wood materials, pallets, or other materials. Items such as tents, and similar items used for shelter that are readily portable, are not structures for purposes of this section.

11. Storage of personal property such as vehicle tires, bicycles, or associated components (except as needed for an individual's personal use), gasoline, generators, lumber, household furniture, propane tanks, combustible material or gases, or other items or materials, is prohibited, other than what is related to camping, sleeping, or keeping warm and dry.

12. Digging, excavation, terracing of soil, alteration of ground, water or infrastructure, or damage to vegetation or trees is prohibited.

13. All animals, in the custody, ownership or companionship of an individual, must be leashed or crated at all times.

14. Camps shall consist of no more than two persons, two animals (e.g., dogs) that are leashed or crated at all times, and one tent.

8.26.040 ENFORCEMENT

A. Voluntary Compliance. Before enforcement actions are taken in respect to this Chapter (with the exception of enforcement of subsection (B)(3)), the enforcement personnel shall make a good faith effort to contact the person violating this Chapter and provide a reasonable opportunity to cure or remedy the alleged violation. Enforcement Personnel shall make a good faith effort to determine whether the person subject to enforcement has been referred to service providers and/or local non-profit assistance organizations and make a referral if it appears none has been made. The following shall be communicated to the person in a manner designed to help them understand the alleged violation:

1. A written or verbal description or identification of the activity constituting the alleged violation and identification of the recipient as being the person responsible for the violation;
2. A written or verbal statement that the enforcement personnel has determined the activity to be a violation;
3. A written or verbal statement of the action required to fix the violation and the time and/or date by which the violation must be fixed; and
4. A written or verbal statement advising that if the violation is not fixed within the time specified, enforcement actions may be imposed.

B. Notice of Violation

1. **72 Hour Notice.** Prior to implementing any of the enforcement mechanisms provided for in this Chapter to remove an Established Campsite and/or Camp Facilities because of violations of this Chapter, the Enforcement Personnel shall provide occupants of an Established Campsite or Camp Facilities, at least 72 hours in advance of any action to

remove the Established Campsite or Camp Facilities, notice both to remove the camp within 72 hours consistent with the requirements of this Chapter as well as of the intent by the City to remove the Established Campsite or Camp Facilities in no less than 72 hours (the “notice”). The notice shall be in writing and shall be posted on or near the Established Campsite or Camp Facilities, so as to reasonably communicate the notice to persons living at the Established Campsite or Camp Facilities but not present during the attempt to provide notice. In addition, the Enforcement Personnel shall make a good faith effort to personally provide the written notice to the occupant(s) of the Established Campsite or Camp Facilities present at the time the Enforcement Personnel posts the notice. Failure of the occupant(s) of the encampment to comply with the notice’s requirements to remove the camp within 72 hours consistent with the requirements of this Chapter shall constitute a violation of this Chapter. The notice shall contain the following information:

- a. The location of the Established Campsite or Camp Facilities;
- b. The date and time notice was posted;
- c. A statement that the Established Campsite or Camp Facilities violates this Chapter;
- d. An advisement that the City will remove the Established Campsite or Camp Facilities 72 hours after the date and time of the notice;
- e. Information about any housing, shelter or homeless services available for occupants of the Established Campsite or Camp Facilities, the phone number and address to contact in order to obtain such housing, shelter or homeless services, if available, and information about obtaining free transportation, if available, to such housing, shelter or homeless services;
- f. An advisement that any personal property remaining at the Established Campsite or Camp Facilities site when the Enforcement Personnel returns to remove the Camp Facilities will be impounded for no fewer than 90 days, or as provided for by applicable law, and will be discarded thereafter if not claimed; and
- g. The address, phone number, and operating hours of the location where the personal property will be stored and may be retrieved, being a storage facility and depending on the property potentially with the Morro Bay Police Department, and that the City will charge no fee for storage or retrieval.

- 2. Less Than 72 Hour Notice.** The notice detailed above may establish a shorter time for the removal of the encampment if the Enforcement Personnel have determined the conditions at the Established Campsite or Camp Facilities requires removal of the Established Campsite or Camp Facilities in less than 72 hours to avoid a potential emergency, such as possible site contamination by hazardous materials or when there is reasonable potential danger to human life or safety. Failure of the occupant(s) of the encampment to comply with the notice’s requirements to remove the camp consistent with the requirements of this Chapter shall constitute a violation of this Chapter.

3. Illegal Activity or Exceptional Emergency. Enforcement personnel may remove an Established Campsite or Camp Facilities without providing the notice described above in the following circumstances:

- a. When there is probable cause for law enforcement officials to believe that illegal activity, other than camping, is occurring at an Established Campsite or Camp Facilities, or in the immediate vicinity of an Established Campsite or Camp Facilities; or
- b. When there is probable cause for law enforcement officials to believe that the property that comprises an Established Campsite or Camp Facilities is being used or is intended to be used to commit or facilitate the commission of otherwise illegal activity; or
- c. In the event of an exceptional emergency, such as significant evidence of site contamination by hazardous materials or when there is immediate danger to human life or safety.

C. Removal of an Established Campsite or Camp Facilities. If the occupant(s) fail to comply with the request for voluntary compliance set forth in subsection A above, and after the enforcement personnel comply with the requirements set forth in subsection B above, any Camp, Camp Materials, or personal property in violation of any of the standards in this Chapter may be removed or cleaned-up by the City or its designated contractors, and the enforcement personnel may take appropriate actions to remove an Established Campsite or Camp Facilities and enforce this Chapter, consistent with the following:

1. When removing Camp Facilities, or individuals, Camp Materials, or personal property from an Established Campsite, enforcement personnel will make reasonable efforts to remove individuals without the use of force or citation.
2. When removing personal property, the City shall make reasonable efforts to determine if the property belongs to an individual and has any reasonable utility or reasonable value. The City shall make reasonable efforts to identify which Established Campsite the property was removed from, to aid in connecting people with their property. Items that are perishable, that have no reasonable use or value, that are not identifiable as belonging to an individual, or that are in an unsanitary condition due to saturation or contamination from bodily fluids, whether human or animal, or other contamination, will be considered garbage, discarded, and need not be stored.
3. Weapons, drug paraphernalia, or other contraband, and items that appear to be either stolen or evidence of a crime, shall be provided to law enforcement officials.
4. Following removal of personal property from City property or rights-of-way, the City shall post a notice at or as near as possible to the location the property was collected and on the City's website, stating where the personal property is being stored, and listing the phone number and hours a person claiming ownership can collect or make arrangements to collect their personal property.
5. After an Established Campsite or Camp Facilities has been removed, then at the recommendation of the Police Chief or Fire Chief on the basis of public health and safety, the City Manager may order that no camp be set up in that same location or a

100-foot radius for up to 30 days. The City shall post signs informing the public that camping is prohibited at the location for the specified period of time.

D. Removal and Storage of Personal Property or Camp Materials During Removal of an Established Campsite or Camp Facilities. Personal property or Camp Materials may be removed from City rights-of-way, City property, or a Camp, during removal of an Established Campsite or Camp Facilities pursuant to Section C above, if in violation of the provisions of this Chapter, as provided for herein.

1. Personal property removed from City rights-of-way or City property and unclaimed at the time of removal will be stored by the City for a minimum of ninety (90) days, or the duration (if shorter in time) allowed by applicable State or federal law, counting from the day of the removal as day one.
2. Items that are perishable, that have no reasonable use or value, that are not identifiable as belonging to an individual, or that are in an unsanitary condition due to saturation or contamination from bodily fluids, whether human or animal, or other contamination, will be considered garbage, discarded, and will not be stored. Property discarded, dumped, or otherwise abandoned in the City rights-of-way or on public property may be immediately discarded.
3. The City will store personal property at a storage facility at or near a designated City facility, where people can reasonably retrieve belongings. Notwithstanding any otherwise applicable City policy or procedure, all items collected and stored pursuant to this Chapter that reasonably appear to have a monetary value at the time of collection of less than one thousand dollars (\$1,000) shall be stored at a storage facility, and items that reasonably appear to have a monetary value at the time of collection of one thousand dollars (\$1000) or more shall be separately stored for safekeeping with the Morro Bay Police Department ("MBPD").
4. The City will make reasonable efforts to provide a range of times the storage facility will be available for people to collect their personal property. The City may dispose of any personal property (whether stored at the storage facility or with the MBPD) that remains unclaimed after ninety (90) days, or the duration (if shorter in time) allowed by applicable State or federal law, counting from the day of the removal as day one.

8.26.050 VIOLATIONS

A citation for a violation of Chapter 8.26 shall be for an infraction. At the City's discretion, it may issue Administrative Citations under Chapter 1.03. Citations will be issued only when other means of achieving compliance have been unsuccessful or are not practicable for the particular situation.

8.26.060 SUSPENSION OF ENFORCEMENT

The City Manager, or designee, is specifically authorized to modify or suspend enforcement of any section or part of this Chapter in the event of a declared emergency, pursuant to

administrative rules or policies, weather conditions (including but not limited to extreme heat or cold), or for any other reason within the City Manager's authority, regardless of whether an emergency has been declared. In addition, the City Manager may suspend the enforcement of regulations contained in this Chapter when the City Manager, or designee, has determined a person does not have access to shelter and is engaged in case management or behavioral health services, or when necessary or appropriate to respond to a person's disability, or as further set forth in City's administrative policies implementing this Chapter 8.26 adopted by the City Manager, or designee, pursuant to Section 8.26.090.

8.26.070 ADOPTION OF ADMINISTRATIVE RULES

The City Manager, or designee may adopt administrative rules or policies governing or guiding enforcement of this Chapter, consistent with the intent of this Chapter, including but not limited to ensuring consistent and appropriate enforcement for various circumstances. These administrative rules or policies should ensure that enforcement is tailored to various circumstances, including but not limited to situations where a person has a disability under the Americans with Disabilities Act, where minor children are present or otherwise involved, where a person has employment obligations that may relate to their ability to comply with this Chapter, or for other reasons that may support discretion in enforcement.

8.26.80 METHODS OF ENFORCEMENT NOT EXCLUSIVE

Methods of enforcement for violations of this Chapter are not exclusive and may consist of multiple enforcement mechanisms where legally authorized and appropriate. However, the intent of the City is to always resolve violations at the lowest possible level, and to engage to seek compliance and solve problems while maintaining the dignity of all involved."

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 4. POTENTIAL CONFLICTS. All ordinances, parts of ordinances, City resolutions or policies, and the like, in conflict with those sections amended or added herein to the Morro Bay Municipal Code, are hereby expressly superseded by this ordinance, with the exception of Section 8.24.010(D) of the Morro Bay Municipal Code.

SECTION 5. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after its passage and adoption.

SECTION 6. CERTIFICATION. The City Clerk shall certify as to the passage and adoption of this ordinance, and the City Clerk shall cause the same to be posted and codified in the manner required by law.

INTRODUCED at a regular meeting of the City Council held on the 12th day of December 2023, by motion of _____ and seconded by _____.

PASSED AND ADOPTED on the _____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO)
CITY OF MORRO BAY)

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance No. 665 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the ____ day of _____ 2024, and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this ____ day of _____, _____.

DANA SWANSON, City Clerk

ORDINANCE NO. 666

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
ADDING CHAPTER 8.27 TO TITLE 8 OF THE MORRO BAY
MUNICIPAL CODE REGULATING OVERNIGHT HUMAN
HABITATION OF VEHICLES ON PRIVATE PROPERTY USED FOR
BUSINESS OR NONPROFIT ORGANIZATION OPERATIONS TO
MITIGATE HARM TO PUBLIC HEALTH, SAFETY AND WELFARE**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the City finds that the use of vehicles for human habitation overnight on private property used for business or nonprofit organization operations impacts public health and safety as this activity tends to result in damage to private property, theft, the accumulation of trash, food waste, human waste and contaminated medical waste and the unauthorized discharge of Greywater and Hazardous Water; and,

WHEREAS, the accumulation of trash, food waste and human waste has the potential to spread disease and result in infestations by vermin and insects; and,

WHEREAS, the accumulation of discarded contaminated medical waste, including used hypodermic needles, has the potential to harm patrons of the businesses or non-profits located where the overnight human habitation of vehicles is occurring who are exposed to this waste, and is an attractive nuisance for children; and,

WHEREAS, the collection of contaminated medical waste, human waste and trash and the discharge of Greywater and Hazardous Water has the potential to contaminate the City's waterways and beaches due to the proximity to storm drains; and,

WHEREAS, overnight human habitation in vehicles on private property used by business or nonprofit establishments has resulted in a significant number of police calls for service related to vandalism, property damage and criminal activity, including narcotics usage, noise violations, excessive debris around the vehicles, prowling, parking violations, private property trespassing, and loitering; and,

WHEREAS, unregulated overnight human habitation in vehicles on private property used by business or nonprofit establishments creates increased public health and safety risks such as those from overdoses, fire hazards, and death; and,

WHEREAS, the City finds that reasonable regulations for human habitation of vehicles overnight on private property used for businesses and nonprofit organizations are necessary to protect public health and safety.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. RECITALS. The recitals set forth above are true and correct and are hereby adopted as findings in support of this Ordinance as if fully set forth herein.

SECTIONS 2. NEW CHAPTER 8.27 ADDED TO CODE. Chapter 8.27 is added to Title 8 of the Morro Bay Municipal Code to read as follows:

“CHAPTER 8.27 – REGULATION OF OVERNIGHT HUMAN HABITATION OF VEHICLES ON PRIVATE PROPERTY USED FOR BUSINESS OR NONPROFIT ORGANIZATION OPERATIONS

8.27.010 FINDINGS AND PURPOSE

- A. The use of various types of vehicles for human habitation overnight on private property used for businesses or non-profit organizations impacts public health and safety as this activity tends to result in damage to private property, theft, public safety risks, the accumulation of trash, food waste, human waste and contaminated medical waste and the unauthorized discharge of Greywater and Hazardous Water.
- B. It is the purpose and intent of the City Council to regulate and provide standards for the human habitation of vehicles overnight on private properties used for business and nonprofit operations so as to be as compatible as possible with the needs of everyone in Morro Bay to be healthy and safe.

8.27.020 DEFINITIONS

The following words and phrases, when used in this Chapter, shall have the meaning ascribed to them by this section unless it is apparent from the context that another meaning is intended.

- A. “Business” means any business that is required to obtain a current and valid business tax certificate under Chapter 5.04 of the Morro Bay Municipal Code.
- B. “Greywater” means untreated wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines and the like. It does not include any toilet discharge, unhealthy bodily wastes, or manufacturing wastes.
- C. “Hazardous Water” means sewage, toilet discharge, unhealthy bodily wastes, manufacturing wastes and the like.
- D. “Human Habitation” means, considering all the circumstances, that a person is using a vehicle for: sleeping; bathing; preparing or cooking meals; or, possessing or storing items that are not associated with ordinary vehicle use, such as a sleeping bag, bedroll, blanket, sheet, pillow, used bedding, kitchen utensils, cookware, cooking equipment, camping gear, food, water, personal grooming items, or containers of feces or urine. Evidence of

human habitation includes observations, considering all the circumstances, of any of the above, as well as that: a person has obscured some or all of the windows; there is litter, rubbish, or waste in or around the vehicle; there is furniture set up in or around the vehicle, such as chairs, tables, umbrellas, or portable cooking equipment; or, there is evidence of human urination or defecation around the vehicle.

- E. "Nonprofit Organization" means an organization that qualifies for tax-exempt status by the IRS because its mission and purpose are to further a social cause and provide a public benefit, regardless of whether or not the organization has secured such tax-exempt status.
- F. "Overnight" means at any time during the hours of 10:00 p.m. and 6:00 a.m. the following day.
- G. "Vehicle" means a "motor vehicle" as defined by California Vehicle Code, section 415 and includes a "recreational vehicle" as defined by California Health and Safety Code, section 18010(a).

8.27.030 PROHIBITION AND REGULATIONS

- A. Prohibition.** Notwithstanding any other provision of this Code, overnight human habitation is prohibited in vehicles parked on private property owned or leased by a business or a nonprofit organization.
- B. Exception.** A total of three vehicles per parcel, may be used by persons who lack access to permanent or safe shelter and who cannot obtain other housing, for overnight human habitation in a parking lot or paved or gravel surface of a parcel of any size owned or leased by a business or nonprofit organization, with the permission of the property owner or lessee, after the owner or lessee is issued a City permit by the Community Development Department, and the owner or lessee complies with the requirements of subsection C.
- C. Requirements.** A property owner or lessee who allows overnight human habitation in vehicles on private property pursuant to this section shall:
 - 1. Provide persons occupying such vehicles with access to sanitary facilities, including but not limited to toilet, hand washing and trash disposal facilities at all times people are authorized to be present overnight.
 - 2. Not require payment of any fee, rent or other monetary charge for the activity authorized by this Chapter.
 - 3. Restrict this use of owner's or lessee's property to one period consisting of no more than three (3) overnight stays, once every ten (10) days, per vehicle.
 - 4. Not allow the discharge or dumping of wastewater, Greywater, Hazardous Water, or trash on the property unless sufficient City approved receptacles or hook ups are available.

5. Not allow for the storage of personal property beyond six (6) feet immediately adjacent to the vehicle.
6. Not allow on-site storage of personal property when the personal property owner is no longer staying on the private property being used.

D. Revocation. A property owner or lessee who permits overnight human habitation in vehicles on private property pursuant to this Chapter may revoke that permission at any time and for any reason. Any person who has permission for human habitation in a vehicle on that property as provided in this Chapter shall leave the property with their vehicle and personal property immediately after permission has been revoked.

E. Existing Land Uses. The provisions of this Chapter are not intended to limit or otherwise change any land uses that may be permitted on real property under the Morro Bay Municipal Code.

8.27.040 VIOLATIONS AND ENFORCEMENT

- A. Violations of this chapter are deemed a public nuisance, and may be abated as such. Each day a violation continues is deemed a new violation.
- B. Violations of this chapter may be punishable as infractions or misdemeanors, pursuant to Chapter 1.16 of this Code.
- C. Violations of this chapter may be punishable thorough administrative fines, in accordance with Chapter 1.03 of this Code, as may be set by City Council resolution.
- D. Methods of enforcement for violations of this Chapter are not exclusive and may consist of multiple enforcement mechanisms where legally authorized and appropriate.

8.27.050 SUSPENSION OF ENFORCEMENT

The City Manager, or designee, is specifically authorized to modify or suspend enforcement of any section or part of this Chapter in the event of a declared emergency, pursuant to administrative rules or policies, weather conditions (including but not limited to extreme heat or cold), or for any other reason within the City Manager's authority, regardless of whether an emergency has been declared. In addition, the City Manager may suspend the enforcement of any of the regulations in this Chapter when the City Manager, or designee, has determined a person does not have access to shelter and is engaged in case management or behavioral health services, or when necessary or appropriate to respond to a person's disability, or as further set forth in City's administrative policies implementing this Chapter 8.27 adopted by the City Manager, or designee, pursuant to Section 8.27.060.

8.26.060 ADOPTION OF ADMINISTRATIVE RULES

The City Manager, or designee, may adopt administrative rules or policies governing or guiding enforcement of this Chapter, consistent with the intent of this Chapter, including but not limited to ensuring consistent and appropriate enforcement for various circumstances. These administrative rules or policies should ensure that enforcement is tailored to various circumstances, including but not limited to situations where a person has a disability under the Americans with Disabilities Act, where minor children are present or otherwise involved, where a person has employment obligations that may relate to their ability to comply with this Chapter, or for other reasons that may support discretion in enforcement. “

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 4. POTENTIAL CONFLICTS. All ordinances, parts of ordinances, City resolutions or policies, and the like, in conflict with those sections amended or added herein to the Morro Bay Municipal Code, are hereby expressly superseded by this ordinance.

SECTION 5. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after its passage and adoption.

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SECTION 6. CERTIFICATION. The City Clerk shall certify as to the passage and adoption of this ordinance, and the City Clerk shall cause the same to be posted and codified in the manner required by law.

INTRODUCED at a regular meeting of the City Council held on the 12th day of December 2023, by motion of _____ and seconded by _____.

PASSED AND ADOPTED on the _____ day of _____, 2024, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:
- RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO)
CITY OF MORRO BAY)

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance No. 666 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the ____ day of _____ 2024, and that it was so adopted by the following vote:

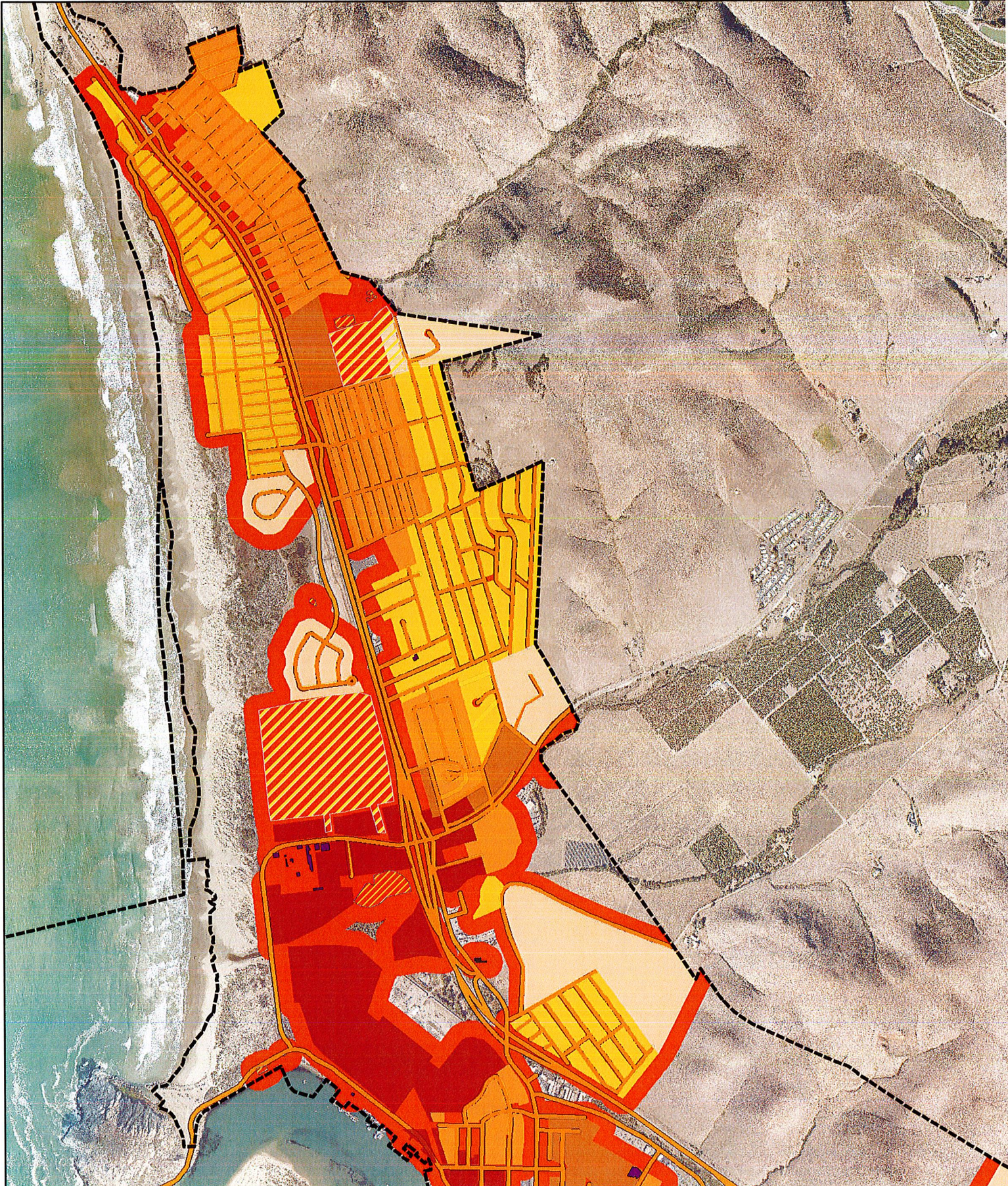
AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this ____ day of _____, _____.

DANA SWANSON, City Clerk



City of Morro Bay Prohibited Camping Boundary



OBJECTID	Number	PreDir	StreetName	StreetType	CommonName	Type	Symbology	UnitNumber	Address
1	61	W	OAK	AVE	PORTERVILLE TRANSIT CENTER	Facilities	Transit		61 W OAK AVE
2	2700	W	TEAPOT DOME	AVE	PORTERVILLE FAIRGROUNDS	Facilities	Fairgrounds		2700 W TEAPOT DOME AVE
3	700	N	NEWCOMB	ST	SKATE PARK	Facilities	Recreation		700 N NEWCOMB ST
4	2701	W	SCRANTON	AVE	OHV PARK	Facilities	Recreation		2701 W SCRANTON AVE
5	97	N	PARK	DR	CITY POOL	Facilities	Pool		97 N PARK DR
6	256	E	ORANGE	AVE	HERITAGE COMMUNITY CENTER	Facilities	Community Center		256 E ORANGE AVE
7	50	W	OLIVE	AVE	PORTERVILLE PUBLIC LIBRARY	Facilities	Library	B	50 W OLIVE AVE UNIT B
8	291	N	MAIN	ST	CITY HALL	Facilities	City Hall		291 N MAIN ST
9	256	E	ORANGE	AVE	MARGARET J SLATTERY LIBRARY	Facilities	Library		256 E ORANGE AVE
11	555	N	PROSPECT	ST	CORPORATION YARD	Facilities	City Services		555 N PROSPECT ST
12	280	N	FOURTH	ST	SANTA FE DEPOT	Facilities	City Services		280 N FOURTH ST
13	393	N	HOCKETT	ST	ZALUD HOUSE	Facilities	Museum		393 N HOCKETT ST
14	300	E	OLIVE	AVE	JUSTICE CENTER	Facilities	Law		300 E OLIVE AVE
15	257	N	D	ST	PORTERVILLE MUSEUM	Facilities	Museum		257 N D ST
16	185	N	D	ST	ANIMAL SHELTER PRIMARY	Facilities	City Services		185 N D ST
17	65	W	MILL	AVE	US POST OFFICE	Facilities	Post Office		65 W MILL AVE
18	211	N	MAIN	ST	FAMILY CRISIS CENTER	Facilities	Services		211 N MAIN ST
19	14	N	MAIN	ST	PUBLIC DEFENDER	Facilities	Law		14 N MAIN ST
24	480	N	HENRAHAN	ST	US FOREST SERVICE	Facilities	Governemnt Services		480 N HENRAHAN ST
98	980	S	JAYE	ST	PORTERVILLE PUBLIC SAFETY BUILDING	Facilities	City Services		980 S JAYE ST
100	1893	S	NEWCOMB	ST	PORTERVILLE MUNICIPAL AIRPORT	Facilities	Airport		1893 S NEWCOMB ST
514	1061	W	HENDERSON	AVE	CSET	Facilities	County Services		1061 W HENDERSON AVE
630	313-315	W	HENDERSON	AVE	FAMILY SERVICES OF TULARE COUNTY	Facilities	County Services		313 W HENDERSON AVE
914	15	E	THURMAN	AVE	PARKS AND LEISURE SERVICES	Facilities	City Services	A	15 E THURMAN AVE #A
931	1900	W	OLIVE	AVE	PORTERVILLE VETERANS MEMORIAL BUILDING	Facilities	City Services		1900 W OLIVE AVE
1157	1333	W	GRAND	AVE	WASTE WATER TREATMENT FACILITY	Facilities	City Services		1333 W GRAND AVE
1158	1063	W	HENDERSON	AVE	TULARE COUNTY EMPLOYMENT CONNECTION	Facilities	County Services		1063 W HENDERSON AVE
1159	1055	W	HENDERSON	AVE	TULARE COUNTY HEALTH AND HUMAN SERVICES AGENCY	Facilities	County Services		1055 W HENDERSON AVE
1160	1055	W	HENDERSON	AVE	TULARE COUNTY PROBATION DEPARTMENT	Facilities	County Services		1055 W HENDERSON AVE
1161	890	W	MORTON	AVE	US SOCIAL SECURITY ADMINISTRATION	Facilities	Governemnt Services		890 W MORTON AVE
1167	300		INDIAN RESERVATION	DR	TULE RIVER TRIBAL COUNCIL	Facilities	Tribal		300 INDIAN RESERVATION DR
1168	1839	S	NEWCOMB	ST	TULARE COUNTY SHERIFFS OFFICE	Facilities	Governemnt Services		1839 S NEWCOMB ST
1193	259	N	MAIN	ST	TULARE COUNTY CHILD SUPPORT SERVICES	Facilities	County Services		259 N MAIN ST
1214	1013	E	OLIVE	AVE	PORTERVILLE CEMETERY	Facilities	Cemetery		1013 E OLIVE AVE
1223	1124	E	SUCCESS	DR	PORTA VISTA PUBLIC UTILITY	Facilities	Utility		1124 E SUCCESS DR
1234	1331	S	SECOND	ST	PORTERVILLE CALTRANS	Facilities	State Services		1331 S SECOND ST
1238	563	W	GIBBONS	AVE	ST ANNES CEMETERY	Facilities	Cemetery		563 W GIBBONS AVE
1240	1960	W	SCRANTON	AVE	SOUTH COUNTY DETENTION FACILITY TULARE COUNTY	Facilities	County Services		1960 W SCRANTON AVE
1263	1061	W	HENDERSON	AVE	TULARE COUNTY GOVERNMENT PLAZA SOUTH	Facilities	County Services		1061 W HENDERSON AVE
1308	16	E	OLIVE	AVE	DA OFFICE	Facilities	Law		16 E OLIVE AVE
1320	12261		ROAD 216		PORTERVILLE PD RANGE	Facilities	Governemnt Services		12261 ROAD 216
1326	29	N	PLANO	ST	ARMY NATIONAL GUARD	Facilities	Governemnt Services		29 N PLANO ST
1333	565	E	SCRANTON	AVE	VANDALIA CEMETERY	Facilities	Cemetery		565 E SCRANTON AVE
1360	165	N	D	ST	ANIMAL SHELTER SECONDARY	Facilities	City Services		165 N D ST
1429	220	E	MORTON	AVE	SEQUOIA NATIONAL FOREST HEADQUARTERS	Facilities	Governemnt Services		220 E MORTON AVE
32	534	N	E	ST	PORTERVILLE SCHOOL DISTRICT	School	Office		534 N E ST
52	465	W	OLIVE	AVE	PORTERVILLE HIGH SCHOOL	School	School		465 W OLIVE AVE
53	960	N	NEWCOMB	ST	MONACHE HIGH SCHOOL	School	School		960 N NEWCOMB ST
54	1701	E	PUTNAM	AVE	GRANITE HILLS HIGH SCHOOL	School	School		1701 E PUTNAM AVE
55	261	E	MULBERRY	AVE	CITRUS HIGH SCHOOL	School	School		261 E MULBERRY AVE
57	900	W	PIONEER	AVE	BUTTERFIELD CHARTER HIGH SCHOOL	School	School		900 W PIONEER AVE
58	335	N	G	ST	BARTLETT MIDDLE SCHOOL	School	School		335 N G ST
59	225	E	COLLEGE	AVE	PIONEER MIDDLE SCHOOL	School	School		225 E COLLEGE AVE
60	1450	W	CASTLE	AVE	SEQUOIA MIDDLE SCHOOL	School	School		1450 W CASTLE AVE
61	197	W	BELLEVIEW	AVE	BELLEVIEW ELEMENTARY	School	School		197 W BELLEVIEW AVE
62	1045	E	ORANGE	AVE	JOHN J DOYLE ELEMENTARY	School	School		1045 E ORANGE AVE
63	500	E	MULBERRY	AVE	LOS ROBLES ELEMENTARY	School	School		500 E MULBERRY AVE

64 701	W	WESTFIELD	AVE	MONTE VISTA ELEMENTARY	School	School	701 W WESTFIELD AVE
65 255	W	OLIVE	AVE	OLIVE STREET ELEMENTARY	School	School	255 W OLIVE AVE
66 388	N	ROCHE	ST	ROCHE AVENUE ELEMENTARY	School	School	388 N ROCHE ST
67 286	E	ORANGE	AVE	SANTA FE ELEMENTARY	School	School	286 E ORANGE AVE
68 271	E	COLLEGE	AVE	VANDALIA ELEMENTARY	School	School	271 E COLLEGE AVE
69 1345	W	PUTNAM	AVE	WEST PUTNAM ELEMENTARY	School	School	1345 W PUTNAM AVE
70 1151	W	PIONEER	AVE	WESTFIELD ELEMENTARY	School	School	1151 W PIONEER AVE
71 1414	W	OLIVE	AVE	PORTERVILLE ADULT SCHOOL	School	Special Education Center	1414 W OLIVE AVE
72 175	S	MATHEW	ST	SUMMIT CHARTER ACADEMY MATHEW CAMPUS	School	School	175 S MATHEW ST
73 15550		REDWOOD	ST	SUMMIT CHARTER COLLEGIATE ACADEMY	School	School	15550 REDWOOD ST
74 1509	N	LOMBARDI	ST	SUMMIT CHARTER ACADEMY LOMBARDI CAMPUS	School	School	1509 N LOMBARDI ST
75 2375	W	MORTON	AVE	BURTON ELEMENTARY SCHOOL	School	School	2375 W MORTON AVE
76 1873	W	MULBERRY	AVE	OAK GROVE ELEMENTARY SCHOOL	School	School	1873 W MULBERRY AVE
77 2573	W	WESTFIELD	AVE	WILLIAM R BUCKLEY ELEMENTARY SCHOOL	School	School	2573 W WESTFIELD AVE
78 252	N	WESTWOOD	ST	JIM MAPLES ACADEMY	School	School	252 N WESTWOOD ST
79 1155	N	ELDERWOOD	ST	BURTON MIDDLE SCHOOL	School	School	1155 N ELDERWOOD ST
80 100	E	COLLEGE	AVE	PORTERVILLE COLLEGE	School	College	100 E COLLEGE AVE
81 15518		REDWOOD	ST	SUMMIT CHARTER INTERMEDIATE ACADEMY	School	School	15518 REDWOOD ST
82 385	N	F	ST	ST ANNES SCHOOL	School	School	385 N F ST
83 254	W	ORANGE	AVE	TULARE COUNTY CHILD CARE EDUCATION PROGRAM	School	Special Education Center	254 W ORANGE AVE
84 2293	E	CRABTREE	AVE	ALTA VISTA ELEMENTARY SCHOOL	School	School	2293 E CRABTREE AVE
85 613	W	TEAPOT DOME	AVE	HOPE ELEMENTARY SCHOOL	School	School	613 W TEAPOT DOME AVE
86 900	W	PIONEER	AVE	PORTERVILLE MILITARY ACADEMY	School	School	900 W PIONEER AVE
87 1051	S	PLANO	ST	LB HILL LEARNING CENTER	School	Special Education Center	1051 S PLANO ST
88 645	N	PROSPECT	ST	PROSPECT EDUCATION CENTER	School	Special Education Center	645 N PROSPECT ST
180 265	W	HENDERSON	AVE	HOOPS PRESCHOOL	School	Preschool	265 W HENDERSON AVE
232 600	W	GRAND	AVE	PORTERVILLE UNIFIED SCHOOLS	School	Office	600 W GRAND AVE
364 314	N	MAIN	ST	SAN JOAQUIN VALLEY COLLEGE	School	College	314 N MAIN ST
524 420	N	E	ST	KRAYOLA KORNER	School	Preschool	420 N E ST
769 81	N	G	ST	PORTERVILLE 1ST BAP PRESCHOOL	School	Preschool	81 N G ST
1189 264	N	WESTWOOD	ST	BURTON SCHOOL DISTRICT	School	Office	264 N WESTWOOD ST
1190 331	N	F	ST	ST ANNES PRESCHOOL	School	Preschool	331 N F ST
1200 111	N	VILLA	ST	HAPPY HEARTS CHILDRENS CENTER	School	Preschool	111 N VILLA ST
1256 632	W	GRAND	AVE	PORTERVILLE SCHOOLS WAREHOUSE	School	Office	632 W GRAND AVE
1261 1061	S	PLANO	ST	LB HILL PRESCHOOL	School	Preschool	1061 S PLANO ST
1386 822	W	PIONEER	AVE	VINE COMMUNITY DAY SCHOOL	School	Special Education Center	822 W PIONEER AVE
1409 245	W	WALNUT	AVE	CHILDRENS CENTER SCHOOL	School	Preschool	245 W WALNUT AVE



CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: Status and Review of Local Drought Emergency

SOURCE: City Manager's Office

COMMENT: At its meeting of May 5, 2015, the City Council took action to approve a Resolution Declaring a Drought Emergency in the City of Porterville. At its meeting of February 20, 2024, the Council reviewed the status of existence of local emergency, and acted to continue its Resolution of local emergency.

HISTORY:

Governor Brown issued Executive Order B-29-15 on Wednesday, April 1, 2015, which established drought-related mandates and restrictions in addition to those already stipulated in previous Executive Orders B-26-14 and B-28-14. Of significance, the Governor directed the State Water Resources Control Board to impose restrictions to achieve a statewide twenty-five percent (25%) reduction in potable urban water usage through February 28, 2016, in comparison to the amount used in 2013, and with consideration given to per capita usage as a basis. The Governor further directed the Board to impose additional restrictions on commercial, industrial, and institutional properties with significant landscaping (cemeteries, golf courses, parks, schools, etc.), to also achieve a twenty-five (25%) reduction in potable water usage. Also of significance, the Board was directed to prohibit irrigation with potable water outside of newly constructed homes and buildings that is not delivered by drip or micro-spray systems.

On November 13, 2015, Governor Brown issued Executive Order B-36-15, which extends emergency conservation regulations through October 2016, if drought conditions persist through January 2016. On February 2, 2016, the State Water Resources Control Board adopted extended emergency water conservation regulations, to be in effect March 1 through October 31, 2016. The City of Porterville benefited somewhat from the extended regulations as the City's water conservation rate has been reduced from thirty-two percent (32%) to twenty-six percent (26%), due to new water connections that have been made and population served (4%), as well as a new climate adjustment factor that was considered (2%).

On May 9, 2016, Governor Brown issued Executive Order B-37-16 ("Making Water Conservation a California Way of Life"), which directs the State Water Resources Control Board to establish new regulations making permanent the emergency conservation regulations. On May 18, 2016, the State Water Resources Control Board adopted a statewide water conservation approach that replaces the percentage reduction-based water conservation standard with a

localized "stress test" approach that mandates urban water suppliers act immediately to ensure at least a three-year supply of water to their customers under continued drought conditions.

On April 7, 2017, Governor Brown issued Executive Order B-40-17, which ended the drought state of emergency in most of California, with the exception of Fresno, Kings, Tulare and Tuolumne counties where emergency water supply and reliability projects are continuing toward addressing diminishing groundwater supplies. The Order maintains monthly reporting requirements and prohibitions on wasteful practices.

On May 31, 2018, Governor Brown signed both AB 1668 (Friedman) and SB 606 (Hertzberg), which set permanent overall targets for indoor and outdoor water consumption. The legislation sets an initial limit for indoor water use of fifty-five (55) gallons per-person per-day in 2022, reducing to 52.5 gallons per-person per-day in 2025, and finally to fifty (50) gallons per-person per-day in 2030. The amount of residential outdoor use is yet-to-be determined, but will allow for varying regional climates. In addition, a standard for water loss due to leak rates in water system pipes will be established. As an urban water provider, the City will need to submit its plan for compliance for approval by the State Water Resources Control Board.

On March 5, 2021, Secretary Vilsack of the United States Department of Agriculture federally-designated Tulare County as a primary natural disaster area due to ongoing drought conditions. On April 21, 2021, Governor Newsom issued a State of Emergency Proclamation due to drought conditions, including Tulare County. On April 27, 2021, the Tulare County Board of Supervisors adopted a Resolution Proclaiming a Local Emergency due to severe drought conditions. On January 4, 2022, the State Water Resources Control Board adopted emergency regulations to supplement voluntary water conservation. On March 28, 2022, Governor Newsom issued Executive Order N-7-22, that requires the state's largest water providers (including the City of Porterville) to put in place "Level 2" of water shortage contingency plans, which the City is currently in "Level 4." On June 10, 2022, the State Water Resources Control Board adopted emergency regulations to prohibit the watering of nonfunctional or purely decorative grass in commercial, industrial or institutional properties with potable water. On March 24, 2023, due to atmospheric river storms during the month of March 2023, Governor Newsom issued Executive Order N-5-23 that ended the requirement that the state's largest water providers (including the City of Porterville) put in place "Level 2" of water storage contingency plans (the City of Porterville is currently in "Level 4"), as well as ended the voluntary fifteen percent (15%) water conservation target.

At its meeting on January 17, 2023, the Council considered an emergency request from the County of Tulare for assistance to Self-Help Enterprises, Inc. (SHE) in the provision of source water for the Emergency Tank Program that serves 389 residences across Tulare County where domestic wells have run dry due to continued drought. The County had been providing source water from its well at the Bob Wiley Detention Facility, north of Visalia, but the recent

rainfall had caused damage and the temporary closure of the access road to the well. The Council acted to grant the County's request for emergency assistance and provide source water to SHE to continue the Emergency Tank Program, to be reviewed at its next regular meeting on February 7, 2023. On January 20, 2023, SHE began taking City water for delivery. The County later reported that the access road had been repaired and that the County source well was accessible again to SHE beginning on February 1, 2023. According to the City water meter report, approximately 111,500 gallons of water was accessed by SHE, with a corresponding cost of \$350. At Council's direction, City staff has also been in contact and coordinating with the Eastern Tule Groundwater Sustainability Agency (ETGSA) in regard to source water from the ETGSA crossing over into other GSA territories and other Sub-basins (e.g. Kaweah) and addressing any potential impacts, although it is important to note that the same has been happening from the County well that is located in the Kaweah Sub-basin.

On August 2, 2023, Council Member Meister was made aware of the lack of drinking water and apparent lack of occasional water availability in the Del Oro Water Company system in the Springville area. During the March 2023 floods, six of the twelve water systems wells were damaged, several of which were damaged beyond repair. City staff was contacted by the Office of State Senator Shannon Grove in regard to the City-County Well Agreement, which dictates that at the request of the State and County, the City shall provide 3,000,000 gallons of water per month for the purpose of meeting emergency water needs in County jurisdiction and shall not charge the State or County for the water. Senator's Grove's Office has been coordinating with the State and Self-Help Enterprises in the potential placement of temporary tanks until Del Oro has completed its repair projects to sufficiently meet its customer demands.

Initially within the city of Porterville, twenty-six (26) residences within the city were determined to have dry wells, for which City staff submitted a Mutual Aid Request to Tulare County OES to initiate the household tank program for identified properties within the city where wells are dry and challenged for permanent connection. The State has committed funding for non-profit agencies to continue drought-related activities, which Self-Help Enterprises has continued the household tank program locally, through State Cleanup and Abatement Account (CAA) emergency funds.

Representatives for the City, County, State (CalOES, DDW, DWR, and SWB) and non-profit partners continued to meet in support of the long-term permanent water connection project for the entire East Porterville area and the estimated 1,800 expected future connections. DWR identified 423 residential units in the East Porterville area (381 of which are in the City's Urban Development Boundary), that were served by the County's Household Tank Program and desired by the State to be connected to the City's water distribution system as soon as possible. DWR has completed a significant City waterline extension project to permanently connect those 423 residential units to the City's water system (considered Phase I of the project). To provide initial source water for the DWR extension project, CalOES desired to expeditiously connect the new

well on Olive Avenue to the City's water system instead of being first equipped as a filling station. Given the new well has an estimated water production value of 800 gallons per minute, as well as a SWB assumed 1.5 gallons per minute per residence, the new well could effectively serve up to five hundred (500) single-family residential units. The City indicated its significant interest that the E. Vandalia Avenue area and its eighty (80) residential units be included in the water connection project, to which the State was agreeable.

Given CalOES has paid for the development of the new well, and its connection to the City's water system, the City will be required under "Drought Redundancy and Resiliency Provisions" to make available to the State up to three million gallons of water per month without charge for emergency purposes. On May 7, 2022, Tulare County OES notified the City that due to deteriorating conditions across the county involving small water systems dependent upon the Friant-Kern Canal that may result in the complete lack of water or "Do Not Drink" orders, the State and County may have to invoke the provision of water from the well.

To proceed with the connection of the new well to the City's water system and the 500 East Porterville and E. Vandalia Avenue residential units, the City Council approved modifications to the Draft Agreement between the City and County at its meeting on April 5, 2016, which the County Board of Supervisors subsequently approved at their meeting on May 10, 2016.

A Memorandum of Understanding between the State, County, and City on the East Porterville permanent water connection project was approved by the Council during a Special Meeting on Tuesday, June 21, 2016, and approved by the Board of Supervisors on Tuesday, June 28, 2016. With the approval of the MOU, the State began the permanent connection of approximately forty (40) homes that are located along existing City water mains. Subsequently, the State officially requested that the City approve the connection of an additional thirty (30) residences as part of the first immediate connections, for up to a total of seventy (70), which the Council approved at its meeting on August 2, 2016.

In regards to the new well's development and connection to the City's water distribution system, the Board of Supervisors awarded the contract for equipping and connecting the new well at its meeting on Tuesday, August 16, 2016, and construction activities commenced the week of October 10, 2016.

County staff had previously indicated that the well would be in service and connected to the City's system no later than December 2016, however, the well was operational and connected to the City's water distribution as of Friday, February 17, 2017. Given the delay in the well's completion and connection, DWR requested that the Council consider allowing the connection of residences as they become prepared for connection, to which the Council was receptive, and a Draft MOU Amendment was approved by the Council at its meeting on December 6, 2016, and subsequently approved by the Board of Supervisors at its meeting on December 20, 2016. City staff continued to work with County staff toward the transfer of the well's ownership from the County to the City, which at its meeting on April 20, 2021, the Council approved the draft Transfer

Agreement subject to the City Attorney's final form.

As of Friday, March 31, 2017, the date the State established as the final day for property owners to complete the registration process to participate in the State-funded connection program opportunity, of the 1,017 eligible developed residential properties identified by the State for connection, 722 completed the required Extra-Territorial Services Agreement, leaving 295 developed residential properties non-responsive to this unique connection program, twenty-three (23) of which were reported as having either dry or diminishing capacity wells. On February 6, 2018, the final residential connection was made of the approximate eligible eight hundred (800) residences in East Porterville to the City's water system.

City staff continues to coordinate with Self-Help Enterprises and State representatives toward the extension of water mains to serve all residential properties within City limits and the city's periphery that are currently participating in the County's Household Tank Program. The two main areas of focus are N. Cobb Street (northwest of State Route 65 and Pioneer Avenue), and S. Cloverleaf Street (southeast of State Route 65 and Olive Avenue). The State has maintained its commitment to grant-fund the necessary infrastructure and connection fees, providing an official funding letter to the City on January 18, 2018, which commits up to \$2.81 million in funding until December 31, 2019. The authorization to advertise for bids for the water connection project was approved by the Council at its July 17th meeting, after which DWR reviewed the bid package for compliance and approved in December the package for advertisement. Council authorized award of the construction contract for approximately \$1.82 million at its meeting on January 15, 2019. City staff conducted a pre-construction public outreach meeting with the affected residents on the status of the project on Thursday, April 4, 2019. Council authorized the agreement with Self-Help Enterprises Inc. to provide the private residential connections at its meeting on July 2, 2019, and construction work began on the project. At its meeting on October 1, 2019, the Council accepted the public works segment of the project in the installation of water mains as complete, with Self-Help and CSET continuing to collaborate on the completion of the individual private connections and abandonment of private wells. City staff has recently been made aware that there may be a couple of additional residences whose wells are dry that are located along existing City water mains or may require further extension of water mains. Staff is coordinating with State staff on addressing these new isolated needs.

County OES and the State Division of Drinking Water (DDW) have reported to the City that the Central Mutual Water Company, located south of the city and south of Gibbons Avenue, has had its well run dry and desires an immediate emergency connection to the City's water system to serve the forty-one (41) connections currently without water. DDW is wishing to support a financial application to upgrade the small water system to City standards (new water lines, meters ,etc.), and to sponsor an Urban Development Boundary (UDB) Amendment application to Tulare County Local Agency Formation Commission (LAFCO), given this area is currently outside the City's UDB but

within the City's Urban Area Boundary (UAB). Given several private wells have run dry in this area, DDW is also attempting to sponsor their connection to the City's water system. For source water capacity for the connections, DWR will include these new connections within the East Porterville water connection capacity development projects. At its Special meeting on August 30, 2019, the City Council directed staff to proceed with the immediate emergency connection of the Central water system, with the permanent connection of the system contingent upon an Agreement with DDW to the sponsorship conditions they have offered. At its meeting on October 1, 2019, the Council directed staff to proceed with the amendment of the UDB to facilitate annexation, which a public meeting with the affected residents was conducted on Wednesday, October 9, 2019. At its meeting on April 21, 2020, the Council conducted a Public Hearing and approved Resolutions of approval of the environmental determination and amendment to the UDB to facilitate annexation. At its meeting on June 1, 2021, the Council approved the State Water Board funding agreement for the development of a City-owned production well, distribution mains and water meters to serve each customer, as well as fire hydrants. On July 20, 2021, the City received notification from the State Water Board that the Akin/Central Water Consolidation Project funding agreement had been formally approved and executed. At its meeting on August 2, 2022, the Council authorized \$1,074,948 for the drilling phase of Well 34 (Akin). At its meeting on October 3, 2023, the Council accepted the drilling phase as complete, with the final construction cost of \$865,402. The equipping phase is the next step in having this well online by the 2024 calendar year.

DDW has also reported to the City that the Del Oro East Plano water system, located on Paul Street (southeast of the intersection of Plano Street and Worth Avenue), is experiencing problems with its existing well and have implemented severe water restrictions. The East Plano water system serves fourteen (14) residences and approximately forty-five (45) people. DDW is wishing to provide financial support to upgrade the small water system to City standards (new water lines, meters ,etc.), and for source water capacity for the connections, DDW would need to either pay appropriate fees and/or develop a capacity development project. The Council is aware that the Del Oro Grandview Gardens water system (north of W. North Grand Avenue) is also experiencing significant issues, and DDW may seek their future consolidation with the City's water system as well.

DDW has further reported to the City that the Beverly Grand Mutual Water Company water system, located north of West North Grand Avenue, is experiencing problems with its existing well and water quality issues, and desires its connection to the City's system to serve the thirty-one (31) residences the system serves. DDW is wishing to provide financial support to upgrade the small water system to City standards (new water lines, meters ,etc.), and for source water capacity for the connections, DDW has agreed to pay appropriate fees toward developing a capacity development project, which at its meeting of October 3, 2017, the Council approved a purchase agreement with Smee Homes, Inc. for the acquisition of property along the Tule River for the development of a new municipal well. At its meeting of October 1, 2019, the

Council approved proceeding with the consolidation of the Beverly Grand water system.

Consolidations and capacity projects continue to be a priority for completion. The city is in the final stages of constructing the remaining capacity for the East Porterville consolidation, with the equipping of Well No. 37, funded by the State Water Board, which is in the Bid process and expected to be completed by March 2026.

The City of Porterville and the entire Central Valley experienced significant rainfall during the storm events of March 2023, making it the third-wettest year since 1968-1969. With the impact of the annual precipitation received during 2023, the State of California is no longer identifying areas of significant drought. Staff would request the Council to consider shifting from the ongoing Declaration of Local Emergency and allow for future updates to be provided to the council at the time of monthly conservation reports.

RECOMMENDATION: That the City Council receive and review the Declaration of Local Emergency, and determine the need no longer exists to continue said Declaration.

ATTACHMENTS:

1. City of Porterville Resolution Declaring Local Drought Emergency: May 5, 2015
2. City-County Well Agreement - May 10, 2016
3. United States Department of Agriculture Drought Natural Disaster Area Designation: March 5, 2021
4. State of California State of Emergency Proclamation: April 21, 2021
5. County of Tulare Drought Local Emergency Resolution: April 27, 2021
6. State Water Resources Control Board: Emergency Regulation - Water Conservation; January 4, 2022
7. Governor Newsom Executive Order N-7-22: March 28, 2022
8. State Water Resources Control Board: Emergency Regulation - Water Conservation; June 10, 2022
9. Governor Newsom Executive Order N-5-23: March 24, 2023
10. State Water Resources Control Board Funding Agreement: Akin/Central Water Consolidation Project

Appropriated/Funded:

Review By:

Department Director:
Patrice Hildreth, City Manager

Final Approver: Jason Ridenour, Acting Deputy City Manager

RESOLUTION NO. 49-2015

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF PORTERVILLE DECLARING A DROUGHT EMERGENCY
WITHIN THE CITY OF PORTERVILLE

WHEREAS: in response to the ongoing severe drought, the State Water Resources Control Board approved an emergency regulation to ensure water agencies, their customers, and state residents increase water conservation in urban settings or face possible fines or other enforcement; and

WHEREAS: as we enter the fourth year of severe drought, long-term forecasts indicate no relief of the current drought conditions, and suggest a warmer-than-average summer, resulting in increased domestic demand for water; and

WHEREAS: public and private potable water supplies continue to be threatened due to decreasing supplies of groundwater caused by the precipitation deficit and an extended state of groundwater overdraft; and

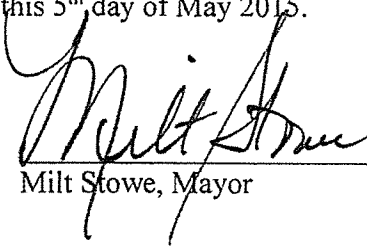
WHEREAS: the long-term ramifications of the current drought will have a significant impact on the city of Porterville and potentially pose a danger to the health and welfare of its residents; and

NOW, THEREFORE, BE IT RESOLVED: that the City Council of the City of Porterville does hereby proclaim that, due to drought conditions, a Local Emergency now exists in the city of Porterville and shall remain in effect for the duration of the emergency; and

BE IT FURTHER RESOLVED: that the City Council of the City of Porterville requests the Governor and California Department of Water Resources make available California Disaster Assistance Act funding for the State of Local Emergency proclaimed on May 5, 2015, and seek all available forms of Federal assistance, to include a Presidential Declaration of Emergency and Individual Assistance and Public Assistance programs as applicable; and

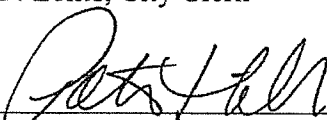
BE IT FURTHER RESOLVED: that a copy of this resolution be forwarded to the State Director of the Office of Emergency Services.

PASSED, APPROVED, AND ADOPTED this 5th day of May 2015.



Milt Stowe, Mayor

ATTEST:
John D. Lollis, City Clerk



By: Patrice Hildreth, Chief Deputy City Clerk

TULARE COUNTY – CITY OF PORTERVILLE WELL AGREEMENT

THIS AGREEMENT is entered into this day of, May 10, 2016, between the COUNTY OF TULARE, referred to as COUNTY, and the CITY OF PORTERVILLE, referred to as CITY, with reference to the following:

- A. WHEREAS, East Porterville/Doyle Colony area properties within the COUNTY's jurisdiction and within the CITY's Urban Development Boundary are experiencing serious water shortages due to the historical drought conditions. Attached hereto as Exhibit 'A' is a map defining the East Porterville/Doyle Colony and Vandalia areas; and
- B. WHEREAS, CITY and COUNTY have been and are collaborating to jointly develop a new municipal water well; and
- C. WHEREAS, COUNTY shall secure complete funding for a new well to be solely owned, operated and maintained by the CITY for the purpose of providing long-term capacity to enable permanent water connections to properties that comply with CITY'S Annexation and Extension of Municipal Services policy, with certain exceptions for specific properties in excess of the maximum lot size. These procedures are defined by two Resolutions, 74-2014 and 19-2016, which are attached hereto as Exhibit 'B'; and
- D. WHEREAS, the COUNTY owns a parcel at the southeast corner of the Tule River and Olive Avenue (APN 240-120-017), represented in Exhibit 'C', and has drilled a municipal supply well, and will equip said well utilizing CITY standards, after which the COUNTY shall convey the land to CITY at a cost of \$1; and
- E. WHEREAS, CITY operates an existing municipal water system, with limited infrastructure already established in the East Porterville/Doyle Colony and Vandalia areas, and has experience and qualifications necessary to provide such services; and
- F. WHEREAS, CITY and COUNTY mutually agree that a regional, collaborative solution to leverage and expand CITY'S municipal water system into the East Porterville/Doyle Colony and Vandalia areas is the most feasible means to address the area's water needs; and
- G. WHEREAS, CITY is willing to enter into this Agreement with COUNTY upon terms and conditions set forth herein; and
- H. WHEREAS, CITY and COUNTY mutually understand that due to the limited resources of the CITY's municipal water system, all future connections must comply with the CITY's Annexation and Extension of Municipal Services policies, with certain exceptions for specific properties in excess of the maximum lot size, attached hereto and made a part thereof as Exhibit 'B'.

ACCORDINGLY, IT IS AGREED:

- 1. **TERM:** This agreement shall become effective as of the date the agreement is fully executed by both agencies.
- 2. **SERVICES TO BE PERFORMED & PAYMENT FOR SERVICES – EQUIPPING MUNICIPAL WELL FACILITY:** Refer to attached Exhibit 'D'.

TULARE COUNTY AGREEMENT NO. 27596

3. **SERVICE TO BE PERFORMED IN PERPETUITY:** The services described below shall be performed in perpetuity upon completion of all tasks enumerated in Exhibit 'D' and upon COUNTY securing the funds for equipping the well to CITY standards and requirements:
- A. CITY shall provide to STATE and/or COUNTY, upon STATE and COUNTY's request, a maximum of three million (3,000,000) gallons of water per month upon integration of the well provided under this Agreement, for the purposes of meeting emergency water needs in COUNTY's jurisdiction. CITY shall not charge COUNTY or STATE for said water.
 - B. CITY shall utilize water produced by the well provided under this Agreement as source capacity for new service connections and agreements in East Porterville/Doyle Colony and Vandalia areas. CITY agrees to provide source water for up to four hundred twenty-three (423) new connections in the East Porterville/Doyle Colony area subject to the CITY'S Annexation and Extension of Municipal Services policies, with certain exceptions for specific properties in excess of the maximum lot size, and up to 80 new connections in the Vandalia area. The 423 new connections noted above are inclusive of those properties immediately adjacent to an existing water main, estimated at 40 parcels, which can be connected to the City's water system immediately upon execution of this agreement and the Memorandum(a) of Understanding between CITY, COUNTY, and STATE. Upon connection to CITY services, the listed properties will be exempt from payment of CITY water impact fees, but will be subject to standard fees, such as, but not limited to, water service and meter installation, unless otherwise financed by STATE or other funding sources, and associated monthly fees. This section shall not be construed to limit additional connections beyond the above referenced 503 properties provided for herein, where CITY provides consumption documentation that determines additional source capacity is available as a result of the connection of this well to CITY's system.
 - C. CITY expressly agrees to own, operate, maintain, repair and otherwise care for the well provided under this Agreement, in order to maintain it in proper working order and to the highest standard, for the duration of the well's useful life.
 - D. COUNTY shall grant the parcel on which the well is located to the CITY by Grant Deed at a cost of \$1 upon formal acceptance of the project. A 50-foot control zone around the well site is a requirement of the State Water Resources Control Board, Drinking Water Program, therefore establishing the minimum parcel size to be conveyed to the CITY. Existing COUNTY infrastructure may encroach through or conflict with the subject parcel and if so, ownership, maintenance, repair and replacement of these facilities shall transition to the City's responsibility by separate maintenance agreement upon acceptance of the project.
 - E. CITY shall not be entitled to compensation by COUNTY, or any State or Federal agency providing funding for the activities enumerated in Exhibit 'D', for any ongoing costs related to owning, operating, maintaining, repairing, or replacing this well. CITY and COUNTY expressly agree that CITY's ongoing compensation for such ongoing costs shall be the use of the well for CITY's use within its water system, unrestricted except as noted in "A"

above. No part of this paragraph shall be construed to limit or restrict in any way CITY's ability to seek any grant funding or collect rates and fees from users of CITY's water system.

- F. All recipients of water are subject to CITY water policies, such as, but not limited to, water conservation and watering schedules. Connections made as noted in "B" above may be subject to further water conservation thresholds as required by the STATE.

4. This Agreement represents the entire agreement between CITY and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

5. Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY: County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare
Administrative Building
2800 W. Burrel Avenue
Visalia, CA 93291

(Fax No.: (559) 733-6318 / Phone No. (559) 636-5005)

CITY: City Manager
291 N. Main St.
Porterville, CA 93257

(Fax No.: (559) 715-4013/ Phone No. (559) 782-7466)

Notice delivered personally or sent by facsimile transmission is deemed to be received upon receipt. Notice sent by first class mail shall be deemed received on the fourth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

6. This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any uncertainty.
7. Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.
8. This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. This Agreement is entered into and shall be performed in Tulare County, California. CITY waives the removal provisions of California Code of Civil Procedure Section 394.
9. The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party or either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.
10. The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

11. This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court of other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.
12. Each party agrees to execute any additional documents and to perform any further acts which may be reasonably required to affect the purposes of this Agreement.
13. CITY expressly agrees that it will not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.
14. Insurance
15. Permit
16. Dispute Resolution: If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.
17. Indemnification: CITY shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, the performance by CITY or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by CITY under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for CITY's failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

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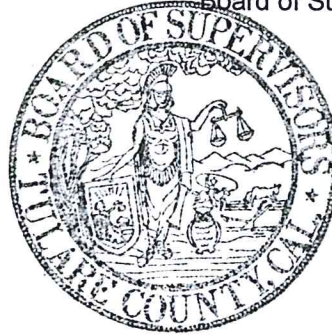
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THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

BY Mike Ennis
Mike Ennis Chairman,
Board of Supervisors



ATTEST: Michael C. Spata,
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By Danisa A. Ybana
Deputy Clerk

Approved as to Form
County Counsel

By M. Grice for LMT
Deputy 20151902

CITY OF PORTERVILLE

BY Milt Stowe
Milt Stowe, Mayor

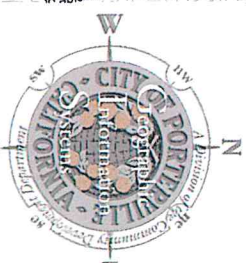
ATTEST:
City Clerk of the City of Porterville

BY J. L. Lolis
John Lolis, City Manager

Approved as to Form

BY [Signature]
City Attorney

EXHIBIT 'A'



 East Porterville Project Boundary



CityLimits

UDB

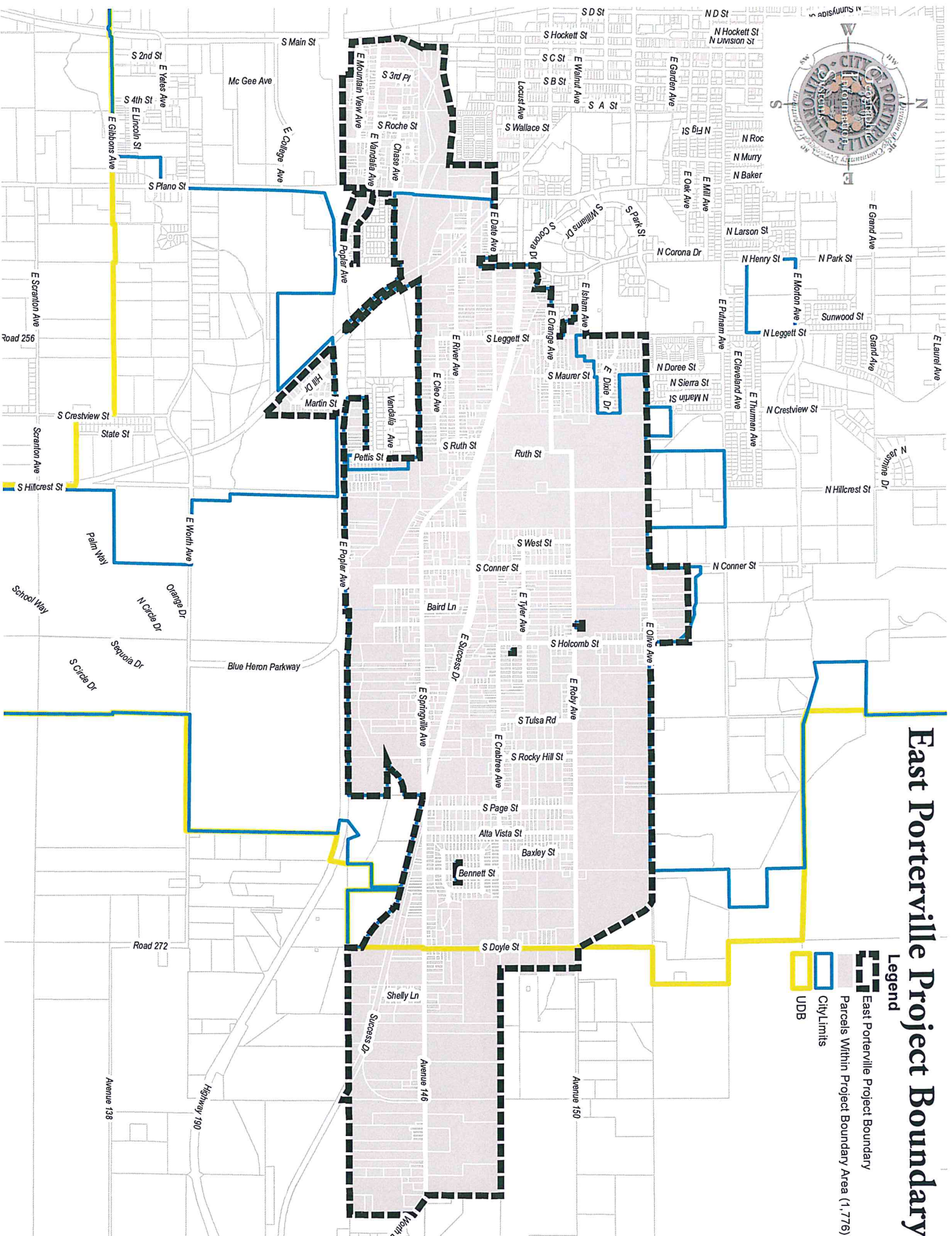


EXHIBIT 'B'

RESOLUTION NO. 74 -2014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE DEFINING OBJECTIVES AND POLICIES FOR ANNEXATIONS AND MUNICIPAL SERVICES

WHEREAS: The City of Porterville established a policy concerning annexation and provision of municipal services in 1986, noting that “the City, in order to grow for reasons of economies of scale and quality of services must expand its boundaries within reason, generally encourages the owners of properties contiguous to the city of Porterville to annex to said City of Porterville”; and

WHEREAS: Since 1990, the population of the city of Porterville has increased 53% according to the California Department of Finance, and the land area of the city proper has increased by 38% according to City annexation records; and

WHEREAS: The City of Porterville accepts its responsibility to provide municipal services to those residents, businesses, and other land uses within the limits of the city. The City of Porterville has taken the position that the costs of all physical improvements within the city have been paid by property owners, and other taxes derived in the city, and, therefore, these same people should not be required to bear the expense of additional physical improvements needed to serve newly annexed areas.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Porterville does hereby define the following objectives related to annexations and municipal services:

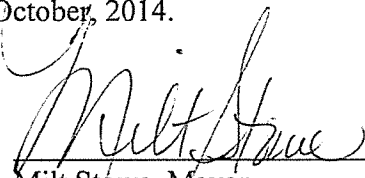
1. To promote orderly development while discouraging urban sprawl, preserving open space and prime agricultural lands, and efficiently extending government services.
2. To honor the City’s fundamental responsibility to provide efficient and sustainable public services to the inhabitants of the city, and where appropriate, to provide those services beyond the limits of the city within the Urban Development Boundary, and only in extreme cases to those properties beyond the Urban Development Boundary within the Urban Area Boundary.
3. To provide for land development and growth in a manner consistent with the General Plan, particularly as it relates to land use and circulation.
4. To consider an application upon its own merits, and identify what benefits would accrue to the City as an agency and service provider, to the residents of the city of Porterville, and to the applicant.
5. To identify the problems involved in any proposal considered for annexation or request for extra-territorial services and resolve them in the manner most beneficial to the properties within the city of Porterville.
6. To develop factual information to permit informed discussion between City representatives and property owners/residents of unincorporated territories.

BE IT FURTHER RESOLVED, that the City Council of the City of Porterville does hereby establish the following policies for consideration of annexations and municipal services:

1. It shall be the policy of the City of Porterville to consider annexation proposals only within the Urban Development Boundary, which is defined as the City of Porterville Annexation Boundary, as adopted by Tulare County Local Area Formation Commission (LAFCo).

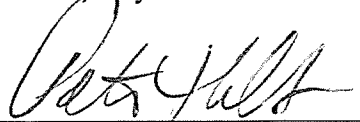
2. It shall be the policy of the City of Porterville to consider extra-territorial service requests primarily within the Urban Development Boundary, which is defined as the City of Porterville Annexation Boundary, as adopted by Tulare County LAFCo.
3. It shall be the policy of the City of Porterville, only where necessary in order to respond to an existing or impending threat to public health or safety of affected residents, to consider extra-territorial service requests within the Urban Area Boundary, as adopted by City Council and identified on the City of Porterville Zoning Map.
4. It shall be the policy of the City of Porterville to consider annexation proposals and extra-territorial service requests in a manner consistent with the policies and regulations adopted by the Tulare County LAFCo and the State of California, as applicable.
5. It shall be the policy of the City of Porterville to discourage single-family one (1) lot annexation proposals that may have an adverse fiscal impact on the City of Porterville.
6. It shall be the policy of the City Council that territory shall not be annexed to the city of Porterville, which as a result of such annexation, unincorporated territory is completely surrounded, or substantially surrounded by the city of Porterville.
7. It shall be the policy of the City of Porterville that annexation proposals shall be in conformance with the Cortese-Knox-Hertzberg Act of 2000, as amended.
8. It shall be the policy of the City Council to consider each petition/consent for annexation upon its relationship to what economic benefits will accrue to the City of Porterville, and to the area residents/property owners.
9. It shall be the policy of the City Council that the costs of all physical improvements will be borne by the property owners/resident or developer.
10. It shall be the policy of the City of Porterville to maintain the viability of agricultural productivity; i.e. protecting and conserving as much agricultural land as possible in the area surrounding the Porterville community.
11. It shall be the policy of the City of Porterville that the applicant for annexation present proposals to the Project Review Committee and explain the particulars of the area under consideration for possible annexation, including a plan for services.
12. It shall be the policy of the City of Porterville to consider any requests for annexation or extra-territorial services in a manner consistent with the procedures adopted by resolution of the City Council.

PASSED, APPROVED AND ADOPTED this 21st day of October, 2014.


Milt Stowe, Mayor

ATTEST:

John D. Lollis, City Clerk

By: 
Patrice Hildreth, Chief Deputy City Clerk

STATE OF CALIFORNIA)
CITY OF PORTERVILLE) SS
COUNTY OF TULARE)

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at regular meeting of the Porterville City Council duly called and held on the 21st day of October, 2014.

THAT said resolution was duly passed, approved, and adopted by the following vote:

Council:	REYES	WARD	STOWE	HAMILTON	GURROLA
AYES:	X		X	X	X
NOES:		X			
ABSTAIN:					
ABSENT:					

JOHN D. LOLLIS, City Clerk


By: Luisa M. Zavala, Deputy City Clerk

RESOLUTION 19-2016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
ESTABLISHING PROCEDURES FOR ANNEXATIONS AND EXTENSION OF
MUNICIPAL SERVICES

WHEREAS: On October 21, 2014, the City Council of the City of Porterville adopted two resolutions that defined objectives and policies, and established procedures for annexations and municipal services, respectively; and

WHEREAS: The on-going, severe drought of the past few years has created a situation where hundreds of parcels in the East Porterville area are experiencing dry wells, or wells of substandard water quality. State and regional agencies have come together with the City to identify and develop a long-term solution to this crisis, which will involve a significant infrastructure project to allow extension of municipal water services to the area. Not all parcels within the subject area meet the mandatory findings for extra-territorial service agreements as identified in the City's current procedures.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Porterville does hereby amend existing procedures to submit application for municipal services, and to have said application(s) processed as outlined in Exhibit "A", attached. The exemption identified for the East Porterville Feasibility Study Project Area will apply to the area represented in Exhibit "B".

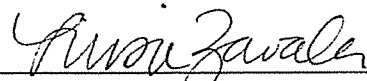
PASSED, APPROVED AND ADOPTED this 19th day of April, 2016.



Milt Stowe, Mayor

ATTEST:

John D. Lollis, City Clerk

BY 

Luisa Zavala, Deputy City Clerk

All properties requesting annexation or extraterritorial services are subject to the procedures established below unless otherwise stated. Compliance with City of Porterville procedures does not guarantee approval by LAFCo of annexations or extra-territorial service agreements. Upon request for an annexation or extraterritorial services request, staff will evaluate whether the applicant's property is within the City's Urban Development Boundary or Urban Area Boundary and explain the process.

ANNEXATION APPLICATION PROCEDURE

1. A complete annexation application packet includes: fees, an Irrevocable Agreement to Annex, information as needed to define a deed restriction specific to land use and zoning, Application for Annexation, and other materials as required with those applications respectively.
2. On receipt of an application as outlined above, all materials will be considered by the Project Review Committee, who will coordinate in a pre-consultation process with LAFCO staff and the County Public Works Department for review and recommendation.
3. During review by the Project Review Committee of the necessary application and data, staff will prepare a report and findings on all aspects of the proposed action(s).
4. An environmental document will be prepared pursuant to the California Environmental Quality Act (CEQA), reviewing the potential environmental effect of the proposed activities. The Zoning Administrator will make an initial determination of the level of environmental review required.
5. After proper noticing, a public hearing will be held for the City Council to hear comments related to the project at a regularly scheduled meeting. The Council will authorize staff to initiate the application with LAFCo. Documents will be filed in accordance with the Cortese-Knox-Hertzberg Act of 2000, as amended, and submitted to the Local Agency Formation Commission for its review, recommendation and action.
6. On consummation by the City Council, the City Clerk shall submit the necessary materials to the State Board of Equalization with the appropriate acreage fees, which are paid by the Applicant.
7. In the event the annexation fails, either by dissenting votes of the City Council or at hearing at LAFCo, the City Council may approve an extraterritorial service agreement within the Urban Development Boundary, subject to conditions identified in the deed restriction.

ANNEXATION EXEMPTION PROCEDURE

Where a certain property meets all of the following criteria, they may proceed with an Extraterritorial Service Agreement for water or storm-water drainage without first attempting annexation, subject to the conditions of Extraterritorial Service Agreements as defined below.

1. Previously developed single family residences on parcels 24,999 square feet or smaller, OR a school developed by a State funded school district.
2. The parcel requesting services must be immediately adjacent to a municipal main providing the requested service, or the property owner shall provide for the extension of the main line to City standards at their expense.

EXTRATERRITORIAL SERVICES APPLICATION PROCEDURE

Extraterritorial Service connections may be made subject to the following conditions. Note specific parameters and the required findings for connections in the Urban Development Boundary and the Urban Area Boundary.

1. Application: A complete extraterritorial services application packet includes: fees, an Irrevocable Agreement to Annex, information as needed to define a deed restriction specific to land use and zoning, and other materials as required with those applications respectively.
2. General Plan Consistency:
 - a. Proposed Uses and Improvements: Service connections are to be withheld from proposed uses and improvements that would not be consistent with the adopted Land Use Element of the Porterville Area General Plan and the City of Porterville General Plan.
 - b. Existing Uses and Improvements: Service connections to existing uses and improvements which are not consistent with the adopted Land Use Element of the Porterville Area General Plan and the City of Porterville General Plan shall be considered at the discretion of the City Council, and may be subject to other restrictions.
3. Agreements and covenants:
 - a. A deed restriction specific to land use and zoning must be approved by the property owner and the City Council, and recorded with the County of Tulare upon the property, at the applicant's cost.
 - b. An irrevocable agreement to annex must be signed by the property owner and recorded with the County of Tulare upon the property, at the applicant's cost.
4. Time limitations: The City Manager or his designee, or the City Council may condition the approval of applications for service connections by establishing a time frame within which connections must be made to avoid re-application.
5. Improvement Plans: Applications for service connections, which necessitate the extension of one or more municipal facilities to property in order to make such connections, shall be conditioned by the City Manager or his designee, or the City Council to require that Construction Drawings of the intended public improvements be submitted to the City Engineer for plan check and approval. Costs incurred for the preparation of improvement plans, and certain off-site construction and/or installation costs related to extending facilities, shall be the responsibility of the applicant.
6. Fees: Prior to the issuance of a Connection Permit, payment must be made to the City of Porterville of all fees pertinent to the respective service connection, or connections, approved by the City Manager or his designee, or the City Council.

Within the Urban Development Boundary:

For connection of water or storm-water facilities, the requesting party must fully fund the extension of infrastructure if it does not already exist in order to connect. The City of Porterville Wastewater Facility is a regional facility and as such, an extraterritorial service request cannot be denied; however, the requesting party must fund a fair share of the extension of infrastructure if it does not already exist in order to connect. Contract services for police, fire, or building inspection services shall be approved by resolution of the City Council.

For connection of water or storm-water facilities, the following findings must be made in order for the Council approve an extraterritorial service connection:

- That the subject property is a previously developed single family residence on a parcel 24,999 square feet or smaller, OR a school developed by a State funded school district.
- That failure to connect to municipal services would result in a threat to public health or safety of affected residents.
- That connection of the subject property would not result in a negative impact to the City of Porterville water and/or storm-water system.
- That the subject property is not within an island as defined by Tulare LAFCo.
- That an attempt to annex the subject site is not realistic given current city limit boundaries. Specifically, the parcel is too far removed from the city limit, and/or the number and valuation of adjacent parcels would result in a failed annexation effort.

Within the Urban Area Boundary:

For connection of water or storm-water facilities, the requesting party must fully fund the extension of infrastructure if it does not already exist in order to connect. The City of Porterville Wastewater Facility is a regional facility and as such, an extraterritorial service request cannot be denied; however, the requesting party must fund a fair share of the extension of infrastructure if it does not already exist in order to connect. Contract services for police, fire, or building inspection services shall be approved by resolution of the City Council.

For connection of water or storm-water facilities, the following findings must be made in order for the Council approve an extraterritorial service connection:

- That the subject property is a previously developed single family residence on a parcel 24,999 square feet or smaller, OR a school developed by a State funded school district.
- That failure to connect to municipal services would result in a threat to public health or safety of affected residents.
- That connection of the subject property would not result in a negative impact to the City of Porterville water and/or storm-water system.

EXEMPTIONS AND EXCEPTIONS

1. PVPUD: Connections to Porterville Regional Sewage Treatment Facilities serving uses and improvements to property within the boundaries and jurisdiction of the Porter Vista Public Utility District (PVPUD) are exempted from application to the City of Porterville. Interested parties should contact the PVPUD for information on connection requirements and fees pertaining

to sewer services. This exemption does not apply to requests for connection to Municipal Water and/or Master Storm Drain Facilities.

2. PRIOR APPROVALS: Porterville City Council approval of requests for connection to Regional Sewage Treatment, Municipal Water and/or Master Storm Drain Facilities as authorized prior to the adoption and effective date of the respective policies set forth herein shall remain valid and in force according to the terms and conditions initially specified at the time of approval, and re-application will not be required.

3. PROPERTIES WITHIN THE EAST PORTERVILLE FEASIBILITY STUDY PROJECT AREA: The California State Water Resources Control Board, in coordination with the Department of Water Resources Drought Task Force, is charged with preparing a feasibility study to define a long-term solution to the water related issues in East Porterville. Properties within that boundary would be permitted to apply for connection, whether in association with DWR, SWRCB, or at a later date, on their own. Such connections would be subject to the mandatory findings as outlined in this procedure, with the following exceptions:

- Rather than require that the subject property be a developed single-family residence on a parcel 24,999 square feet or smaller, neither the land use nor the parcel size would be restricted neither the land use nor the parcel size would be restricted for legal and legal non-conforming structures and land uses existing as of April 29, 2016.
- Further, properties within certain islands in the EPFS Project Area would not be required to annex prior to connection. This exception does not limit the City of Porterville's authority to pursue annexation in the future, but rather waives the requirement that annexation must be approved prior to connection.

East Porterville Properties



STATE OF CALIFORNIA)
CITY OF PORTERVILLE) SS
COUNTY OF TULARE)

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at regular meeting of the Porterville City Council duly called and held on the 19th day of April, 2016.

THAT said resolution was duly passed, approved, and adopted by the following vote:

Council:	REYES	WARD	STOWE	HAMILTON	GURROLA
AYES:	X	X	X	X	
NOES:					
ABSTAIN:					
ABSENT:					X

JOHN D. LOLLIS, City Clerk


By: Luisa Zavala, Deputy City Clerk

EXHIBIT 'C'



EXHIBIT 'D'

Scope of Work

Task	Description	Cost
1.2	Prepare Well Drilling Plans, Specifications, and Estimates	\$468.00
3.2	Prepare Well Equipping Plans, Specifications, and Estimates	\$1,526.00
5	Ph. 1 Preconstruction Meeting	\$1,357.43
Total:		\$3,351.43

Consulting Engineering work will be reimbursed directly to Dee Jaspar & Associates under Tulare County Agreement No. 1276, including the following Tasks:

Task 4.1	Project Evaluations and Field Surveying	\$58,326.00
Task 4.2	Prepare Well Equipping Plans, Specifications, and Estimates	\$30,000.00
Task 4.3	Prepare and Assist with SCE Application & Telephone Service	\$5,000.00
Task 4.4	SCE Costs	\$15,000.00
Total:		\$108,326.00



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

March 5, 2021

The Honorable Gavin Newsom
Governor
State of California
Sacramento, California 95814

Dear Governor Newsom:

In accordance with 7 CFR 759.5(a), I am designating 50 California counties as primary natural disaster areas due to a recent drought.

According to the U.S. Drought Monitor (see <http://droughtmonitor.unl.edu/>), these counties suffered from a drought intensity value during the growing season of 1) D2 Drought-Severe for 8 or more consecutive weeks or 2) D3 Drought-Extreme or D4 Drought-Exceptional.

In accordance with section 321(a) of the Consolidated Farm and Rural Development Act, additional areas of your state and adjacent states are named as contiguous disaster counties. Enclosed you will find documentation that provides a detailed list of all primary and contiguous counties impacted by this disaster.

A Secretarial disaster designation makes farm operators in primary counties and those counties contiguous to such primary counties eligible to be considered for certain assistance from the Farm Service Agency (FSA), provided eligibility requirements are met. This assistance includes FSA emergency loans. Farmers in eligible counties have 8 months from the date of a Secretarial disaster declaration to apply for emergency loans. FSA considers each emergency loan application on its own merits, taking into account the extent of production losses on the farm and the security and repayment ability of the operator.

Local FSA offices can provide affected farmers with further information.

Sincerely,

A handwritten signature in blue ink, reading "Tom J. Vilsack", is positioned above the printed name of the Secretary.

Thomas J. Vilsack
Secretary

Enclosure

Disaster Designation Areas for California and Contiguous States

Primary Counties:

California	(50)			
Alameda	Glenn	Marin	Riverside	Solano
Alpine	Humboldt	Mariposa	Sacramento	Sonoma
Amador	Imperial	Mendocino	San Bernardino	Stanislaus
Butte	Inyo	Merced	San Francisco	Sutter
Calaveras	Kern	Modoc	San Joaquin	Tehama
Colusa	Kings	Mono	San Mateo	Trinity
Contra Costa	Lake	Napa	Santa Clara	Tulare
Del Norte	Lassen	Nevada	Shasta	Tuolumne
El Dorado	Los Angeles	Placer	Sierra	Yolo
Fresno	Madera	Plumas	Siskiyou	Yuba

Contiguous Counties:

California	(8)		
Monterey	San Benito	San Luis Obispo	Santa Cruz
Orange	San Diego	Santa Barbara	Ventura

In addition, in accordance with section 321(a) of the Consolidated Farm and Rural Development Act, counties in adjacent states are named as contiguous disaster areas. Those states, counties, and numbers are:

Contiguous Counties in Adjacent States:

Arizona	(3)		
La Paz	Mohave	Yuma	
Nevada	(8)		
Clark	Esmeralda	Mineral	Washoe
Douglas	Lyon	Nye	Carson City
Oregon	(5)		
Curry	Josephine	Lake	
Jackson	Klamath		

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

State of Emergency Proclamation

WHEREAS climate change is intensifying the impacts of droughts on our communities, environment and economy, and California must therefore improve drought resiliency and prepare to respond to more frequent, prolonged, and intense dry periods; and

WHEREAS much of the West is experiencing severe to exceptional drought and California is in a second consecutive year of dry conditions, resulting in drought or near-drought throughout many portions of the State; and

WHEREAS these drought conditions can result in degraded water quality, fallowing of productive farmland, setbacks to vulnerable and rural communities through job losses and longer-lasting recoveries, significant impacts to tribal, commercial, and recreational salmon fisheries, constraints on access to traditional lifeways, loss of aquatic and terrestrial biodiversity, and ecosystem impacts; and

WHEREAS drought conditions vary across the State and some watersheds, including the Russian River and Klamath Basin, are extremely dry and are facing substantial water supply and ecosystem challenges; and

WHEREAS it is necessary to expeditiously mitigate the effects of the drought conditions within the Russian River Watershed, located within Mendocino and Sonoma counties, to ensure the protection of health, safety, and the environment; and

WHEREAS experience in the last drought has demonstrated the value of preparing earlier for potential sustained dry conditions, the need to improve our monitoring and forecasting capabilities, and many other lessons that are captured in the Administration's *Report to the Legislature on the 2012-2016 Drought*; and

WHEREAS the State and its many partners have strengthened drought resilience since the last drought including state investments in water management systems, implementation of the Sustainable Groundwater Management Act, establishment of the Safe and Affordable Fund for Equity and Resilience Program, development of the Administration's *Water Resilience Portfolio*, and continued water conservation by Californians whose current statewide urban water use is 16% lower than at the beginning of the last drought; and

WHEREAS state agencies have been actively responding to current drought conditions and preparing for the possibility of a third dry year including through convenings of the interagency drought team, which was established at my direction, to organize, focus, and track changing conditions, coordinate state agency responses, and work closely with partners across the State; and

WHEREAS under the provisions of Government Code section 8558(b), I find that the conditions caused by the drought conditions, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single local government and require the combined forces of a mutual aid region or regions to appropriately respond; and

WHEREAS under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the drought conditions; and

WHEREAS to protect public health and safety, it is critical the State take certain immediate actions without undue delay to prepare for and mitigate the effects of, the drought conditions within the Russian River Watershed, and under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Proclamation would prevent, hinder, or delay the mitigation of the effects of the drought conditions of the Russian River Watershed, located within Mendocino and Sonoma counties.

NOW THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in Mendocino and Sonoma counties due to drought conditions in the Russian River Watershed.

IT IS HEREBY ORDERED THAT:

1. To further the success of California's water conservation efforts and increase our drought preparedness, state agencies shall partner with local water districts and utilities to make all Californians aware of drought, and encourage actions to reduce water usage by promoting the Department of Water Resources' Save Our Water campaign (<https://saveourwater.com>) and other water conservation programs.
2. To continue coordination with partners across the State for the potential of prolonged drought impacts, the Department of Water Resources, the State Water Resources Control Board (Water Board), the Department of Fish and Wildlife, and the Department of Food and Agriculture shall work with regional and local governments, including groundwater sustainability agencies, to identify watersheds, communities, public water systems, and ecosystems that may require coordinated state and local actions to address issues stemming from continued dry conditions, to ensure that we can respond to water shortages and protect people, natural resources and economic activity.
3. To continue partnership and coordination with Californian Native American tribes, state agencies shall engage in consultation, collaboration, and communication with California Native American tribes to assist them in necessary preparation and response to drought conditions on tribal lands and potential impacts to cultural and traditional resources within ancestral lands.
4. To prioritize drought response and preparedness resources, the Department of Water Resources, the Water Board, the Department of Fish and Wildlife and the Department of Food and Agriculture, in consultation with the Department of Finance, shall:
 - a. Accelerate funding for water supply enhancement, water conservation, or species conservation projects.
 - b. Identify unspent funds that can be repurposed to enable projects to address drought impacts to people, ecosystems, and economic activities.
 - c. Recommend additional financial support for water resilience infrastructure projects and actions for potential inclusion in the upcoming May Revision.

5. To increase resilience of our water supplies during drought conditions, the Department of Water Resources shall:
 - a. Work with counties to encourage reporting of household water shortages, such as dry residential wells, on the website the Department maintains for that purpose, to enable tracking of drought impacts.
 - b. Work with counties, and groundwater sustainability agencies as appropriate, to help ensure that well drillers submit required groundwater well logs for newly constructed and deepened wells in a timely manner.
 - c. Work with agricultural water suppliers and agricultural water users to provide technical assistance, including implementation of efficient water management practices and use of technology such as the California Irrigation Management Information System.
 - d. Work with urban and agricultural water suppliers to encourage timely submittal by water districts and public posting of urban water management and water shortage contingency plans and agricultural water management and drought plans.
 - e. Accelerate updating the land subsidence data it is providing to support implementation of the Sustainable Groundwater Management Act.
6. To increase resilience of our water systems during drought conditions, the Water Board shall:
 - a. Use its authority, provide technical assistance, and where feasible provide financial assistance, to support regular reporting of drinking water supply well levels and reservoir water levels where the Water Board determines that there is risk of supply failure because of lowering groundwater levels or reservoir levels that may fall below public water system intakes.
 - b. Prioritize the permitting of public water systems that anticipate the need to activate additional supply wells where water quality is a concern and treatment installation needs to proceed to relieve a system's potential supply concerns.
 - c. Provide annual water demand data, information on water right priority, and other communications on water availability on its website.
 - d. Identify watersheds where current diversion data is insufficient to evaluate supply impacts caused by dry conditions, and take actions to ensure prompt submittal of missing data in those watersheds.
7. To address the acutely dry conditions in the Russian River Watershed, the Water Board shall consider:
 - a. Modifying requirements for reservoir releases or diversion limitations in that watershed to ensure adequate, minimal water supplies for critical purposes.
 - b. Adopting emergency regulations to curtail water diversions when water is not available at water rights holders' priority of right or to protect releases of stored water.

For purposes of carrying out this directive, Public Resources Code, Division 13 (commencing with section 21000) and regulations adopted pursuant to that Division are suspended in the counties of Mendocino and Sonoma to the extent necessary to address the impacts of the drought in the Russian River Watershed. The Water Board shall identify the projects

eligible for the suspensions pursuant to this paragraph and maintain on its websites a list of the activities or approvals for which these provisions are suspended.

8. To ensure that equipment and services necessary for drought response in the Russian River Watershed can be procured quickly, the provisions of the Government Code and the Public Contract Code applicable to procurement, state contracts, and fleet assets, including, but not limited to, advertising and competitive bidding requirements, are hereby suspended to the extent necessary to address the effects of the drought in the Russian River Watershed, located within Mendocino and Sonoma counties. Approval of the Department of Finance is required prior to the execution of any contract entered into pursuant to this provision.
9. To increase the resilience of our natural habitats to protect vulnerable species during drought conditions, the Department of Fish and Wildlife shall:
 - a. Evaluate and take actions to protect terrestrial and aquatic species and, wherever possible, work with water users and other parties on voluntary measures to protect species.
 - b. Work to improve State hatcheries and increase water use efficiency on State wildlife areas and ecological reserves to maintain habitat for vulnerable species.
 - c. Respond to human-wildlife interactions related to ongoing dry conditions and increase public messaging and awareness.
 - d. Work with commercial and recreational salmon fishing and tribal representatives to anticipate and develop strategies to mitigate and respond to salmon fishery impacts, with particular emphasis on addressing impacts to salmon fisheries in the Klamath Basin.
10. To support our agricultural economy and food security during drought conditions, the Department of Food and Agriculture shall:
 - a. Provide technical assistance to support conservation planning, on-farm water and energy conservation practices and technologies, including augmenting the State Water Efficiency and Enhancement Program.
 - b. Conduct an economic analysis of drought impacts to agriculture, including land use, jobs, and rural food economies, expanding on existing research done in the last drought to include thorough regional analysis especially in the Central Valley, and in the implementation of the Sustainable Groundwater Management Act and alternative land uses for fallowed land.
 - c. Maintain a web page with drought resources for farmers and ranchers, including the United States Department of Agriculture and other federal and state resources.
 - d. Work with federal agencies to assist Klamath Basin farmers and ranchers contending with reduced water supplies.
11. To ensure the potential impacts of drought on communities are anticipated and proactively addressed, the Department of Water Resources, in coordination with the Water Board, shall develop groundwater management principles and strategies to monitor, analyze, and minimize impacts to drinking water wells.
12. To provide critical information on the different drought conditions across the State, the Department of Water Resources, in consultation with the Department of Fish and Wildlife, the Department of Food and Agriculture,

and the Water Board, shall develop a California Drought Monitor by December 31, 2021, as recommended in the Administration's Report to the Legislature on the 2012-2016 Drought.

13. To prepare for potential salinity issues in the Delta, the Department of Water Resources, in consultation with the Water Board, the Department of Fish and Wildlife, the Delta Stewardship Council, and the Central Valley Flood Protection Board, shall initiate actions necessary to prepare for and address potential Delta salinity issues during prolonged drought conditions.

14. To prepare for potential impacts of drought conditions on species, the Water Board and the Department of Fish and Wildlife shall work with federal agency partners to manage temperature conditions for the preservation of fish in the Sacramento River downstream of Shasta Dam while balancing water supply needs.

This Proclamation is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

I FURTHER DIRECT that as soon as hereafter possible, this Proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Proclamation.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 21st day of April 2021



GAVIN NEWSOM
Governor of California

ATTEST:

DR. SHIRLEY WEBER
Secretary of State

RESOLUTION PROCLAIMING A LOCAL EMERGENCY BY THE BOARD OF SUPERVISORS COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF A)
LOCAL EMERGENCY DUE TO)
SEVERE DROUGHT CONDITIONS)

RESOLUTION NO. 2021-0290

WHEREAS, California's most recent drought spanning from approximately 2012 to 2018 required the proclamation of a Local Emergency by the County of Tulare from February 2014 to November 2019, as well as a Governor's State of Emergency and the combined resources of multiple local, state, and federal agencies, commercial entities, and non-profit organizations to mitigate; and

WHEREAS, over 3,000 failed or dry wells – including private domestic, community, and agricultural wells – were reported to Tulare County from 2014 to 2017 as a result of the prior drought, causing significant health, safety, and economic issues for Tulare County residents and businesses; and

WHEREAS, well over \$100 million in emergency relief and permanent infrastructure projects were expended to mitigate the effects of the prior drought; and

WHEREAS, a hydrological year ("water year") runs from October 1 to September 30 of the following year; and

WHEREAS, the current water year beginning October 1, 2020 is, to date, the third-driest on record, with potential to become the driest on record without significant additional precipitation which is unlikely to occur during the traditionally dry months; and

WHEREAS, the United States Drought Monitor shows that 94.51% of Tulare County is currently experiencing "Extreme Drought" (D3) conditions and the remaining 5.49% is in "Severe Drought" (D2) conditions, and the County of Tulare anticipates that these conditions will progress to "Exceptional Drought" (D4) conditions as occurred in the prior drought based on the current Southern Sierra snowpack measured at only 15% of historical average for April 1st, drastically reduced surface water allocations on the State Water Project and Central Valley Project, and correspondingly low water levels in local reservoirs; and

WHEREAS, surface water supply constraints create a demonstrable and unsustainable increase in demand for groundwater which is likely to cause additional dry wells for community water systems, private domestic wells, and agricultural wells, creating economic hardships and conditions of extreme peril to the health and safety of individuals within Tulare County requiring the combined forces of all levels of government to mitigate; and

WHEREAS, California Government Code section 8630 empowers the Board of Supervisors to proclaim the existence or threatened existence of a local emergency; and

WHEREAS, Section 1-15-1005 of the Tulare County Ordinance Code defines "emergency" to include "the actual or threatened existence of conditions of disaster or of

extreme peril to the safety of persons and property within [Tulare] County caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, earthquake, or other conditions, ... which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of [Tulare] County, requiring the combined forces of other political subdivisions to combat"; and

NOW, THEREFORE, IT IS HEREBY PROCLAIMED that a local emergency now exists throughout said Tulare County due to drought which has created conditions of disaster and extreme peril to the safety of persons and property within the County, and that such conditions are or are likely to be beyond the control of the services, personnel, equipment, and/or facilities of this County, thus requiring the combined forces of other political subdivisions to combat; and

IT IS FURTHER PROCLAIMED that this local emergency is proclaimed pursuant to the California Emergency Services Act, California Government Code §8550 et seq.; and

IT IS REQUESTED that the Governor of the State of California find and proclaim Tulare County to be in a State of Emergency, and make available any and all material and financial support and resources necessary to combat the conditions of disaster, including but not limited to California Disaster Assistance Act funding for emergency protective measures and increased funding to relevant programs of the State Water Resources Control Board and Department of Water Resources; and

IT IS FURTHER REQUESTED that the Governor waive and all regulations and statutes that may hinder response to this emergency; and

IT IS PROCLAIMED AND ORDERED that during the existence of said local emergency, the powers, functions, and duties of the emergency organization of Tulare County shall be those prescribed by State law, by ordinances and resolutions of Tulare County, and by the Tulare County Operational Area Emergency Operations Plan, as approved by the Board of Supervisors.

UPON MOTION OF SUPERVISOR MICARI, SECONDED BY SUPERVISOR TOWNSEND, THE FOLLOWING WAS ADOPTED BY THE BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD APRIL 27, 2021, BY THE FOLLOWING VOTE:

AYES: SUPERVISORS MICARI, VANDER POEL, SHUKLIAN, VALERO AND TOWNSEND

NOES: NONE

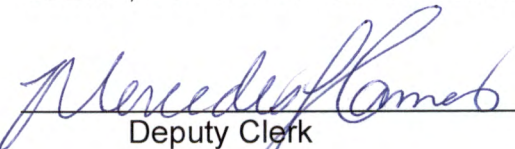
ABSTAIN: NONE

ABSENT: NONE

ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS



BY:


Deputy Clerk

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2022-0002**

**TO ADOPT AN EMERGENCY REGULATION
TO SUPPLEMENT VOLUNTARY WATER CONSERVATION**

WHEREAS:

1. On April 21, May 10, and July 8, 2021, Governor Newsom issued proclamations that a state of emergency exists in a total of 50 counties due to severe drought conditions and directed state agencies to take immediate action to preserve critical water supplies and mitigate the effects of drought and ensure the protection of health, safety, and the environment.
2. On October 19, 2021, Governor Newsom signed a proclamation extending the drought emergency statewide and further urging Californians to reduce their water use.
3. There is no guarantee that winter precipitation will alleviate the current drought conditions.
4. Many Californians have taken bold steps over the years to reduce water use; nevertheless, the severity of the current drought and uncertainty about Water Year 2022 require additional conservation actions from residents and businesses.
5. Water conservation is the easiest, most efficient, and most cost-effective way to quickly reduce water demand and extend supplies into the next year, providing flexibility for all California communities. Water saved is water available next year, giving water suppliers the flexibility to manage their systems efficiently. The more water that is conserved now, the less likely it is that a community will experience such dire circumstances or that water rationing will be required.
6. Most Californians use more water outdoors than indoors. In many areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes would not suffer greatly from receiving a decreased amount of water.

7. Public information and awareness are critical to achieving conservation goals, and the Save Our Water campaign ([SaveOurWater.com](https://www.saveourwater.com)), run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective drought response.
8. [SaveWater.CA.Gov](https://www.savewater.ca.gov) is an online tool designed to help save water in communities. This website lets anyone easily report water waste from their phone, tablet, or computer by simply selecting the type of water waste they see, typing in the address where the waste is occurring, and clicking send. These reports are filed directly with the State Water Resources Control Board (State Water Board or Board) and relevant local water supplier.
9. Enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated.
10. On October 19, 2021, the Governor suspended the environmental review required by the California Environmental Quality Act to allow State Water Board-adopted drought conservation emergency regulations and other actions to take place quickly to respond to emergency conditions.
11. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: “prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.”
12. On November 30, 2021, the State Water Board issued public notice that the State Water Board would consider the adoption of the regulation at the Board’s regularly scheduled January 4, 2022 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations.
13. The emergency regulation sets a minimum standard that many communities are already doing more but not everyone is taking these low-cost, easy to implement actions that can save significant amounts of water during a drought emergency.

14. Disadvantaged communities may require assistance in increasing water conservation, and state and local agencies should look for opportunities to provide assistance in promoting water conservation, including but not limited to translation of regulation text and dissemination of water conservation announcements into languages spoken by at least 10 percent of the people who reside in a water supplier's service area, such as in newspaper advertisements, bill inserts, website homepage, social media, and notices in public libraries.
15. The Board directs staff to consider the following in pursuing any enforcement of section 995, subdivision (b)(1)(A)-(F): before imposing monetary penalties, staff shall provide one or more warnings; monetary penalties must be based on an ability to pay determination, consider allowing a payment plan of at least 12 months, and shall not result in a tax lien; and Board enforcement shall not result in shutoff.
16. The Board encourages entities other than Board staff that consider any enforcement of this regulation to apply these same factors identified in resolved paragraph 15. Nothing in the regulation or in the enforcement provisions of the regulation precludes a local agency from exercising its authority to adopt more stringent conservation measures. Moreover, the Water Code does not impose a mandatory penalty for violations of the regulation adopted by this resolution, and local agencies retain their enforcement discretion in enforcing the regulation, to the extent authorized, and may develop their own progressive enforcement practices to encourage conservation.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, title 23, section 995, as appended to this resolution as an emergency regulation.
2. State Water Board staff will submit the regulation to the Office of Administrative Law (OAL) for final approval.
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director or designee may make such changes.

4. This regulation shall remain in effect for one year after filing with the Secretary of State unless the State Water Board determines that it is no longer necessary due to changed conditions or unless the State Water Board renews the regulation due to continued drought conditions, as described in Water Code section 1058.5.
5. The State Water Board directs State Water Board staff to work with the Department of Water Resources and the Save Our Water campaign to disseminate information regarding the emergency regulations.
6. Nothing in the regulation or in the enforcement provisions of the regulation precludes a local agency from exercising its authority to adopt more stringent conservation measures. Local agencies are encouraged to develop their own progressive enforcement practices to promote conservation.

CERTIFICATION

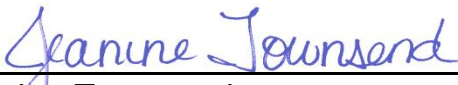
The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 4, 2022.

AYE: Vice Chair Dorene D'Adamo
Board Member Sean Maguire
Board Member Laurel Firestone
Board Member Nichole Morgan

NAY: None

ABSENT: Chair E. Joaquin Esquivel

ABSTAIN: None



Jeanine Townsend
Clerk to the Board

ADOPTED TEXT OF EMERGENCY REGULATION

Title 23. Waters

Division 3. State Water Resources Control Board and Regional Water Quality Control Boards

Chapter 3.5. Urban Water Use Efficiency and Conservation

Article 2. Prevention of Drought Wasteful Water Uses

§ 995. Wasteful and Unreasonable Water Uses.

(a) As used in this section:

(1) "Turf" has the same meaning as in section 491.

(2) "Incidental runoff" means unintended amounts (volume) of runoff, such as unintended, minimal overspray from sprinklers that escapes the area of intended use. Water leaving an intended use area is not considered incidental if it is part of the facility or system design, if it is due to excessive application, if it is due to intentional overflow or application, or if it is due to negligence.

(b)(1) To prevent the unreasonable use of water and to promote water conservation, the use of water is prohibited as identified in this subdivision for the following actions:

(A) The application of potable water to outdoor landscapes in a manner that causes more than incidental runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;

(B) The use of a hose that dispenses water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;

(C) The use of potable water for washing sidewalks, driveways, buildings, structures, patios, parking lots, or other hard surfaced areas, except in cases where health and safety are at risk;

(D) The use of potable water for street cleaning or construction site preparation purposes, unless no other method can be used or as needed to protect the health and safety of the public;

(E) The use of potable water for decorative fountains or the filling or topping-off of decorative lakes or ponds, with exceptions for those decorative fountains, lakes, or ponds that use pumps to recirculate water and only require refilling to replace evaporative losses;

(F) The application of water to irrigate turf and ornamental landscapes during and within 48 hours after measurable rainfall of at least one fourth of one inch of rain. In determining whether measurable rainfall of at least fourth of one inch of rain occurred in a given area, enforcement may be based on records of the National Weather Service, the closest CIMIS station to the parcel, or any other reliable source of rainfall data available to the entity undertaking enforcement of this subdivision; and

(G) The use of potable water for irrigation of ornamental turf on public street medians.

(2) Notwithstanding subdivision (b)(1), the use of water is not prohibited by this section to the extent necessary to address an immediate health and safety need. This may include, but is not limited to, the use of potable water in a fountain or water feature when required to be potable because human contact is expected to occur.

(c)(1) To prevent the unreasonable use of water and to promote water conservation, any homeowners' association or community service organization or similar entity is prohibited from:

(A) Taking or threatening to take any action to enforce any provision of the governing documents or architectural or landscaping guidelines or policies of a common interest development where that provision is void or unenforceable under section 4735, subdivisions (a) and (b) of the Civil Code;

(B) Imposing or threatening to impose a fine, assessment, or other monetary penalty against any owner of a separate interest for reducing or eliminating the watering of vegetation or lawns during a declared drought emergency, as described in section 4735, subdivision (c) of the Civil Code; or

(C) Requiring an owner of a separate interest upon which water-efficient landscaping measures have been installed in response to a declared drought emergency, as described in section 4735, subdivisions (c) and (d) of the Civil Code, to reverse or remove the water-efficient landscaping measures upon the conclusion of the state of emergency.

(2) As used in this subdivision:

(A) "Architectural or landscaping guidelines or policies" includes any formal or informal rules other than the governing documents of a common interest development.

(B) "Homeowners' association" means an "association" as defined in section 4080 of the Civil Code.

(C) "Common interest development" has the same meaning as in section 4100 of the Civil Code.

(D) "Community service organization or similar entity" has the same meaning as in section 4110 of the Civil Code.

(E) "Governing documents" has the same meaning as in section 4150 of the Civil Code.

(F) "Separate interest" has the same meaning as in section 4185 of the Civil Code.

(3) If a disciplinary proceeding or other proceeding to enforce a rule in violation of subdivision (c)(1) is initiated, each day the proceeding remains pending shall constitute a separate violation of this regulation.

(d) To prevent the unreasonable use of water and to promote water conservation, any city, county, or city and county is prohibited from imposing a fine under any local maintenance ordinance or other relevant ordinance as prohibited by section 8627.7 of the Government Code.

(e) The taking of any action prohibited in subdivision (b), (c) or (d) is an infraction punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs. The fine for the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(f) A decision or order issued under this section by the Board or an officer or employee of the Board is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the Water Code.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 4080, 4100, 4110, 4150, 4185, and 4735, Civil Code; Section 8627.7, Government Code; Sections 102, 104, 105, 275, 350, 491, and 1122, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-7-22

WHEREAS on April 12, 2021, May 10, 2021, July 8, 2021, and October 19, 2021, I proclaimed states of emergency that continue today and exist across all the counties of California, due to extreme and expanding drought conditions; and

WHEREAS climate change continues to intensify the impacts of droughts on our communities, environment, and economy, and California is in a third consecutive year of dry conditions, resulting in continuing drought in all parts of the State; and

WHEREAS the 21st century to date has been characterized by record warmth and predominantly dry conditions, and the 2021 meteorological summer in California and the rest of the western United States was the hottest on record; and

WHEREAS since my October 19, 2021 Proclamation, early rains in October and December 2021 gave way to the driest January and February in recorded history for the watersheds that provide much of California's water supply; and

WHEREAS the ongoing drought will have significant, immediate impacts on communities with vulnerable water supplies, farms that rely on irrigation to grow food and fiber, and fish and wildlife that rely on stream flows and cool water; and

WHEREAS the two largest reservoirs of the Central Valley Project, which supplies water to farms and communities in the Central Valley and the Santa Clara Valley and provides critical cold-water habitat for salmon and other anadromous fish, have water storage levels that are approximately 1.1 million acre-feet below last year's low levels on this date; and

WHEREAS the record-breaking dry period in January and February and the absence of significant rains in March have required the Department of Water Resources to reduce anticipated deliveries from the State Water Project to 5 percent of requested supplies; and

WHEREAS delivery of water by bottle or truck is necessary to protect human safety and public health in those places where water supplies are disrupted; and

WHEREAS groundwater use accounts for 41 percent of the State's total water supply on an average annual basis but as much as 58 percent in a critically dry year, and approximately 85 percent of public water systems rely on groundwater as their primary supply; and

WHEREAS coordination between local entities that approve permits for new groundwater wells and local groundwater sustainability agencies is important to achieving sustainable levels of groundwater in critically overdrafted basins; and

WHEREAS the duration of the drought, especially following a multiyear drought that abated only five years ago, underscores the need for California to redouble near-, medium-, and long-term efforts to adapt its water management and delivery systems to a changing climate, shifting precipitation patterns, and water scarcity; and

WHEREAS the most consequential, immediate action Californians can take to extend available supplies is to voluntarily reduce their water use by 15 percent from their 2020 levels by implementing the commonsense measures identified in operative paragraph 1 of Executive Order N-10-21 (July 8, 2021); and

WHEREAS to protect public health and safety, it is critical the State take certain immediate actions without undue delay to prepare for and mitigate the effects of the drought conditions, and under Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Proclamation would prevent, hinder, or delay the mitigation of the effects of the drought conditions.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code sections 8567, 8571, and 8627, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. The orders and provisions contained in my April 21, 2021, May 10, 2021, July 8, 2021, and October 19, 2021 Proclamations remain in full force and effect, except as modified by those Proclamations and herein. State agencies shall continue to implement all directions from those Proclamations and accelerate implementation where feasible.
2. To help the State achieve its conservation goals and ensure sufficient water for essential indoor and outdoor use, I call on all Californians to strive to limit summertime water use and to use water more efficiently indoors and out. The statewide Save Our Water conservation campaign at [SaveOurWater.com](https://www.SaveOurWater.com) provides simple ways for Californians to reduce water use in their everyday lives. Furthermore, I encourage Californians to understand and track the amount of water they use and measure their progress toward their conservation goals.
3. By May 25, 2022, the State Water Resources Control Board (Water Board) shall consider adopting emergency regulations that include all of the following:
 - a. A requirement that each urban water supplier, as defined in section 10617 of the Water Code, shall submit to the Department of Water Resources a preliminary annual water supply and demand assessment consistent with section 10632.1 of the Water Code no later than June 1, 2022, and submit a final annual water

supply and demand assessment to the Department of Water Resources no later than the deadline set by section 10632.1 of the Water Code;

- b. A requirement that each urban water supplier that has submitted a water shortage contingency plan to the Department of Water Resources implement, at a minimum, the shortage response actions adopted under section 10632 of the Water Code for a shortage level of up to twenty percent (Level 2), by a date to be set by the Water Board; and
- c. A requirement that each urban water supplier that has not submitted a water shortage contingency plan to the Department of Water Resources implement, at a minimum, shortage response actions established by the Water Board, which shall take into consideration model actions that the Department of Water Resources shall develop for urban water supplier water shortage contingency planning for Level 2, by a date to be set by the Water Board.

To further conserve water and improve drought resiliency if the drought lasts beyond this year, I encourage urban water suppliers to conserve more than required by the emergency regulations described in this paragraph and to voluntarily activate more stringent local requirements based on a shortage level of up to thirty percent (Level 3).

- 4. To promote water conservation, the Department of Water Resources shall consult with leaders in the commercial, industrial, and institutional sectors to develop strategies for improving water conservation, including direct technical assistance, financial assistance, and other approaches. By May 25, 2022, the Water Board shall consider adopting emergency regulations defining “non-functional turf” (that is, a definition of turf that is ornamental and not otherwise used for human recreation purposes such as school fields, sports fields, and parks) and banning irrigation of non-functional turf in the commercial, industrial, and institutional sectors except as it may be required to ensure the health of trees and other perennial non-turf plantings.
- 5. In order to maximize the efficient use of water and to preserve water supplies critical to human health and safety and the environment, Public Resources Code, Division 13 (commencing with section 21000) and regulations adopted pursuant to that Division are hereby suspended, with respect to the directives in paragraphs 3 and 4 of this Order and any other projects and activities for the purpose of water conservation to the extent necessary to address the impacts of the drought, and any permits necessary to carry out such projects or activities. Entities that desire to conduct activities under this suspension, other than the directives in paragraphs 3 and 4 of this Order, shall first request that the Secretary of the Natural Resources Agency make a determination that the proposed activities are eligible to be conducted under this suspension. The Secretary shall use sound discretion in applying this Executive Order to ensure that the suspension serves the purpose of accelerating conservation projects that are necessary to address impacts of the drought, while at the same time

protecting public health and the environment. The entities implementing these directives or conducting activities under this suspension shall maintain on their websites a list of all activities or approvals for which these provisions are suspended.

6. To support voluntary approaches to improve fish habitat that would require change petitions under Water Code section 1707 and either Water Code sections 1425 through 1432 or Water Code sections 1725 through 1732, and where the primary purpose is to improve conditions for fish, the Water Board shall expeditiously consider petitions that add a fish and wildlife beneficial use or point of diversion and place of storage to improve conditions for anadromous fish. California Code of Regulations, title 23, section 1064, subdivisions (a)(1)(A)(i)-(ii) are suspended with respect to any petition that is subject to this paragraph.
7. To facilitate the hauling of water for domestic use by local communities and domestic water users threatened with the loss of water supply or degraded water quality resulting from drought, any ordinance, regulation, prohibition, policy, or requirement of any kind adopted by a public agency that prohibits the hauling of water out of the water's basin of origin or a public agency's jurisdiction is hereby suspended. The suspension authorized pursuant to this paragraph shall be limited to the hauling of water by truck or bottle to be used for human consumption, cooking, or sanitation in communities or residences threatened with the loss of affordable safe drinking water. Nothing in this paragraph limits any public health or safety requirement to ensure the safety of hauled water.
8. The Water Board shall expand inspections to determine whether illegal diversions or wasteful or unreasonable use of water are occurring and bring enforcement actions against illegal diverters and those engaging in the wasteful and unreasonable use of water. When access is not granted by a property owner, the Water Board may obtain an inspection warrant pursuant to the procedures set forth in Title 13 (commencing with section 1822.50) of Part 3 of the Code of Civil Procedure for the purposes of conducting an inspection pursuant to this directive.
9. To protect health, safety, and the environment during this drought emergency, a county, city, or other public agency shall not:
 - a. Approve a permit for a new groundwater well or for alteration of an existing well in a basin subject to the Sustainable Groundwater Management Act and classified as medium- or high-priority without first obtaining written verification from a Groundwater Sustainability Agency managing the basin or area of the basin where the well is proposed to be located that groundwater extraction by the proposed well would not be inconsistent with any sustainable groundwater management program established in any applicable Groundwater Sustainability Plan adopted by that Groundwater Sustainability

Agency and would not decrease the likelihood of achieving a sustainability goal for the basin covered by such a plan; or

- b. Issue a permit for a new groundwater well or for alteration of an existing well without first determining that extraction of groundwater from the proposed well is (1) not likely to interfere with the production and functioning of existing nearby wells, and (2) not likely to cause subsidence that would adversely impact or damage nearby infrastructure.

This paragraph shall not apply to permits for wells that will provide less than two acre-feet per year of groundwater for individual domestic users, or that will exclusively provide groundwater to public water supply systems as defined in section 116275 of the Health and Safety Code.

10. To address household or small community drinking water shortages dependent upon groundwater wells that have failed due to drought conditions, the Department of Water Resources shall work with other state agencies to investigate expedited regulatory pathways to modify, repair, or reconstruct failed household or small community or public supply wells, while recognizing the need to ensure the sustainability of such wells as provided for in paragraph 9.
11. State agencies shall collaborate with tribes and federal, regional, and local agencies on actions related to promoting groundwater recharge and increasing storage.
12. To help advance groundwater recharge projects, and to demonstrate the feasibility of projects that can use available high water flows to recharge local groundwater while minimizing flood risks, the Water Board and Regional Water Quality Control Boards shall prioritize water right permits, water quality certifications, waste discharge requirements, and conditional waivers of waste discharge requirements to accelerate approvals for projects that enhance the ability of a local or state agency to capture high precipitation events for local storage or recharge, consistent with water right priorities and protections for fish and wildlife. For the purposes of carrying out this paragraph, Division 13 (commencing with section 21000) of the Public Resources Code and regulations adopted pursuant to that Division, and Chapter 3 (commencing with section 85225) of Part 3 of Division 35 of the Water Code and regulations adopted pursuant thereto are hereby suspended to the extent necessary to address the impacts of the drought. This suspension applies to (a) any actions taken by state agencies, (b) any actions taken by local agencies where the state agency with primary responsibility for the implementation of the directives concurs that local action is required, and (c) permits necessary to carry out actions under (a) or (b). The entities implementing these directives shall maintain on their websites a list of all activities or approvals for which these provisions are suspended.
13. With respect to recharge projects under either Flood-Managed Aquifer Recharge or the Department of Water Resources Sustainable

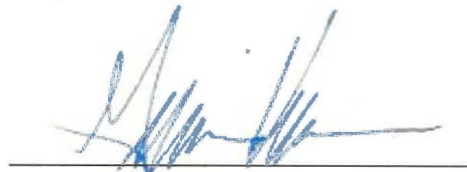
Groundwater Management Grant Program occurring on open and working lands to replenish and store water in groundwater basins that will help mitigate groundwater conditions impacted by drought, for any (a) actions taken by state agencies, (b) actions taken by a local agency where the Department of Water Resources concurs that local action is required, and (c) permits necessary to carry out actions under (a) or (b), Public Resources Code, Division 13 (commencing with section 21000) and regulations adopted pursuant to that Division are hereby suspended to the extent necessary to address the impacts of the drought. The entities implementing these directives shall maintain on their websites a list of all activities or approvals for which these provisions are suspended.

14. To increase resilience of state water supplies during prolonged drought conditions, the Department of Water Resources shall prepare for the potential creation and implementation of a multi-year transfer program pilot project for the purpose of acquiring water from willing partners and storing and conveying water to areas of need.
15. By April 15, 2022, state agencies shall submit to the Department of Finance for my consideration proposals to mitigate the worsening effects of severe drought, including emergency assistance to communities and households and others facing water shortages as a result of the drought, facilitation of groundwater recharge and wastewater recycling, improvements in water use efficiency, protection of fish and wildlife, mitigation of drought-related economic or water-supply disruption, and other potential investments to support short- and long-term drought response.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 28th day of March 2022.



GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY N. WEBER, PH.D.
Secretary of State

**State of California
Office of Administrative Law**

In re:
State Water Resources Control Board

Regulatory Action:

Title 23, California Code of Regulations

Adopt sections: 996

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

Government Code Sections 11346.1 and
11349.6

OAL Matter Number: 2022-0606-03

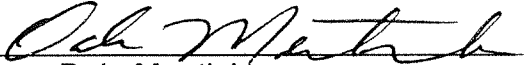
OAL Matter Type: Emergency (E)

This emergency action by the State Water Resources Control Board adopts a new regulation which requires urban water suppliers to submit preliminary supply and demand assessments to the Department of Water Resources and to implement Level 2 demand reduction actions (actions intended to result in a 10 to 20 percent savings). The regulation bans the irrigation of non-functional turf with potable water in commercial, industrial, and institutional sectors and establishes that such irrigation is an infraction punishable by a fine of up to five hundred dollars for each day in which the violation occurs pursuant to Water Code section 1058.5(d).

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code. Pursuant to Water Code section 1058.5(b), the Finding of Emergency in this matter was exempt from Office of Administrative Law Review.

This emergency regulatory action is effective on 6/10/2022 and, pursuant to Water Code section 1058.5(c), will expire on 6/10/2023. The Certificate of Compliance for this action is due no later than 6/9/2023.

Date: June 10, 2022


Dale Mentink
Assistant Chief Counsel

For: Kenneth J. Pogue
Director

Original: Eileen Sobeck, Executive
Director

Copy: Garrett Lenahan

EMERGENCY

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2022	EMERGENCY NUMBER -0606-03E
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For use by Office of Administrative Law (OAL) only

OFFICE OF ADMIN. LAW
2022 JUN 6 PM 3:18

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

State Water Resources Control Board

AGENCY FILE NUMBER (If any)

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUN 10 2022

2:06 PM

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE ☐ Notice re Proposed Regulatory Action ☐ Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE ☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Water Demand Reduction Emergency Regulation	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 996
	AMEND
TITLE(S) 23	REPEAL

3. TYPE OF FILING

☐ Regular Rulemaking (Gov. Code §11346)	☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	☐ Emergency Readopt (Gov. Code, §11346.1(h))	☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	☐ File & Print	☐ Print Only
☒ Emergency (Gov. Code, §11346.1(b))		☒ Other (Specify) <u>Water Code Section 1058.5</u>	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

☐ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	☒ Effective on filing with Secretary of State	☐ §100 Changes Without Regulatory Effect	☐ Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

☐ Department of Finance (Form STD. 399) (SAM §6660)	☐ Fair Political Practices Commission	☐ State Fire Marshal
☐ Other (Specify)		

7. CONTACT PERSON Garrett Lenahan	TELEPHONE NUMBER (916) 341-5179	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Eric Oppenheimer

Digitally signed by Eric Oppenheimer
Date: 2022.06.06 14:24:44 -0700

DATE

6/6/2022

TYPED NAME AND TITLE OF SIGNATORY

Eric Oppenheimer, Chief Deputy Director, State Water Resources Control Board

For use by Office of Administrative Law (OAL) only

AUTHORIZED FOR FILING AND PRINTING

JUN 10 2022

Office of Administrative Law

ADOPTED EMERGENCY REGULATION TEXT

Title 23. Waters

Division 3. State Water Resources Control Board and Regional Water Quality Control Boards

Chapter 3.5. Urban Water Use Efficiency and Conservation

Article 2. Prevention of Drought Wasteful Water Uses

§ 996. Urban Drought Response Actions

(a) As used in this section:

(1) "Commercial, industrial and institutional" refers to commercial water users, industrial water users, and institutional water users as respectively defined in Water Code, section 10608.12, subdivisions (e), (i), and (j), and includes homeowners' associations, common interest developments, community service organizations, and other similar entities but does not include the residences of these entities' members or separate interests.

(2) "Common interest development" has the same meaning as in section 4100 of the Civil Code.

(3) "Community service organization or similar entity" has the same meaning as in section 4110 of the Civil Code.

(4) "Homeowners' association" means an "association" as defined in section 4080 of the Civil Code.

(5) "Non-functional turf" means turf that is solely ornamental and not regularly used for human recreational purposes or for civic or community events. Non-functional turf does not include sports fields and turf that is regularly used for human recreational purposes or for civic or community events.

(6) "Plant factor" has the same meaning as in section 491.

(7) "Separate interest" has the same meaning as in section 4185 of the Civil Code.

(8) "Turf" has the same meaning as in section 491.

(9) "Urban water supplier" has the same meaning as Water Code section 10617.

(10) "Water shortage contingency plan" means the plan required by Water Code section 10632.

(b) Each urban water supplier shall submit to the Department of Water Resources a preliminary annual water supply and demand assessment consistent with section 10632.1

of the Water Code no later than June 1, 2022 or the effective date of this section, whichever comes later, and submit a final annual water supply and demand assessment to the Department of Water Resources no later than the deadline set by section 10632.1 of the Water Code.

(c) (1) Each urban water supplier that has submitted a water shortage contingency plan to the Department of Water Resources shall implement by June 10, 2022, at a minimum, all demand reduction actions identified in the supplier's water shortage contingency plan adopted under Water Code 10632 for a shortage level of ten (10) to twenty (20) percent (Level 2).

(2) Notwithstanding subdivision (c)(1), urban water suppliers shall not be required to implement new residential connection moratoria pursuant to this section.

(3) Notwithstanding subdivision (c)(1), an urban water supplier may implement the actions identified in subdivision (d) in lieu of implementing the demand reduction actions identified in the supplier's water shortage contingency plan adopted under Water Code section 10632 for a shortage level of ten (10) to twenty (20) percent (Level 2), provided the supplier meets all of the following:

(i) The supplier's annual water supply and demand assessment submitted to the Department of Water Resources demonstrates an ability to maintain reliable supply until September 30, 2023.

(ii) The supplier does not rely on, for any part of its supply, the Colorado River, State Water Project, or Central Valley Project, and no more than ten (10) percent of its supply comes from critically overdrafted groundwater basins as designated by the Department of Water Resources.

(iii) The supplier's average number of gallons of water used per person per day by residential customers for the year 2020 is below 55 gallons, as reported to the Board in the Electronic Annual Report.

(d) Each urban water supplier that has not submitted a water shortage contingency plan to the Department of Water Resources shall, by June 10, 2022, and continuing until the supplier has implemented all demand reduction actions identified in the supplier's water shortage contingency plan adopted under Water Code 10632 for a shortage level of ten (10) to twenty (20) percent (Level 2), implement at a minimum the following actions:

(1) Initiate a public information and outreach campaign for water conservation and promptly and effectively reach the supplier's customers, using efforts such as email, paper mail, bill inserts, customer app notifications, news articles, websites, community events, radio and television, billboards, and social media.

(2) Implement and enforce a rule or ordinance limiting landscape irrigation with potable water to no more than two (2) days per week and prohibiting landscape irrigation with potable water between the hours of 10:00 a.m. and 6:00 p.m.

(3) Implement and enforce a rule or ordinance banning, at a minimum, the water uses prohibited by section 995. Adoption of a rule or ordinance is not required if the supplier has authority to enforce, as infractions, the prohibitions in section 995 and takes enforcement against violations.

(e) (1) To prevent the unreasonable use of water and to promote water conservation, the use of potable water is prohibited for the irrigation of non-functional turf at commercial, industrial, and institutional sites.

(2) Notwithstanding subdivision (e)(1), the use of water is not prohibited by this section to the extent necessary to ensure the health of trees and other perennial non-turf plantings or to the extent necessary to address an immediate health and safety need.

(3) Notwithstanding subdivision (e)(1), an urban water supplier may approve a request for continued irrigation of non-functional turf where the user certifies that the turf is a low water use plant with a plant factor of 0.3 or less, and demonstrates the actual use is less than 40% of reference evapotranspiration.

(f) The taking of any action prohibited in subdivision (e) is an infraction punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs. The fine for the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(g) A decision or order issued under this section by the Board, or an officer or employee of the Board, is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the Water Code.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 4080, 4100, 4110, and 4185, Civil Code; Section 8627.7, Government Code; Sections 102, 104, 105, 275, 350, 377, 491, 1058.5, 1122, 10608.12, 10617, 10632, and 10632.1, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976

**EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA**

EXECUTIVE ORDER N-5-23

WHEREAS on April 21, 2021, May 10, 2021, July 8, 2021, and October 19, 2021, I proclaimed States of Emergency to exist due to drought conditions; and

WHEREAS the multi-year nature of the current drought, which began three years after the record-setting drought of 2012-2016, continues to have significant, immediate impacts on communities across California with vulnerable water supplies, farms that rely on irrigation to grow food and fiber, and fish and wildlife that rely on stream flows and cool water; and

WHEREAS the March 3, 2023, snow survey conducted by the Department of Water Resources and partner agencies found that most regions of the Sierra Nevada are above average for snow water content, and some regions are nearing record amounts of snow, and snow and rain has fallen across many regions of the state since then, with more precipitation forecasted; and

WHEREAS improved conditions have helped rehabilitate surface water supplies, but have not abated the severe drought conditions that remain in some parts of the State, including the Klamath River basin and the Colorado River basin, and many groundwater basins throughout the State remain depleted from overreliance and successive multi-year droughts; and

WHEREAS continued action by the State is needed to address ongoing consequences of the drought emergency, including groundwater supply shortages, domestic well failures, and drought-related harm to native fishes in the Klamath River and Clear Lake watersheds; and

WHEREAS the drought emergency has required a dynamic and flexible response from the State, and several provisions in my prior Proclamations and Orders have been terminated or superseded already, specifically Paragraphs 4 and 8 of my State of Emergency Proclamation dated April 21, 2021, Paragraphs 2, 4, and 7 of my State of Emergency Proclamation dated May 10, 2021, Paragraphs 3, 4, 5, 6, and 10 of my State of Emergency Proclamation dated July 8, 2021, and Paragraph 9 of Executive Order N-7-22; and

WHEREAS improved conditions warrant an even more targeted State response to the ongoing drought emergency and certain provisions in my State of Emergency Proclamations dated April 21, 2021, May 10, 2021, July 8, 2021, and October 19, 2021, and in Executive Orders N-10-21, N-7-22, and N-3-23 provide authority that is no longer needed to mitigate the effects of the drought conditions or direct actions by state agencies, departments, and boards that have already been completed; and

WHEREAS notwithstanding the rescission of certain emergency authorities for emergency drinking water action, state agencies have existing legal authority and funding to continue expedited work to advance the human right to water, and state agencies will continue all ongoing drought resilience planning work, including through coordination with local agencies and tribes; and

WHEREAS next winter's hydrology is uncertain and the most efficient way to preserve the State's improved surface water supplies is for Californians to continue their ongoing efforts to make conservation a way of life; and

WHEREAS to protect public health and safety, it is critical the State take certain immediate actions without undue delay to prepare for and mitigate the effects of the drought conditions, and under Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Order would prevent, hinder, or delay the mitigation of the effects of the drought conditions.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code sections 8567, 8571, and 8627, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. The orders and provisions contained in my State of Emergency Proclamations dated April 21, 2021, May 10, 2021, July 8, 2021, and October 19, 2021, and Executive Orders N-7-22 (March 28, 2022), N-3-23 (February 13, 2023), and N-4-23 (March 10, 2023), remain in full force and effect, except as modified by those Proclamations and Orders and herein. State agencies shall continue to implement all directions from those Proclamations and Orders and accelerate implementation where feasible.
2. The following provisions of my State of Emergency Proclamation dated April 21, 2021, are terminated:
 - a. Paragraph 2;
 - b. Paragraphs 5-7; and
 - c. Paragraphs 9-14.
3. The following provisions of my State of Emergency Proclamation dated May 10, 2021, are terminated:
 - a. Paragraph 1;
 - b. Paragraph 3;
 - c. Paragraph 5; and
 - d. Paragraphs 9-10.
4. The following provisions of my State of Emergency Proclamation dated July 8, 2021, are terminated:
 - a. Paragraph 2;
 - b. Paragraphs 7-8, except those portions of paragraph 7 withdrawing provisions of prior orders;
 - c. Paragraphs 11-12.

5. The following provisions of my State of Emergency Proclamation dated October 19, 2021, are terminated:

- a. Paragraph 2;
- b. Paragraphs 4-5;
- c. Paragraph 8; and
- d. Paragraph 10.

6. The following provisions of Executive Order N-10-21 are terminated:

- a. Paragraph 1; and
- b. Paragraph 3

7. The following provisions of Executive Order N-7-22 are terminated:

- a. Paragraphs 1-3;
- b. Paragraph 6; and
- c. Paragraphs 14-15.

8. The following provisions of Executive Order N-3-23 are terminated:

- a. Paragraph 1; and
- b. Paragraph 3, except those portions of the paragraph withdrawing provisions of prior orders.

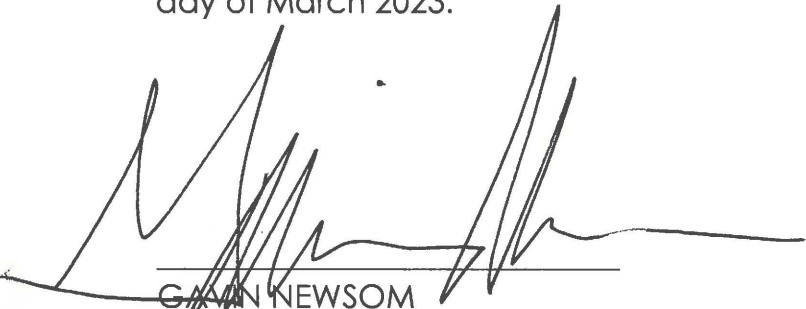
9. Paragraph 6 of my State of Emergency Proclamation dated May 10, 2021, and Paragraph 9 of my State of Emergency Proclamation dated July 8, 2021, are withdrawn and replaced with the following text:

To ensure critical instream flows for species protection in the Klamath River and Clear Lake watersheds, the State Water Resources Control Board (Water Board) and Department of Fish and Wildlife shall evaluate the minimum instream flows and other actions needed to protect salmon, steelhead, the Clear Lake Hitch, and other native fishes in critical streams systems in these watersheds and work with water users, tribes, and other parties on voluntary measures to implement those actions. To the extent voluntary actions are not sufficient, the Water Board, in coordination with the Department of Fish and Wildlife, shall consider emergency regulations to establish minimum instream flows to mitigate the effects of the drought conditions. For purposes of state agencies carrying out or approving any actions contemplated by this paragraph, Public Resources Code, Division 13 (commencing with Section 21000) and regulations adopted pursuant to that Division are suspended. Nothing in this Paragraph affects or limits the validity of actions already taken in the Klamath and Clear Lake watersheds or ongoing under Paragraph 6 of my State of Emergency Proclamation dated May 10, 2021, or Paragraph 9 of my State of Emergency Proclamation dated July 8, 2021.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 24th day of March 2023.



GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY N. WEBER, PH.D.
Secretary of State



DRINKING WATER CONSTRUCTION LOAN

AGREEMENT NO. SWRCB0000000000D2002017

by and between

CITY OF PORTERVILLE ("Recipient")

and

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD ("State Water Board")



for the purpose of the

AKIN/CENTRAL WATER CONSOLIDATION PROJECT
5410010-018C AND 5400655-001C ("Project")

- Section 116760 et seq. of the Health and Safety Code and Resolution Nos. 2019-0065 and 2020-0022.

PROJECT FUNDING AMOUNT: \$4,787,664
PRINCIPAL FORGIVENESS COMPONENT: \$4,787,664

ESTIMATED REASONABLE PROJECT COST: \$4,787,664
ELIGIBLE WORK START DATE: JULY 1, 2016
ELIGIBLE CONSTRUCTION START DATE: SEPTEMBER 22, 2020
CONSTRUCTION COMPLETION DATE: OCTOBER 1, 2023
FINAL REIMBURSEMENT REQUEST DATE: APRIL 1, 2024
RECORDS RETENTION END DATE: OCTOBER 1, 2059

1. The State Water Board and the Recipient mutually promise, covenant, and agree to the terms, provisions, and conditions of this Agreement, including the following Exhibits, which are attached hereto or are incorporated by reference:
 - Exhibit A – Scope of Work and Schedule
 - Exhibit B – Specific Funding Provisions
 - Exhibit C – GENERAL TERMS AND CONDITIONS 2019-NOV
 - Exhibit D – Special Conditions
2. The following documents are also incorporated by reference:
 - the Drinking Water System Permit No. 03-12-06P-004;
 - the Davis-Bacon requirements found at:
https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/davisbacon/2020_dwsrf_governmental_entities.pdf
3. Party Contacts during the term of this Agreement are:

State Water Board		City of Porterville	
Section:	Division of Financial Assistance		
Name:	Pete Stamas, Project Manager	Name:	Monte Reyes, Mayor
Address:	1001 I Street, 16th Floor	Address:	291 North Main Street
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	Porterville, CA 93257
Phone:	(916) 552-9983	Phone:	(559) 782-7499
Fax:		Fax:	
Email:	Pete.Stamas@waterboards.ca.gov	Email:	montereyes@portervilleca.gov

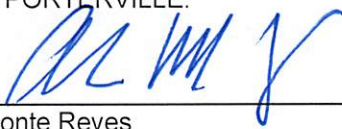
Each party may change its contact upon written notice to the other party. While Party Contacts are contacts for day-to-day communications regarding Project work, the Recipient must provide official communications and notices to the Division's Deputy Director.

4. Conditions precedent to this Agreement are set forth as follows:
 - (a) The Recipient must deliver an opinion of general counsel satisfactory to the State Water Board's counsel dated on or after the date that the Recipient signs this Agreement.
 - (b) The Recipient must deliver to the Division a resolution authorizing this Agreement and identifying its authorized representative by title.
 - (c) The Recipient must deliver to the Division a resolution certifying that its decision-making body reviewed and considered the Mitigated Negative Declaration filed by the State Water Board for the Akin Water Company Water Supply Project together with the Mitigation Monitoring and Reporting Program and reached its own conclusions on whether and how to approve the Project, pursuant to Section 15050 (b) of the CEQA Guidelines.
5. The Recipient represents, warrants, and commits to the following as of the Eligible Work Start Date and continuing thereafter for the term of this Agreement, which shall be at least until the Records Retention End Date:
 - (a) The Recipient agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents.
 - (b) The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. Upon execution by both parties, this Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.

- (c) None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. The Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The Recipient is able to pay its debts as they become due. The Recipient maintains sufficient insurance coverage considering the scope of this Agreement, including, for example but not necessarily limited to, general liability, automobile liability, workers compensation and employer liability, professional liability.
- (d) The Recipient is in compliance with all State Water Board funding agreements to which it is a party.

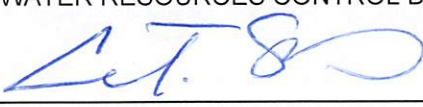
IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CITY OF PORTERVILLE:

By: 
Name: Monte Reyes
Title: Mayor

Date: 6/1/2021

STATE WATER RESOURCES CONTROL BOARD:

By: 
Name: Leslie Laudon
Title: Deputy Director *for*
Division of Financial Assistance

Date: 7/15/21

EXHIBIT A – SCOPE OF WORK AND SCHEDULE

A.1. PROJECT PURPOSE AND DESCRIPTION.

The Project is for the benefit of the Recipient and has a Useful Life of at least 40 years. The funding under this Agreement shall be used to provide the residents of two small disadvantaged communities currently served by Akin Water Company (Akin WC) and Central Mutual Water Company (Central MWC) with a sustainable source of safe drinking water.

A.2. SCOPE OF WORK.

The Recipient agrees to do the following: consolidate with Akin WC and Central MWC. Recipient also agrees to construct a new production well, estimated to produce between 1,300 and 1,800 gallons per minute, to provide the needed source capacity for the consolidation of Akin WC, the consolidation of Central MWC, as well as satisfy the remainder of East Porterville residents' capacity needs.

The Recipient agrees to do the following for the Akin WC service area: construct approximately 1,500 feet of 8-inch waterline to provide water service to each customer currently served by Akin WC; install approximately three new fire hydrants and twenty-six new service laterals and meters; and destroy Akin WC's two existing wells.

The Recipient agrees to do the following for the Central MWC service area: construct approximately 1,400 feet of 6-inch waterline to provide water service to each customer currently served by Central MWC; install approximately four new fire hydrants and thirty-four new service laterals and meters; and destroy Central MWC's existing well.

Upon Completion of Construction, the Recipient must expeditiously initiate Project operations.

A.3 SIGNAGE

The Recipient must place a professionally prepared sign at least four feet tall by eight feet wide made of ¾ inch thick exterior grade plywood or other approved material in a prominent location on the Project site and must maintain the sign in good condition for the duration of Project implementation. The sign may include another agency's required information and must include, prominently displayed, the following disclosure statement and color logos (available from the Division):



"Funding for this project has been provided in full or in part under the Drinking Water State Revolving Fund, which may include capitalization funding from the United States Environmental Protection Agency through an agreement with the State Water Resources Control Board."

A.4 SCHEDULE.

Failure to provide items by the due dates indicated in the table below may constitute a material violation of this Agreement. The Project Manager may adjust the dates in the "Estimated Due Date" column of this table, but Critical Due Date adjustments will require an amendment to this Agreement. The Recipient

must complete and submit all work in time to be approved by the Division prior to the Project Completion Date. As applicable for specific submittals, the Recipient must plan adequate time to solicit, receive, and address comments prior to submitting the final submittal. The Recipient must submit the final Reimbursement Request prior to the Final Reimbursement Request Date set forth on the Cover Page.

ITEM	DESCRIPTION OF SUBMITTAL	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A – SCOPE OF WORK			
A.	ADDITIONAL SUBMITTAL(S) TO DIVISION		
1.	Final Plans and Specifications		September 1, 2021
2.	Final Budget Approval Package		February 1, 2022
3.	Completion of Construction	October 1, 2023	
B.	REPORTS		
1.	Progress Reports		Quarterly
2.	Final Inspection and Certification		October 1, 2023
3.	Project Completion Report		December 1, 2023
4.	As Needed Reports		TBD
EXHIBIT B – REIMBURSEMENTS, BUDGET DETAIL, AND REPORTING PROVISIONS			
A.	REIMBURSEMENTS		
1.	Reimbursement Requests		Quarterly
2.	Final Reimbursement Request	April 1, 2024	

The Recipient must award the prime construction contract and begin construction timely. The Recipient must deliver any request for extension of the Completion of Construction Date no less than 90 days prior to the Completion of Construction Date.

A.5 PROGRESS REPORTS.

The Recipient must provide a progress report to the Division each quarter, beginning no later than 90 days after execution of this Agreement. The Recipient must provide a progress report with each Reimbursement Request. Failure to provide a complete and accurate progress report may result in the withholding of Project Funds, as set forth in Exhibit B. A progress report must contain the following information:

- 1) A summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed;
- 2) A description of compliance with environmental requirements;
- 3) A listing of change orders including amount, description of work, and change in contract amount and schedule; and
- 4) Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

A.6 SPECIAL REPORTS.

(a) The Recipient must submit a Project Completion Report to the Division with a copy to the appropriate District Office on or before the due date established by the Division and the Recipient at the time of final project inspection. The Project Completion Report must include the following:

- i. Description of the Project,
- ii. Description of the water quality problem the Project sought to address,
- iii. Discussion of the Project's likelihood of successfully addressing that water quality problem in the future, and
- iv. Summary of compliance with applicable environmental conditions.

(b) If the Recipient fails to submit a timely Project Completion Report, the State Water Board may stop processing pending or future applications for new financial assistance, withhold reimbursements under this Agreement or other agreements, and begin administrative proceedings.

(c) The Recipient must report Disadvantaged Business Enterprise (DBE) utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334. The Recipient must submit such reports to the Division annually within ten (10) calendar days following October 1 until such time as the "Notice of Completion" is issued. The Recipient must comply with 40 CFR § 33.301 and require its contractors and subcontractors on the Project to comply.

A.7 FINAL PROJECT INSPECTION AND CERTIFICATION.

Upon completion of the Project, the Recipient must provide for a final inspection and must certify that the Project has been completed in accordance with this Agreement, any final plans and specifications submitted to the State Water Board, and any amendments or modifications thereto. If the Project involves the planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, or other professionals, the final inspection and certification must be conducted by a California Registered Civil Engineer or other appropriate California registered professional. The results of the final inspection and certification must be submitted to the Project Manager.

EXHIBIT B – FUNDING AMOUNTS

B.1 ESTIMATED REASONABLE COST AND PROJECT FUNDS.

The estimated reasonable cost of the total Project is set forth on the Cover Page of this Agreement and is greater than or equal to the funding anticipated to be provided by the State Water Board under this Agreement. Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds not to exceed the amount of the Project Funding Amount set forth on the Cover Page of this Agreement.

B.2 RECIPIENT CONTRIBUTIONS.

(a) The loan component of this Agreement is forgiven. The estimated amount of principal that will be due to the State Water Board from the Recipient under this Agreement is Zero dollars and no cents (\$0.00).

(b) The Recipient must pay any and all costs connected with the Project including, without limitation, any and all Project Costs. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient must nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.

(c) If the Recipient recovers funds from any responsible parties, the Recipient shall immediately notify the Division. The amount of this Agreement may be reduced to reflect the recovered funds.

B.3 VERIFIABLE DATA.

Upon request by the Division, the Recipient must submit verifiable data to support deliverables specified in the Scope of Work. The Recipient's failure to comply with this requirement may be construed as a material breach of this Agreement.

B.4 BUDGET COSTS

Budget costs are contained in the Summary Project Cost Table below:

LINE ITEM	TOTAL ESTIMATED COST	PROJECT FUNDING AMOUNT
Construction	\$3,194,720	\$3,194,720
Pre-Purchased Material/Equipment	\$0	\$0
Purchase of Land	\$0	\$0
Contingency	\$638,944	\$638,944
Allowances (Soft Costs)	\$954,000	\$954,000
TOTAL	\$4,787,664	\$4,787,664

The Division's Final Budget Approval and related Form 259 and Form 260 will document a more detailed budget of eligible Project Costs and Project funding amounts.

The Recipient is prohibited from requesting disbursement amounts that represent Recipient's mark-ups to costs invoiced or otherwise requested by consultants or contractors.

Reasonable indirect costs may be allowable upon approval by the Division.

B.5 LINE ITEM ADJUSTMENTS.

Upon written request by the Recipient, the Division may adjust the line items of the Summary Project Cost Table at the time of Division's Final Budget Approval. Upon written request by the Recipient, the Division may also adjust the line items of the Summary Project Cost Table as well as the detailed budget at the time of Recipient's submittal of its final claim. Any line item adjustments to the Summary Project Cost Table that are due to a change in scope of work will require an Agreement amendment. The sum of adjusted line items in both the Summary

Project Cost Table and the detailed budget must not exceed the Project Funding Amount. The Division may also propose budget adjustments.

Under no circumstances may the sum of line items in the budget approved through the Final Budget Approval process exceed the Project Funding Amount. Any increase in the Project Funding Amount will require an Agreement amendment.

B.6 REIMBURSEMENT PROCEDURE.

(a) Except as may be otherwise provided in this Agreement, reimbursements will be made as follows:

1. Upon execution and delivery of this Agreement by both parties, the Recipient may request immediate reimbursement of any eligible incurred costs as specified below through submission to the State Water Board of the Reimbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed.
2. The Recipient must submit a Reimbursement Request for costs incurred prior to the date this Agreement is executed by the State Water Board no later than ninety (90) days after this Agreement is executed by the State Water Board. Late Reimbursement Requests may not be honored.
3. Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Reimbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of progress reports due under Exhibit A.
4. The Recipient must not request reimbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of reimbursement. Supporting documentation (e.g., receipts) must be submitted with each Reimbursement Request. The amount requested for Recipient's administration costs must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Reimbursement of Project Funds will be made only after receipt of a complete, adequately supported, properly documented, and accurately addressed Reimbursement Request. Upon request by the Division, supporting documents for professional and administrative services must include the employees' names, classifications, labor rates, hours worked, and descriptions of the tasks performed. Reimbursement Requests submitted without supporting documents may be wholly or partially withheld at the discretion of the Division.
5. The Recipient must spend Project Funds within 30 days of receipt. If the Recipient earns interest earned on Project Funds, it must report that interest immediately to the State Water Board. The State Water Board may deduct earned interest from future reimbursements.
6. The Recipient shall not request a reimbursement unless that Project Cost is allowable, reasonable, and allocable.
7. Notwithstanding any other provision of this Agreement, no reimbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.

(b) Notwithstanding any other provision of this Agreement, the Recipient agrees that the State Water Board may retain an amount equal to ten percent (10%) of the Project Funding Amount until Project Completion. Any retained amounts due to the Recipient will be promptly disbursed to the Recipient, without interest, upon Project Completion.

(c) Except as follows, construction costs and disbursements are not available until after the Division has approved the final budget form submitted by the Recipient. The Deputy Director of the Division may authorize the disbursement of up to ten percent (10%) of Project Funds for the reimbursement of eligible construction costs and pre-purchased materials prior to Division approval of the final budget form submitted by the Recipient. All other construction costs are not eligible for reimbursement until after this the Division has approved the final budget form submitted by the Recipient. Construction costs incurred prior to the Eligible Construction Start Date are not eligible for reimbursement.

B.7 REVERTING FUNDS AND DISENCUMBRANCE.

In the event the Recipient does not submit Reimbursement Requests for all funds encumbered under this Agreement by the Final Reimbursement Request Date, any remaining funds revert to the State. The State Water Board may notify the Recipient that the project file is closed, and any remaining balance will be disencumbered and unavailable for further use under the Agreement.

EXHIBIT C – GENERAL TERMS AND CONDITIONS 2019-NOV

GENERAL TERMS AND CONDITIONS 2019-NOV is incorporated by reference and is posted at
https://www.waterboards.ca.gov/water_issues/programs/grants_loans/general_terms.html

EXHIBIT D – SPECIAL CONDITIONS

1. Notwithstanding Exhibit C, the following terms have no meaning for the purposes of this Agreement:
 - Work Completion
 - Work Completion Date
2. Each capitalized term used in this Agreement has the following meaning:
 - "Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.
 - "Authorized Representative" means the duly appointed representative of the Recipient as set forth in the certified original of the Recipient's authorizing resolution that designates the authorized representative by title.
 - "Completion of Construction" means the date, as determined by the Division after consultation with the Recipient, that the work of building and erection of the Project is substantially complete, and is established on the Cover Page of this Agreement.
 - "District Office" means District Office of the Division of Drinking Water of the State Water Board.
 - "Division of Drinking Water" means the Division of Drinking Water of the State Water Board.
 - "Eligible Construction Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which construction costs may be incurred and eligible for reimbursement hereunder.
 - "Eligible Work Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which any non-construction costs may be incurred and eligible for reimbursement hereunder.
 - "Enterprise Fund" means the enterprise fund of the Recipient in which Revenues are deposited.
 - "Event of Default" means, in addition to the meanings set forth in Exhibit C, the occurrence of any of the following events:
 - a) A material adverse change in the condition of the Recipient, the Revenues, or the System, which the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement.
 - b) Failure to operate the System or the Project without the Division's approval;
 - "Final Budget Approval" means the Division-approved final budget for the Project, as set forth in Exhibit B.
 - "Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Project (i.e., costs that are not directly related to the Project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Recipient; non-project-specific accounting and personnel services performed within the Recipient organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; generic overhead or markup; and taxes.
 - "Initiation of Construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project.
 - "Net Revenues" means, for any Fiscal Year, all Revenues received by the Recipient less the Operations and Maintenance Costs for such Fiscal Year.
 - "Operations and Maintenance Costs" means the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with GAAP, including all

reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses, and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement, and obsolescence charges or reserves therefor and amortization of intangibles.

- "Reimbursement Request" means the Recipient's request for Project Funds from the State Water Board as set forth in Exhibit B.
- "Revenues" means, for each Fiscal Year, all gross income and revenue received or receivable by the Recipient from the ownership or operation of the System, determined in accordance with GAAP, including all rates, fees, and charges (including connection fees and charges) as received by the Recipient for the services of the System, and all other income and revenue howsoever derived by the Recipient from the ownership or operation of the System or arising from the System, including all income from the deposit or investment of any money in the Enterprise Fund or any rate stabilization fund of the Recipient or held on the Recipient's behalf, and any refundable deposits made to establish credit, and advances or contributions in aid of construction.
- "System" means all drinking water collection, transport, treatment, storage, and delivery facilities, including land and easements thereof, owned by the City of Porterville, or its successor agency, and all other properties, structures, or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions, or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed.
- "Useful Life" means the economically useful life of the Project beginning at Project Completion and is set forth in Exhibit A.

3. Acknowledgements.

The Recipient must include the following acknowledgement in any document, written report, or brochure to be shared with the general public prepared in whole or in part pursuant to this Agreement:

"Funding for this project has been provided in full or in part under the Drinking Water State Revolving Fund, which may include capitalization funding from the United States Environmental Protection Agency through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

4. Rates and Charges. The Recipient must, to the extent permitted by law, fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair, and nondiscriminatory and which will be sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs, and must ensure that Net Revenues are in an amount necessary to meet its obligations under this Agreement. The Recipient may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Net Revenues from such reduced rates, fees, and charges will at all times be sufficient to meet the requirements of this section.
5. [RESERVED]
6. [RESERVED].

7. Environmental/Technical Special Conditions

Technical:

1. The Recipient shall submit its professional engineering services contract to the Division prior to disbursement of funds for costs incurred under such contract.
2. The Recipient shall not solicit bids, award a contract, or commence construction activities until final plans and specifications are approved by the Division of Drinking Water Tulare District Office Engineer and the Project Manager.
3. The Recipient must submit final consolidation agreements with Akin WC and Central MWC, in a form satisfactory to the Division, and receive written approval from the Project Manager to proceed before Project Funds may be disbursed for any Project Costs under the Agreement.
4. Upon completion of the Project the Recipient shall submit a water supply permit amendment request for review to the Division of Drinking Water Tulare District Office.

Environmental:

1. The documents identified below are incorporated by reference and the Recipient shall comply with the conditions and recommendations therein:
 - a. The Mitigation Monitoring and Reporting Program adopted by the State Water Board on June 16, 2016 for the Project. The Recipient shall implement all mitigation measures therein.
 - b. The letter dated February 12, 2020, from Patricia Cole of the United States Fish and Wildlife Service, San Joaquin Valley Division to Douglas E. Eberhardt of the United States Environmental Protection Agency, including, but not limited to, the following:
 - i. Implement Avoidance and Minimization Measures and Best Management Practices prior to and during construction activities to minimize and avoid effects to the San Joaquin kit fox.
 - c. The Mitigation Monitoring and Reporting Program adopted by the City of Porterville on April 21, 2020 for the Central Mutual Water Company Consolidation Project. The Recipient shall implement all mitigation measures therein.
2. In the Recipient's Quarterly Reports submitted pursuant to this Agreement, the Recipient shall include a discussion of the status of its compliance with environmental measures identified in this Exhibit D, with separate sections clearly labeled and titled, discussing the status of Recipient's compliance.
3. In the Recipient's Project Completion Report submitted pursuant to this Agreement, the Recipient shall include a discussion of its compliance with environmental measures identified in this Exhibit D, with separate sections clearly labeled and titled, discussing the status of Recipient's compliance.
8. [RESERVED].
9. Appointment of Receiver/Custodian. Upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the State Water Board under this Agreement, the State Water Board may make application for the appointment of a receiver or custodian of the Revenues, pending such proceeding, with such power as the court making such appointment may confer.
10. [RESERVED].
11. Damages for Breach of Federal Conditions. In the event that any breach of any of the provisions of this Agreement by the Recipient results in the failure of Project Funds to be used pursuant to the provisions of this Agreement, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, the Recipient must immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

12. [RESERVED].

13. Operation and Maintenance. The Recipient shall sufficiently and properly staff, operate, and maintain the facility and structures constructed or improved as part of the project throughout the term of this Agreement, consistent with the purposes of this Agreement. The Recipient assumes all operations and maintenance costs of the facilities and structures; the State Water Board shall not be liable for any cost of such maintenance, management or operation.

14. Insurance. The Recipient will procure and maintain or cause to be maintained insurance on the System and Project with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System or Project) as are usually covered in connection with systems similar to the System or Project. Such insurance may be maintained by a self-insurance plan so long as such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund in an amount determined (initially and on at least an annual basis) by an independent insurance consultant experienced in the field of risk management employing accepted actuarial techniques and (ii) the establishment and maintenance of a claims processing and risk management program. In the event of any damage to or destruction of the System or Project caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System or Project. The Recipient must begin such reconstruction, repair or replacement as expeditiously as possible, and must pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same must be completed and the System and Project must be free and clear of all claims and liens. Recipient agrees that for any policy of insurance concerning or covering the construction of the Project, it will cause, and will require its contractors and subcontractors to cause, a certificate of insurance to be issued showing the State Water Board, its officers, agents, employees, and servants as additional insured; and must provide the Division with a copy of all such certificates prior to the commencement of construction of the Project.

15. Notice Events. Upon the occurrence of any of the following events, the Recipient must notify the Division's Deputy Director and Party Contacts by phone and email within the time specified below:

- a. The Recipient must notify the Division within 24 hours by phone at (916) 327-9978 and by email to DrinkingWaterSRF@waterboards.ca.gov of any discovery of any potential tribal cultural resource and/or archaeological or historical resource. Should a potential tribal cultural resource and/or archaeological or historical resource be discovered during construction or Project implementation, the Recipient must ensure that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient must implement appropriate actions as directed by the Division.
- b. The Recipient must notify the Division promptly of the occurrence of any of the following events:
 - i. Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
 - ii. Change of ownership of the Project (no change of ownership may occur without written consent of the Division);
 - iii. Loss, theft, damage, or impairment to Project;
 - iv. Events of Default, except as otherwise set forth in this section;

- v. A proceeding or action by a public entity to acquire the Project by power of eminent domain.
- vi. Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity or the Recipient's continued existence;
- vii. Consideration of dissolution, or disincorporation;
- viii. Enforcement actions by or brought on behalf of the State Water Board or Regional Water Board.
- ix. The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this funding, or in any certification, report, or request for reimbursement made pursuant to this Agreement, by the Recipient, its employees, agents, or contractors;
- x. Any substantial change in scope of the Project. The Recipient must undertake no substantial change in the scope of the Project until prompt written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;
- xi. Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more;
- xii. Any Project monitoring, demonstration, or other implementation activities required in this Agreement;
- xiii. Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division;
- xiv. Any event requiring notice to the Division pursuant to any other provision of this Agreement.
- xv. Completion of work on the Project.
- xvi. The Recipient must promptly notify the Division and Party Contacts of cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
- xvii. The Recipient must promptly notify the Division and Party Contacts of the discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during implementation of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
- xviii. The Recipient must promptly notify the Division and Party Contacts of Completion of Construction, and Project Completion;
- xix. The Recipient must promptly notify the Division and Party Contacts of the award of the prime construction contract for the Project; and the Recipient must promptly notify the Division and Party Contacts of Initiation of construction of the Project.

xx. The occurrence of a material breach or event of default under any Recipient obligation that results in the acceleration of principal or interest or otherwise requires immediate prepayment, repurchase or redemption.

xxi. [RESERVED].

16. Continuous Use of Project; No Lease, Sale, Transfer of Ownership, or Disposal of Project. The Recipient agrees that, except as provided in this Agreement, it will not abandon, substantially discontinue use of, lease, sell, transfer ownership of, or dispose of all or a significant part or portion of the Project during the Useful Life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all disbursed Project Funds or all or any portion of all remaining funds covered by this Agreement together with accrued interest and any penalty assessments that may be due.
17. State Cross-Cutters. Recipient represents that, as applicable, it complies and covenants to maintain compliance with the following for the term of the Agreement:
- a) The California Environmental Quality Act (CEQA), as set forth in Public Resources Code 21000 et seq. and in the CEQA Guidelines at Title 14, Division 6, Chapter 3, Section 15000 et seq.
 - b) Water Conservation requirements, including regulations in Division 3 of Title 23 of the California Code of Regulations.
 - c) Monthly Water Diversion Reporting requirements, including requirements set forth in Water Code section 5103.
 - d) Public Works Contractor Registration with Department of Industrial Relations requirements, including requirements set forth in Sections 1725.5 and 1771.1 of the Labor Code.
 - e) Volumetric Pricing & Water Meters requirements, including the requirements of Water Code sections 526 and 527.
 - f) Urban Water Management Plan requirements, including the Urban Water Management Planning Act (Water Code, § 10610 et seq.).
 - g) Urban Water Demand Management requirements, including the requirements of Section 10608.56 of the Water Code.
 - h) Delta Plan Consistency Findings requirements, including the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.
 - i) Agricultural Water Management Plan Consistency requirements, including the requirements of Water Code section 10852.
 - j) Charter City Project Labor Requirements, including the requirements of Labor Code section 1782 and Public Contract Code section 2503.
 - k) The Recipient agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with directives or orders issued pursuant to Division 7 of the Water Code.
18. Financial Management Systems. The Recipient must comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been

used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient is bound by, and must comply with, the provisions and requirements of the federal Single Audit Act of 1984 and 2 CFR Part 200, subpart F, and updates or revisions, thereto.

19. Access and Inspection. In addition to the obligations set forth in section 2 of the General Terms and Conditions incorporated in Exhibit C of this Agreement, the Recipient must ensure that the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during the term of the Agreement.
20. Fraud, Waste, and Abuse. The Recipient shall prevent fraud, waste, and the abuse of Project Funds, and shall cooperate in any investigation of such activities that are suspected in connection with this Agreement. The Recipient understands that discovery of any evidence of misrepresentation or fraud related to reimbursement requests, invoices, proof of payment of invoices, or other supporting information, including but not limited to double or multiple billing for time, services, or any other eligible cost, may result in referral to the Attorney General's Office or the applicable District Attorney's Office for appropriate action. The Recipient further understands that any suspected occurrences of false claims, misrepresentation, fraud, forgery, theft or any other misuse of Project Funds may result in withholding of reimbursements and/or the termination of this Agreement requiring the immediate repayment of all funds disbursed hereunder.
21. Disputes. The Recipient must continue with the responsibilities under this Agreement during any dispute. The Recipient may, in writing, appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute. This provision does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law. This section relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.
22. Additional Representations and Warranties. The Recipient makes the following representations and warranties:
 - a. [RESERVED].
 - b. The Recipient has not made any untrue statement of a material fact in its application for this financial assistance, or omitted to state in its application, a material fact that makes the statements in its application not misleading.
 - c. The Recipient agrees to fulfill all assurances, declarations, representations, and commitments in its application, accompanying documents, and communications filed in support of its request for funding under this Agreement.
 - d. The execution, delivery, and performance by Recipient of this Agreement, including all incorporated documents, do not violate any provision of any law or regulation in effect as of the date set forth on the first page hereof, or result in any breach or default under any contract, obligation, indenture, or other instrument to which Recipient is a party or by which Recipient is bound as of the date set forth on the Cover Page.

- e. Except as set forth in this paragraph, there are, as of the date of execution of this Agreement by the Recipient, no pending or, to Recipient's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency which materially affect the financial condition or operations of the Recipient, the Revenues, and/or the Project.
 - f. There are no proceedings, actions, or offers by a public entity to acquire by purchase or the power of eminent domain any of the real or personal property related to or necessary for the Project.
 - g. The Recipient is duly organized and existing and in good standing under the laws of the State of California. Recipient must at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. Within the preceding ten years, the Recipient has not failed to demonstrate compliance with state or federal audit disallowances.
 - h. Any financial statements or other financial documentation of Recipient previously delivered to the State Water Board as of the date(s) set forth in such financial statements or other financial documentation: (a) are materially complete and correct; (b) present fairly the financial condition of the Recipient; and (c) have been prepared in accordance with GAAP. Since the date(s) of such financial statements or other financial documentation, there has been no material adverse change in the financial condition of the Recipient, nor have any assets or properties reflected on such financial statements or other financial documentation been sold, transferred, assigned, mortgaged, pledged or encumbered, except as previously disclosed in writing by Recipient and approved in writing by the State Water Board.
 - i. The Recipient is current in its continuing disclosure obligations associated with its material debt, if any.
 - j. The Recipient has no conflicting or material obligations, except as set forth in this paragraph.
 - k. The Recipient legally possesses all real property rights necessary for the purposes of this Agreement, not subject to third party revocation, which rights extend at least to the Records Retention End Date of this Agreement, except as set forth in this paragraph.
 - l. The Recipient and its principals, to the best of the Recipient's knowledge and belief, are not presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in any work overseen, directed, funded, or administered by the State Water Board program for which this grant funding is authorized; nor have they engaged or permitted the performance of services covered by this Agreement from parties that are debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this grant funding is authorized.
 - m. The Recipient possesses all water rights necessary for this Project.
23. Federal SRF Requirements. The Recipient acknowledges, warrants compliance with, and covenants to continuing compliance with the following federal terms and conditions for the Useful Life of the Project:
- a. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the

Recipient hereby certifies that all "iron and steel products" used in the Project were or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

- b. The Recipient must include in full the Wage Rate Requirements (Davis-Bacon) language incorporated by reference in Section 2 of this Agreement in all construction contracts and subcontracts.
- c. The Recipient shall notify the State Water Board and the USEPA contact of public or media events publicizing the accomplishment of significant events related to this Project and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
- d. The Recipient shall comply with applicable EPA general terms and conditions found at <http://www.epa.gov/ogd>.
- e. No Recipient may receive funding under this Agreement unless it has provided its DUNS number to the State Water Board.
- f. [RESERVED]
- g. The Recipient represents and warrants that it and its principals are not excluded or disqualified from participating in this transaction as such terms are defined in Parts 180 and 1532 of Title 2 of the Code of Federal Regulations (2 CFR). If the Recipient is excluded after execution of this Agreement, the Recipient shall notify the Division within ten (10) days and shall inform the Division of the Recipient's exclusion in any request for amendment of this Agreement. The Recipient shall comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR. Such compliance is a condition precedent to the State Water Board's performance of its obligations under this Agreement. When entering into a covered transaction as defined in Parts 180 and 1532 of 2 CFR, the Recipient shall require the other party to the covered transaction to comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR.
- h. To the extent applicable, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with USEPA's Final Financial Assistance Conflict of Interest Policy at <https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy>. A conflict of interest may result in disallowance of costs.
- i. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement.
- j. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the Recipient. The Recipient must utilize the Interagency Edison extramural invention reporting system at <http://Edison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.

- k. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the Disclosure statement set forth in Exhibit A.
- l. The Recipient acknowledges that it is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Project.
- m. The Recipient, its employees, contractors and subcontractors and their employees warrants that it will not engage in severe forms of trafficking in persons, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject the State Water Board to loss of federal funds. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement if the Recipient that is a private entity is determined to have violated the foregoing.
- n. The Recipient certifies to the best of its knowledge and belief that:
 - i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and notify the State Water Board.
 - iii. The Recipient shall require this certification from all parties to any contract or agreement that the Recipient enters into and under which the Recipient incurs costs for which it seeks disbursements under this Agreement.
- o. The Recipient must comply with the following federal non-discrimination requirements:
 - i. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
 - ii. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
 - iii. The Age Discrimination Act of 1975, which prohibits age discrimination.
 - iv. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
 - v. 40 CFR Part 7, as it relates to the foregoing.
 - vi. Executive Order 13798, including, to the greatest extent practicable and to the extent permitted by law, the requirement to respect and protect the freedom of persons and organizations to engage in political and religious speech
 - vii. All applicable federal civil rights regulations, including statutory and national policy requirements (2 CFR section 200.300).

- p. Executive Order No. 11246. The Recipient shall include in its contracts and subcontracts related to the Project the following provisions:

"During the performance of this contract, the contractor agrees as follows:"(a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(d) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(e) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(g) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

- q. The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises as set forth in this Agreement.
- r. Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368. Except where the purpose of this Agreement is to remedy the cause of the violation, the Recipient may not procure goods, services, or materials from suppliers excluded under the federal System for Award Management: <http://www.sam.gov/>.
- s. Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655. The Recipient must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105.
- t. The Recipient agrees that if its network or information system is connected to USEPA networks to transfer data using systems other than the Environmental Information Exchange Network or USEPA's Central Data Exchange, it will ensure that any connections are secure.
- u. All geospatial data created pursuant to this Agreement that is submitted to the State Water Board for use by USEPA or that is submitted directly to USEPA must be consistent with Federal Geographic Data Committee endorsed standards. Information on these standards may be found at www.fgdc.gov.
- v. If the Recipient is a water system that serves 500 or fewer persons, the Recipient represents that it has considered publicly-owned wells as an alternative drinking water supply.
- w. The Recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.
- x. The Recipient agrees to immediately notify the Project Manager in writing about any allegation of research misconduct involving research activities that are supported in whole or in part with EPA funds under this Project, including fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, or ordering, advising, or suggesting that subordinates engage in research misconduct.
- y. The Recipient agrees to comply with, and require all contractors and subcontractors to comply with, EPA's Scientific Integrity Policy, available at <https://www.epa.gov/osa/policy-epa-scientific-integrity>, when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue.
- z. The Recipient shall not suppress, alter, or otherwise impede the timely release of scientific findings or conclusions; intimidate or coerce scientists to alter scientific data, findings, or professional opinions or exert non-scientific influence on scientific advisory boards; knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty; or otherwise violate the EPA's Scientific Integrity Policy. The Recipient must refrain from acts of research misconduct, including publication or reporting, as described in EPA's Policy and Procedures for Addressing Research Misconduct, Section 9.C, and must ensure scientific findings are generated and

disseminated in a timely and transparent manner, including scientific research performed by contractors and subcontractors.

- aa. The Recipient agrees to comply with the Animal Welfare Act of 1966 (7 USC 2131-2156). Recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training," available at <http://grants.nih.gov/grants/olaw/references/phspol.htm#USGovPrinciples>.
- bb. The Recipient certifies that no Project Funds will be used on:
 - i. Video surveillance or telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
 - ii. Telecommunications or video surveillance services produced by such entities;
 - iii. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country; or
 - iv. Other telecommunications or video surveillance services or equipment in violation of [2 CFR 200.216](#).



CITY COUNCIL AGENDA – MARCH 5, 2024

SUBJECT: Status and Review of Declaration of Local Flood Emergency

SOURCE: City Manager's Office

COMMENT: On March 13, 2023, Mayor Martha A. Flores in conjunction with the Acting City Manager Patrice Hildreth declared the existence of a local emergency within the City of Porterville. Said Declaration was made pursuant to Chapter 9 of the Porterville Municipal Code, and in response to the increasing threat to life and property in the city caused by a series of storm systems striking California and in particular the Porterville area, impacting Success Lake and significantly increasing flows of the Tule River. Pursuant to the California Emergency Services Act (California Government Code 8558 et seq.), emergency declarations must be ratified by the governing body within seven days of being declared. At its Special Meeting on March 17, 2023, the City Council acted to ratify the Declaration of Local Emergency. The Act also requires that the emergency declaration be renewed every sixty (60) days to remain in effect, which at its meeting on February 20, 2024, the Council reviewed and acted to renew the emergency declaration. Staff continues to work with FEMA for resolution of the City's claims and will continue to work to identify a timeline and critical path forward.

Chronology:

On March 10, 2023, due to the volume of water added to Success Lake from significant storm activity, Tulare County Sheriff Mike Boudreaux issued an Evacuation Warning for both the north and south sides of the Tule River, and the Tulare County Office of Emergency Services (TCOES) established a Temporary Evacuation Point (TEP) and Emergency Shelter in the gymnasium at Porterville College.

On March 15, 2023, due to the water level of Success Lake rising to the point of running over the spillway of the Richard L. Schafer Dam, Sheriff Boudreaux issued a Mandatory Evacuation Order for the residences, businesses and structures between Schafer Dam and Road 284, east of the city of Porterville.

On March 18, 2023, due to water levels dropping on the Tule River, Sheriff Boudreaux reduced the Mandatory Evacuation Order back to an Evacuation Warning.

On March 15, 2023, due to rising flood waters, Sheriff Boudreaux issued a Mandatory Evacuation Order for the area between Olive Avenue (Avenue 152) to Avenue 144 and the Friant-Kern Canal and the Tule River and Westwood Street, west of the city of Porterville. On March 25, 2023, Sheriff Boudreaux reduced the Mandatory Evacuation Order back to an Evacuation Warning.

On March 15, 2023, due to rising water levels of the Tule River, City Public Works Department staff took extraordinary measures to protect the neighborhood north of River Springs Drive, avoiding potentially catastrophic flooding of the area.

On March 16, 2023, due to the historic water levels and flows of the Tule River causing erosion to the river banks, Police Chief Jake Castellow issued a Mandatory Evacuation Order for eight residences along Rio Vista Avenue, providing information on the TEP and Emergency Shelter established at Porterville College. City Public Works Department staff took extraordinary measures over the next several days to mitigate and protect the river banks from affecting the residences. On March 24, 2023, Chief Castellow reduced the Mandatory Evacuation Order of the eight residences back to an Evacuation Warning.

On March 19, 2023, due to continued erosion of the banks of the Tule River and the performance of immediate necessary mitigation efforts by Public Works Department personnel, Chief Castellow issued a Mandatory Evacuation Order for both the north and south banks of the Tule River within City limits (not including permanent structures with a designated address), and provided information on the TEP and Emergency Shelter established at Porterville College. The Public Works Department continues to work diligently in shoring the banks of the Tule River.

To accommodate upcoming ceremonies and events in the gymnasium at Porterville College, the TEP and Emergency Shelter at the College closed at noon on April 11, 2023, and thirty (30) individuals were successfully transitioned to the new TEP at the Porterville Army National Guard Armory. A Special Meeting of the Council was scheduled for April 14, 2023, to consider a draft License agreement for the City's temporary use of the State facility. The American Red Cross continued to provide shelter services at the TEP, but transitioned out on May 5, 2023. With the authority granted to the City Attorney and City Manager at its meeting on April 18, 2023, the City and County drafted a Memorandum of Understanding (MOU) in an effort to continue TEP shelter services until May 5, 2023, while the Mandatory Evacuation Order remained in place along the banks of the Tule River in city limits. On April 14, 2023, the County transmitted a letter to the California Governor's Office of Emergency Services (Cal OES), requesting continued financial support for the Armory TEP, which the County reported that Cal OES did not approve. At its meeting on July 11, 2023, the County Board of Supervisors approved the MOU for TEP shelter services between the City and the County, retroactive from April 11, 2023 to May 5, 2023.

Given the lack of continued financial support by Cal OES, the County notified the City that it would discontinue its support of the Armory TEP at noon on May 5, 2023, and American Red Cross would vacate the facility as well, leaving the City alone to determine the function of the Armory TEP after noon on May 5th. The significant threat of local emergency continued to exist with

the estimated over three hundred percent (300%) of normal snow pack in the Sierra Nevada mountains and the potential for a warm storm or heat wave this Spring to again inundate the Tule River, described as a "loaded locomotive at the top of the hill." Given the forecasts of potential widespread flooding damage to west Tulare County and significant portions of Kings County later this Spring and early Summer, Red Cross representatives strongly believe they will be returning to the Armory TEP and other Tulare County locations (e.g. Porterville Developmental Center) to assist those displaced from homes due to flooding. Until such time that Cal OES makes the determination that emergency conditions again exist in Tulare County, the Council was left to determine if local emergency conditions existed to continue operating the Armory TEP, which expenditures would not be reimbursable given the lack of approval by Cal OES.

Given the continued mandatory evacuation order along the Tule River in city limits and the legal implications of the *Martin v. Boise* federal 9th Circuit Court of Appeals decision (2018), and the announced departure of the American Red Cross and County support at noon on May 5, 2023, City staff developed an operational plan for the Armory TEP, cognizant of the lack of federal and State reimbursement of costs. As of April 27, 2023, eighteen (18) individuals were receiving shelter services at the Armory TEP, with most individuals only at the facility in the evening. Given the limited daytime TEP population, and daily meal services provided at the nearby Porterville Welcome Center, staff recommended to limit the Armory TEP hours from 7:00 P.M. to 7:00 A.M. daily, providing temporary staffing of two individuals (including a security guard). Temporary staffing had been quoted at \$25 per hour, for a daily expense of \$600 (or \$18,000 per month). At its meeting on May 2, 2023, the Council authorized the continued operation of the Armory TEP for a 12-hour operational period over the evenings, and also directed that the Armory restrooms and shower facilities be used by the individuals at the TEP, which although not ADA-compliant, are not required for non-reimbursable shelter activities while under a Declaration of Local Emergency. The contract for the on-site mobile shower and portable restroom facilities that are ADA-compliant expired on May 11, 2023, which the rental cost was approximately \$18,000 per month. However, the City Attorney recommended maintaining a single ADA-portable restroom at the facility. Beginning at noon on May 5, 2023, the City assumed administrative and financial responsibility for the Armory, which has established operational hours of 8:00 P.M. to 8:00 A.M. and averaged twenty (20) individuals each evening (please see attached daily census).

On May 4, 2023, the City received an updated draft License agreement for the use of the Armory, proposing a 1-year lease for exclusive use by the City effective May 5, 2023, through May 4, 2024. The draft agreement proposes no fee for the use of the facility, but that the City assume responsibility for the facility's utilities. On Monday, May 8th, the last remaining Army personnel left the facility, with the City now having complete exclusive use of the facility. At its meeting on May 16, 2023, the Council approved the updated draft License agreement for the 1-year exclusive use of the Armory.

On March 31, 2023, Governor Newsom issued Executive Order N-6-23 to support Tulare Lake Basin flood response, which streamlines State preparation, response and recovery actions and supports local flood response efforts and assist in preparing communities for the impacts of snowmelt runoff in the months ahead.

On April 3, 2023, President Biden granted a Major Disaster Declaration for the State of California, triggering the release of Federal funds to help individuals and communities recover from Severe Winter Storms, Straight-line Winds, Flooding, Landslides and Mudslides that occurred February 21, 2023, and continuing. Monterey and Tulare counties were designated in the Major Disaster Declaration for both Individual and Public Assistance, as well as Hazard Mitigation. On July 14, 2023, the Federal Emergency Management Agency (FEMA) made the determination to close the incident period effective July 10, 2023. Although the incident period has been closed, businesses and individuals may still apply for federal disaster assistance through September 1, 2023.

On May 17, 2023, Governor Newsom issued Executive Order N-7-23 to support Tulare Lake Basin flood response, which extends flood diversion and groundwater recharge flexibilities implemented for the Tulare Lake Basin, including Kern River floodwater to be allowed into the California Aqueduct.

On August 4, 2023, Governor Newsom issued Executive Order N-10-23 to streamline levee repairs and debris removal to help local communities recover from flooding and prepare for the next wet season.

At its meeting on April 4, 2023, the Council approved Resolution No. 15-2023, which authorized the appropriation of funds from the Catastrophic/Emergency Reserve Fund for the costs associated with the response to the local emergency including personnel, equipment, services and other necessary expenditures. At its meeting on April 18, 2023, the Council approved two emergency expenditures that exceeded \$5,000 in their acquisition, which included additional Water Rescue Equipment for the Fire Department (\$6,417.70) and the 30-day rental of two mobile shower/restroom units (\$13,151) for the Armory TEP due to the facility's restrooms and showers not being compliant with the Americans with Disabilities Act (ADA). At its meeting on May 2, 2023, the Council approved two additional emergency expenditures that exceeded \$5,000 in their acquisition, which included a trailer-mounted 6" dewatering and sewage pump (\$77,396.67), and local trucking services of riprap material (\$5,436.00), both for the Public Works Department.

In support of two private personnel providing nightly security at the Armory as it continues to function as a temporary evacuation point and shelter, City staff has secured TopKnotch Security, Inc. as the security services provider. TopKnotch provided an agreement for security services for approximately \$18,000 per month (2 personnel at \$25/hour for 12 hours per day for 30 days per month), which the Council approved at its meeting on June 6, 2023. Due to violations by TopKnotch Security of its agreement with the City for security services, City staff terminated the agreement effective immediately on Friday,

July 14, 2023, causing the Police Department to provide security services at the Armory on Friday, July 14 through Sunday, July 16, 2023. Beginning on Monday, July 17, 2023, Good Guard Security, Inc. began providing security services, which at its meeting on July 18, 2023, the Council approved an agreement for security services for approximately \$21,000 per month (2 personnel at \$28.95/hour for 12 hours per day for 30 days per month).

RECOMMENDATION: That the City Council receive the report of status and review of the Declaration of Local Emergency and determine the need exists to continue said Declaration.

ATTACHMENTS:

1. Declaration of Local Emergency - March 13, 2023
2. Resolution No. 11-2023
3. Rio Vista Avenue Mandatory Evacuation Order - March 16, 2023
4. Tule River Banks Mandatory Evacuation Order - March 19, 2023
5. Governor Newsom Executive Order N-6-23
6. Governor Newsom Executive Order N-7-23
7. Governor Newsom Executive Order N-10-23
8. Federal Disaster Declaration Fact Sheet - April 3, 2023
9. License to Use State Military Property - April 14, 2023
10. City and County Memorandum of Understanding for Shelter Support
11. County of Tulare CalOES Shelter Support Request Letter - April 14, 2023
12. License to Use State Military Property - May 16, 2023
13. Federal Disaster Declaration Notice - July 14, 2023
14. Resolution No. 15-2023
15. Rescue Source & Rescue 3 Invoice: Water Rescue Equipment
16. Royal Restrooms Invoice: Mobile Shower-Restroom Units
17. Rain for Rent Pump Invoice
18. Mike Clark Trucking Invoice
19. TopKnotch Security, Inc. Agreement
20. Good Guard Security, Inc. Agreement
21. Armory Daily Census
22. Municipal Code Chapter 9 - Civil Defense and Disaster
23. California Government Code 8558

Appropriated/Funded:

Review By:

Department Director:
Patrice Hildreth, City Manager

Final Approver: Jason Ridenour, Acting Deputy City Manager



DECLARATION OF LOCAL EMERGENCY

WHEREAS, severe winter storm systems have struck California and in particular, the Porterville area, beginning in late February and continuing into March bringing damaging winds and historic precipitation, including rainfall in the Southern Sierra Nevada mountains already impacted by above-normal snow levels; and

WHEREAS, it is forecasted that additional storms will continue to threaten the Porterville area, bringing additional rain, significantly impacting Lake Success which is above capacity, and significantly increasing flows in the Tule River; and

WHEREAS, under the provisions of the City Charter, I find that conditions of extreme peril to the safety of persons and property exist due to these storms; and

WHEREAS, I find that the conditions caused by these storms, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of the City of Porterville and may require the combined forces of mutual aid and/or unified command to appropriately respond.

NOW, THEREFORE, I, MARTHA A. FLORES, Mayor of the City of Porterville, in accordance with the authority vested in me by the Porterville City Charter, **HEREBY DELCARE A LOCAL EMERGENCY** to exist in the City of Porterville.

IT IS HEREBY ORDERED that the City's Emergency Management Team under the direction of Fire Chief/Incident Commander Bryan Cogburn has the authority to procure any and all resources deemed necessary in this event.

DECLARED, this 13th day of March, 2023.

Martha A. Flores, Mayor

ATTEST:

Patrice Hildreth, Chief Deputy City Clerk

RESOLUTION NO. 11 -2023

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF PORTERVILLE CONFIRMING THE EXISTENCE
OF A LOCAL EMERGENCY

WHEREAS, Chapter 9 of the Porterville Municipal Code of the City of Porterville provides for the ability to declare the existence or threatened existence of a local emergency when the City is affected or likely to be affected by a public calamity; and

WHEREAS, conditions of extreme peril to the safety of persons and property have arisen within the City of Porterville caused by severe winter storm systems striking California, and in particular the Porterville area, beginning in late February and continuing into March bringing damaging winds and historic precipitation, including rainfall in the Southern Sierra Nevada mountains already impacted by above-normal snow levels; and

WHEREAS, it is forecasted that additional storms will continue to threaten the Porterville area, bringing additional rain, significantly impacting Lake Success which is above capacity, and significantly increasing flows in the Tule River that create or will likely create conditions of extreme peril; and

WHEREAS, Mayor Martha A. Flores in conjunction with City Manager John Lollis did declare the existence of a local emergency within the City of Porterville on the 13th day of March, 2023, which is subject to ratification by the City Council within seven (7) days. A copy of said Declaration is attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby find that the aforesaid conditions of extreme peril did warrant and necessitate the declaration of the existence of a local emergency; and

BE IT RESOLVED that said local emergency shall be deemed to continue to exist until termination is proclaimed by the City Council of the City of Porterville, State of California.

PASSED, APPROVED AND ADOPTED this 17th day of March, 2023.



Martha A. Flores, Mayor

ATTEST:

John D. Lollis, City Clerk



By: Patrice Hildreth, Chief Deputy City Clerk



DECLARATION OF LOCAL EMERGENCY

WHEREAS, severe winter storm systems have struck California and in particular, the Porterville area, beginning in late February and continuing into March bringing damaging winds and historic precipitation, including rainfall in the Southern Sierra Nevada mountains already impacted by above-normal snow levels; and

WHEREAS, it is forecasted that additional storms will continue to threaten the Porterville area, bringing additional rain, significantly impacting Lake Success which is above capacity, and significantly increasing flows in the Tule River; and

WHEREAS, under the provisions of the City Charter, I find that conditions of extreme peril to the safety of persons and property exist due to these storms; and

WHEREAS, I find that the conditions caused by these storms, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of the City of Porterville and may require the combined forces of mutual aid and/or unified command to appropriately respond.

NOW, THEREFORE, I, MARTHA A. FLORES, Mayor of the City of Porterville, in accordance with the authority vested in me by the Porterville City Charter, **HEREBY DELCARE A LOCAL EMERGENCY** to exist in the City of Porterville.

IT IS HEREBY ORDERED that the City's Emergency Management Team under the direction of Fire Chief/Incident Commander Bryan Cogburn has the authority to procure any and all resources deemed necessary in this event.

DECLARED, this 13th day of March, 2023.

Martha A. Flores, Mayor

ATTEST:

Patrice Hildreth, Chief Deputy City Clerk

STATE OF CALIFORNIA)
CITY OF PORTERVILLE) SS
COUNTY OF TULARE)

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at a meeting of the Porterville City Council duly called and held on the 17th day of March, 2023.

Said resolution was duly passed, approved, and adopted by the following vote:

Council:	FLORES	CARRILLO	WEYHRAUCH	BELTRAN	MEISTER
AYES:	X	X	X	X	X
NOES:					
ABSTAIN:					
ABSENT:					



JOHN D. LOLLIS, City Clerk

By:

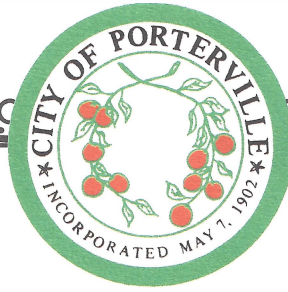
Fernando Gabriel-Moraga, Deputy City Clerk

Police Department

350 North "D" Street
Porterville, CA 93257
(559) 782-7400/FAX (559) 784-1070
www.PortervillePolice.com

Jake Castellow

Chief of Police



March 16th, 2023

This is a message from Tulare County & the City of Porterville. Due to the recent storm events, and the water levels in the Tule River, there is erosion to the bank of the river. An Evacuation order has been issued for all residences, businesses, and structures that are on the south side of Rio Vista Ave with the addresses of **191 Rio Vista Avenue, 201 Rio Vista Avenue, 211 Rio Vista Avenue, 221 Rio Vista Avenue, 231 Rio Vista Avenue, 241 Rio Vista Avenue, and 245 Rio Vista Avenue.**

An evacuation order, also known as a mandatory evacuation, means that all residents and visitors should **leave now** before the water causes unsafe conditions for the residence. If you are unable to evacuate and require assistance, please call 9-1-1. For additional resources or information, please call 2-1-1. Please refer to the map on the Tulare County website, emergencies page, at [TulareCounty.CA.gov/emergencies](https://www.tularecounty.ca.gov/emergencies).

A Temporary Evacuation point has been set up at Porterville College, 100 E College Avenue. Thank you.

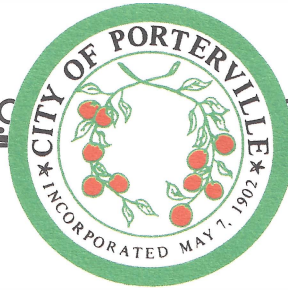
Jake Castellow
Chief of Police

Police Department

350 North "D" Street
Porterville, CA 93257
(559) 782-7400/FAX (559) 784-1070
www.PortervillePolice.com

Jake Castellow

Chief of Police



March 19, 2023

This is a message from Tulare County & the City of Porterville. Due to the recent storm events, there is erosion to the banks of the Tule River.

An **Evacuation Order** has been issued for the north bank and south bank of the Tule River, from Westwood Street, to the Plano bridge, but does not include the south bank from Westwood Street, east to the bridge of State Route 65. This evacuation order does not include permanent structures with a designated address, other than those for which a previous evacuation order has been issued.

An evacuation order, also known as a mandatory evacuation, means that all residents and visitors should leave immediately due to the unsafe conditions of the river banks. If you are unable to evacuate and require assistance, please call 9-1-1. For additional resources or information, please call 2-1-1. Please refer to the map on the Tulare County website, emergencies page, at TulareCounty.CA.gov/emergencies.

A Temporary Evacuation point has been set up at Porterville College, 100 E College Avenue.

Jake Castellow

Chief of Police

Porterville Police Department Mission Statement

The members of the Porterville Police Department are committed to the safety and security of the community while providing quality service with excellence, honesty and integrity.

EXECUTIVE DEPARTMENT STATE OF CALIFORNIA

EXECUTIVE ORDER N-6-23

WHEREAS on March 1, 2023, March 8, 2023, March 12, 2023, March 14, 2023, and March 28, 2023, I proclaimed a State of Emergency to exist in 47 counties, cumulatively, as a result of a series of ongoing winter storms that initially struck California beginning in late February and continue to significantly impact the counties identified in my Proclamations; and

WHEREAS the State has experienced over a dozen atmospheric rivers since December 2022, resulting in compounding and cumulative impacts across California, including what are expected to be record amounts of snow in the Sierra Nevada, in particular in the southern Sierra, and current and forecasted precipitation are expected to add to historic snowpack levels already composed of several million acre-feet of snow water content; and

WHEREAS reservoirs into which the Sierra snowpack runoff would flow are already impacted by runoff, which is expected to greatly exceed available storage capacity in the reservoirs in and around the Tulare Lake Basin and the San Joaquin River Basin, and much of the ground in the area has reached saturation due to the series of ongoing winter storms; and

WHEREAS the Tulare Lake Basin is the terminal point for the Kings, Kaweah, Tule, and Kern Rivers, and several smaller streams, meaning that water from additional expected rains and Sierra snowpack runoff that cannot be stored in reservoirs or absorbed into the ground will flow into the basin; and

WHEREAS recent storms have already caused flooding in the Tulare Lake Basin, leading to emergency rescues and evacuation orders in Allensworth, Alpaugh, and other communities in Tulare and Kings Counties, and leading to dozens of levee breaks and local agencies directing strategic cuts to canals and levees to prevent further flooding of communities; and

WHEREAS runoff from the snowpack caused by the winter storms could result in flood conditions in the Tulare Lake Basin resembling those last experienced in the historic floods of 1969 and 1983, following historic snowpacks in those years; and

WHEREAS local flood control districts and other local governments generally have flood control responsibility in the Tulare Lake Basin, but state agencies such as the California Department of Forestry and Fire Protection (CAL FIRE), the California Department of Water Resources, and the Governor's Office of Emergency Services are actively engaged in supporting this local effort, and state agencies will continue to provide technical advice and other resources and support as needed, with a particular priority on protecting the lives and health of local communities; and

WHEREAS stretches of the San Joaquin River have been or are at flood stage this spring, river stages are expected to stay high throughout the spring as snowpack melts, and multiple levee repairs are underway on the lower San Joaquin River; and

WHEREAS the Tulare Lake Basin is hydrologically connected to the San Joaquin River Basin and that connection has the potential to exacerbate the flood risk in the San Joaquin River Basin, and so further emergency response efforts may become necessary in the San Joaquin River Basin as well; and

WHEREAS heavy accumulation of snowfall on the roof of Bear Valley Elementary School, located in Alpine County, currently renders instructional space unsafe for use; and

WHEREAS frequent flooding and flood evacuation orders have resulted in school closures and low student attendance in Pajaro Middle School, Hall District Elementary School and Ohlone Elementary, located in Pajaro Valley Unified School District in Santa Cruz County; and

WHEREAS it is critical that displaced students are back in school facilities as quickly as possible to ensure continuity in education; and

WHEREAS the State of California and local governments, in collaboration with the Federal government, continue sustained efforts to respond to and mitigate the effects of these storms; and

WHEREAS on March 9, 2023, I requested a Presidential Emergency Declaration related to these late winter storms, which was expeditiously approved by President Joseph R. Biden, Jr.; and

WHEREAS on March 15, 2023, I requested the addition of 9 counties to the existing Presidential Emergency Declaration related to these late winter storms, which was expeditiously approved by the President; and

WHEREAS on March 28, 2023, I also requested the President issue a Major Disaster Declaration related to these late winter storms for counties that met the validated damage threshold; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay the mitigation of the effects of these ongoing winter storms.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, and in particular, Government Code sections 8567, 8571, and 8627, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. All provisions contained in the above-referenced Proclamations of a State of Emergency shall remain in full force and effect.
2. To protect health, safety, and the environment, and to reduce the risks of local catastrophic flooding in the Tulare Lake Basin, Chapter 6 (commencing with section 1600) of Division 2 of the Fish and Game Code, and regulations adopted pursuant to that Chapter, are

suspended for activities that meet all of the requirements in Paragraph 3.

3. The suspension created by Paragraph 2 shall apply to floodwater diversion, debris removal, and levee repair and breach in the Tulare Lake Basin, on the condition that the actions cease when the flood conditions have abated to the point there is no longer flooding outside of defined streambeds and levees. Additionally, the suspension created by Paragraph 2 shall apply to floodwater diversion only if all of the following additional conditions are met:
 - a. The diversion of floodwater from the Tulare Lake Basin or rivers or streams flooding the Tulare Lake Basin must occur between March 31, 2023, and August 1, 2023, for flood management purposes.
 - b. For diversions directly from rivers or streams, a local or regional flood control agency, city, or county has given notice via its internet website, electronic distribution list, emergency notification service, or another means of public notice that flows downstream of the point of diversion are at imminent risk of flooding and inundation of land, roads, or structures.
 - c. For diversion of floodwaters in the Tulare Lake Basin (that is, waters no longer contained within a defined streambed or levee), a local or regional flood control agency, city, or county has given notice via its internet website, electronic distribution list, emergency notification service, or another means of public notice that areas from which the floodwaters are diverted are either at imminent risk of flooding or already flooded, with potential or existing inundation of land, roads, or structures.
 - d. Any water diverted is not diverted to and will not be applied to any area that has not been in active irrigated agricultural cultivation within the past three years, including grazing lands, annual grasslands, and natural habitats. This limitation does not apply to facilities already constructed for the purposes of groundwater recharge or managed wetlands.
4. In addition to the mandatory conditions set forth in Paragraph 3, any person conducting planned levee breaches or controlled inundation to prevent further catastrophic flooding pursuant to the suspension created by Paragraph 2 should take care, wherever feasible, to protect above-ground infrastructure and drinking water and wastewater infrastructure such as drinking water well field sites, wastewater discharge ponds, and other water resources that are necessary for the protection of human health and the recovery of impacted communities.
5. For purposes of conducting emergency flood preparation and response activities, for any (a) actions taken by state agencies, (b) actions taken by a local agency where the Secretary of the Natural Resources Agency concurs that local action is required, and (c) permits necessary to carry out actions under (a) and (b), Public

Resources Code, Division 13 (commencing with Section 21000) and regulations adopted pursuant to that Division, are suspended to the extent necessary to address flood impacts in the Tulare Lake Basin.

6. To support adequate state staffing for all state agencies and departments with an assigned response and/or recovery role related to flooding in the Tulare Lake Basin, consistent with applicable federal law, work hour limitations for retired annuitants, permanent and intermittent personnel, and state management and senior supervisors are suspended. Furthermore, reinstatement and work hour limitations in Government Code sections 21220, 21224(a), and 7522.56(b), (d), (f), and (g), and the time limitations in Government Code section 19888.1 and California Code of Regulations, title 2, sections 300-303 are suspended. All other restrictions must be adhered to for retired annuitants. The Director of the California Department of Human Resources must be notified of any individual employed in state government pursuant to these suspensions. The suspension of statutes identified in this Paragraph shall also apply to local governments, as applicable, to ensure adequate staffing to appropriately respond to the flooding in the Tulare Lake Basin. Local governmental agencies shall notify the California Public Employees' Retirement System of any individual employed by an agency pursuant to this Paragraph.
7. The limitation for the period of employment for State Personnel Board emergency appointments, as provided in Government Code section 19888.1, is suspended for positions required for emergency response and/or recovery operations related to flooding in the Tulare Lake Basin. The requirements and period of employment for such appointments will be determined by the Office of Emergency Services but shall not extend beyond the termination date of the State of Emergency.
8. To the extent the Alpine County Office of Education and Alpine County Unified School District are required to use temporary facilities such as the Alpine County Public Library due to extraordinary snowpack on the roof of Bear Valley Elementary School, rendering instructional space unsafe, the requirements of Education Code sections 17280, et seq., 17365, et seq., and Government Code sections 4453 and 14963 are suspended with respect to those temporary facilities. The requirements of the California Building Code (codified in Title 24 of the California Code of Regulations), as adopted and enforced by the local building and fire agencies with jurisdiction over the area, shall apply to these temporary facilities.
9. To the extent the Alpine County Office of Education and Alpine County Unified School District are required to temporarily use buildings, as defined in the California Building Code (California Code of Regulations, Title 24, Part 2, Chapter 2, section 202), such as the Alpine County Public Library due to extraordinary snowpack on the roof of the Bear Valley Elementary School, rendering instructional space unsafe, local planning and zoning regulations shall be suspended to allow immediate occupancy of such buildings for use as public school facilities. In addition, the requirements of the California Building Code, as adopted and enforced by the local building and fire agencies with jurisdiction over the area, shall apply, except that the requirements

relating to Change of Use or Occupancy Classification in the California Building Code (California Code of Regulations, Title 24, Part 2, Chapter 1, section 111) shall not trigger immediate code upgrades, and a Certificate of Occupancy shall not be withheld for such immediate and temporary use of the facilities as a public school, as long as such facilities met building code requirements at the time of their construction, are accessible to individuals with disabilities, and are judged safe for use by the local building official.

10. Education Code section 60641 (a) requiring that all pupils be administered academic assessments in mathematics, English language arts, and science, as provided for in Education Code section 60640, is suspended for the 2022-2023 school year for Pajaro Middle School, Hall District Elementary School and Ohlone Elementary School of the Pajaro Valley Unified School District, if a federal waiver is approved by the United States Department of Education.

I FURTHER DIRECT that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have
hereunto set my hand and caused
the Great Seal of the State of
California to be affixed this 31st day
of March 2023.



GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY N. WEBER, Ph.D.
Secretary of State

EXECUTIVE DEPARTMENT STATE OF CALIFORNIA

EXECUTIVE ORDER N-7-23

WHEREAS on March 1, March 8, March 12, March 14, March 28, April 20, and May 15, 2023, I proclaimed a State of Emergency to exist in 52 counties, cumulatively, as a result of a series of winter storms that initially struck California beginning in late February and continue to significantly impact the counties identified in my Proclamations; and

WHEREAS on March 31, 2023, I issued Executive Order N-6-23 to further bolster the emergency response to this Late Winter Storms event, particularly in the Tulare Lake Basin that continues to be plagued by historic flooding; and

WHEREAS on April 21, May 10, July 8, and October 19, 2021, I proclaimed States of Emergency to exist due to drought conditions; and

WHEREAS on March 10, 2023, I issued Executive Order N-4-23 to address evolving drought conditions due to the winter storms and to mitigate flooding by facilitating groundwater recharge; and

WHEREAS due to the complexity of the impacts from over a dozen Atmospheric River events since December 2022, including the accumulation of a record snowpack in the Sierra Nevada that is likely to yield record snowmelt runoff, especially in the Tulare Lake Basin, I previously issued Executive Orders identified herein to respond to and recover from the winter storms, and those orders now require updating in-light of the most recent runoff conditions and the State's more robust and recent modeling of likely flood impacts; and

WHEREAS the Tulare Lake Basin includes portions of Fresno, Kings, Tulare, and Kern counties and is the terminal point for the Kaweah, Tule, and Kern Rivers as well as a portion of the Kings River and several smaller streams, meaning that water from Sierra snowpack runoff that cannot be stored in reservoirs or absorbed into the ground will flow into the basin; and

WHEREAS the Tulare Lake Basin is hydrologically connected to the San Joaquin River Basin via the James Bypass and Fresno Slough and that connection has the potential to exacerbate the flood risk in the San Joaquin River Basin, and so further emergency response efforts may become necessary in the San Joaquin River Basin; and

WHEREAS stretches of the San Joaquin River, Chowchilla and Eastside Bypasses, San Joaquin River mainstem and tributaries (Fresno River, Chowchilla River, Merced River, Stanislaus River, and Tuolumne River, hereafter, San Joaquin River Tributaries), and Fresno Slough/James Bypass have been or are at flood stage this spring, river stages are expected to stay high or increase throughout the spring and summer as snowpack melts, and multiple levee repairs are underway on the lower San Joaquin River; and

WHEREAS the Kern River – California Aqueduct Intertie exists to move floodwaters safely from the Kern River into the California Aqueduct, and the Kern River Watermaster on May 10, 2023, requested the use of the Intertie to prevent Kern River floodwater from exacerbating flooding in the Tulare Lake Basin, and state agencies have begun actions to safely enable the diversion of these flood flows; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Order would prevent, hinder, or delay the mitigation of the effects of these ongoing winter storms.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, and in particular, Government Code sections 8567, 8571, and 8627, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. All provisions contained in the above-referenced Proclamations of a State of Emergency and Executive Orders shall remain in full force and effect except as modified in this Order.
2. Paragraph 2 of Executive Order N-6-23 is withdrawn and replaced by the following:

To protect health, safety, and the environment, and to reduce the risks of local catastrophic flooding in the Tulare Lake or San Joaquin River Basins, the following are suspended for activities that meet the requirements in Paragraph 3.

- a. Chapter 6 (commencing with section 1600) of Division 2 of the Fish and Game Code, and regulations adopted pursuant to that Chapter; and
 - b. Division 13 (commencing with Section 21000) of the Public Resources Code, and regulations adopted pursuant to that division.
3. Paragraph 3 of Executive Order N-6-23 is withdrawn and replaced by the following, except that any diversion in the Tulare Lake Basin that is operational as of June 1, 2023, may continue to operate under Paragraph 3 of Executive Order N-6-23 until August 31, 2023:

The suspensions created by Paragraph 2 shall apply to floodwater diversion, floating vegetation and debris removal, and levee repair and breach, in the Tulare Lake or San Joaquin River Basins, on the condition that the actions cease when the flood conditions have abated to the point there is no longer a risk of, or existing, flooding causing inundation of land, roads, or structures at or downstream of the point of diversion.

4. Additionally, the suspensions created by Paragraph 2 shall apply to floodwater diversion only if all the following additional conditions are met:
 - a. Any diversion of floodwaters directly from the (i) Tulare Lake Basin or rivers or streams or bypasses flooding the Tulare Lake Basin or (ii) the San Joaquin River or San Joaquin River tributaries (including Fresno Slough and James Bypass) or San Joaquin River bypasses must occur between March 31, 2023, and August 31, 2023, for flood management purposes.

- b. With respect to diversions of floodwaters directly from rivers or streams or bypasses, a local or regional flood control agency, city, or county has given notice via its internet website, electronic distribution list, emergency notification service, or another means of public notice, that flows downstream of the point of diversion are at imminent risk of flooding and inundation of land, roads, or structures.
- c. With respect to diversions of floodwaters that are no longer contained within a defined streambed or levee, a local or regional flood control agency, city, or county has given notice via its internet website, electronic distribution list, emergency notification service, or another means of public notice that areas from which the floodwaters are diverted are either at imminent risk of flooding or already flooded, with potential or existing inundation of land, roads, or structures, or are on lands inundated as a result of actions within subparagraph (a).
- d. Any floodwater diverted is not diverted to and will not be applied to:
 - i. Any barn, ponds, or lands to which manure or waste from an animal facility that generates waste from the feeding and housing of animals for more than 45 days per year in a confined area that is not vegetated are applied;
 - ii. Any agricultural field where pesticide or fertilizer application has occurred in the prior 30 days or in the period prohibited by applicable law, whichever is longer;
 - iii. Any area that could cause damage to critical levees, infrastructure, wastewater and drinking water systems, drinking water wells or drinking water supplies, or exacerbate the threat of flood and other health and safety concerns; or
 - iv. Any area that has not been in active irrigated agricultural cultivation within the past three years including grazing lands, annual grasslands, and natural habitats. This limitation does not apply to facilities already constructed for the purposes of groundwater recharge or managed wetlands.
- e. With respect to diversions of floodwaters from waters tributary to the Sacramento and San Joaquin River Delta as defined in Water Code section 12220 (Delta), water rights holders are not making releases of stored water or reoperating facilities to provide flow for the purposes of meeting water quality control plan or endangered species requirements in the Delta at the time of the diversion.
- f. With respect to diversions of floodwaters directly from the San Joaquin River or San Joaquin River Tributaries, the diversion uses:
 - i. either existing diversion infrastructure or temporary pumps;

- ii. no new permanent infrastructure or permanent construction; and
 - iii. simple screens installed on temporary pump intakes to minimize the impacts of diversion to salmon and other aquatic life.
- 5. Paragraph 4 of Executive Order N-6-23 is withdrawn and replaced by the following:

In addition to the mandatory conditions set forth in Paragraph 3, any person conducting planned levee breaches or controlled inundation to prevent further catastrophic flooding pursuant to the suspensions created by Paragraph 2 should, wherever feasible, protect above-ground infrastructure and water sources that are necessary for the protection of human health and the recovery of impacted communities.

- 6. Paragraph 5 of Executive Order N-6-23 is withdrawn and replaced by the following:

For purposes of conducting emergency flood preparation and response activities beyond those provided for in Paragraphs 2 and 3, for any (a) actions taken by state agencies, (b) actions taken by a local agency where the Secretary of the Natural Resources Agency concurs that local action is required, and (c) permits necessary to carry out actions under (a) and (b), Public Resources Code, Division 13 (commencing with Section 21000) and regulations adopted pursuant to that Division, are suspended to the extent necessary to address flood impacts in the Tulare Lake or San Joaquin River Basins.

- 7. Paragraph 6 of Executive Order N-6-23 is withdrawn and replaced by the following:

To support adequate state staffing for all state agencies and departments with an assigned response and/or recovery role related to flooding in the Tulare Lake or San Joaquin River Basins, consistent with applicable federal law, work hour limitations for retired annuitants, permanent and intermittent personnel, and state management and senior supervisors are suspended. Furthermore, reinstatement and work hour limitations in Government Code sections 21220, 21224(a), and 7522.56(b), (d), (f), and (g), and the time limitations in Government Code section 19888.1 and California Code of Regulations, title 2, sections 300-303 are suspended. All other restrictions must be adhered to for retired annuitants. The Director of the California Department of Human Resources must be notified of any individual employed in state government pursuant to these suspensions. The suspension of statutes identified in this Paragraph shall also apply to local governments, as applicable, to ensure adequate staffing to appropriately respond to the flooding in the Tulare Lake Basin. Local governmental agencies shall notify the California Public Employees' Retirement System of any individual employed by an agency pursuant to this Paragraph.

- 8. Paragraph 6 of Executive Order N-6-23 is withdrawn and replaced by the following:

The limitation for the period of employment for State Personnel Board

emergency appointments, as provided in Government Code section 19888.1, is suspended for positions required for emergency response and/or recovery operations related to flooding in the Tulare Lake or San Joaquin River Basins. The requirements and period of employment for such appointments will be determined by the Office of Emergency Services, but shall not extend beyond the termination date of the State of Emergency.

9. Paragraph 3 of Executive Order N-4-23 is withdrawn and replaced by the following, except that any diversion that is operational as of June 1, 2023, may continue to operate under Paragraph 3 of Executive Order N-4-23 until August 31, 2023:

The suspensions created by Paragraph 2 of Executive Order N-4-23 shall apply to diversions of floodwaters as to which all the following conditions are met:

- a. Diversions of floodwaters directly from rivers, streams, or bypasses must occur between March 10, 2023, and August 31, 2023, for flood management and associated groundwater recharge.
- b. Diversions of floodwaters no longer contained within a defined streambed must prevent imminent risk of flooding or relieve flooding pressure from land, roads, or structures, already inundated, including as a result of actions within subparagraph (a).
- c. A local or regional flood control agency, city, or county has given notice via its internet website, electronic distribution list, emergency notification service, or another means of public notice, that waters at or downstream of the point of diversion are at imminent risk of flooding and inundation of land, roads, or structures.
- d. The diversions cease when the flood conditions have abated to the point there is no longer a risk of, or existing, flooding causing inundation of land, roads, or structures at or downstream of the point of diversion.
- e. Any floodwater diverted is not diverted to and will not be applied to:
 - i. Any barn, ponds, or lands, to which manure or waste from an animal facility that generates waste from the feeding and housing of animals for more than 45 days per year in a confined area that is not vegetated are applied;
 - ii. Any agricultural field where pesticides or fertilizer application has occurred in the prior 30 days or in the period prohibited by applicable law, whichever is longer;
 - iii. Any area that could cause damage to critical levees, infrastructure, wastewater and drinking water systems, drinking water wells or drinking water supplies, or exacerbate the threat of flood and other health and safety concerns; or

- iv. Any area that has not been in active irrigated agricultural cultivation within the past three years, including grazing lands, annual grasslands, and natural habitats. This limitation does not apply to facilities already constructed for the purpose of groundwater recharge or managed wetlands.
- f. With respect to diversions of floodwaters from waters tributary to the Sacramento and San Joaquin River Delta (Delta) as defined in Water Code section 12220 (Delta), water rights holders are not making releases of stored water or reoperating facilities to provide flow for the purposes of meeting water quality control plan or endangered species supporting regulatory requirements in the Delta at the time of the diversion.
- g. The diversion uses:
 - i. Either existing diversion infrastructure or temporary pumps;
 - ii. Existing groundwater recharge locations, where available;
 - iii. No new permanent infrastructure or permanent construction; and
 - iv. Simple screens installed on temporary pump intakes to minimize the impacts of diversion to salmon and other aquatic life.
- h. The person or entity availing itself of suspensions created by Paragraph 2 of Executive Order N-4-23 files a preliminary report with the Water Board and any applicable Groundwater Sustainability Agency (GSA) or GSAs for the basin, no later than 14 days after initially commencing diversion of flood flows for groundwater recharge, and a final report with the Water Board and any applicable GSA or GSAs for the basin no later than September 15, 2023. The preliminary and final reports required by this subparagraph shall:
 - i. Identify the person or entity utilizing the suspensions created by Paragraph 2 of Executive Order N-4-23;
 - ii. Identify the triggering condition from subparagraph (c) of this paragraph;
 - iii. Provide the GPS coordinates for the point of diversion, a map identifying the approximate area inundated by the flood flows, and the corresponding assessor parcel number(s);
 - iv. Identify the time when diversions of floodwaters to groundwater recharge commenced, and for final reports, when diversions ceased; and
 - v. Provide an estimate, as of the report's date, of the amount of floodwaters diverted utilizing the suspensions created by Paragraph 2 of Executive Order N-4-23.

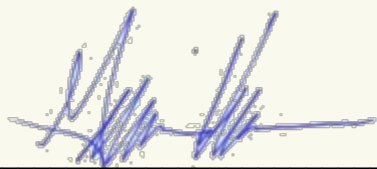
The Water Board shall post on its internet website all reports received pursuant to this subparagraph.

10. To mitigate the effects of the Late Winter Storms, including by reducing the risks of local catastrophic flooding in the Tulare Lake Basin, Part 2 (commencing with section 1200) of division 2 of the Water Code, exclusive of section 1225, and regulations adopted pursuant to that part, are suspended for diversions of flood flows into the Kern Intertie and ultimately into the California Aqueduct until August 31, 2023, such that applications and permits for water rights shall not be required for such diversions, nor shall such diversions create new water rights or modify existing water rights, to the extent applications or permits would have been required or water rights would have been affected absent this suspension.
11. The Department of Water Resources and State Water Resources Control Board shall (i) communicate to water systems and others any additional information or actions necessary for those systems and others to monitor and be prepared for the addition of Kern River floodwater in the California Aqueduct, and (ii) collaborate on long-term actions that align water rights and flood response, including actions that maximize in-basin groundwater recharge.

I FURTHER DIRECT that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have
hereunto set my hand and caused
the Great Seal of the State of
California to be affixed this 17th day
of May 2023.



GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY WEBER, PH.D
Secretary of State

**EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA**

EXECUTIVE ORDER N-10-23

WHEREAS the State has experienced over thirty atmospheric rivers since December 2022, resulting in compounding and cumulative impacts across California, including record or near record amounts of snow in the Sierra Nevada; and

WHEREAS on January 4, 2023, I proclaimed a State of Emergency to exist in California as a result of severe winter storms related to an atmospheric river event beginning on December 27, 2022; and

WHEREAS on March 1, March 8, March 12, March 14, March 28, April 20, May 15, and June 16, 2023, I proclaimed a State of Emergency to exist in 53 counties, cumulatively, as a result of a series of winter storms that initially struck California beginning in late February and continue to significantly impact the counties identified in my Proclamations; and

WHEREAS on April 21, May 10, July 8, and October 19, 2021, I proclaimed States of Emergency to exist due to drought conditions, and on February 13, 2023, I issued Executive Order N-3-23 and on March 10, 2023, I issued Executive Order N-4-23, to address evolving drought conditions due to the 2022-2023 Winter Storm Events and mitigate flooding by facilitating groundwater recharge; and

WHEREAS on March 31, 2023, I issued Executive Order N-6-23 to bolster the emergency response to the 2022-2023 Winter Storm Events, particularly in the Tulare Lake Basin that continues to be affected by historic flooding; and

WHEREAS on May 17, 2023, and on June 16, 2023, I issued Executive Order N-7-23 and N-9-23, respectively, to further bolster the emergency response to the 2022-2023 Winter Storm Events, in both the San Joaquin River and the Tulare Lake Basins; and

WHEREAS there remains a need for removal of floating vegetation and debris throughout impacted counties, including stretches of the Salinas River mainstem and tributaries, stretches of the Pajaro River mainstream and tributaries, and coastal streams along the Central Coast region from Santa Cruz County to Ventura County, and that removal must expeditiously occur before the next rainy season begins in fall 2023 in order to mitigate the risk of additional flooding and allow for continued recovery efforts; and

WHEREAS emergency repairs, debris removal, sediment removal, and vegetation management within waters of the United States are subject to federal approvals from the U.S. Army Corps of Engineers pursuant to section 404 of the federal Clean Water Act (33 U.S.C. § 1344), and the State Water Resources Control Board (Water Board) has previously issued state water quality certifications corresponding to the Corps Regional General Permits 8, 5, or 63 for Repair and Protection Activities in Emergency Situations and the Nationwide Permit 3 for Maintenance Part (a) for repair, rehabilitation, or replacement of structure of fill (collectively Emergency or Repair Corps Orders), which provide a

pathway for emergency activities in many instances (hereinafter referred to as Water Board Emergency or Repair 401 Certification Orders); and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Order would prevent, hinder, or delay the mitigation of the effects of the 2022-2023 Winter Storm Events.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, and in particular, Government Code sections 8567, 8571, and 8627, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. All provisions contained in the above-referenced Proclamations of a State of Emergency and Executive Orders shall remain in full force and effect, except as modified or withdrawn in subsequent proclamations and orders.
2. To protect health, safety, and the environment, and to reduce the risks of local catastrophic flooding, with respect to activities that take place in the San Joaquin River and tributaries, the Tulare Lake Basin and tributaries, including, but not limited to, the Kings, Tule, Kaweah, and Kern Rivers, the Salinas River and tributaries, the Pajaro River and tributaries, and other coastal streams between the Pajaro River (Santa Cruz/Monterey/San Benito Counties), to and including the Ventura River (Santa Barbara/Ventura County), but excluding tributaries to such other coastal streams, the following are suspended, subject to the conditions in Paragraphs 3 and 4, as applicable:
 - a. Chapter 6 (commencing with section 1600) of Division 2 of the Fish and Game Code, and regulations adopted pursuant to that Chapter.
 - b. Certain statutes, rules, and requirements applicable to activities under the jurisdiction of the Water Board and the California Regional Water Quality Control Boards (Regional Water Boards) as follows:
 - i. For an activity in a water of the United States that receives an authorization by the U.S. Army Corps of Engineers pursuant to section 404 of the Clean Water Act, any enrollment criteria that may limit the permitting of the activity under a Water Board Emergency or Repair 401 Certification Order, including criteria limiting the scope to only the Emergency or Repair Corps Orders, conditioned on compliance with all other provisions set forth in the relevant Water Board Emergency or Repair 401 Certification Order.

- ii. For an activity not covered by paragraph 2.b.i, sections 13260 and 13263 of the Water Code, and regulations adopted pursuant to those sections.
 - c. Division 13 (commencing with section 21000) of the Public Resources Code, and regulations adopted pursuant to that division.
- 3. The suspensions in Paragraph 2 apply only to (i) the repair or replacement of existing levees, weirs, and other conveyance and flood-control infrastructure, (ii) debris removal, (iii) sediment removal, and (iv) vegetation management, provided that the activity meets all of the following conditions, as applicable:
 - a. The activity is necessary to respond to conditions caused by the 2022-2023 Winter Storm Events and is necessary to avoid future damage from high streamflow events in the upcoming rainy season.
 - b. Removal of sediment or vegetation or both serves to either reestablish a functional low flow channel or reestablish channel capacity, or clear sediment and debris from the river channel near structures such as bridges.
 - c. Removal of sediment or vegetation or both is carried out in a manner that (i) does not involve excavation resulting in the establishment of a new low flow channel that did not exist prior to the 2022-2023 Winter Storm Events, (ii) maintains the natural contour of the stream, (iii) maintains the downstream slope of the stream flow line, and (iv) does not impede fish passage or cause fish stranding.
 - d. Removal of sediment or vegetation or both is limited to portions of the channel that are dry.
 - e. No more than 30% of the total native vegetation within the stream channel and bank is removed from each river mile.
 - f. Levees are either set back from their previous location (increasing channel capacity) or are rebuilt as configured prior to the 2022-2023 Winter Storm Events.
 - g. The activity does not involve disposal or placement of flood-delivered sediments into waters of the state or at locations or in a manner where sediments may be washed into waters of the state by rainfall or runoff.
 - h. The activity minimizes impacts to beneficial uses of the water body.
 - i. The activity is completed by November 1, 2023.
- 4. The suspensions in Paragraph 2.b.ii apply only if the activity meets all of the following further conditions:

- a. The project proponent shall provide notice to the appropriate Regional Water Board as early as possible, and no less than forty- eight (48) hours prior to initiating the project, that includes the scope and location of the activity, a description of the infrastructure, debris, sediment, and vegetation conditions relevant to the activity, with representative photos, and, as applicable, a description of how the activity serves to establish a functional low flow channel or reestablish channel capacity.
- b. Following any accidental discharge of a reportable quantity of a hazardous material (as defined in Health and Safety Code section 25501), sewage, or an unknown material, the project proponent shall follow the notification and reporting procedures set forth in condition A.3.c of Water Quality Order No. 2019-0044-Exec Clean Water Act Section 401 Water Quality Certification and Order.
- c. The activity shall be undertaken so as to avoid causing a violation of any applicable water quality standards, including impairment of designated beneficial uses for receiving waters, as adopted in any applicable Regional Water Board or Water Board water quality control plan or state policy for water quality control, but in the event of a violation of water quality standards, the project proponent shall eliminate the source of any such discharge as soon as practicable. Water diversion activities must not result in the degradation of beneficial uses or exceedances of water quality objectives of any of the receiving waters. Any temporary dam or other constructed obstruction must only be built from materials that will cause little or no siltation (e.g., clean gravel). Normal flows must be restored to the affected water immediately upon completion of work at that location.
- d. If there is a violation of a water quality standard, the project proponent shall notify the applicable Regional Water Board of any event causing a violation of compliance with water quality standards. Notification may be via telephone, e-mail, delivered written notice, or other verifiable means. This notification must be followed within three (3) working days by submission of a written report that includes the cause of the violation; the location shown on a map; and the period of the noncompliance including exact dates and times. If the noncompliance has not been corrected, include: the anticipated time it is expected to continue; the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; and any monitoring results.
- e. If surface water is present, the project proponent shall conduct continuous visual surface water monitoring to detect accidental discharge of construction-related pollutants (e.g., oil and grease, turbidity plume, or uncured concrete).

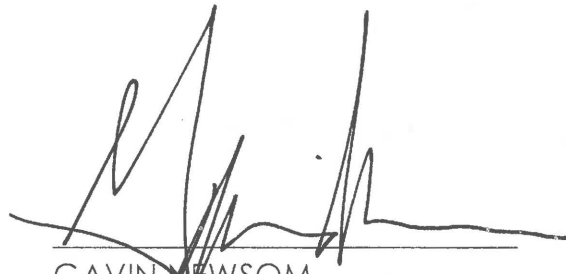
- f. The project proponent shall keep all repairs and construction to the minimum necessary to alleviate the emergency caused by the 2022- 2023 Winter Storm Events and limited to in-kind replacement or refurbishment of on-site features, although the project may undertake minor upgrading if bioremediation or other environmentally sensitive solutions are used.
 - g. The project proponent shall implement effective best management practices to control erosion and runoff from areas associated with the activity, including access roads. All areas of temporary impacts and all other areas of temporary disturbance that could result in a discharge or a threatened discharge to waters of the U.S. and/or state must be restored. Restoration must include grading of disturbed areas to pre-project contours and revegetation with native species.
 - h. Notification of completion, including representative photos showing completion, shall be submitted to the appropriate Regional Water Board within 30 days of completion of the activity.
- 5. To support adequate state staffing for all state agencies assigned response and/or recovery role related to the 2022-2023 Winter Storm Events in coastal streams including and between the Pajaro River (Santa Cruz/Monterey/San Benito Counties) and the Ventura River (Santa Barbara/Ventura County), consistent with applicable federal law, work hour limitations for retired annuitants, permanent and intermittent personnel, and state management and senior supervisors are suspended. Furthermore, reinstatement and work hour limitations in Government Code sections 21220, 21224(a), and 7522.56(b), (d), (f), and (g), and the time limitations in Government Code section 19888.1 and California Code of Regulations, title 2, sections 300-303 are suspended. All other restrictions must be adhered to for retired annuitants. The Director of the California Department of Human Resources must be notified of any individual employed in state government pursuant to these suspensions. The suspension of statutes identified in this Paragraph shall also apply to local governments, as applicable, to ensure adequate staffing to appropriately respond to the damage from the 2022-2023 Winter Storm Events in coastal streams including and between the Pajaro River (Santa Cruz/Monterey/San Benito Counties) and the Ventura River (Santa Barbara/Ventura County). Local governmental agencies shall notify the California Public Employees' Retirement System of any individual employed by an agency pursuant to this Paragraph.
- 6. The limitation for the period of employment for State Personnel Board emergency appointments, as provided in Government Code section 19888.1, is suspended for positions required for emergency response and/or recovery operations related to the 2022-2023 Winter Storm Events in coastal streams including and between the Pajaro River (Santa Cruz/Monterey/San Benito Counties) and the Ventura River (Santa Barbara/Ventura County). The requirements

and period of employment for such appointments will be determined by the Office of Emergency Services but shall not extend beyond the termination date of the State of Emergency.

I FURTHER DIRECT that as soon as hereafter possible, this Order be filed with the Office of the Secretary of State and that widespread publicity and notice be given to this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 4th day of August 2023.

A handwritten signature in black ink, appearing to read 'Gavin Newsom', is written over a horizontal line.

GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY N. WEBER, PH.D.
Secretary of State



FEMA

Congressional Affairs Division
202-646-4500

STATE OF CALIFORNIA

FEDERAL DISASTER DECLARATION FACT SHEET

APRIL 3, 2023

Today, April 3, 2023, President Joseph R. Biden Jr., granted a Major Disaster Declaration for the State of California triggering the release of Federal funds to help individuals and communities recover from Severe Winter Storms, Straight-line Winds, Flooding, Landslides, and Mudslides that occurred February 21, 2023, and continuing. Details of the disaster declaration and assistance programs are as follows:

Declaration Number:	FEMA-4699-DR
Incident:	Severe Winter Storms, Straight-line Winds, Flooding, Landslides, and Mudslides
Incident Period:	February 21, 2023, and continuing
Federal Coordinating Officer:	Andrew F. Grant National FCO Program
Individual Assistance (IA):	(Assistance to individuals and households):
IA-Designated Counties:	Kern, Mariposa, Monterey, San Benito, Santa Cruz, Tulare, and Tuolumne Counties.
Public Assistance (PA):	(Assistance for emergency work and the repair or replacement of disaster-damaged facilities):
PA-Designated Counties:	Calaveras, Los Angeles, Monterey, and Tulare Counties.
Hazard Mitigation (HM):	(Assistance for actions taken to prevent or reduce long term risk to life and property from natural hazards):

HM-Designated Areas:

All areas in the State of California are eligible to apply for assistance under the Hazard Mitigation Grant Program.

OTHER:

Additional designations may be made at a later date if requested by the state and warranted by the results of further damage assessments.

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LICENSE NUMBER	1221
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LICENSE TO USE STATE MILITARY PROPERTY

BETWEEN

CALIFORNIA MILITARY DEPARTMENT

AND

The City of Porterville

FOR

USE OF READINESS CENTER IMPROVEMENTS AND GROUNDS

This AGREEMENT, dated for reference the 10th day of April 2023, by and between the California Military Department (CMD), hereinafter called STATE, and the City of Porterville, 291 North Main Street, Porterville, CA 93257, hereinafter called LICENSEE, without distinction as to number or gender, and effective upon execution by STATE. STATE and LICENSEE are sometimes referred to individually as a "party" or collectively as the "parties".

RECITALS

WHEREAS, the STATE has under its jurisdiction, certain real property known as the Porterville armory, located at 29 N. Plano St. Porterville, CA 93257, hereinafter called PREMISES, identified in **Exhibit "B"**, consisting of one (1) page and attached hereto and incorporated herein by this reference.; and,

WHEREAS, it is essential that STATE have a secure facility and surrounding grounds; and,

WHEREAS, PREMISES may be made available to meet the needs of the local civil authority when not required to meet immediate operational requirements;

NOW THEREFORE, STATE and LICENSEE agree as follows:

WITNESSETH

I.

GENERAL PROVISIONS

1. AGREEMENT is for non-exclusive weekday or weekend use throughout the license term.
2. Upon declaration of emergency by the STATE or federal government, STATE reserves the right to reoccupy PREMISES, including all parking areas, with twenty-four (24) hours written or electronic (voice or email) notice to LICENSEE at the notification address/number below.

3. PREMISES will not be available during the following drill periods: n/a
4. LICENSEE shall comply with all applicable statutes, laws, ordinances and rules or regulations adopted by the Federal, State or any City, City and County, County or other body politic pertaining to use of said premises or any provisions of the License.
5. LICENSEE shall comply with such reasonable rules and regulations as may be prescribed by STATE for the reasonable use and occupation of State Facilities.
6. LICENSEE understands and agrees the California Legislature may impose additional restrictions, limitations or conditions affecting AGREEMENT provisions or terms; however, any such changes become effective no sooner than 30 days after the legislature has acted.
7. This agreement shall not be assigned or sublet or otherwise encumbered, in whole or in part, without STATE'S prior written consent.
8. STATE shall supply PREMISES with utilities, the nominal cost of which is included in the use fee. Section VI (FEES), item #5 addresses extraordinary utility use and payment.
9. LICENSEE shall have use of the offices, storage areas, drill floor, latrines, showers, parking areas for placement of storage containers (if required), and kitchen counters solely for food preparation or distribution (no oven or stove top use). All food will be stored and surfaces cleaned on a daily basis when shelter operations are underway.
10. STATE is not responsible for losses or damage to personal property, equipment or materials of LICENSEE, its employees, agents or clients. LICENSEE shall report to STATE all losses immediately upon discovery.
11. LICENSEE shall not drive any nails, tacks, pins or other objects into the walls, ceilings, partitions, windows, woodwork, or any other part of PREMISES, nor in any manner move or change any fixture, nor make any alterations to PREMISES without STATE'S prior written consent.
12. Upon completion of use, LICENSEE shall remove all decorations, display, signs, and equipment on PREMISES.
13. Upon license expiration, LICENSEE will surrender PREMISES to STATE with appurtenances and fixtures in good order, condition, and repair, reasonable use and wear thereof, or Acts of God excepted.
14. LICENSEE shall not permit any alcoholic beverage to be offered for sale, stored, given away or otherwise disposed or consumed on any part of PREMISES, nor shall LICENSEE permit any use of tobacco products on any part of PREMISES or within twenty (20) feet of entrances, doorways or opening windows, except in a sufficiently distanced controlled area under LICENSEE supervision.
15. LICENSEE acknowledges PREMISES may not be fully ADA compliant and agrees to implement or improve, at its sole cost and expense, those necessary compliance measures required for the duration of its use. Furthermore, LICENSEE agrees to provide any and all required temporary emergency lighting required by State, County or City laws or ordinances.

II.

AUTHORIZED ACTIVITIES

1. LICENSEE is authorized to use PREMISES to provide temporary shelter and/or health and medical services to homeless citizens of the community.
2. LICENSEE may provide on-site program management through either LICENSEE employees, agents or volunteers or through contracted services.
3. LICENSEE agrees to clean PREMISES removing all litter, trash, cans, bottles, etc. from PREMISES after each use period, but not less than once per day.
4. LICENSEE shall provide janitorial services, whether from a licensed contractor or qualified civil service employee(s), to clean and sanitize the armory, including restrooms, showers, and drill floor, according to standards set forth in **Exhibit "F"**, made a part hereof by this reference. If civil service employees will not fulfill janitorial services, LICENSEE shall provide STATE a copy of the janitorial contract before commencement of licensed use.
5. The armory facility will be available twenty-four (24) hours each day unless otherwise approved by the STATE for extended periods during inclement weather conditions.
6. LICENSEE shall provide on PREMISES one hour before shelter opening until one hour after lights-out in the evening no less than one (1) appropriately licensed (guard card) and easily identifiable uniformed security officer. The security officer shall have access to a telephone, provided by LICENSEE, for contacting the appropriate law enforcement agency, should it become necessary. LICENSEE is responsible for protecting patrons, agents and invitees from acts of third parties, and agrees to notify STATE and appropriate law enforcement agencies as required.
7. Uniformed security personnel will check (search) each client for weapons and drug paraphernalia before any client may enter, or reenter the armory. On-site supervising soldiers are not security personnel and WILL NOT assist with weapon checks or other security-related actions; however, they will observe security inspections.
8. Security personnel will notify the military site supervisor or, if one is not available, the Area Coordinator or the STATE Program Manager before leaving PREMISES. A copy of the security contract will be due to the STATE before the license term begins.
9. Consistent with GC 15301.3(e), LICENSEE shall provide STATE a schedule of nightly shelter visits by law enforcement officers of the local jurisdiction within which the armory is located.
10. Any damage to PREMISES will be inspected by STATE representatives (CMD Area Coordinator) and LICENSEE to determine the character and extent of damage (with photographs). Repairs should be completed within twenty-four (24) hours if an emergency or seventy-two (72) hours if urgent.
11. The STATE Area Coordinator will contract for necessary repair or restoration services using appropriate state or federal guidance, while coordinating and collaborating closely with LICENSEE. LICENSEE may not undertake repairs or restoration using its own forces or contract services without the prior written

consent of STATE'S Area Coordinator.

12. Within thirty (30) days of being presented a demand (invoice) for payment, LICENSEE shall make STATE whole for the cost of repairing or restoring any improvement or utility damaged as a result of PREMISES shelter use. If significant plumbing issues occur due to repeated latrine clogging by clients, the LICENSEE will provide, at its sole cost or expense, portable latrines for the duration of the contract.
13. LICENSEE shall take all necessary steps to ensure shelter clients do not constitute a nuisance in the immediate vicinity of PREMISES during hours of shelter operation. If at any time the STATE is dissatisfied with the LICENSEE efforts, the LICENSEE and STATE shall meet to explore means and methods of compliance.
14. LICENSEE is solely responsible for supplying consumables including, but limited to cleaning or sanitizing supplies and equipment, liquid soap, paper towels, and toilet paper. LICENSEE affirms the County Health Department shall provide regular health screenings and consultation on sanitation issues as required or as otherwise requested.
15. The ONLY animals allowed inside PREMISES are service animals as defined in Section XIV below. Client pets or any other animal not meeting the definition of service animal must remain outside PREMISES at all times.
16. LICENSEE shall conform to the guidance and recommendations for tuberculosis prevention outlined in "*Preventing Tuberculosis (TB) in Homeless Shelters: A Guide for Preventing and Controlling TB and other Aerosol Transmissible Diseases in Los Angeles County Facilities*", included as **Exhibit "C"** herein and by this reference made a part hereof.
17. LICENSEE shall at all times conform to local or state (Governor's) orders for preventing COVID-19 infection by mandating mask wearing and organizing the site to conform to physical distancing requirements.
18. Before clients may park their vehicle in PREMISES parking area, LICENSEE shall ensure each has a valid vehicle registration and current insurance coverage.
19. Vehicles parked on PREMISES without appropriate approval shall be towed away by STATE's order and at LICENSEE's risk and expense.

III.

NOTIFICATION

All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below. All such notices or other communications shall be deemed received upon the earlier of (i) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice, (ii) if mailed as provided above, on the date of receipt or rejection, when received by the other party if received Monday through Friday between 6:00 a.m. and 5:00 p.m. Pacific Standard Time. so long as such day is not a State or Federal holiday and otherwise on the next day provided that if the next day is Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day.

To LICENSEE:

City of Porterville
Attn: City Manager
291 North Main Street
Porterville, CA 93257
(559) 782-7466

To STATE:

California Military Department
9800 Goethe Road, Box 18
Sacramento, CA 95826
(916) 854-3788

PROGRAM MANAGER:

SSG Monica Estrada
(916) 541-8160

Notice of change of address or telephone number shall be given by written notice in the manner described in this section. LICENSEE is obligated to notice State offices listed above and the failure to provide notice to do so shall constitute a lack of notice. Nothing contained herein shall preclude the giving of any such notice by personal service.

IV.

INSURANCE REQUIREMENTS

LICENSEE is a public entity, which is self-insured and will be responsible for any damage caused to PREMISES. Additionally, LICENSEE shall indemnify STATE against any injuries caused by use of PREMISES. LICENSEE has furnished the necessary Certificate of Self-Insurance, **Exhibit "D"** attached hereto and incorporated herein by this reference, demonstrating the required insurance coverage will be in effect during the complete term of AGREEMENT, and shall include, but not be limited to:

- Combined single limit liability of \$2,000,000, or
- Special event coverage with a limit of \$2,000,000, and
- A statement naming the United States, State of California, its officers, agents, employees, and servants as additional insured, but only with respect to the activities of the named insured.

V.

HOLD HARMLESS INDEMNIFICATION

The PREMISES are provided in "AS-IS" and "WITH ALL FAULTS" condition, and STATE and its employees, representatives and agents disclaim all warranties, expressed or implied, regarding the PREMISES, including, but not limited to, all implied warranties of merchantability or fitness for a particular purpose or compliance with Applicable Law. LICENSEES acknowledges and agrees that STATE and its employees, representatives and agents have made no representations or warranties for the PREMISES, including, without limitation, any representations or warranties regarding, (a) the condition or repair of the PREMISES, (b) whether such PREMISES are sufficient for the purposes of LICENSEE, or (c) whether the PREMISES comply with Applicable Laws (as defined below), including without limitation the Americans with Disabilities Act (ADA) or other accessibility laws, (d) whether there are any facts or conditions affecting the PREMISES that might, individually or in the aggregate, interfere with the use or occupancy of the

PREMISES or any portion thereof by LICENSEE.

The use of the PREMISES by LICENSEE shall be conclusive evidence that LICENSEE accepts the same "AS IS and WITH ALL FAULTS" and that the PREMISES are suited for the use intended by LICENSEE and are in good and satisfactory condition at the time such possession was taken. LICENSEE represents and warrants to STATE that (a) its sole intended use of the PREMISES is for temporary sheltering (the "Permitted Use") and (b) prior to using the PREMISES it has made such investigations as it deems appropriate with respect to the suitability of the PREMISES for its intended use and has determined that the PREMISES are suitable for such intended use.

LICENSEE shall comply with all applicable statutes, laws, ordinances and rules and regulations adopted by the Federal, State or any City, City and County, County or other body politic, including without limitation all building codes, the ADA or other accessibility laws ("Applicable Laws") and which pertains to use of the PREMISES or any provisions of the License, and will indemnify, defend and hold STATE free and harmless from and against any violations thereof and any and all liabilities, suits, causes of action, judgments, demands and claims for damages, including all reasonable costs of any litigation and attorney's fees and expenses, arising out or by reason of any such violation.

LICENSEE shall indemnify, defend and hold STATE its employees, representatives and agents free and harmless from and against any and all suits, causes of action, demands, proceedings, claims, damages, judgments, obligations liabilities, liens, fines, costs, and expenses (including, but not limited to, attorneys' fees and costs) (collectively "Losses") which arise from or are related to (a) use or occupancy of the PREMISES by LICENSEE or its Representatives, including, but not limited to, damage to property of any kind whatsoever and to whomsoever belonging, including LICENSEE, from any cause or causes whatsoever during the term of this License or any occupancy hereunder, holdover periods or any other occupancy of the PREMISES during the term of this License, except (i) those Losses that are ultimately determined by a court or administrative tribunal of competent jurisdiction to be caused by sole gross negligence of the STATE or its employees, or (ii) to the extent any such Losses are ultimately determined by a court or administrative tribunal of competent jurisdiction to be caused by the willful misconduct of the STATE or its employees; provided, however, any condition of the PREMISES that is found to be in violation of any Applicable Law by a court or administrative tribunal of competent jurisdiction shall not be deemed gross negligence or willful misconduct on the part of the STATE or its employees; (b) breach of LICENSEE'S obligations under the AGREEMENT, (c) negligence or other wrongful act by LICENSEE or its Representatives, (d) violation of Applicable Law by LICENSEE or its Representatives, (e) any allegation that the PREMISES do not comply with Applicable Law. "Representatives" means LICENSEE'S agents, employees, representatives, contractors, or any other person or persons acting within the direct control or authority of such party or its agents, employees, representatives or contractors.

VI.

FEES

1. The use fee is waived based on Services in Kind as per California Army National Guard Regulation 210-2 paragraph 9.
2. Extraordinary utility costs are waived during the term of this license.
3. Emergency 24 hour use of the facility is authorized through the request from the local Office of Emergency Services.

VII. TERM

License shall take effect no earlier than April 11, 2023 or upon execution by STATE, whichever is later, and shall expire no later than 0800 (8:00 A.M.) August 31, 2023.

VIII. AMENDMENT AND TERMINATION

AGEEMENT amendment or modification must be in writing and duly executed by the parties.

Either party may terminate AGEEMENT with 30 days written notification to the other at the addresses previously given. Upon termination, the activities of the parties shall be governed by the applicable provisions of the Military and Veterans Code. STATE is not obligated to reimburse LICENSEE any fees should it terminate this AGREEMENT before reaching its full term.

IX. ENTIRE AGREEMENT

AGREEMENT, along with any exhibits attached hereto, constitutes the entire covenant and understanding between STATE and LICENSEE for PREMISES. AGREEMENT supersedes all prior and contemporaneous routine activity agreements, representations or understandings, if any, whether oral or written.

X. DURATION & RENEWAL

AGREEMENT shall remain in effect through the termination date and will not be extended, but may be renewed annually subsequent to renegotiation required to protect the parties.

XI. RIGHT TO ENTER

During continuance in force of AGREEMENT, there shall be, and is hereby expressly reserved to STATE and to any of its contractors, agents, employees, representatives, or licensees, the right at any and all reasonable times, and any and all places to temporarily enter upon said PREMISES for inspection or other lawful STATE purposes.

XII. ENVIRONMENTAL LAWS AND REGULATIONS

LICENSEE must comply with all applicable local, State or Federal environmental provisions, requirements, ordinances, regulations or laws. AGREEMENT does not constitute any form of authorization, permit, or opinion with respect to the satisfaction thereof. LICENSEE agrees that it shall comply with all laws, federal, state, or local, existing during the term of this license pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law.

1. In the event STATE or any of its affiliates, successors, principals, employees, or agents should incur any liability, cost, or expense, including attorney's fees and costs, as a result of the LICENSEE'S illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, the LICENSEE shall indemnify, defend, and hold harmless any of these individuals against such liability.
2. Where the LICENSEE is found to be in breach of this Paragraph due to the issuance of a government order directing the LICENSEE to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by the LICENSEE or any person acting under

LICENSEE'S direct control and authority, LICENSEE shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by STATE in connection with or in response to such government order.

XIII.

DEFAULT

LICENSEE shall make all required payments to the STATE without deduction, default or delay. In the event of the failure of LICENSEE to do so, or in the event of a breach of any of the other terms, covenants or conditions herein contained on the part of LICENSEE to be kept and performed, and if such default continues for a period of thirty (30) days after receipt of written notice from STATE to LICENSEE of such default, this License may, at the STATE'S sole discretion, be terminated.

In the event of termination of this License, it shall be lawful for STATE to reenter into and upon the PREMISES and every part thereof and to remove and store at LICENSEE's expense all property therefrom and to repossess and occupy the PREMISES. In the event STATE terminates this License pursuant to this Paragraph, the STATE shall not be required to pay LICENSEE any sum or sums whatsoever.

XIV.

SERVICE ANIMALS

Service Animal Defined by Title II and Title III of the ADA: (from the ADA National Network)

Under Title II and III of the ADA, service animals are **limited to dogs** individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

Emotional support animals, comfort animals, and therapy dogs are not service animals under Title II and Title III of the ADA. Other species of animals, whether wild or domestic, trained or untrained, are not considered service animals either. The work or tasks performed by a service animal must be directly related to the individual's disability. A doctor's letter does not turn an animal into a service animal.

Examples of animals fitting the ADA's definition of "service animal" because they have been **specifically trained to perform a task for the person with a disability**:

Guide Dog or Seeing Eye® Dog¹ is a carefully trained dog that serves as a travel tool for persons who have severe visual impairments or are blind.

Hearing or Signal Dog is a dog that has been trained to alert a person who has a significant hearing loss or is deaf when a sound occurs, such as a knock on the door.

Psychiatric Service Dog is a dog that has been trained to perform tasks that assist individuals with disabilities to detect the onset of psychiatric episodes and lessen their effects.

SigDOG (sensory signal dogs or social signal dog) is a dog trained to assist a person with autism. The dog alerts the handler to distracting repetitive movements common among those with autism, allowing the person to stop the movement (e.g., hand flapping).

Seizure Response Dog is a dog trained to assist a person with a seizure disorder. The dog may stand guard over the person during a seizure or the dog may go for help. A few dogs have learned to predict a seizure and warn the person in advance to sit down or move to a safe place.

While Emotional Support Animals or Comfort Animals are often used as part of a medical treatment plan as therapy animals, they are not considered service animals under the ADA. These support animals provide companionship, relieve loneliness, and sometimes help with depression, anxiety, and certain phobias, but do not have special training to perform tasks that assist people with disabilities and are not covered by federal laws protecting the use of service animals.

A public facility is not allowed to ask for documentation or proof a dog has been certified, trained, or licensed as a service animal. Staff on site may ask the following questions:

1. Is the dog a service animal required because of a disability?
2. What work or task has the dog been trained to perform?

No further questions should be asked regarding the disability or the animal, nor is it permissible to ask that the dog perform the task that grants it to be a service animal.

CONCURRENCE

INSTALLATION COMMANDER

DATE: _____

FOR THE ADJUTANT GENERAL

DATE: _____



CITY OF PORTERVILLE

DATE: 04/21/2023

**MEMORANDUM OF UNDERSTANDING FOR SHELTER SUPPORT
BETWEEN COUNTY OF TULARE AND CITY OF PORTERVILLE**

This Agreement, is effective as of April 11, 2023, (the "Agreement"), and is between The City of Porterville ("CITY"), a California municipal corporation, and the COUNTY OF TULARE, a political subdivision of the State of California ("COUNTY"), who agree as follows:

WHEREAS, CITY has entered into an arrangement with the California National Guard for use of the Armory space, with address of 29 N Plano St., Porterville, CA 93257 (the "Premises") for emergency shelter purposes; and

WHEREAS, COUNTY, along with its Health and Human Services Agency, desires to provide disaster relief support, including logistical support, shelter staffing, and meal support, solely for the purpose of the Premises being used as an emergency shelter in response to the March 2023 atmospheric river storms; and

WHEREAS, in order to provide said support, COUNTY is fully dependent upon the California Department of Social Services ("CDSS") fulfilling COUNTY'S request for logistical and funding support, of which COUNTY, upon receipt, will convey to CITY; and

WHEREAS, in the event that CDSS is unable to provide support, and/or CDSS or the American Red Cross is unable to provide operational support, COUNTY is unable to continue services alone and shall immediately terminate this Agreement; and

WHEREAS, COUNTY seeks to clarify the scope of services to be provided and set reasonable limits on the term of those services; and

WHEREAS, COUNTY agrees to provide, and CITY agrees to receive said services; and

WHEREAS, CITY opened the shelter on the Premises on April 11, 2023, and COUNTY began providing services as of April 11, 2023, and now seek to memorialize this exchange in writing;

NOW, THEREFORE, in consideration of the mutual promises and representations set forth herein, the parties agree as follows:

1. **SERVICES.** COUNTY agrees to provide at its own expense, and CITY agrees to receive services at the Premises pursuant to this Agreement. COUNTY shall provide 24 hour, or agreed operational period staffing at the Premises, in which COUNTY will provide logistical support, shelter staffing, and meal support in conjunction with the California Department of Social Services and/or the American Red Cross. COUNTY will additionally provide social assistance via case management services Monday through Friday, 8 AM to 5 PM. COUNTY shall also provide 24 hour security at the site (Collectively, the "Services"). The parties may agree in writing to a shorter operational period.

CITY shall provide animal care and shelter for residents of the Premises, including kennels and food. CITY shall be providing laundry, bathroom, and shower services for the residents of the Premises. Except for as otherwise specified in Section 8.c., CITY shall provide janitorial services for the Premises, which shall be regularly available daily, and shall be available upon an immediate needs basis. CITY shall keep on-call maintenance technician that is able to respond to immediate maintenance needs.

Services will be performed to the satisfaction of COUNTY for purposes of reimbursement of COUNTY by the State or Federal government.

2. **TERM.** The Services contemplated in Section 1 shall be from April 11, 2023, to May 5, 2023.

The County's provision of staffing and support services shall end at 12:00 noon, and the County's provision of security services shall end at 5:00 p.m., on Friday, May 5, 2023.

Additionally, the Parties agree that this Agreement will terminate pursuant to Section 19 of this Agreement upon the exit of the California Department of Social Services' support of staffing of the Services.

3. **CONSIDERATION.** CITY and COUNTY agree that the services provided to the public are adequate and good consideration for this Agreement, and no monetary compensation is required for this Agreement.

4. **USE.** Upon commencement of the term, COUNTY staff shall be entitled entry onto the Premises to provide the Services.

5. **AGREEMENT TO USE FACILITIES.** The use of the Premises is defined as follows:

- a. Use of the Premises 24 hours a day for sheltering evacuees and animals; and
- b. Any other use to which the parties mutually agree.

6. **ACCEPTANCE.** On the date that the COUNTY begins providing services at the Premises, the Premises shall be in good condition. COUNTY commencing services on the Premises on the effective date shall constitute COUNTY's acknowledgment that, to the best of their knowledge, the Premises is in good condition.

7. **USE.** COUNTY shall use the Premises and shall not use it in any manner that will constitute waste or nuisance.

8. **MAINTENANCE.**

- a. CITY will provide, at CITY's expense, all ongoing maintenance, preventative maintenance, repair, and upkeep of the Premises, including, but not limited to, the parking areas, sidewalks, grounds, building and improvements, and equipment and fixtures attached thereto.

b. CITY will be responsible for complying with all codes or laws requiring alterations, maintenance or restoration of the Premises and parking areas during the term of the AGREEMENT, at no cost to COUNTY, including all ADA Standards for Accessible Design requirements and codes requiring fire extinguishers or other fire suppression equipment and related signage.

c. CITY will be responsible for cleaning the restrooms. COUNTY will be responsible for any cleaning or sanitization of rooms used, waiting rooms, and door handles.

d. In case of emergency the parties will take immediate steps to protect persons and property, consistent with their respective roles and responsibilities under this AGREEMENT. The CITY maintains responsibility to provide COUNTY with a facility that is fit for the purpose and intent of the AGREEMENT. If necessary repairs are brought to the CITY's attention by COUNTY, CITY will make repairs within the next ten (10) days. If the CITY does not take the necessary steps, COUNTY will have the right to repair and to be reimbursed by CITY.

9. **ALTERATIONS.** COUNTY shall not make any structural or exterior alterations to the Premises without CITY's or the California National Guard's consent; however, COUNTY shall have the right without cost to the CITY to make, with CITY's prior written consent, nonstructural alterations to the interior of the Premises that COUNTY requires in order to conduct its operations on the Premises, so long as those alterations are not prohibited by the terms and conditions of the CITY'S License Agreement with the California Military Department.

Upon termination of the AGREEMENT, if COUNTY is not then in default of any of the provisions of this AGREEMENT, COUNTY shall have the right to remove from the Premises immediately before the termination of the AGREEMENT, or within ten (10) days thereafter, any alterations COUNTY has made to the Premises, as long as the removal will not cause any structural

damage to the Premises, and COUNTY at its cost promptly restores any damage caused by the removal.

10. **UTILITIES.** CITY, in conjunction with the California National Guard, shall make all arrangements for, and pay for, all utilities and services furnished or to be used by COUNTY, including, without limitation, gas, electricity, water, sewer, trash, and for all connection charges, therefore. CITY and the California National Guard shall provide all fire extinguishers and related signs.

11. **INDEMNITY.** To the fullest extent permitted by law, CITY will hold harmless, defend and indemnify COUNTY and its officers, agents, volunteers, contractors, and employees from and against any liability, claims, actions, costs, damages, losses and expenses for injury, including without limitation, death of any person or damage to any property, including damage to animals; enforcement actions under California Prevailing Wage laws with respect to work done by CITY, or under other applicable statute or ordinance; or resulting from CITY's or CITY's agents', employees', contractors', or invitees' negligent or intentionally wrongful acts or omissions with respect to the Premises. CITY's obligation will continue beyond the expiration or termination of this Agreement as to any act or omission which occurred during the term of this AGREEMENT, or any renewal or holdover period. This indemnification provision will survive the termination of this AGREEMENT.

To the fullest extent permitted by law, COUNTY will hold harmless, defend and indemnify CITY and its officers, agents, volunteers, contractors, and employees from and against any liability, claims, actions, costs, damages, losses and expenses for injury, including without limitation, death of any person or damage to any property, including damage to animals; enforcement actions under California Prevailing Wage laws with respect to work done by COUNTY, or under other applicable statute or ordinance; or resulting from COUNTY's or COUNTY's agents', employees', contractors', or invitees' negligent or intentionally wrongful acts or omissions with

respect to the Premises. COUNTY's obligation will continue beyond the expiration or termination of this Agreement as to any act or omission which occurred during the term of this AGREEMENT, or any renewal or holdover period. This indemnification provision will survive the termination of this AGREEMENT.

12. **INSURANCE.** CITY acknowledges and agrees that COUNTY is a self-insured entity and waives any requirement that COUNTY procure and/or maintain insurance of any kind, including liability and/or fire/extended coverage insurance. COUNTY acknowledges and agrees that CITY is a self-insured entity and waives any requirement that CITY procure and/or maintain insurance of any kind, including liability and/or fire/extended coverage insurance.

13. **DESTRUCTION.** In the event the Premises, or the building in which the Premises is located, is totally or partially destroyed by fire, earthquake, flood, or other casualty so as to render such property unfit for occupancy, in whole or in part, and that if it should reasonably appear that CITY cannot or will not restore or repair the Premises within ten (10) days from the date of such damage, either party shall be entitled to terminate the Agreement by giving the other party notice in writing of intention to so terminate ten (5) days before the proposed date of termination.

14. **CONDEMNATION.** If, during the AGREEMENT Term, there is any taking by condemnation of all or part of the building, other improvements, or land of which the Premises are a part, or any interest in the AGREEMENT, the rights and obligations of the parties shall be determined as follows:

a. If the Premises are totally taken by condemnation, the AGREEMENT shall terminate on the date of the taking;

b. If any portion of the Premises is taken by condemnation the AGREEMENT shall remain in effect, except that COUNTY may elect to terminate the AGREEMENT by giving notice of same within five (5) days of the date of the taking.

15. **ASSIGNMENT.** COUNTY shall not assign or encumber its interest in the AGREEMENT, all or any part of the Premises, without the consent of CITY, which consent may be withheld at CITY's absolute discretion.

16. **SIGNS.** COUNTY may not install, or permit any other person to install, any sign, awning, canopy, marquee or other advertising on any exterior wall, door, or window on the Premises.

17. **PARTIES'S ENTRY ON PREMISES.** The parties and their authorized representatives shall have the right to enter the Premises at all reasonable times.

18. **REMOVAL OF PERSONAL PROPERTY.** On expiration or other termination of the AGREEMENT, COUNTY shall remove all its personal property and shall perform all restoration made necessary by the removal of any alterations, fixtures, or signs.

19. **TERMINATION.** Either party may terminate this Agreement for cause upon fifteen (15) days' prior written notice to the other party. For purposes of this section, "cause" shall be defined as the failure of either party to remedy any material breach of the AGREEMENT within three (3) days' written notice of the breach. No material breach will be found for issues that this contract already provides a remedy for, so long as those remedies are timely undertaken.

COUNTY, may immediately terminate this Agreement upon written notice should the expenses associated with the Services be deemed to be non-reimbursable by the Federal Government or California State Government, as COUNTY will not be able to fund the scope of the Services considered in this Agreement without Federal or State reimbursement. Written notice of such determination of non-reimbursability shall be communicated by COUNTY to CITY as soon as possible.

COUNTY may immediately terminate this Agreement upon written notice should operational support from CDSS or the American Red Cross ceases, as COUNTY will not be able to provide such support on its own. This written notice shall be communicated by COUNTY to CITY as soon as possible.

COUNTY, as required by the Federal Emergency Management Agency ("FEMA") contract provisions, may terminate this Agreement without cause and shall provide CITY with seven (7) days written notice of the termination of this Agreement without cause.

20. **SUCCESSORS.** This Agreement shall be binding on, and inure to, the benefit of the parties, their successors and assigns, except as otherwise limited by this Agreement.

21. **NOTICE.** Any notice, demand, request, consent, approval or other communication required or permitted under this Agreement shall be in writing and must be either delivered in person or sent by certified mail, postage prepaid, to the follow addresses:

COUNTY: Board of Supervisors
County of Tulare Administration Building
2800 W. Burrel
Visalia, CA 93291
w/Copy to: Tulare County Office of Emergency Services
Attn: Andrew Lockman
5957 S. Mooney Blvd.
Visalia, CA 93277

CITY: John Lollis
291 N Main St,
Porterville, CA 93257

Notice shall be deemed communicated four (4) days from the time of mailing as provided in this section.

22. **ACCESS TO RECORDS.** The following access to records requirements apply to this AGREEMENT: a. The parties agree to provide each other, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to

any books, documents, papers, and records of the CITY and COUNTY which are directly pertinent to this AGREEMENT for the purposes of making audits, examinations, excerpts, and transcriptions.

b. The CITY agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

c. The CITY agrees to provide the FEMA Administrator, or their authorized representatives, access to the Premises or other sites pertaining the scope of this AGREEMENT.

d. In compliance with the Disaster Recovery Act of 2018, the COUNTY and the CITY acknowledge and agree that no language in this AGREEMENT is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

23. DEBARMENT AND SUSPENSION. CITY certifies, by entering into this AGREEMENT, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this AGREEMENT by any federal agency or by any department, agency or political subdivision of the State of California. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of CITY. The CITY also further certifies that it has verified the suspension and debarment status for all sub-contractors receiving funds under this AGREEMENT and is solely responsible for any paybacks and or penalties that might arise from non-compliance.

24. CHANGES. CITY and COUNTY, together the "Parties" agree that any changes made to this AGREEMENT must be formal written Agreement in the form of a Change Order to this AGREEMENT. Any Change Order must be submitted by the requesting party by at least seven

(7) days written notice to the other Party. Both the CITY and COUNTY must agree, in writing, to any changes to this AGREEMENT.

25. DEPARTMENT OF HOMELAND SECURITY SEALS/LOGOS. The CITY shall not use the Department of Homeland Security ("DHS") seal(s), logos, crests, or reproduction of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

26. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS. CITY acknowledges that FEMA financial assistance will be used to fund all or a portion of the AGREEMENT. CITY shall comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

27. NO OBLIGATION BY FEDERAL GOVERNMENT. The Federal Government is not a party to this AGREEMENT and is not subject to any obligation or liabilities to the COUNTY, CITY, or any other party pertaining to any matter resulting from this AGREEMENT.

28. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. CITY acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statement) applies to the CITY's actions pertaining to this AGREEMENT.

29. DISASTER SERVICE WORKERS. Emergency management personnel provided under this AGREEMENT are public employees, who during disaster situations, are declared under California Government Code section 3100, to be Disaster Service Workers. Work-related injuries will be handled by providing agency/jurisdiction under Worker's Compensation. Emergency management personnel must immediately report any injury suffered while deployed, to their assigned supervisor and home agency. Further, emergency management personnel provided by the CITY under this Agreement are Disaster Service Workers and employees of the CITY, and as such are provided the immunities, protections, and benefits of Disaster Service Workers, as provided in the California Emergency Services Act and other applicable law. Each

party shall defend, indemnify, and hold the other party, its officials, officers, employees, agents, and volunteers, harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), or claims for injury or damage arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damage are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officials, officers, employees, agents, or volunteers.

30. **WAIVER.** The failure of either party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment will not be considered to be a waiver of any preceding breach of the Agreement by the other party.

31. **INTEGRATION.** This instrument contains all the Agreements of the parties relating to the Premises and cannot be modified or amended except by a subsequent Agreement in writing.

32. **NO THIRD-PARTY BENEFICIARIES.** Unless specifically set forth, the parties to this Agreement do not intend to provide any third-party benefit or enforceable legal or equitable right or remedy.

33. **GOVERNING LAW.** This Agreement will be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles.

34. **HEADINGS.** Paragraph headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

35. **INTERPRETATION.** This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code Section 1654 shall not apply to address and interpret any uncertainty.

36. CONFLICT WITH LAWS OR REGULATIONS; SEVERABILITY. This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement will continue in full force and effect.

37. AUTHORITY. Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind, and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right to enter into this Agreement and perform all of its obligations hereunder.

38. COUNTERPARTS. This Parties to this AGREEMENT may sign this AGREEMENT in counterparts, each of which is an original and all of which taken together form one single document. The counterparts of this AGREEMENT may be executed and delivered by facsimile or other electronic signature (including portable document format) by the Parties and the receiving Party may rely on the receipt of such document so executed and delivered

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electronically or by facsimile as if the original had been received.

THE PARTIES, having read and considered the above provisions, indicate their Agreement by their authorized signatures below.

Date: _____

CITY OF PORTERVILLE

By: _____

John Lollis

City Manager

Approved as to form:

City Attorney

By: _____

**COUNTY
COUNTY OF TULARE**

By: _____

Jason T. Britt

Tulare County Emergency Services Director

Approved as to form:

County Counsel

By: A. Zahseen

Matter No. 2023359



Office of Emergency Services

5957 South Mooney Boulevard, Visalia, California 93277
(559) 624-7495 Telephone (559) 737-4692 Facsimile

April 14, 2023

Ms. Nancy Ward
Director, Governor's Office of Emergency Services
3650 Schriever Avenue
Mather, CA 95655

Dear Director Ward,

Tulare County appreciates the Office of Emergency Services' tireless work to support the response to and recovery from DR-4699 in our County and the surrounding region. Specifically, your negotiation of an ongoing incident period and the expeditious approval of individual assistance programs have been particularly valuable to the affected communities as we continue to recover from storm damages, repair distressed and weakened waterways, and prepare for the impending historic snowmelt runoff.

As current snow moisture content in local watersheds is estimated at over 300% of the historical average, total inflows to local reservoirs through April and July are expected to exceed three times the reservoir capacity. Local reservoir and waterway operators continue to aggressively release water at or near full capacity to make space for the anticipated inflows and prevent a return to spillway flows, while balancing needs of downstream operators to conduct emergency repairs. As a result, a number of homes, agricultural properties, and public spaces remain inundated with floodwater, and more homes may be affected because of the new snowmelt conditions. Specifically, we anticipate similar or worse conditions as a result of the snowmelt.

Tulare County is concerned that current sheltering for individuals affected by inundation and/or evacuation orders, including previously displaced individuals who remain under an evacuation order, may be limited in duration, especially during the current intervening period between storm and snowmelt-induced flooding incidents within the disaster.

Tulare County has entered into an agreement with the City of Porterville to maintain the last remaining emergency evacuation shelter site in the County. The California Department of Social Services and Volunteer Emergency Services Team have pledged support to provide staff and services for only two weeks at this shelter. Forty Tulare County residents who have been displaced due to flood activities are staying at this site. Because the support from CDSS and VEST is limited, the County is concerned that it may not be able to continually fund and staff the ongoing shelter projects. Our concern is the ongoing financial and logistical burden to the County and the incorporated cities therein.

As we are sure that you are aware, emergency protective measures, flood control activities, and damage assessments are being conducted because of the flood conditions in Tulare County. These efforts go hand-in-hand with ensuring that County residents are safe,



Office of Emergency Services

5957 South Mooney Boulevard, Visalia, California 93277
(559) 624-7495 Telephone (559) 737-4692 Facsimile

fed, and warm. The State's cooperation in keeping funding and support from the Department of Social Services and VEST beyond the initial two weeks available for emergency sheltering of Tulare County Residents is vital. Your support in ensuring ongoing funding and logistical support for these critical emergency protective measures is greatly appreciated.

Sincerely,

A handwritten signature in black ink, reading "Andrew Lockman".

Andrew Lockman
Office of Emergency Services Manager



LICENSE NUMBER	1221
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LICENSE TO USE STATE MILITARY PROPERTY

BETWEEN

CALIFORNIA MILITARY DEPARTMENT

AND

The City of Porterville

FOR

USE OF READINESS CENTER IMPROVEMENTS AND GROUNDS

This AGREEMENT, dated for reference the 10th day of April 2023, by and between the California Military Department (CMD), hereinafter called STATE, and the City of Porterville, 291 North Main Street, Porterville, CA 93257, hereinafter called LICENSEE, without distinction as to number or gender, and effective upon execution by STATE. STATE and LICENSEE are sometimes referred to individually as a "party" or collectively as the "parties".

RECITALS

WHEREAS, the STATE has under its jurisdiction, certain real property known as the Porterville armory, located at 29 N. Plano St. Porterville, CA 93257, hereinafter called PREMISES, identified in **Exhibit "B"**, consisting of one (1) page and attached hereto and incorporated herein by this reference.; and,

WHEREAS, it is essential that STATE have a secure facility and surrounding grounds; and,

WHEREAS, PREMISES may be made available to meet the needs of the local civil authority when not required to meet immediate operational requirements;

NOW THEREFORE, STATE and LICENSEE agree as follows:

WITNESSETH

I.

GENERAL PROVISIONS

1. AGREEMENT is for non-exclusive weekday or weekend use throughout the license term.
2. Upon declaration of emergency by the STATE or federal government, STATE reserves the right to reoccupy PREMISES, including all parking areas, with twenty-four (24) hours written or electronic (voice or email) notice to LICENSEE at the notification address/number below in Section III; "Notification".

3. LICENSEE shall comply with all applicable statutes, laws, ordinances and rules or regulations adopted by the Federal, State or any City, City and County, County or other body politic pertaining to use of said premises or any provisions of the License.
4. LICENSEE shall comply with such reasonable rules and regulations as may be prescribed by STATE for the reasonable use and occupation of State Facilities.
5. LICENSEE understands and agrees the California Legislature may impose additional restrictions, limitations or conditions affecting AGREEMENT provisions or terms; however, any such changes become effective no sooner than 30 days after the legislature has acted.
6. This agreement shall not be assigned or sublet or otherwise encumbered, in whole or in part, without STATE'S prior written consent.
7. STATE infrastructure shall supply PREMISES with utilities, but LICENSEE will transfer utility accounts into its name for payment: electric, sewer, water, refuse collection.
8. LICENSEE shall have use of the offices, storage areas, drill floor, latrines, showers, parking areas for placement of storage containers (if required), and kitchen counters solely for food preparation or distribution (no oven or stove top use). All food will be stored and surfaces cleaned on a daily basis when shelter operations are underway.
9. STATE is not responsible for losses or damage to personal property, equipment or materials of LICENSEE, its employees, agents or clients. LICENSEE shall report to STATE all losses immediately upon discovery.
10. LICENSEE shall not drive any nails, tacks, pins or other objects into the walls, ceilings, partitions, windows, woodwork, or any other part of PREMISES, nor in any manner move or change any fixture, nor make any alterations to PREMISES without STATE'S prior written consent.
11. Upon completion of use, LICENSEE shall remove all decorations, display, signs, and equipment on PREMISES.
12. Upon license expiration, LICENSEE will surrender PREMISES to STATE with appurtenances and fixtures in good order, condition, and repair, reasonable use and wear thereof, or Acts of God excepted.
13. LICENSEE shall not permit any alcoholic beverage to be offered for sale, stored, given away or otherwise disposed or consumed on any part of PREMISES, nor shall LICENSEE permit any use of tobacco products on any part of PREMISES or within twenty (20) feet of entrances, doorways or opening windows, except in a sufficiently distanced controlled area under LICENSEE supervision.
14. LICENSEE acknowledges PREMISES may not be fully ADA compliant and agrees to implement or improve, at its sole cost and expense, those necessary compliance measures required for the duration of its use. Furthermore, LICENSEE agrees to provide any and all required temporary emergency lighting required by State, County or City laws or ordinances.

II.

AUTHORIZED ACTIVITIES

1. In order to provide a variety of health, medical or other services to homeless citizens, LICENSEE may provide on-site program management through either LICENSEE employees, agents, volunteers or contracted services.
2. The armory facility will be available twenty-four (24) hours each day unless otherwise amended in writing by the STATE.
3. LICENSEE is solely responsible for protecting employees, patrons, agents, clients, or invitees from acts of third parties, and agrees to notify STATE and appropriate law enforcement agencies as required.
4. LICENSEE agrees to maintain PREMISES in a clean and habitable condition, which includes exterior landscape maintenance and removal of all litter, trash, cans, bottles, etc. from the site not less than once per day.
5. Any damage to PREMISES will be inspected by STATE representatives (CMD Area Coordinator) and LICENSEE to determine the character and extent of damage (with photographs). Repairs should be completed within twenty-four (24) hours if an emergency or seventy-two (72) hours if urgent.
6. The STATE Area Coordinator will contract for necessary repair or restoration services using appropriate state or federal guidance, while coordinating and collaborating closely with LICENSEE. LICENSEE may not undertake repairs or restoration using its own forces or contract services without the prior written consent of STATE'S Area Coordinator.
7. Within thirty (30) days of being presented a demand (invoice) for payment, LICENSEE shall make STATE whole for the cost of repairing or restoring any improvement or utility damaged as a result of PREMISES use.
8. If significant plumbing issues occur due to continued actions of clients, LICENSEE will provide portable latrines, at its sole cost and expense, for the duration of the contract.
9. LICENSEE shall take all necessary steps to ensure clients do not constitute a nuisance in the immediate vicinity of the facility during hours of operation. If at any time the STATE is dissatisfied with the LICENSEE efforts, the LICENSEE and STATE shall meet to explore means and methods of compliance.
10. LICENSEE shall supply consumable sanitary items and paper products, which include, but not limited to: cleaning/sanitizing supplies and equipment, liquid soap, paper towels, and toilet paper. If requested (necessary), the County Health Department shall provide periodic health screenings and consultation on issues pertaining to sanitation
11. Pets of clients occupying PREMISES or participating in provided services are prohibited inside the PREMISES, with the exception of those meeting the definition of "service animal" in Section XV below.
12. LICENSEE shall ensure clients provide valid vehicle registration and insurance BEFORE parking their vehicle in PREMISES parking area.
13. Vehicles parked on PREMISES without appropriate approval shall be towed away by STATE's order and at LICENSEE's risk and expense.

III.

NOTIFICATION

All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below. All such notices or other communications shall be deemed received upon the earlier of (i) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice, (ii) if mailed as provided above, on the date of receipt or rejection, when received by the other party if received Monday through Friday between 6:00 a.m. and 5:00 p.m. Pacific Standard Time, so long as such day is not a State or Federal holiday and otherwise on the next day provided that if the next day is Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day.

To LICENSEE:

City of Porterville
Attn: City Manager
291 North Main Street
Porterville, CA 93257
(559) 782-7466

To STATE:

California Military Department
9800 Goethe Road, Box 18
Sacramento, CA 95826
(916) 854-3788

PROGRAM MANAGER:

SSG Monica Estrada
(916) 541-8160

Notice of change of address or telephone number shall be given by written notice in the manner described in this section. LICENSEE is obligated to notice State offices listed above and the failure to provide notice to do so shall constitute a lack of notice. Nothing contained herein shall preclude the giving of any such notice by personal service.

IV.

INSURANCE REQUIREMENTS

LICENSEE is a public entity, which is self-insured and will be responsible for any damage caused to PREMISES. Additionally, LICENSEE shall indemnify STATE against any injuries caused by use of PREMISES. LICENSEE has furnished the necessary Certificate of Self-Insurance, **Exhibit "D"** attached hereto and incorporated herein by this reference, demonstrating the required insurance coverage will be in effect during the complete term of AGREEMENT, and shall include, but not be limited to:

- Combined single limit liability of \$2,000,000, or
- Special event coverage with a limit of \$2,000,000, and
- A statement naming the United States, State of California, its officers, agents, employees, and servants as additional insured, but only with respect to the activities of the named insured.

V.

HOLD HARMLESS INDEMNIFICATION

The PREMISES are provided in "AS-IS" and "WITH ALL FAULTS" condition, and STATE and its employees, representatives and agents disclaim all warranties, expressed or implied, regarding the PREMISES, including, but not limited to, all implied warranties of merchantability or fitness for a particular purpose or compliance with Applicable Law. LICENSEES acknowledges and agrees that STATE and its employees, representatives and agents have made no representations or warranties for the PREMISES, including, without limitation, any representations or warranties regarding, (a) the condition or repair of the PREMISES, (b) whether such PREMISES are sufficient for the purposes of LICENSEE, or (c) whether the PREMISES comply with Applicable Laws (as defined below), including without limitation the Americans with Disabilities Act (ADA) or other accessibility laws, (d) whether there are any facts or conditions affecting the PREMISES that might, individually or in the aggregate, interfere with the use or occupancy of the PREMISES or any portion thereof by LICENSEE.

The use of the PREMISES by LICENSEE shall be conclusive evidence that LICENSEE accepts the same "AS IS and WITH ALL FAULTS" and that the PREMISES are suited for the use intended by LICENSEE and are in good and satisfactory condition at the time such possession was taken. LICENSEE represents and warrants to STATE that (a) its sole intended use of the PREMISES is for temporary sheltering (the "Permitted Use") and (b) prior to using the PREMISES it has made such investigations as it deems appropriate with respect to the suitability of the PREMISES for its intended use and has determined that the PREMISES are suitable for such intended use.

LICENSEE shall comply with all applicable statutes, laws, ordinances and rules and regulations adopted by the Federal, State or any City, City and County, County or other body politic, including without limitation all building codes, the ADA or other accessibility laws ("Applicable Laws") and which pertains to use of the PREMISES or any provisions of the License, and will indemnify, defend and hold STATE free and harmless from and against any violations thereof and any and all liabilities, suits, causes of action, judgments, demands and claims for damages, including all reasonable costs of any litigation and attorney's fees and expenses, arising out or by reason of any such violation.

LICENSEE shall indemnify, defend and hold STATE its employees, representatives and agents free and harmless from and against any and all suits, causes of action, demands, proceedings, claims, damages, judgments, obligations liabilities, liens, fines, costs, and expenses (including, but not limited to, attorneys' fees and costs) (collectively "Losses") which arise from or are related to (a) use or occupancy of the PREMISES by LICENSEE or its Representatives, including, but not limited to, damage to property of any kind whatsoever and to whomsoever belonging, including LICENSEE, from any cause or causes whatsoever during the term of this License or any occupancy hereunder, holdover periods or any other occupancy of the PREMISES during the term of this License, except (i) those Losses that are ultimately determined by a court or administrative tribunal of competent jurisdiction to be caused by sole gross negligence of the STATE or its employees, or (ii) to the extent any such Losses are ultimately determined by a court or administrative tribunal of competent jurisdiction to be caused by the willful misconduct of the STATE or its employees; provided, however, any condition of the PREMISES that is found to be in violation of any Applicable Law by a court or administrative tribunal of competent jurisdiction shall not be deemed gross negligence or willful misconduct on the

part of the STATE or its employees; (b) breach of LICENSEE'S obligations under the AGREEMENT, (c) negligence or other wrongful act by LICENSEE or its Representatives, (d) violation of Applicable Law by LICENSEE or its Representatives, (e) any allegation that the PREMISES do not comply with Applicable Law. "Representatives" means LICENSEE'S agents, employees, representatives, contractors, or any other person or persons acting within the direct control or authority of such party or its agents, employees, representatives or contractors.

VI.

FEES

1. The use fee is waived based on Services in Kind as per California Army National Guard Regulation 210-2 paragraph 9.
2. Utility accounts will be transferred to LICENSEE, which will directly pay utility costs on an as-incurred basis.

VII.

TERM

License shall take effect no earlier than May 5, 2023 or upon execution by STATE, whichever is later, and shall expire no later than 0800 (8:00 A.M.) May 4, 2024.

VIII.

AMENDMENT AND TERMINATION

AGREEMENT cannot be amended or modified in any way except by a written AGREEMENT duly executed by STATE and LICENSEE. Any proposal for amendment or modification must be delivered for review and approval by the Chief, Realty Operations or her/his delegatee.

AGREEMENT may be terminated by either party upon 30 days' written notification to the other party at the addresses previously given in Section III; "Notification". Upon termination, the activities of the parties shall be governed by the applicable provisions of the Military and Veterans Code. STATE is not obligated to reimburse LICENSEE any fees should it terminate this AGREEMENT before reaching its full term.

IX.

ENTIRE AGREEMENT

AGREEMENT, along with any exhibits attached hereto, constitutes the entire covenant and understanding between STATE and LICENSEE for PREMISES. AGREEMENT supersedes all prior and contemporaneous routine activity agreements, representations or understandings, if any, whether oral or written.

X.

DURATION & RENEWAL

AGREEMENT shall remain in effect through the termination date and will not be extended, but may be renewed annually subsequent to renegotiation required to protect the parties.

XI.

RIGHT TO ENTER

During continuance in force of AGREEMENT, there shall be, and is hereby expressly reserved to STATE and to any of its contractors, agents, employees, representatives, or licensees, the right at any and all reasonable times, and any and all places to temporarily enter upon said PREMISES for inspection or other lawful STATE purposes.

XII.

ENVIRONMENTAL LAWS AND REGULATIONS

LICENSEE must comply with all applicable local, State or Federal environmental

provisions, requirements, ordinances, regulations or laws. AGREEMENT does not constitute any form of authorization, permit, or opinion with respect to the satisfaction thereof. LICENSEE agrees that it shall comply with all laws, federal, state, or local, existing during the term of this license pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law.

1. In the event STATE or any of its affiliates, successors, principals, employees, or agents should incur any liability, cost, or expense, including attorney's fees and costs, as a result of the LICENSEE'S illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, the LICENSEE shall indemnify, defend, and hold harmless any of these individuals against such liability.
2. Where the LICENSEE is found to be in breach of this Paragraph due to the issuance of a government order directing the LICENSEE to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by the LICENSEE or any person acting under LICENSEE'S direct control and authority, LICENSEE shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by STATE in connection with or in response to such government order.

XIII.

DEFAULT

LICENSEE shall make all required payments to the STATE without deduction, default or delay. In the event of the failure of LICENSEE to do so, or in the event of a breach of any of the other terms, covenants or conditions herein contained on the part of LICENSEE to be kept and performed, and if such default continues for a period of thirty (30) days after receipt of written notice from STATE to LICENSEE of such default, this License may, at the STATE'S sole discretion, be terminated.

In the event of termination of this License, it shall be lawful for STATE to reenter into and upon the PREMISES and every part thereof and to remove and store at LICENSEE's expense all property therefrom and to repossess and occupy the PREMISES. In the event STATE terminates this License pursuant to this Paragraph, the STATE shall not be required to pay LICENSEE any sum or sums whatsoever.

XIV.

SERVICE ANIMALS

Service Animal Defined by Title II and Title III of the ADA: (from the ADA National Network)

Under Title II and III of the ADA, service animals are **limited to dogs** individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

Emotional support animals, comfort animals, and therapy dogs are not service animals under Title II and Title III of the ADA. Other species of animals, whether wild or domestic, trained or untrained, are not considered service animals either. The work or tasks performed by a service animal must be directly related to the individual's disability. A doctor's letter does not turn an animal into a service animal.

Examples of animals fitting the ADA's definition of "service animal" because they have been **specifically trained to perform a task for the person with a disability**:

Guide Dog or Seeing Eye® Dog¹ is a carefully trained dog that serves as a travel tool for persons who have severe visual impairments or are blind.

Hearing or Signal Dog is a dog that has been trained to alert a person who has a significant hearing loss or is deaf when a sound occurs, such as a knock on the door.

Psychiatric Service Dog is a dog that has been trained to perform tasks that assist individuals with disabilities to detect the onset of psychiatric episodes and lessen their effects.

SigDOG (sensory signal dogs or social signal dog) is a dog trained to assist a person with autism. The dog alerts the handler to distracting repetitive movements common among those with autism, allowing the person to stop the movement (e.g., hand flapping).

Seizure Response Dog is a dog trained to assist a person with a seizure disorder. The dog may stand guard over the person during a seizure or the dog may go for help. A few dogs have learned to predict a seizure and warn the person in advance to sit down or move to a safe place.

While Emotional Support Animals or Comfort Animals are often used as part of a medical treatment plan as therapy animals, **they are not considered service animals under the ADA**. These support animals provide companionship, relieve loneliness, and sometimes help with depression, anxiety, and certain phobias, but do not have special training to perform tasks that assist people with disabilities and are not covered by federal laws protecting the use of service animals.

A public facility is not allowed to ask for documentation or proof a dog has been certified, trained, or licensed as a service animal. Staff on site may ask the following questions:

1. Is the dog a service animal required because of a disability?
2. What work or task has the dog been trained to perform?

No further questions should be asked regarding the disability or the animal, nor is it permissible to ask that the dog perform the task that grants it to be a service animal.

CONCURRENCE

FOR THE ADJUTANT GENERAL



CITY OF PORTERVILLE

DATE: _____

DATE: 05/17/2023



FEMA

4699-DR-CA Amendment 006



English

Notice Date	July 10, 2023
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Billing Code 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4699-DR]

[Docket ID FEMA-2023-0001]

California; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA-4699-DR), dated April 3, 2023, and related determinations.

DATE: This amendment was issued July 14, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 10, 2023.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance - Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households - Other Needs; 97.036, Disaster Grants - Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

/s/

Deanne Criswell,

Administrator,

Federal Emergency Management Agency.

Last updated July 14, 2023

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**National
Terrorism
Advisory
System**

RESOLUTION NO. 15 -2023

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF PORTERVILLE AUTHORIZING THE APPROPRIATION OF FUNDS FROM THE
CATASTROPHIC / EMERGENCY RESERVE FOR THE COSTS ASSOCIATED
WITH THE RESPONSE TO THE LOCAL FLOOD EMERGENCY**

WHEREAS: Pursuant to Chapter 9 of the Porterville Municipal Code, Mayor Martha A. Flores declared the existence of a local emergency within the City of Porterville on March 13, 2023 due to the threat to life and property caused by a series of storms impacting Success Lake significantly increasing the Tule River flows; and

WHEREAS: Flood water and water from Success Lake had caused evacuation warnings and mandatory evacuation orders in the month of March for some local residents; and

WHEREAS: Historic water levels and flows of the Tule River have caused erosion to the river banks, prompting City staff to take extraordinary measures to protect the riverbanks and avoid potentially catastrophic flooding;

WHEREAS: The significant threat of local flooding emergency continues to exist with the estimated snow pack in the Sierra Nevada mountains of more than three hundred percent (300%) of normal and the potential for a warm storm or heat wave this Spring; and

WHEREAS: The City of Porterville Municipal Code Section 2-31.2, established the Catastrophic / Emergency Reserve Fund for the purpose of providing funds to mitigate costs associated with unforeseen emergencies, including natural disasters or catastrophic events;

NOW, THEREFORE, BE IT RESOLVED:

1. That the City Council of the City of Porterville make a finding that the local flood emergency is an unforeseen and unavoidable event that require the expenditure of City resources beyond those provided for in the annual budget; and
2. That the City Council of the City of Porterville does hereby approve and authorize the appropriation of funds from the Catastrophic / Emergency Reserve Fund for the costs associated with the response to the local emergency including personnel, equipment, services, and other necessary expenditures; and
3. That the City Council authorize the replacement of funds from any grant funds that may be used to reimburse said costs.

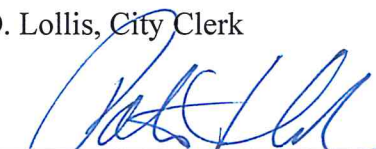
PASSED, APPROVED AND ADOPTED this 4th day of April, 2023.



Martha A. Flores, Mayor

ATTEST:

John D. Lollis, City Clerk

By: 

Patrice Hildreth, Chief Deputy City Clerk

STATE OF CALIFORNIA)
CITY OF PORTERVILLE) SS
COUNTY OF TULARE)

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at a meeting of the Porterville City Council duly called and held on the 4th day of April, 2023.

Said resolution was duly passed, approved, and adopted by the following vote:

Council:	FLORES	CARRILLO	WEYHRAUCH	BELTRAN	MEISTER
AYES:	X	X	X	X	X
NOES:					
ABSTAIN:					
ABSENT:					



JOHN D. LOLLIS, City Clerk

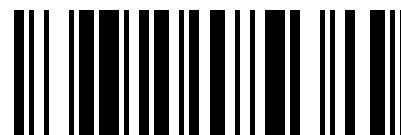
By: 
Fernando Gabriel-Moraga, Deputy City Clerk

Invoice

Calwen Inc. dba Rescue Source & Rescue 3 Intl

Calwen Inc. dba Rescue Source & Rescue 3
P.O. Box 1050
Wilton, CA 95693
Phone: 916-687-6556
Fax: 916-687-6717
Email: info@rescuesource.com

Order #	Date
131282	03/20/2023



Bill To:	Ship To:
PORTERVILLE FIRE DEPARTMENT 40 W CLEVELAND PORTERVILLE, CA 93257 Phone: 559-782-7526 Email: jrodriguez@ci.porterville.ca.us	PORTERVILLE FIRE DEPARTMENT 40 W CLEVELAND PORTERVILLE, CA 93257
Customer: PORTERVILLE FIRE DEPARTMENT	Contact: JANIE RODRIGUEZ PO Number: 23-22733

Sales Rep	Payment Terms	FOB Point	Carrier	Ship Service	Date Scheduled
MELISSA	NET 30	Origin	UPS Next Day Air		03/20/2023

Item #	Type	Number	Description	Unit Price	Qty Ordered	Total Price
1	Kit	KT2210	PFD TYPE V PACKAGE	\$250.00	20 ea	\$ 5,000.00
2	Sale	PF4026R	NRS 2022 RAPID RESCUER RED	\$0.00	20 ea	\$ 0.00
3	Sale	KN2556OR	NRS PILOT KNIFE ORANGE	\$0.00	20 ea	\$ 0.00
4	Sale	WH7905	WHISTLE-RESCUE 3 LOGO WITH COIL	\$0.00	20 ea	\$ 0.00
5	Sale	HL7050HVL/XL	RQ3 STORM PRO HELMET HI VIS LARGE/XLARGE	\$32.00	20 ea	\$ 640.00
6	Shipping	Freight	Freight Out	\$256.00	1 ea	\$ 256.00
7	Sale	Tax Expense	Tax Expense	\$521.70	1 ea	\$ 521.70

Subtotal:	\$6,417.70
Sales Tax:	\$0.00
Total:	\$6,417.70

Thank you for your order.
If you have any questions please call 800-457-3728
or e-mail info@rescuesource.com.

Royal Restrooms

A Regal Portable Restroom Experience

1452 N. Vasco Road #101
Livermore, Ca 94551
Phone: 877.922.9980
Fax:(925) 337-8878

Cage Code 5HJ93

DATE:

INVOICE # 04-12-2023

FOR:

BILL TO: Portable Restrooms

Donnie Moore

dmoore@ci.porterville.ca.us

(559) 782-7539

DESCRIPTION	T	AMOUNT
1 Single ADA Shower/Restroom Combo	t	\$4,250.00
1 Three Stall Shower/Restroom Combo	t	\$4,850.00
Delivery	t	\$100.00
Installation and Removal		\$2,500.00
Before/After Hours or Same Day Services		\$600.00

Due upon receipt-----For Royal Restrooms of California [W9 Click here.](#)

Make all checks payable to Royal Restrooms of California. If payment is not received per terms of agreement signed, applicable late fees will be applied. If you have any questions concerning this invoice, call Us at 877-922-9980 california@royalrestroomsca.com

THANK YOU FOR YOUR BUSINESS!

TAXABLE SUBTOTAL	\$9,200.00
TAX RATE	9.250%
SALES TAX	\$851.00
NON TAXABLE SUBTOTAL	\$3,100.00
TOTAL	\$13,151.00



INVOICE

24/7 Emergency 800-742-7246
www.rainforrent.com

Rain For Rent
Bakersfield
4001 State Rd
Bakersfield CA 93308
United States
661-399-1724

Your sales person	REMIT PAYMENTS TO:
JESSE PINTOR	Rain for Rent RAIN FOR RENT FILE 52541 LOS ANGELES, CA 90074-2541

CONTRACT # 1169502 CUSTOMER CITY OF PORTERVILLE CUSTOMER # 112354 NAME CITY OF PORTERVILLE ADDRESS 291 N MAIN ST PORTERVILLE CA 93257 PHONE	INVOICE# 1854595	INVOICE DATE 3/30/2023	PO or JOB# 23-22734	PAYMENT DUE 4/29/2023
PLEASE PAY				\$77,396.67
SHIPPED TO JOBSITE:				
NAME CITY OF PORTERVILLE ADDRESS Corporation Yard 555 N Prospect St Porterville CA 93257 PHONE				

Notes:

Requested by: Michael Knight
PO Number: 23-22734

QTY	UOM	DESCRIPTION	PRODUCT #	STATUS	DATE OUT	BILLED THRU	DAYS BILLED	PRICE	AMOUNT	TAXABLE
1.00	EA	Pump BA150E D285 Tlr Mt Diesel Eng Hatz 4H50TIC	1022734		SALES		0.00	\$65,685.06	\$65,685.06	Y
1.00	EA	Shipping/Handling Freight	M240			SERVICES	0.00	\$5,158.57	\$5,158.57	Y

TOTAL SALES:	\$65,685.06
TOTAL RENTALS:	\$0.00
TOTAL SERVICES:	\$5,158.57
TOTAL OTHER:	\$0.00
SUBTOTAL:	\$70,843.63
TAX:	\$6,553.04

TOTAL:	\$77,396.67
---------------	--------------------

FOR PROPER CREDIT, PLEASE INCLUDE INVOICE NUMBER ON YOUR PAYMENT.
PAST DUE AMOUNTS ARE SUBJECT TO A SERVICE CHARGE OF 1.50%
CUSTOMER, (RENTEE OR BUYER as context requires), shall be deemed to accept
all terms, conditions and provisions hereof upon execution of this agreement;
ordering; or delivery of equipment to customer, whichever comes first.

PAYMENT TERMS: NET 30

SIGNATURE: _____ DATE: _____

Mike Clark Trucking
19385 Avenue 144
Porterville, CA 93257 US
+1 5597845486
mct3desk1@yahoo.com



INVOICE

BILL TO

City of Porterville
Street Superintendent, Field
Service Div.
555 N. Prospect
Porterville, Ca 93257

INVOICE # 2637**DATE** 03/23/2023**DUE DATE** 04/25/2023**TERMS** Net 30

DATE	FREIGHT	ACTIVITY	FREIGHT BILL	RATE	AMOUNT
03/23/2023	8.80	Super 10	7383117 - Luque	120.00	1,056.00
03/23/2023	9.70	Super 10	7383219 - Luque	120.00	1,164.00
03/23/2023	9.70	Super 10	7383046 - Luque	120.00	1,164.00
03/23/2023	9.80	Super 10	8432857 - Luque	120.00	1,176.00
03/23/2023	7.30	Super 10	9281272 - Luque	120.00	876.00

Thank you for your business!

SUBTOTAL	5,436.00
TAX	0.00
TOTAL	5,436.00
BALANCE DUE	\$5,436.00

A finance charge of 1.5% monthly/18% annually will be charged on accounts over 30 days past due. In the event a suit is brought to enforce collection, the customer shall be liable for responsible attorneys fees and costs of the suit.



Name of person in charge: Amy Greybehl

Event Date: Start 5/5/23 month to month Price Per Guard: _____

Event Time: 8pm-8am How many guests: open

(Overtime is billed at \$35 per hour) _____ Invite Only: Y/N

Event Location: 29 ~~44~~ Plano St

City: Porterville State: CA

Zip: 93257 Special Instructions/ Directions for Event:

2 guards, check-in Guest by 8pm, lock gates, lights off by 10pm.

Balance Due for guaranteed hours \$: 18,000 - updated

Third Party Information- Please Print Clearly

Financially Responsible Party (Client):

City of Porterville - Army National Guard

Clients Contact Phone

Number: 559-782-7521

Client Email

Address: agreybehl@ci.porterville.ca.us

Clients Home

Address: City

City: Porterville State: CA Zip: 93257

Wedding/Prom/ Anniversary? Other: _____

Payment Information:

The parties have read all pages of this Agreement & the attached Terms and Conditions, agree to all its terms, and acknowledge receipt of a complete copy of the Agreement and Terms & Conditions. Each person signing as the Client below shall be responsible for ensuring that full payment is made as stated in this document. Client agrees that a 30% non-refundable retainer will be due immediately to reserve date and time as listed on contract.

Venmo: _____ @Chris-Morton-80 Zelle: _____ (559)756-4570

Cashapp: _____ \$maddym90 Check: X* Cash: _____

*Payment to be issued upon completion of a City of Porterville Business License Application

Client Initials: AG

Date: 5/5/23

You are a valued customer of Topknotch Security INC, and we want you to enjoy our guards' services. To ensure that the integrity of our officers is maintained for you and all of our customers, the following Terms & Conditions apply to all services provided by Topknotch Security INC, under all circumstances and without exception.

The purchaser (client) on the front of this contract is 100% responsible for his or her guests.

Topknotch Security INC will strictly enforce State and Federal Laws and will maintain a zero-tolerance compliance policy that no alcoholic beverages can be consumed or used by any person not of legal drinking age. All U.S. law enforcement agencies have absolute power to stop any event for administrative search. If contraband is found, even in negligible quantities without the officers knowledge, they can seize and forfeit the contraband to a local government agency. All law enforcement agencies are aggressively enforcing this policy.

Topknotch Security INC will not be responsible for injuries that may occur due to fighting while the event is ongoing. Topknotch Security INC will do their best to defuse any situation verbally, if Topknotch Security INC feels as if our officers cannot control the situation, we will be forced to contact the local law enforcement.

At the officer's discretion, the Client agrees to be fully liable for any damages / charges that may be incurred.

The Client accepts full responsibility for any and all damage, and for any loss of income due to negligence or carelessness caused by any member of the client's group at any time during the event. The Client authorizes Topknotch Security INC to charge for the expenses regardless of and in addition to any prior agreements or understandings. These charges are necessary due to the high cost of insurance, health insurance, uniforms, and due to the revenue and time lost during the time that the officer cannot work.

Please initial here to acknowledge the charges should any damages occur. AG

- Topknotch Security INC recommends that all and any personal valuables be removed from the vehicle when unattended. We will not be held responsible for any lost, stolen, or damaged articles.

- Topknotch Security INC reserves the right to terminate this or any other contract for noncompliance of the above requests, especially if responsible party does not follow Topknotch Security INC, requests to obey the rules in this contract.

Any deposits (cash, checks or course of payment) will be non-refundable for any reason, if any cancellation occurs from the responsible party's side. If for any reason the local law enforcements shuts the event down for any reasons, payment is non-refundable. The open balance is due immediately the day before the agreed job. The renter authorizes the immediate 30% non-refundable retainer & the final payment, states that she/he is the authorized purchaser for this rental contract, the authorized party for the given payment, responsible and liable for payment of the total amount, per cash or other payments. As with all contracts, the rental contract between the mentioned person as renter (Client) and Topknotch Security INC is made with the information and the terms given to us. I am satisfied with the terms and conditions above and fully understand and agree to everything stated in the contract.

Client Initials: AG Date 5/5/23

All of the given information from the Client is binding and cannot be changed without Topknotch Security INC acceptance. If the contract is cancelled after it is signed, Topknotch Security INC is still authorized to collect the remaining balance in full, if the officers does not go out again on the cancelled date for the same or higher amount. We will reserve the set date upon the approval of the purchaser's preferred payment as per telephone conversation. The responsible party gives authorization to use the payment information over the phone / fax / Internet in combination with a signed contract. It is agreed that it is not necessary to obtain a signed slip, as the reservation is made over the phone / fax / Internet. Proof of identity of the purchaser using said credit card must be supported by the signed contract or in person. At time of event we need the full payment, state identification of the purchaser that authorizes the transaction for the signed contract. If the purchaser cannot provide all of the above items at the time of event, Topknotch Security INC will not start the job, as we have no proof of the legal possession of payment. Therefore the risk of not getting paid will give us the right to cancel. The purchaser is still fully responsible to pay the total amount as he failed to provide the above requirements.

Topknotch Security INC cannot guarantee the availability of overtime. It is of particular importance that the purchaser makes allowances for anticipated delays and adheres to the agreed time schedule. In the event that the purchaser wants to change the time of the itinerary, they may do so, only if Topknotch Security INC can accommodate other clients that booked with Topknotch Security INC prior to or after the said time. The purchaser further agrees to pay additional charges incurred such as overtime and or more officers. The overtime will be billed by hourly rate at \$35.00 per hour, unless negotiated otherwise. If customer fails to cancel at the last minute, the full amount of contracted time will be charged.

The purchaser authorizes Topknotch Security INC to charge any additional charges after they have rendered services to the purchasers' as supplemental charge. If cash payment is selected, the payment is due no later than the close of the next business day in full. Customer agrees to have Topknotch Security INC get an authorization for the above course of payment and amount, for the event stated above.

If any payment due hereunder is unpaid (10) ten days after the due date, hereon Topknotch Security INC will have the right to add and collect late charges with interest at the maximum rate allowed by law. All such sums are due and owing with any other expenses, (filing fees, court cost, and reasonable attorney fees, etc.)

I fully understand and agree to everything stated in the contract and the Terms & Conditions. If, for any reasons, I am not fully satisfied with the services I receive, I have 24 hours after the completion of the job to file a complaint in writing. If Topknotch Security INC, does not receive my written complaint in the above stated timeframe, I agree that there is no valid complaint, and I am fully satisfied with the services I received. Filing a written complaint insures both parties that it is fully understood what the problem was and will help Topknotch Security INC to assist the responsible parties in any kind of resolution to the complaint. The purchaser will be contacted within a week of the complaint to settle the matter. I understand that this is a separate case from the main contract and therefore have no dispute in general against Topknotch Security INC and the payment I authorized.

Since Topknotch Security INC offers high-tech-equipment, sometimes heat and excessive use of all power-operated equipment might be subject to having more breaks for our officers. This will, of course, not interfere with the safety of the party itself and therefore will have no effect on continuing or paying of the contracted event. Topknotch Security INC guarantees that all our officers are constantly trained to keep the highest possible standards and eliminate such failures as much as possible. We have the right to add more officers in case of emergency or the event is getting bigger than contracted. As stated, this will only happen in emergencies, and to upgrade, never downgrade. If the upgrade is needed, Topknotch Security INC gives the customer the right to downsize the event and receive additional charges. Additional charges will occur on the customer's side if an upgrade is made. Topknotch Security INC will notify the responsible party if more officers and hours are needed, as well as how much more the cost will be.

If any of our above guarantees or contracted terms cannot be met due to conditions outside of our control, including weather, accidents, and any other acts of incidents, we will use our best efforts to notify the customer of these conditions and resulting delays or changes.

I am satisfied with the terms and conditions above and fully understand and agree to everything stated in the contract and the Terms & Conditions.

Client Signature Amy Graybehl Date 5/5/23
Topknotch Security Representative Signature Madeline M. Foster Date 5/3/25

ADDITIONAL REMARKS:

- 1 officer roaming & 1 officer checking in guest
- Roaming grounds and making sure lights out at 10 pm
- Making sure no guest leave after 8pm
- Roaming the whole grounds and the animals



SECURITY SERVICES AGREEMENT

AGREEMENT PREPARED FOR: **City of Porterville: Shelter**
July 15, 2023



Good Guard Security, Inc.

21622 Plummer St, Suite 200, Chatsworth, CA 91311

1-800-651-0491 ext 1061

info@goodguardsecurity.com

www.GoodGuardSecurity.com

SERVICE DETAILS

Client Service Address:	29 N Plano St, Porterville, CA 93257
Client Billing Address:	29 N Plano St, Porterville, CA 93257
Service Hours:	7 Day(s) / 07:30 PM - 08:30 AM / 13 Hours / Monday - Sunday
Location Contact & Telephone Number:	Amy Graybehl 559-782-7521
Email:	agraybehl@ci.porterville.ca.us
Rate (U.S. Dollars):	\$28.95 (Per Hour Per Guard)
Holiday Rate	\$43.45 (Per Hour Per Guard)
Service Commencement Date:	07/17/2023 @ 07:30 PM
Payment Terms:	Bi-weekly
Permanent/Temporary:	Permanent 3 Month Minimum (30 Day Cancellation Notice)
Uniform:	Professional Security Uniform
Additional Charges:	N/a
Security Service Description:	2 Professional Unarmed Guard(s) 1 Guard will be intaking clients and the other guard will be patrolling the facility. Note: Providing a visual deterrent to any outside danger. Security officers will make sure there isn't anyone vandalizing the premises, or trying to break into the property. Loss prevention.

This SECURITY SERVICES AGREEMENT ("Agreement") is entered into upon mutual execution hereof by and between GOOD GUARD SECURITY, a California corporation, Private Patrol Operator (PPO) License #120362 (hereinafter, "Company") and **City of Porterville** (hereinafter, "Client"), with respect to the following:

- RATES:** Service Rates are subject to adjustment for any change in any law, causing a change in work hours, wage rates, working conditions or other costs to Company.
- PAYMENT:** Invoices will be submitted either bi-weekly or monthly, upon mutual agreement between Company and Client, and are payable on receipt at the address on the invoice. A late charge of 1 ½ % per month will be added to balances not paid within seven days.
- EMPLOYEES:** (a) Personnel supplied by Company are its employees and not Client's. Company is solely responsible for social security, unemployment and similar taxes applicable to its employees.
(b) Company is a Federal Government Contractor and complies with Executive Order 11246, as amended: Section 503 of the Rehabilitation Act of 1973, as amended: Section 402 of Vietnam era Veterans' Readjustment Assistance Act of 1974 and related regulations. Company's employees will be assigned without regard to race, color, creed, sex, and national origin, handicap conditions that do not impair job performance or veteran status.
(c) Client may reasonably remove any employee assigned provided such removal is not in violation of law. In the event any employee is removed at Client's request, Client agrees to indemnify and hold Company harmless from any claims, demands, liabilities, judgments, losses, suits, damages, fines, penalties, and expenses including reasonable attorney's fees and defense costs (hereinafter collectively "Claim(s)") that may arise there from.
- OVERTIME:** Overtime rates shall apply to work on New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas; work on any additional holidays listed and any extra hours exceeding 8-hours a day or 40-hours per week. Coverage for labor disputes, civil disorders or natural disaster, or special assignment or agreement is not included except as described in the Service Rate Classification. Additional overtime rates shall not apply to situations where an employee of Company already on-duty covers hours for a "called-off" employee and thus works over 8-hours in his/her shift.
- PROPERTY/EQUIPMENT:** All property and equipment furnished by Company for performance of its services under this Agreement, regardless of whether portable or stationary, shall be considered the personal property of Company, and shall remain the personal property of Company after termination of this Agreement. Upon the termination of this Agreement, the Company shall have reasonable access and time to remove its property from Client's property. Client shall not be responsible for any of Company's personal property which is stolen, damaged or missing from the property in the absence of Company's supervision.
- KEYS/ACCESS:** Company shall not be provided a master key (or its equivalent) to the property or any portion thereof, except for such location(s) that are to be exclusively used by Company's guards or other personnel. Notwithstanding anything to the contrary in this Agreement, Company shall not be responsible for any damages including, without limitation, any costs incurred in re-keying or changing locks caused by the loss or theft of such key(s).
- NON-COMPETITION:** Client, its affiliates, agents, and other related persons or entities hereby agree not to hire any Company staff, employees, or personnel for a period of at least one (1) year after such person has terminated his/her employment with Company. Client further agrees not to prepare to engage in competition with Company, solicit,

divert, poach, or encourage any of the Company staff, employees, or personnel to stop working with Company, or to solicit, divert, poach, encourage, or facilitate them to work with Client, any affiliate of Client, or any related person or entity of Client. Client recognizes that Company has a significant investment in the recruitment and training of its employees and guards to be providing services under this Agreement, and that these personnel are a valuable asset to Company. As it is impractical and extremely difficult to fix the actual damages which may result from the loss of such employees and guards, Client agrees that if Client (or its affiliates, agents, and other related persons or entities) is in breach of this section of the Agreement, then Client shall be required to pay to Company for each such employee (or former employee employed by Company) the sum of \$7,500.00. Such fee is expressly agreed to be considered liquidated damages, and not a penalty.

8. **LIABILITY AND INDEMNITIES:** (a) Client agrees that Company is not an insurer and that the amounts payable hereunder are based upon the value of service offered and not the value of Client's interests being protected or the property of Client or others located on Client's premises. Accordingly, Company undertakes no liability to Client and makes no representation, express or implied, that its service will prevent occurrences or their consequences, which result in loss or damage. (b) Client agrees that Company shall not be liable for any claims incurred or asserted by Client, irrespective of origin, to persons or property, whether directly or indirectly caused by performance or nonperformance of obligations imposed by this agreement or by negligent acts or omissions, including those relating to the hiring, training, supervision or retention of personnel, of Company, its agents or employees. (c) The services provided under this Agreement are solely for the benefit of Client and neither this Agreement nor any services rendered hereunder confer any rights on any other party as a third-party beneficiary or otherwise and Client agrees to indemnify and hold Company harmless from and against any claims made by a third party(s), including, but not limited to, injury, death or damage or loss of property, arising from the negligent acts or omissions, including those relating to the hiring, training, supervision or retention of personnel, of Company, its agents or employees. (d) If, at Client's request, Company employees undertake duties or are requested to use equipment or vehicles other than as agreed to in writing by Company, Client shall be solely responsible for and shall indemnify and hold Company harmless from and against any claims arising there from, including, but not limited to, claims arising from the negligent acts or omissions including those relating to the hiring, training, supervision or retention of personnel, of Company, its agents or employees. (e) Client hereby waives any and all rights of subrogation that any insurer of Client may have against Company. (f) Where Company is entitled to indemnification, Company shall have the right to tender defense of the claim to Client.
9. **FORCE MAJEURE:** The obligations of Company hereunder may be suspended during any period where performance is prevented by acts of God, civil or labor disturbances, or events beyond Company's reasonable economic control.
10. **HAZARDOUS OR DEFECTIVE CONDITIONS/MATERIALS:** (a) Client agrees that it will comply with OSHA Hazard Communication Standards and will indemnify and hold Company harmless from all claims, including injuries to Company's employees arising out of a condition existing at Client's premises or Client's violation of any safety or health related law or regulation. (b) Client further agrees to: (1) make available to Company the Material Safety Data Sheet for each hazardous chemical to which Company's employees may be exposed at Client's premises; (2) inform company of (A) precautionary measures that need to be taken to protect Company's employees and (B) Client's hazardous material labeling system.
11. **INSURANCE:** Client agrees to assume all risk of loss or damage to its premises, business and property of others on Client's premises occurring as a result of fire, theft or other casualty and Client agrees that it will maintain insurance to fully protect Client against such loss or damage. Accordingly, Client waives its right of recovery against Company of any such loss or damage, however caused.
12. **TERMINATION OF SERVICES:** Except as otherwise provided in this Agreement, this Agreement may be terminated for non-performance by either party, provided that such party has given the others reasonable time to correct any instances of such non- performance. If either party fails to correct such non-performance, the Agreement may be terminated, provided that such party has given the others at least thirty (30) days advance written notice of such intention. Notwithstanding the foregoing and for all other intentions, termination of services by Client must be preceded by at least thirty (30) days advance written notice of such intention to terminate services. Minimum 3-Month Service Agreement from start date.
13. **ENTIRE AGREEMENT AND INTERPRETATION:** This Agreement constitutes the entire agreement and understanding between the parties, and no representations, inducements, promises or agreements not embodied herein shall be of any force or effect. This Agreement shall be governed under the law of the State of its performance and if any provision shall conflict therewith, such provision shall be interpreted to remove such conflict, so that this Agreement and all its other provisions shall remain in full force and effect.
14. **DEFAULT:** Company may terminate this Agreement immediately and exercise such other rights and remedies as permitted by law, if Client fails to pay any amount when due or if any proceeding is commenced or threatened by or against Client under the Bankruptcy Code or any other Debtor's law, or if Client makes or threatens to make an assignment for the benefit of creditors.

IN WITNESS WHEREOF, the parties by their duly authorized representatives have signed this Agreement as of the date first above written:

By GOOD GUARD SECURITY:

Brady Osorto

(Authorized Representative Signature)

Brady Osorto / Business Development Manager

(Print Name & Title)

By CLIENT:

(Authorized Representative Signature)

(Print Name & Title)

Porterville Army National Guard Armory
Temporary Evacuation Point and Shelter

Daily Census

<u>Date:</u>	<u>Adults:</u>	<u>Youth:</u>	<u>Dogs:</u>
Friday, May 5, 2023	12	0	1
Saturday, May 6, 2023	10	0	0
Sunday, May 7, 2023	10	0	0
Monday, May 8, 2023	15	0	1
Tuesday, May 9, 2023	12	0	0
Wednesday, May 10, 2023	8	0	0
Thursday, May 11, 2023	9	0	0
Friday, May 12, 2023	9	0	0
Saturday, May 13, 2023	7	0	0
Sunday, May 14, 2023	6	0	0
Monday, May 15, 2023	13	0	0
Tuesday, May 16, 2023	11	3	4
Wednesday, May 17, 2023	11	3	4
Thursday, May 18, 2023	16	3	4
Friday, May 19, 2023	11	0	3
Saturday, May 20, 2023	14	0	5
Sunday, May 21, 2023	12	0	4
Monday, May 22, 2023	14	0	3
Tuesday, May 23, 2023	14	5	3
Wednesday, May 24, 2023	16	3	3
Thursday, May 25, 2023	13	1	6
Friday, May 26, 2023	18	4	3
Saturday, May 27, 2023	16	5	5
Sunday, May 28, 2023	16	1	3
Monday, May 29, 2023	18	1	3

Tuesday, May 30, 2023	19	1	6
Wednesday, May 31, 2023	17	1	3
Thursday, June 1, 2023	19	1	7
Friday, June 2, 2023	17	1	7
Saturday, June 3, 2023	16	1	4
Sunday, June 4, 2023	20	1	8
Monday, June 5, 2023	20	1	6
Tuesday, June 6, 2023	22	1	10
Wednesday, June 7, 2023	23	1	9
Thursday, June 8, 2023	22	1	7
Friday, June 9, 2023	22	1	10
Saturday, June 10, 2023	15	1	6
Sunday, June 11, 2023	26	1	9
Monday, June 12, 2023	18	1	7
Tuesday, June 13, 2023	24	1	4
Wednesday, June 14, 2023	21	1	7
Thursday, June 15, 2023	20	1	4
Friday, June 16, 2023	28	1	6
Saturday, June 17, 2023	20	1	7
Sunday, June 18, 2023	24	1	4
Monday, June 19, 2023	21	0	8
Tuesday, June 20, 2023	28	0	6
Wednesday, June 21, 2023	28	0	4
Thursday, June 22, 2023	22	0	4
Friday, June 23, 2023	27	0	4
Saturday, June 24, 2023	26	0	4
Sunday, June 25, 2023	24	0	3
Monday, June 26, 2023	23	0	4
Tuesday, June 27, 2023	30	0	5

Wednesday, June 28, 2023	26	0	6
Thursday, June 29, 2023	27	0	5
Friday, June 30, 2023	25	0	5
Saturday, July 1, 2023	27	0	9
Sunday, July 2, 2023	25	3	3
Monday, July 3, 2023	24	3	3
Tuesday, July 4, 2023	20	3	4
Wednesday, July 5, 2023	28	2	6
Thursday, July 6, 2023	28	2	5
Friday, July 7, 2023	27	2	6
Saturday, July 8, 2023	28	2	5
Sunday, July 9, 2023	36	2	3
Monday, July 10, 2023	28	2	3
Tuesday, July 11, 2023	34	2	4
Wednesday, July 12, 2023	35	2	2
Thursday, July 13, 2023	47	2	7
Friday, July 14, 2023	27	2	0
Saturday, July 15, 2023	24	2	2
Sunday, July 16, 2023	24	2	3
Monday, July 17, 2023	26	2	1
Tuesday, July 18, 2023	26	2	2
Wednesday, July 19, 2023	21	2	1
Thursday, July 20, 2023	21	2	1
Friday, July 21, 2023	22	0	0
Saturday, July 22, 2023	22	0	0
Sunday, July 23, 2023	22	0	0
Monday, July 24, 2023	21	0	0
Tuesday, July 25, 2023	22	0	0
Wednesday, July 26, 2023	20	0	0

Thursday, July 27, 2023	27	0	0
Friday, July 28, 2023	25	0	0
Saturday, July 29, 2023	22	0	0
Sunday, July 30, 2023	22	0	0
Monday, July 31, 2023	24	0	0
Tuesday, August 1, 2023	21	0	0
Wednesday, August 2, 2023	19	0	0
Thursday, August 3, 2023	20	0	0
Friday, August 4, 2023	19	0	0
Saturday, August 5, 2023	26	0	0
Sunday, August 6, 2023	22	0	0
Monday, August 7, 2023	20	0	0
Tuesday, August 8, 2023	25	0	3
Wednesday, August 9, 2023	23	0	3
Thursday, August 10, 2023	20	0	3
Friday, August 11, 2023	23	0	5
Saturday, August 12, 2023	22	0	5
Sunday, August 13, 2023	29	0	6
Monday, August 14, 2023	25	0	5
Tuesday, August 15, 2023	21	0	5
Wednesday, August 16, 2023	23	0	6
Thursday, August 17, 2023	23	0	5
Friday, August 18, 2023	22	0	5
Saturday, August 19, 2023	23	0	5
Sunday, August 20, 2023	21	0	4
Monday, August 21, 2023	25	0	5
Tuesday, August 22, 2023	22	0	5
Wednesday, August 23, 2023	27	0	5
Thursday, August 24, 2023	22	0	5

Friday, August 25, 2023	25	0	5
Saturday, August 26, 2023	23	0	4
Sunday, August 27, 2023	25	0	5
Monday, August 28, 2023	23	1	5
Tuesday, August 29, 2023	24	1	6
Wednesday, August 30, 2023	22	2	6
Thursday, August 31, 2023	18	2	5
Friday, September 1, 2023	17	2	5
Saturday, September 2, 2023	20	2	5
Sunday, September 3, 2023	20	2	5
Monday, September 4, 2023	21	2	5
Tuesday, September 5, 2023	22	2	5
Wednesday, September 6, 2023	15	2	3
Thursday, September 7, 2023	16	2	4
Friday, September 8, 2023	18	2	4
Saturday, September 9, 2023	19	2	4
Sunday, September 10, 2023	20	2	5
Monday, September 11, 2023	20	2	5
Tuesday, September 12, 2023	24	2	5
Wednesday, September 13, 2023	24	2	5
Thursday, September 14, 2023	21	2	5
Friday, September 15, 2023	26	2	5
Saturday, September 16, 2023	28	2	5
Sunday, September 17, 2023	26	2	5
Monday, September 18, 2023	22	2	5
Tuesday, September 19, 2023	24	2	5
Wednesday, September 20, 2023	26	2	5
Thursday, September 21, 2023	30	2	5

Friday, September 22, 2023	23	2	5
Saturday, September 23, 2023	20	2	5
Sunday, September 24, 2023	26	2	5
Monday, September 25, 2023	20	2	4
Tuesday, September 26, 2023	20	2	4
Wednesday, September 27, 2023	24	2	4
Thursday, September 28, 2023	22	2	4
Friday, September 29, 2023	17	2	4
Saturday, September 30, 2023	20	2	4
Sunday, October 1, 2023	23	2	4
Monday, October 2, 2023	20	2	4
Tuesday, October 3, 2023	18	2	4
Wednesday, October 4, 2023	22	2	4
Thursday, October 5, 2023	24	2	7
Friday, October 6, 2023	21	2	5
Saturday, October 7, 2023	18	2	5
Sunday, October 8, 2023	19	2	5
Monday, October 9, 2023	20	2	5
Tuesday, October 10, 2023	19	2	5
Wednesday, October 11, 2023	22	2	5
Thursday, October 12, 2023	27	2	5
Friday, October 13, 2023	21	2	5
Saturday, October 14, 2023	21	2	5
Sunday, October 15, 2023	19	2	5
Monday, October 16, 2023	24	2	5
Tuesday, October 17, 2023	22	2	5
Wednesday, October 18, 2023	22	2	5
Thursday, October 19, 2023	30	2	5
Friday, October 20, 2023	17	2	5

Saturday, October 21, 2023	15	2	5
Sunday, October 22, 2023	22	2	5
Monday, October 23, 2023	22	2	5
Tuesday, October 24, 2023	20	2	5
Wednesday, October 25, 2023	19	2	5
Thursday, October 26, 2023	21	1	5
Friday, October 27, 2023	21	1	3
Saturday, October 28, 2023	21	1	3
Sunday, October 29, 2023	18	1	3
Monday, October 30, 2023	24	1	3
Tuesday, October 31, 2023	20	1	3
Wednesday, November 1, 2023	25	1	3
Thursday, November 2, 2023	24	1	3
Friday, November 3, 2023	22	1	3
Saturday, November 4, 2023	22	1	3
Sunday, November 5, 2023	19	1	3
Monday, November 6, 2023	23	1	3
Tuesday, November 7, 2023	27	1	3
Wednesday, November 8, 2023	22	1	3
Thursday, November 9, 2023	22	1	3
Friday, November 10, 2023	23	1	3
Saturday, November 11, 2023	21	1	3
Sunday, November 12, 2023	24	1	3
Monday, November 13, 2023	27	1	3
Tuesday, November 14, 2023	24	1	3
Wednesday, November 15, 2023	29	1	3
Thursday, November 16, 2023	29	0	3
Friday, November 17, 2023	25	0	3
Saturday, November 18, 2023	29	0	3

Sunday, November 19, 2023	29	0	3
Monday, November 20, 2023	29	0	3
Tuesday, November 21, 2023	29	0	3
Wednesday, November 22, 2023	29	0	3
Thursday, November 23, 2023	21	0	3
Friday, November 24, 2023	29	0	3
Saturday, November 25, 2023	27	0	3
Sunday, November 26, 2023	27	0	3
Monday, November 27, 2023	26	0	3
Tuesday, November 28, 2023	27	0	3
Wednesday, November 29, 2023	29	0	3
Thursday, November 30, 2023	27	0	3
Friday, December 1, 2023	22	0	3
Saturday, December 2, 2023	25	0	3
Sunday, December 3, 2023	25	0	3
Monday, December 4, 2023	20	0	3
Tuesday, December 5, 2023	25	0	3
Wednesday, December 6, 2023	30	0	3
Thursday, December 7, 2023	30	0	3
Friday, December 8, 2023	29	0	3
Saturday, December 9, 2023	25	0	3
Sunday, December 10, 2023	31	0	3
Monday, December 11, 2023	30	0	3
Tuesday, December 12, 2023	32	0	3
Wednesday, December 13, 2023	32	0	3
Thursday, December 14, 2023	35	0	3
Friday, December 15, 2023	30	0	3
Saturday, December 16, 2023	31	0	3
Sunday, December 17, 2023	29	0	3

Monday, December 18, 2023	26	0	3
Tuesday, December 19, 2023	25	1	3
Wednesday, December 20, 2023	31	0	3
Thursday, December 21, 2023	28	0	3
Friday, December 22, 2023	32	0	3
Saturday, December 23, 2023	29	0	3
Sunday, December 24, 2023	30	0	3
Monday, December 25, 2023	28	0	3
Tuesday, December 26, 2023	23	0	3
Wednesday, December 27, 2023	24	0	3
Thursday, December 28, 2023	28	0	3
Friday, December 29, 2023	23	0	3
Saturday, December 30, 2023	25	0	3
Sunday, December 31, 2023	28	0	3
Monday, January 1, 2024	24	0	3
Tuesday, January 2, 2024	24	0	3
Wednesday, January 3, 2024	29	0	3
Thursday, January 4, 2024	21	0	3
Friday, January 5, 2025	22	0	3
Saturday, January 6, 2024	32	0	3
Sunday, January 7, 2024	29	0	3
Monday, January 8, 2024	26	0	3
Tuesday, January 9, 2024	27	0	3
Wednesday, January 10, 2024	34	0	3
Thursday, January 11, 2024	33	0	3
Friday, January 12, 2025	36	0	3
Saturday, January 13, 2024	35	0	3
Sunday, January 14, 2024	34	0	3
Monday, January 15, 2024	39	0	3

Tuesday, January 16, 2024	38	0	4
Wednesday, January 17, 2024	33	0	4
Thursday, January 18, 2024	33	0	4
Friday, January 19, 2025	33	0	4
Saturday, January 20, 2024	36	0	4
Sunday, January 21, 2024	38	0	4
Monday, January 22, 2024	36	1	4
Tuesday, January 23, 2024	34	1	4
Wednesday, January 24, 2024	32	1	4
Thursday, January 25, 2024	38	1	4
Friday, January 26, 2025	35	1	4
Saturday, January 27, 2024	32	1	4
Sunday, January 28, 2024	36	1	4
Monday, January 29, 2024	34	1	4
Tuesday, January 30, 2024	40	1	5
Wednesday, January 31, 2024	36	1	5
Thursday, February 1, 2024	36	1	5
Friday, February 2, 2024	36	1	5
Saturday, February 3, 2024	27	1	5
Sunday, February 4, 2024	33	1	5
Monday, February 5, 2024	29	1	5
Tuesday, February 6, 2024	33	1	5
Wednesday, February 7, 2024	37	1	5
Thursday, February 8, 2024	34	1	5
Friday, February 9, 2024	37	0	5
Saturday, February 10, 2024	38	0	5
Sunday, February 11, 2024	39	0	5
Monday, February 12, 2024	35	0	5
Tuesday, February 13, 2024	38	0	5

Wednesday, February 14, 2024	37	0	5
Thursday, February 15, 2024	35	0	5
Friday, February 16, 2024	38	0	5
Saturday, February 17, 2024	40	0	5
Sunday, February 18, 2024	38	0	5
Monday, February 19, 2024	41	0	5
Tuesday, February 20, 2024	43	0	5
Wednesday, February 21, 2024	36	0	5
Thursday, February 22, 2024	39	0	5
Friday, February 23, 2024	36	0	5
Saturday, February 24, 2024	36	0	5
Sunday, February 25, 2024	38	0	5
Monday, February 26, 2024	37	0	5
Tuesday, February 27, 2024	41	0	5

CHAPTER 9

CIVIL DEFENSE AND DISASTER

SECTION:

9-1: Purpose Of Chapter

9-2: Definitions

9-3: Emergency Council

9-4: Officers Of Emergency Council

9-5: Emergency Council Meetings

9-6: Duties Of Emergency Council

9-7: Powers Of Chairman Of Emergency Council

9-8: Exercises Or Drills

9-9: Acts Authorized Under Certain Conditions

9-10: Emergency Services Coordinator

9-11: Powers And Duties Of Coordinator

9-12: Emergency Powers Of Coordinator

9-13: Emergency Services Organization

9-14: Functions And Duties Of Emergency Service Organization

9-15: Acts Unlawful During Disasters

9-16: Penalty For Violation Of Chapter

9-1: PURPOSE OF CHAPTER:

The purposes of this chapter are to provide for the preparation and carrying out of plans for disaster and emergency services, the protection of persons and property within the city of Porterville in the event of a disaster, and to provide for the coordination of the disaster and emergency functions of the city with all other affected persons and agencies, both public and private. Any expenditures made in connection with such disaster or emergency services, including mutual aid activities, shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property in the city. (Ord. 987 § A, 10-6-1970)

9-2: DEFINITIONS:

Except where the context otherwise requires, the following definitions shall govern the construction of this chapter:

DISASTER: Actual or threatened enemy attack, sabotage, extraordinary fire, flood, storm, epidemic, riot, earthquake or other public calamity. It shall not include, nor does any provision of this chapter apply to, any condition relating to a labor controversy.

EMERGENCY SERVICES: The preparation for carrying out disaster functions, other than functions for which military forces are primarily responsible, and to prevent, minimize and repair injury and damage resulting from disasters. It shall not include, nor does any provision of this chapter apply to, any condition relating to a labor controversy.

EMERGENCY SERVICES OFFICE: The physical facilities constituting the Tulare operational area's primary emergency operating center, and the necessary staff and personnel to operate such facilities on a day to day or disaster emergency basis.

TULARE OPERATIONAL AREA: The unincorporated area of the county, and the cities of Dinuba, Exeter, Farmersville, Lindsay, Porterville, Tulare, Visalia and Woodlake. (Ord. 987 § A, 10-6-1970)

9-3: EMERGENCY COUNCIL:

The emergency council of the Tulare operational area is hereby created and shall consist of the following members:

A. The chairman of the board of supervisors of the county. Said board of supervisors shall appoint an additional member of said board to serve as an alternate member of the emergency council when the chairman is absent from the county or is not immediately available to perform his duties.

B. The mayors of the cities of Dinuba, Exeter, Farmersville, Lindsay, Porterville, Tulare, Visalia and Woodlake, or alternates appointed by the respective city councils.

C. Two (2) persons residing in the unincorporated area of the county who shall be appointed by the other members of the emergency council.

D. The emergency services coordinator of the county, who shall be an ex officio member and who shall not be entitled to a vote at the meetings of the emergency council. (Ord. 987 § A, 10-6-1970)

9-4: OFFICERS OF EMERGENCY COUNCIL:

The officers of the emergency council shall be a chairman, and such other officers as the council may deem necessary. The chairman of the board of supervisors shall serve as chairman of the council. When he is absent from the county or is not immediately available to perform his duties, the other member of the board of supervisors who is a member of the council shall serve as chairman. (Ord. 987 § A, 10-6-1970)

9-5: EMERGENCY COUNCIL MEETINGS:

The emergency council may hold regular meetings at a time and place established by the council. Special meetings of the council shall be called in accordance with section 54950 et seq., of the Government Code of the state of California. Special meetings may be called by the chairman or the alternate chairman designated pursuant to section 9-4 of this chapter. The council shall meet at least four (4) times each year. The council shall have the power to adopt rules and regulations governing the conduct of its meetings. (Ord. 987 § A, 10-6-1970)

9-6: DUTIES OF EMERGENCY COUNCIL:

It shall be the duty of the emergency council to review and recommend for adoption by the board of supervisors and the respective city councils, disaster and mutual aid plans and agreements, and such ordinances, resolutions, rules, regulations and budgets as are necessary to implement such plans and agreements. (Ord. 987 § A, 10-6-1970)

9-7: POWERS OF CHAIRMAN OF EMERGENCY COUNCIL:

The chairman of the emergency council is hereby empowered to perform the following acts:

A. Serve as the emergency services director of the Tulare operational area.

B. Request the city council of the city of Porterville to proclaim the existence or threatened existence of a local emergency and the termination thereof, if the city council is in session, or to issue such a proclamation if the city council is not in session, subject to confirmation by the city council at the earliest practicable time.

C. Request the mayor to request the governor to proclaim a state of disaster when in the opinion of the chairman the resources of the area are inadequate to cope with the disaster on a local basis. (Ord. 987 § A, 10-6-1970)

9-8: EXERCISES OR DRILLS:

The chairman of the emergency council shall order an exercise or drill of the entire emergency services organization at least once each year, and a minimum of two (2) exercises or drills for selected portions of the emergency operating center staff each year. Participation in required state or federal exercises, special drills for communications, radiological, fire, law enforcement or other specific services shall be in addition to the exercises or drills required hereinabove. (Ord. 987 § A, 10-6-1970)

9-9: ACTS AUTHORIZED UNDER CERTAIN CONDITIONS:

In the event of the proclamation of a local emergency as herein provided, or the proclamation of a state of disaster by the governor or the director of the California disaster office, or in the event of a war caused state of

extreme emergency, the chairman, as the emergency services director of the Tulare operational area, is hereby empowered to perform the following acts:

A. Make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such disaster; provided, however, that such rules and regulations must be confirmed at the earliest practicable time by the emergency council.

B. Subject to the approval of the city council, to obtain vital supplies, equipment and such other properties found lacking and needed for the protection of life and property of the people, and to bind the city for the fair value thereof and, if required, to commandeer the same immediately for public use.

C. Require emergency services of any city officer or employee, and in the event of the proclamation of a state of disaster or extreme emergency by the governor in the region in which the city is located, to commandeer the aid of as many citizens as he thinks necessary in the execution of his duties. Such persons shall be entitled to all privileges, benefits and immunities which are provided by state law for registered civil defense and disaster volunteer workers.

D. Requisition any necessary equipment or materials from any city department or agency.

E. Execute all of the special powers conferred upon him by this chapter or by resolution adopted pursuant thereto, all powers conferred upon him by any statute, by any agreement approved by city council, or by any other lawful authority. (Ord. 987 § A, 10-6-1970)

9-10: EMERGENCY SERVICES COORDINATOR:

There is hereby created the position of emergency services coordinator of the Tulare operational area who may be referred to as the coordinator. He shall serve as the executive officer of the Tulare operational area and his staff shall serve as the staff of the emergency services office. The board of supervisors of the county of Tulare shall consider the recommendations of the emergency council in the appointment or dismissal of the coordinator. (Ord. 987 § A, 10-6-1970)

9-11: POWERS AND DUTIES OF COORDINATOR:

The coordinator shall have the following general powers and duties:

A. Represent the emergency council and its chairman as their executive officer for the purpose of coordinating all efforts within the Tulare operational area for the accomplishment of the purposes of this chapter.

B. Identify and define questions of authority and responsibility that may arise between persons and agencies referred to in section 9-13 of this chapter and submit recommendations for resolving such matters to the chairman.

C. Represent the Tulare operational area in all dealings with public or private agencies pertaining to disaster or civil defense, when authorized by the chairman.

D. Prepare an operational plan with necessary service annexes and standing operating procedures to provide administrative guides for the Tulare operational area.

E. Plan and conduct exercises and drills, as ordered by the chairman, for the emergency services organization or for the emergency operating center staff. (Ord. 987 § A, 10-6-1970)

9-12: EMERGENCY POWERS OF COORDINATOR:

In the event of the proclamation of a local emergency as herein provided, or the proclamation of a state of disaster by the governor, or in the event of a war caused state of extreme emergency, the coordinator is hereby empowered to perform the following acts:

A. Activate the emergency operating center including calling in, as necessary, service chiefs, standby staff and service dispatchers.

B. Cause the dissemination of appropriate warning signals and issue suitable advisory information to the emergency council, the emergency services organization and the public.

C. Advise the California disaster office of the local situation.

D. Request mutual aid through the California disaster office if local deficiencies of personnel and/or equipment are indicated by the service chiefs.

E. Order the provision of security for the emergency operating center and communications staff. (Ord. 987 § A, 10-6-1970)

9-13: EMERGENCY SERVICES ORGANIZATION:

All officers and employees of the county and the cities included in the Tulare operational area, together with those volunteer forces enrolled to aid them during a disaster and all groups, organizations and persons, including persons commandeered under the provision of subsection 9-9C of this chapter who by operation of law or agreement may be charged with duties incident to the protection of life and property in the city during such disaster, shall constitute the emergency service organization of the Tulare operational area. (Ord. 987 § A, 10-6-1970)

9-14: FUNCTIONS AND DUTIES OF EMERGENCY SERVICE ORGANIZATION:

The functions and duties of the emergency services organization shall be distributed among such divisions, services and special staff as the emergency council shall prescribe by resolution, subject to the approval of the board of supervisors of the county and the respective city councils. Insofar as possible, the form of organization, titles and terminology shall conform to the recommendations of the federal government and the California disaster office. (Ord. 987 § A, 10-6-1970)

9-15: ACTS UNLAWFUL DURING DISASTERS:

It shall be unlawful for any person to perform any of the following acts during a disaster:

A. Wilfully obstruct, hinder or delay any member of the emergency services organization in the enforcement of any lawful rule or regulation issued pursuant to this chapter or in the performance of any duty imposed upon him by virtue of this chapter.

B. To do any act forbidden by any lawful rules or regulations issued pursuant to this chapter, if such act is of such a nature as to give, or be likely to give, assistance to the enemy, or to imperil the lives or property of inhabitants of the city, or to prevent or delay the defense or protection thereof.

C. To wear, carry or display, without authority, any means of identification specified by the civil defense and disaster agency of the federal government or the state of California. (Ord. 987 § A, 10-6-1970)

9-16: PENALTY FOR VIOLATION OF CHAPTER:

Any person violating any of the provisions of this chapter which are declared to be unlawful shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the Tulare County jail for not more than six (6) months, or by both such fine and imprisonment. (Ord. 987 § A, 10-6-1970)

State of California

GOVERNMENT CODE

Section 8558

8558. Three conditions or degrees of emergency are established by this chapter:

(a) “State of war emergency” means the condition that exists immediately, with or without a proclamation thereof by the Governor, whenever this state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that an enemy attack is probable or imminent.

(b) “State of emergency” means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions such as air pollution, fire, flood, storm, epidemic, riot, drought, cyberterrorism, sudden and severe energy shortage, electromagnetic pulse attack, plant or animal infestation or disease, the Governor’s warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy or conditions causing a “state of war emergency,” which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the Public Utilities Commission.

(c) (1) “Local emergency” means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by conditions such as air pollution, fire, flood, storm, epidemic, riot, drought, cyberterrorism, sudden and severe energy shortage, deenergization event, electromagnetic pulse attack, plant or animal infestation or disease, the Governor’s warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage or deenergization event that requires extraordinary measures beyond the authority vested in the Public Utilities Commission.

(2) A local emergency proclaimed as the result of a deenergization event does not trigger the electric utility obligations set forth in Public Utilities Commission Decision 19-07-015 or its successor decisions as related to deenergization events. A local emergency proclaimed as the result of a deenergization event does not alter the electric

utilities' Public Utilities Commission-approved cost-recovery mechanisms for their own costs associated with deenergization events.

(Amended by Stats. 2022, Ch. 537, Sec. 1. (SB 468) Effective January 1, 2023.)