

CITY OF ATWATER

CITY COUNCIL AGENDA

Council Chambers
750 Bellevue Road
Atwater, California

May 23, 2016

CALL TO ORDER:

5:00 PM

PLEDGE OF ALLEGIANCE TO THE FLAG:

ROLL CALL:

Bergman____, Raymond ____, Rivero____, Vineyard ____, Price____

CLOSED SESSION:

Adjourn to Conference Room A

- a. **Conference with Legal Counsel – Anticipated Litigation – Government Code Section 54956.9(b): Number of cases: (1)**
- b. **Conference with Labor Negotiator – Government Code Section 54957.6. Agency Negotiator: Deputy City Attorney Henderson and Human Resources Director Del Real, Bargaining Unit: Atwater Police Officers Association**

REGULAR SESSION: (Council Chambers)

6:00 PM

CALL TO ORDER:



PLEDGE OF ALLEGIANCE TO THE FLAG:

INVOCATION:

Invocation by Police Chaplain McClellan

ROLL CALL:

Bergman____, Raymond ____, Rivero____, Vineyard ____, Price____

MAYOR OR CITY ATTORNEY REPORT OUT FROM CLOSED SESSION:

SUBSEQUENT NEED ITEMS: (The City Clerk shall announce any requests for items requiring immediate action subsequent to the posting of the agenda. Subsequent need items require a two-thirds vote of the members of the City Council present at the meeting.)

APPROVAL OF AGENDA AS POSTED OR AS AMENDED: (This is the time for the City Council to remove items from the agenda or to change the order of the agenda.)

Staff's Recommendation: Motion to approve agenda as posted or as amended.

CEREMONIAL MATTERS:

- **Police Officer of the Year**

Staff's Recommendation: That Mayor Price and Police Lieutenant Joseph present the certificate of recognition to Police Officer of the Year, Matthew Vierra.

- **City Track Meet Champions**

Staff's Recommendation: That Mayor Price and Recreation Supervisor Barton present the plaque to Track Coach/Teacher Joe Rivero in recognition of the 2016 City Track Meet Champions, Peggy Heller School.

PRESENTATIONS:

Merced County Mosquito Abatement District perspective on Zika Virus (Allan Inman, Manager-Entomologist/Mike Nelson, Board Trustee)

COMMENTS FROM THE PUBLIC:

NOTICE TO THE PUBLIC

At this time any person may comment on any item which is not on the agenda. Please state your name and address for the record. Action will not be taken on an item that is not on the agenda. If it requires action, it will be referred to staff and/or placed on a future agenda.

To comment on an item that is **on** the agenda, please wait until the item is read for consideration; please limit comments to a maximum of five (5) minutes.

Civility is expected from members of the public during the meeting. For more efficient use of time, disruptive behavior will not be tolerated. While you may not agree with what an individual is saying, please treat everyone with courtesy and respect.

CONSENT CALENDAR:

NOTICE TO THE PUBLIC

Background information has been provided on all matters listed under the Consent Calendar, and these items are considered to be routine. All items under the Consent Calendar are normally approved by one motion. If discussion is requested on any item, that item will be removed from the Consent Calendar for separate action.

WARRANTS:

1. May 23, 2016

Staff's Recommendation: Approval of warrants as listed.

MINUTES: (City Council)

2. Regular meeting, May 9, 2016

Staff's Recommendation: Approval of minutes as listed.

AGREEMENTS:

3. Reimbursement Agreement with Lee Hancock for Saratoga Place Apartment Project (Community Development Director McBride)

Staff's Recommendation: Approval of Reimbursement Agreement, in a form approved by the City Attorney, with Lee Hancock for the Saratoga Place Apartment Project; and authorizes and directs the City Manager to execute the agreement on behalf of the City.

4. Professional Services Agreement with EMC Planning Group, Inc., for CEQA consulting services for Saratoga Place Apartment Project (Community Development Director McBride)

Staff's Recommendation: Approval of Professional Services Agreement, in a form approved by the City Attorney, with EMC Planning Group, Inc., for California Environmental Quality Act (CEQA) consulting services for the Saratoga Place Apartment Project; and authorizes and directs the City Manager to execute the agreement on behalf of the City.

PETITONS AND COMMUNICATIONS:

5. Request from White Pines Court Neighborhood for block party

Staff's Recommendation: Approval of request to close White Pines Court between 4:00 PM and 12:00 AM on Monday, July 4, 2016 for annual block party.

6. Request from CAL FIRE/Atwater City Fire Department for MDA "Boot Drive"

Staff's Recommendation: Approval of request from CAL FIRE/Atwater City Fire Department for annual Muscular Dystrophy Association (MDA) "Boot Drive" from 7:00 AM to 2:00 PM on Saturday, May 28, 2016.

FUNDING AND BUDGET MATTERS:

7. Treasurer's Report for the month of April, 2016 (City Treasurer Heller)

Staff's Recommendation: Motion to approve the Treasurer's Report for the month of April, 2016; or

Motion to approve staff's recommendation as presented.

CITY ATTORNEY REPORTS/UPDATES:

8. Adopting City Council Agenda Policy

Staff's Recommendation: Motion to adopt Resolution No. 2887-16 adopting City Council Agenda Policy; or

Motion to approve staff's recommendation as presented.

9. Waiving the first reading and introducing Ordinance No. CS 973 amending Chapter 2.08 of the Atwater Municipal Code relating to City Council Meetings

Staff's Recommendation: Motion to waive the first reading and introduce Ordinance No. CS 973 amending Chapter 2.08 to adopt Rosenberg's Rules of Order; or

Motion to approve staff's recommendation as presented.

10. Reviewing proposed amendments to Chapter 8.50 of the Atwater Municipal Code regarding commercial marijuana cultivation, processing, delivery, and dispensing and personal cultivation of medical marijuana

Staff's Recommendation: That the City Council, by motion, provide staff with direction regarding requested revisions to draft Ordinance No. CS 974 regarding an express ban on commercial marijuana cultivation, processing, delivery originating from within the City limits, and dispensing of medical marijuana and regulating the personal cultivation of medical marijuana in the City of Atwater.

PUBLIC HEARINGS:

11. **Waiving the first reading and introducing Ordinance No. CS 972 amending Title 13, "Public Services," Chapter 13.13 "Water Conservation Program" of the Atwater Municipal Code** (Water Division Manager/Chief Operator Shaw)

Staff's Recommendation: Open the Public Hearing and take any testimony given regarding Ordinance No. CS 972; and

Motion to waive the first reading and introduce Ordinance No. CS 972 amending Title 13, "Public Services," Chapter 13.13 "Water Conservation Program" of the Atwater Municipal Code; or

Motion to approve staff's recommendation as presented.

REPORTS AND PRESENTATIONS FROM STAFF:

12. **Granting an Exemption to Castle Vista Senior Community from the watering schedule set forth in Section 13.13.030(B) of Atwater Municipal Code** (Water Division Manager/Chief Operator Shaw)

Staff's Recommendation: Motion to adopt Resolution No. 2886-16 exempting Castle Vista Senior Community from the water schedule set forth in Section 13.13.030(B) of the Atwater Municipal Code; or

Motion to approve staff's recommendation as presented.

13. **Approving agreement with Yosemite Church for certain improvements and usage of Atwater Community Center** (Recreation Supervisor Barton)

Staff's Recommendation: Motion to approve an agreement, in a form approved by the City Attorney, with Yosemite Church for improvements to and usage of the Atwater Community Center and monthly fees for use of the Atwater Community Center on Sundays; and authorizes and directs the City Manager to execute the agreement on behalf of the City; or

Motion to approve staff's recommendation as presented.

14. **Verbal update regarding effectiveness and fiscal impact of the Vacant Building Sales Tax Rebate Program** (Finance Director Deol)

CITY COUNCIL MATTERS:

15. **Letter of support for Castle Family Health Center's application for funding through a New Access Point (HRSA-17-009)**

Recommendation: Motion to approve letter of support regarding application for funding through a New Access Point (HRSA-17-009) by the federal Health Resources and Services Administration/Bureau of Primary Health Care; or

Motion to approve recommendation as presented.

16. City Council comments and requests for future agenda items

CLOSED SESSION:

Continuation of Closed Session if necessary

ADJOURNMENT:

Adjourn to Wednesday, May 25, 2016 at 4:00 PM in the City Council Chambers to hold a Budget Workshop for Fiscal Year 2016/17

CERTIFICATION:

I, Jeanna Del Real, City Clerk of the City of Atwater, do hereby certify that a copy of the foregoing agenda was posted at City Hall a minimum of 72 hours prior to the meeting.



JEANNA DEL REAL, CMC
CITY CLERK

SB 343 NOTICE

In accordance with California Government Code Section 54957.5, any writing or document that is a public record, relates to an open session agenda item and is distributed less than 72 hours prior to a regular meeting will be made available for public inspection in the office of the City Clerk at City Hall during normal business hours at 750 Bellevue Road.

If, however, the document or writing is not distributed until the regular meeting to which it relates, then the document or writing will be made available to the public at the location of the meeting, as listed on this agenda at 750 Bellevue Road.



In compliance with the Federal Americans with Disabilities Act of 1990, upon request, the agenda can be provided in an alternative format to accommodate special needs. If you require special accommodations to participate in a City Council, Commission, or Committee meeting due to a disability, please contact the City Clerk's Office at least 48 business hours in advance of the meeting at 357-6205. You may also send the request by email to jdelreal@atwater.org.

~ May 2016 ~

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6 City Hall closed	7
8	9 City Council Meeting - 6:00 PM	10	11	12	13 City Hall closed	14
15	16 Oversight Board of Successor Agency to ARA Meeting - Cancelled	17	18 Community Development & Resources Commission Meeting - 6:00 PM	19	20 City Hall closed	21
22	23 Audit & Finance Committee Meeting - 3:30 PM City Council Meeting - 6:00 PM	24	25 City Council Adjourned Meeting (Budget Workshop) - 4:00 PM	26 Merced County District 3 Supervisor McDaniel "Mobile" Office Hours - 1:30 - 3:30 PM	27 City Hall closed	28
29	30 City Holiday Memorial Day	31	Notes:			
31	Trash pick up delayed 1 day					

~ June 2016 ~

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3 City Hall closed	4
5	6	7	8	9	10 City Hall closed	11
12	13 City Council Meeting - 6:00 PM	14	15 Community Development & Resources Commission Meeting - 6:00 PM	16	17 City Hall closed	18
19	20 Oversight Board of Successor Agency to ARA Meeting - 1:30 PM	21	22	23 Merced County District 3 Supervisor McDaniel "Mobile" Office Hours - 1:30 - 3:30 PM	24 City Hall closed	25
26	27 Audit & Finance Committee Meeting - 3:30 PM City Council Meeting - 6:00 PM	28	29	30	Notes:	

WARRANTS SUMMARY FOR MAY 23, 2016 COUNCIL MEETING

TOTAL OF WARRANTS (FROM WARRANT REPORT)

\$ 1,885,277.64

ADDITIONAL WARRANTS (THESE AMOUNTS ARE **NOT** INCLUDED IN TOTAL WARRANTS)

DATE	DESCRIPTION	AMOUNT
5/10/2016	Prewrittens included in this current warrant run.	(\$101,027.72)
5/1/2016	Dental Claims/Admin.-APRIL 2016	\$ 11,261.88
5/12/2016	PERS Retirement EFT 4/21/16 - 5/4/16	\$44,876.57

TOTAL ADDITIONAL WARRANTS (\$44,889.27)

GRAND TOTAL OF WARRANTS PAID -----

\$1,840,388.37

INFORMATIONAL ONLY (INCLUDED IN THE TOTAL WARRANTS TOTAL)

DATE	DESCRIPTION	AMOUNT
5/12/2016	Net Payroll	\$154,531.72
5/12/2016	Federal Taxes	\$53,413.31
5/12/2016	State Taxes	\$6,856.47
5/12/2016	Payroll Deductions	\$1,924.85

\$214,801.50 Total Payroll

TOTAL INFORMATIONAL WARRANTS

\$216,726.35


 CITY TREASURER

Accounts Payable

Checks for Approval

User: jdaniel
 Printed: 5/18/2016 - 2:00 PM

Prewritten



City of
Atwater
 Community Pride City Wide

750 Bellevue Road, Atwater CA 95301

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67692	05/10/2016	General Fund	Utilities	PACIFIC GAS & ELECTRIC		922.47
67692	05/10/2016	General Fund	Utilities	PACIFIC GAS & ELECTRIC		456.55
67692	05/10/2016	Pajaro Dunes LD	Utilities	PACIFIC GAS & ELECTRIC		74.56
67692	05/10/2016	Price Annexation LD	Utilities	PACIFIC GAS & ELECTRIC		1,659.43
67692	05/10/2016	Atwater South LD	Utilities	PACIFIC GAS & ELECTRIC		28.47
67692	05/10/2016	Woodview Garland LA	Utilities	PACIFIC GAS & ELECTRIC		44.05
67692	05/10/2016	General Fund	Utilities	PACIFIC GAS & ELECTRIC		2,591.91
67692	05/10/2016	General Fund	Utilities	PACIFIC GAS & ELECTRIC		23.61
67692	05/10/2016	Shaffer Lakes West LD	Utilities	PACIFIC GAS & ELECTRIC		150.73
67692	05/10/2016	Cottage Gardens LD	Utilities	PACIFIC GAS & ELECTRIC		27.48
67692	05/10/2016	Gas Tax/Street Improvement	Utilities	PACIFIC GAS & ELECTRIC		1,200.05
67692	05/10/2016	Internal Service Fund	Utilities	PACIFIC GAS & ELECTRIC		981.45
67692	05/10/2016	Airport Business Park LD	Utilities	PACIFIC GAS & ELECTRIC		1,557.76
67692	05/10/2016	Sandlewood Square LD	Utilities	PACIFIC GAS & ELECTRIC		79.28
67692	05/10/2016	Northwood Village LD	Utilities	PACIFIC GAS & ELECTRIC		515.40
67692	05/10/2016	General Fund	Utilities	PACIFIC GAS & ELECTRIC		76.21
67692	05/10/2016	General Fund	Utilities	PACIFIC GAS & ELECTRIC		307.25
67692	05/10/2016	Gas Tax/Street Improvement	Utilities	PACIFIC GAS & ELECTRIC		13,749.98
67692	05/10/2016	Shaffer Lakes East LD	Utilities	PACIFIC GAS & ELECTRIC		514.98
67692	05/10/2016	Sewer Enterprise Fund	Utilities	PACIFIC GAS & ELECTRIC		32,102.66
67692	05/10/2016	Orchard Park Estates LD	Utilities	PACIFIC GAS & ELECTRIC		337.83
67692	05/10/2016	Internal Service Fund	Utilities	PACIFIC GAS & ELECTRIC		2,155.07
67692	05/10/2016	Sierra Parks LD	Utilities	PACIFIC GAS & ELECTRIC		213.69
67692	05/10/2016	Sewer Enterprise Fund	Utilities	PACIFIC GAS & ELECTRIC		1,955.60
67692	05/10/2016	Woodhaven LD	Utilities	PACIFIC GAS & ELECTRIC		44.05
67692	05/10/2016	Wildwood Estates LD	Utilities	PACIFIC GAS & ELECTRIC		116.92
67692	05/10/2016	Water Enterprise Fund	Utilities	PACIFIC GAS & ELECTRIC		36,021.78
Check Total:						97,909.22
67693	05/10/2016	General Fund	Recreation Donations	WESTAMERICA BANK		139.64
67693	05/10/2016	General Fund	Memberships & Subscriptions	WESTAMERICA BANK		217.00
67693	05/10/2016	Gas Tax/Street Improvement	Special Departmental Expense	WESTAMERICA BANK		161.74
67693	05/10/2016	General Fund	Elementary School Track	WESTAMERICA BANK		48.59

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67693	05/10/2016	General Fund	Office Supplies	WESTAMERICA BANK		9.99
67693	05/10/2016	Internal Service Fund	Special Departmental Expense	WESTAMERICA BANK		5.36
67693	05/10/2016	General Fund	Special Departmental Expense	WESTAMERICA BANK		304.39
67693	05/10/2016	Water Enterprise Fund	Special Departmental Expense	WESTAMERICA BANK		12.83
67693	05/10/2016	Sewer Enterprise Fund	Professional Services	WESTAMERICA BANK		222.44
67693	05/10/2016	General Fund	Training	WESTAMERICA BANK		21.67
67693	05/10/2016	General Fund	Recreation Donations	WESTAMERICA BANK		50.00
					Check Total:	1,193.65
67694	05/12/2016	General Fund	Miscellaneous Union Dues	AFSCME DISTRICT COUNCIL 57		737.68
					Check Total:	737.68
67695	05/12/2016	General Fund	Garnishments	FRANCHISE TAX BOARD		255.34
					Check Total:	255.34
67696	05/12/2016	General Fund	Pre-Paid Legal	PRE-PAID LEGAL SERVICES		28.91
					Check Total:	28.91
67697	05/12/2016	General Fund	Garnishments	STATE DISBURSEMENT UNIT		852.92
					Check Total:	852.92
67698	05/12/2016	General Fund	Deferred Compensation	VANTAGEPOINT TRANSFER AGT-457		50.00
					Check Total:	50.00
					Report Total:	101,027.72

Accounts Payable

Checks for Approval

User: jdaniel
 Printed: 5/18/2016 - 2:01 PM



City of
Atwater
 Community Pride City Wide

750 Bellevue Road, Atwater CA 95301

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
0	05/23/2016	Successor Agency Debt Service	Cash with Fiscal Agent	THE BANK OF NEW YORK MELLON		375,000.00
0	05/23/2016	Successor Agency Debt Service	Cash with Fiscal Agent	THE BANK OF NEW YORK MELLON		126,148.13
0	05/23/2016	Successor Agency Debt Service	Cash with Fiscal Agent	THE BANK OF NEW YORK MELLON		110,000.00
0	05/23/2016	Successor Agency Debt Service	Cash with Fiscal Agent	THE BANK OF NEW YORK MELLON		49,160.00
0	05/23/2016	Successor Agency Debt Service	Cash with Fiscal Agent	THE BANK OF NEW YORK MELLON		135,000.00
0	05/23/2016	Successor Agency Debt Service	Cash with Fiscal Agent	THE BANK OF NEW YORK MELLON		30,040.00
Check Total:						825,348.13
67699	05/23/2016	Internal Service Fund	Special Departmental Expense	A ONE JANITORIAL		133.80
Check Total:						133.80
67700	05/23/2016	General Fund	Training	ACEC CALIFORNIA		92.13
Check Total:						92.13
67701	05/23/2016	Gas Tax/Street Improvement	Special Departmental Expense	AIRGAS NCN		275.49
Check Total:						275.49
67702	05/23/2016	General Fund	Adult Co-Ed Volleyball	SABRINA ALVARADO		80.00
Check Total:						80.00
67703	05/23/2016	General Fund	Adult Co-Ed Volleyball	SYLVIA ALVARADO		60.00
Check Total:						60.00
67704	05/23/2016	General Fund	Memberships & Subscriptions	AMERICAN PLANNING ASSOCIATION		95.00
Check Total:						95.00
67705	05/23/2016	General Fund	Professional Services	ANIMAL MEDICAL CENTER		75.75
Check Total:						75.75
67706	05/23/2016	General Fund	Communications	AT and T		933.24
67706	05/23/2016	General Fund	Communications	AT and T		245.68
67706	05/23/2016	Northwood Village LD	Communications	AT and T		102.84

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67706	05/23/2016	Meadow View LD	Communications	AT and T		101.61
67706	05/23/2016	Water Enterprise Fund	Communications	AT and T		1,128.25
67706	05/23/2016	Sewer Enterprise Fund	Communications	AT and T		1,135.67
67706	05/23/2016	Internal Service Fund	Communications	AT and T		2,132.28
Check Total:						5,779.57
67707	05/23/2016	Sewer Enterprise Fund	Special Departmental Expense	ATWATER CHIROPRACTIC, INC.		250.00
67707	05/23/2016	Gas Tax/Street Improvement	Professional Services	ATWATER CHIROPRACTIC, INC.		120.00
Check Total:						370.00
67708	05/23/2016	Water Enterprise Fund	Special Departmental Expense	ATWATER IRRIGATION INC.		13.82
Check Total:						13.82
67709	05/23/2016	General Fund	Special Departmental Expense	ATWATER MEDICAL GROUP		114.00
Check Total:						114.00
67710	05/23/2016	RDVLPMT Obligation Retirement	Professional Services	BANK OF NEW YORK		1,750.00
67710	05/23/2016	RDVLPMT Obligation Retirement	Professional Services	BANK OF NEW YORK		1,650.00
67710	05/23/2016	Sewer Enterprise Fund	Professional Services	BANK OF NEW YORK		2,200.00
Check Total:						5,600.00
67711	05/23/2016	Internal Service Fund	Improvements Other Than Bldg	BARTON OVERHEAD DOOR		229.60
67711	05/23/2016	Internal Service Fund	Improvements Other Than Bldg	BARTON OVERHEAD DOOR		9,363.25
Check Total:						9,592.85
67712	05/23/2016	General Fund	Special Departmental Expense	BEST IMPRESSION PRINTING		74.76
67712	05/23/2016	General Fund	Office Supplies	BEST IMPRESSION PRINTING		169.61
Check Total:						244.37
67713	05/23/2016	Sewer Enterprise Fund	Special Departmental Expense	BIG CREEK LUMBER COMPANY		11.54
Check Total:						11.54
67714	05/23/2016	General Fund	Special Departmental Expense	ROBERT BLAIS		1,000.00
Check Total:						1,000.00
67715	05/23/2016	Sewer Enterprise Fund	Special Departmental Expense	BOGIE'S PUMP SYSTEMS		9,255.72
Check Total:						9,255.72
67716	05/23/2016	Gas Tax/Street Improvement	Special Departmental Expense	CALAVERAS MATERIALS INC.		856.45
Check Total:						856.45

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67717 /	05/23/2016	Sewer Enterprise Fund	Professional Services	CALTEST		1,782.00
67717	05/23/2016	Sewer Enterprise Fund	Professional Services	CALTEST		923.50
					Check Total:	2,705.50
67718 /	05/23/2016	General Fund	Castle Park	ART CISNEROS		170.00
					Check Total:	170.00
67719 /	05/23/2016	Internal Service Fund	Professional Services	COLEMAN HEATING & A/C		343.85
					Check Total:	343.85
67720 /	05/23/2016	Internal Service Fund	Communications	COMCAST CABLE		117.73
					Check Total:	117.73
67721 /	05/23/2016	Internal Service Fund	Special Departmental Expense	CONSOLIDATED ELECTRICAL DISTRIBUTORS		58.32
					Check Total:	58.32
67722 /	05/23/2016	General Fund	Inspection Fees	CSG CONSULTANTS, INC.		26,035.00
67722	05/23/2016	General Fund	Plan Check Fees	CSG CONSULTANTS, INC.		745.00
67722	05/23/2016	General Fund	Plan Check Fees	CSG CONSULTANTS, INC.		5,377.44
					Check Total:	32,157.44
67723 /	05/23/2016	Section 125 Medical	Deposits Section 125	JENNIFER DANIEL		396.53
					Check Total:	396.53
67724 /	05/23/2016	General Fund	Adult Slo-Pitch Softball	TODD A. DAVIS		50.00
					Check Total:	50.00
67725 /	05/23/2016	Internal Service Fund	Operations & Maintenance	JOHN DEERE FINANCIAL		68.76
67725	05/23/2016	Internal Service Fund	Operations & Maintenance	JOHN DEERE FINANCIAL		232.79
67725	05/23/2016	Internal Service Fund	Operations & Maintenance	JOHN DEERE FINANCIAL		152.16
					Check Total:	453.71
67726 /	05/23/2016	General Fund	Professional Services	DEPT. OF JUSTICE		524.00
67726	05/23/2016	General Fund	Special Departmental Expense	DEPT. OF JUSTICE		32.00
					Check Total:	556.00
67727 /	05/23/2016	General Fund	Professional Services	DEPT.OF FORESTRY & FIRE PROTECTION		496,911.95
					Check Total:	496,911.95
67728 /	05/23/2016	Ferrari Ranch Project Fund	Professional Services	EMC PLANNING GROUP INC		23,810.70

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
					Check Total:	23,810.70
67729 ✓	05/23/2016	General Fund	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		2,678.55
67729	05/23/2016	Price Annexation LMA	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		313.50
67729	05/23/2016	Bell Crossing LNDSCP	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		44.80
67729	05/23/2016	Meadow View LNDSCP	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		179.20
67729	05/23/2016	Juniper Meadows LNDSCP	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		53.75
67729	05/23/2016	Gas Tax/Street Improvement	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		645.00
					Check Total:	3,914.80
67730 ✓	05/23/2016	Gas Tax/Street Improvement	Special Departmental Expense	FASTENAL COMPANY		11.75
					Check Total:	11.75
67731 ✓	05/23/2016	General Fund	Adult Slo-Pitch Softball	STEVE FLORIANO		75.00
					Check Total:	75.00
67732 ✓	05/23/2016	General Fund	Professional Services	FORENSIC NURSE SPECIALISTS		3,300.00
					Check Total:	3,300.00
67733 ✓	05/23/2016	Water Enterprise Fund	Special Departmental Expense	GRAINGER, INC.		109.31
					Check Total:	109.31
67734 ✓	05/23/2016	General Fund	Professional Services	GUNRUNNER GUN SHOP		1,279.75
					Check Total:	1,279.75
67735 ✓	05/23/2016	Internal Service Fund	Special Departmental Expense	HAJOCA CORPORATION		7.12
67735	05/23/2016	Gas Tax/Street Improvement	Special Departmental Expense	HAJOCA CORPORATION		50.28
					Check Total:	57.40
67736 ✓	05/23/2016	Risk Management Fund	Professional Services	HARRIS, PERISHO & RUIZ		1,600.00
					Check Total:	1,600.00
67737 ✓	05/23/2016	General Fund	Special Departmental Expense	HORIZON		71.00
					Check Total:	71.00
67738 ✓	05/23/2016	General Fund	Uniform & Clothing Expense	IMAGE UNIFORMS		219.53
					Check Total:	219.53
67739 ✓	05/23/2016	Risk Management Fund	Professional Services	JACKSON LEWIS P.C.		2,449.00
					Check Total:	2,449.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67740	05/23/2016	Gas Tax/Street Improvement	Professional Services	JLB TRAFFIC ENGINEERING, INC		1,206.31
67740	05/23/2016	Gas Tax/Street Improvement	Professional Services	JLB TRAFFIC ENGINEERING, INC		381.78
					Check Total:	1,588.09
67741	05/23/2016	General Fund	Plan Check Deposit	JOHNSON PLUMBING, INC.		500.00
					Check Total:	500.00
67742	05/23/2016	General Fund	Professional Services	JORGENSEN COMPANY		108.64
					Check Total:	108.64
67743	05/23/2016	General Fund	Community Center	JOENE LANARDO		500.00
67743	05/23/2016	General Fund	Community Center Rental	JOENE LANARDO		-58.00
					Check Total:	442.00
67744	05/23/2016	Internal Service Fund	Operations & Maintenance	LATTA'S AUTO SUPPLY		487.56
67744	05/23/2016	Internal Service Fund	Operations & Maintenance	LATTA'S AUTO SUPPLY		34.65
67744	05/23/2016	Internal Service Fund	Operations & Maintenance	LATTA'S AUTO SUPPLY		12.95
67744	05/23/2016	Internal Service Fund	Special Departmental Expense	LATTA'S AUTO SUPPLY		71.69
67744	05/23/2016	Internal Service Fund	Operations & Maintenance	LATTA'S AUTO SUPPLY		82.61
67744	05/23/2016	Internal Service Fund	Operations & Maintenance	LATTA'S AUTO SUPPLY		280.23
67744	05/23/2016	Internal Service Fund	Operations & Maintenance	LATTA'S AUTO SUPPLY		48.39
67744	05/23/2016	Internal Service Fund	Operations & Maintenance	LATTA'S AUTO SUPPLY		-61.24
67744	05/23/2016	Internal Service Fund	Operations & Maintenance	LATTA'S AUTO SUPPLY		4.89
67744	05/23/2016	Water Enterprise Fund	Special Departmental Expense	LATTA'S AUTO SUPPLY		248.79
67744	05/23/2016	Internal Service Fund	Operations & Maintenance	LATTA'S AUTO SUPPLY		95.60
67744	05/23/2016	Internal Service Fund	Operations & Maintenance	LATTA'S AUTO SUPPLY		47.20
67744	05/23/2016	Internal Service Fund	Operations & Maintenance	LATTA'S AUTO SUPPLY		5.39
					Check Total:	1,358.71
67745	05/23/2016	General Fund	Memberships & Subscriptions	LEAGUE OF CALIFORNIA CITIES		9,725.00
					Check Total:	9,725.00
67746	05/23/2016	Internal Service Fund	Operations & Maintenance	LEHR AUTO ELECTRIC		464.56
					Check Total:	464.56
67747	05/23/2016	General Fund	Special Departmental Expense	LEXISNEXIS RISK DATA MANAGEMENT		185.76
					Check Total:	185.76
67748	05/23/2016	General Fund	Rents & Leases	MAILFINANCE		1,605.84
					Check Total:	1,605.84

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67749	05/23/2016	General Fund	Adult Slo-Pitch Softball	ROBERT L. MARTINEZ		75.00
					Check Total:	75.00
67750	05/23/2016	Internal Service Fund	Operations & Maintenance	MCAULEY MOTORS		23.92
67750	05/23/2016	Internal Service Fund	Operations & Maintenance	MCAULEY MOTORS		20.66
					Check Total:	44.58
67751	05/23/2016	General Fund	Community Center	ROB MCCOY		300.00
67751	05/23/2016	General Fund	Community Center Rental	ROB MCCOY		116.00
					Check Total:	416.00
67752	05/23/2016	General Fund	Special Departmental Expense	MERCED COUNTY ASSESSOR		7.50
					Check Total:	7.50
67753	05/23/2016	General Fund	Community Center	MERCED COUNTY BOWLING		300.00
67753	05/23/2016	General Fund	Community Center Rental	MERCED COUNTY BOWLING		4.00
					Check Total:	304.00
67754	05/23/2016	General Fund	Utilities	MERCED IRRIGATION DISTRICT		671.05
67754	05/23/2016	Gas Tax/Street Improvement	Utilities	MERCED IRRIGATION DISTRICT		350.38
67754	05/23/2016	Price Annexation LD	Utilities	MERCED IRRIGATION DISTRICT		151.85
67754	05/23/2016	Price Annexation LMA	Utilities	MERCED IRRIGATION DISTRICT		17.92
67754	05/23/2016	Mello Ranch LD	Utilities	MERCED IRRIGATION DISTRICT		290.46
67754	05/23/2016	Mello Ranch LNDSCP	Utilities	MERCED IRRIGATION DISTRICT		47.41
67754	05/23/2016	Camellia Estates LD	Utilities	MERCED IRRIGATION DISTRICT		50.62
67754	05/23/2016	Juniper Meadows LD	Utilities	MERCED IRRIGATION DISTRICT		4.21
67754	05/23/2016	Camellia Meadows LD	Utilities	MERCED IRRIGATION DISTRICT		50.62
67754	05/23/2016	Stone Creek LD	Utilities	MERCED IRRIGATION DISTRICT		188.84
67754	05/23/2016	Stone Creek LNDSCP	Utilities	MERCED IRRIGATION DISTRICT		1.00
67754	05/23/2016	America West LD	Utilities	MERCED IRRIGATION DISTRICT		112.53
67754	05/23/2016	Bell Crossing LD	Utilities	MERCED IRRIGATION DISTRICT		248.21
67754	05/23/2016	Bell Crossing LNDSCP	Utilities	MERCED IRRIGATION DISTRICT		15.80
67754	05/23/2016	Atwater South LD	Utilities	MERCED IRRIGATION DISTRICT		310.02
67754	05/23/2016	Mello Ranch 2 LD	Utilities	MERCED IRRIGATION DISTRICT		472.88
67754	05/23/2016	Meadow View LD	Utilities	MERCED IRRIGATION DISTRICT		275.42
67754	05/23/2016	Aspenwood LD	Utilities	MERCED IRRIGATION DISTRICT		147.26
67754	05/23/2016	Applegate Ranch LD	Utilities	MERCED IRRIGATION DISTRICT		258.08
67754	05/23/2016	Applegate Ranch Lndscp	Utilities	MERCED IRRIGATION DISTRICT		15.80
67754	05/23/2016	Water Enterprise Fund	Utilities	MERCED IRRIGATION DISTRICT		9.11
67754	05/23/2016	Sewer Enterprise Fund	Utilities	MERCED IRRIGATION DISTRICT		188.55
67754	05/23/2016	Sewer Enterprise Fund	Utilities	MERCED IRRIGATION DISTRICT		3,644.62

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67755	05/23/2016	General Fund	Special Departmental Expense	MERCED MEDICAL SUPPLY		24.00
				Check Total:		7,522.64
67756	05/23/2016	General Fund	Printing & Advertising	MERCED SUN STAR-LEGALS		174.60
67756	05/23/2016	General Fund	Printing & Advertising	MERCED SUN STAR-LEGALS		351.40
67756	05/23/2016	General Fund	Printing & Advertising	MERCED SUN STAR-LEGALS		109.40
				Check Total:		24.00
67757	05/23/2016	Internal Service Fund	Operations & Maintenance	MERCED TRUCK & TRAILER INC.		193.43
				Check Total:		635.40
67758	05/23/2016	General Fund	Uniform & Clothing Expense	MERCED UNIFORM		69.03
67758	05/23/2016	General Fund	Uniform & Clothing Expense	MERCED UNIFORM		271.94
67758	05/23/2016	General Fund	Uniform & Clothing Expense	MERCED UNIFORM		420.63
				Check Total:		193.43
67759	05/23/2016	Gas Tax/Street Improvement	Winton Way Road Improvements	MID VALLEY ENGINEERING		5,130.00
				Check Total:		761.60
67760	05/23/2016	General Fund	Professional Services	MONTE VISTA SMALL ANIMAL HOSPITAL		193.80
67760	05/23/2016	General Fund	Professional Services	MONTE VISTA SMALL ANIMAL HOSPITAL		190.00
67760	05/23/2016	General Fund	Professional Services	MONTE VISTA SMALL ANIMAL HOSPITAL		300.00
67760	05/23/2016	General Fund	Professional Services	MONTE VISTA SMALL ANIMAL HOSPITAL		290.00
67760	05/23/2016	General Fund	Professional Services	MONTE VISTA SMALL ANIMAL HOSPITAL		225.00
67760	05/23/2016	General Fund	Professional Services	MONTE VISTA SMALL ANIMAL HOSPITAL		25.00
				Check Total:		5,130.00
67761	05/23/2016	General Fund	Office Supplies	NEOFUNDS BY NEOPOST		1,000.00
				Check Total:		1,223.80
67762	05/23/2016	General Fund	Rents & Leases	OFFICE EQUIPMENT		1,601.96
67762	05/23/2016	General Fund	Rents & Leases	OFFICE EQUIPMENT		1,601.95
67762	05/23/2016	General Fund	Rents & Leases	OFFICE EQUIPMENT		1,601.95
				Check Total:		1,000.00
67763	05/23/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		401.16
67763	05/23/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		52.60
67763	05/23/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		42.11
67763	05/23/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		39.44
				Check Total:		4,805.86

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67763	05/23/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		360.61
67763	05/23/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		123.89
67763	05/23/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		24.27
67763	05/23/2016	Internal Service Fund	Small Tools	O'REILLY AUTO PARTS		31.31
67763	05/23/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		280.79
67763	05/23/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		264.04
67763	05/23/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		79.30
67763	05/23/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		-42.12
67763	05/23/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		-17.47
67763	05/23/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		-10.00
67763	05/23/2016	Internal Service Fund	Special Departmental Expense	O'REILLY AUTO PARTS		11.76
67763	05/23/2016	Internal Service Fund	Special Departmental Expense	O'REILLY AUTO PARTS		19.54
67763	05/23/2016	Internal Service Fund	Special Departmental Expense	O'REILLY AUTO PARTS		7.78
67763	05/23/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		7.55
67763	05/23/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		-47.58
67764	05/23/2016	General Fund	Communications	PACIFIC TELEMAGEMENT	Check Total:	1,628.98
67765	05/23/2016	General Fund	Adult Slo-Pitch Softball	FERNANDO PERALES	Check Total:	78.00
67766	05/23/2016	General Fund	Castle Park	MARTHA PIMENTEL	Check Total:	75.00
67767	05/23/2016	General Fund	Special Departmental Expense	PRIME SHINE, INC	Check Total:	170.00
67768	05/23/2016	Water Fund Capital Replacemet	Well #20 Rehab	QUAD KNOPF	Check Total:	206.50
67768	05/23/2016	General Fund	Professional Services	QUAD KNOPF		238.80
67769	05/23/2016	General Fund	Professional Services	QUICKPCSSUPPORT	Check Total:	1,335.42
67769	05/23/2016	Water Enterprise Fund	Professional Services	QUICKPCSSUPPORT		3,600.00
67769	05/23/2016	Information Technology Fund	Professional Services	QUICKPCSSUPPORT		220.00
67769	05/23/2016	Information Technology Fund	Special Departmental Expense	QUICKPCSSUPPORT		5,505.00
67769	05/23/2016	Information Technology Fund	Professional Services	QUICKPCSSUPPORT		585.00
67770	05/23/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY	Check Total:	10,296.64
67770	05/23/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		365.93

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67770	05/23/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		14.86
67770	05/23/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		365.93
67770	05/23/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		545.94
67770	05/23/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		365.93
67770	05/23/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		14.86
67770	05/23/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		365.93
67770	05/23/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		185.91
67770	05/23/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		14.86
67770	05/23/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		336.41
67770	05/23/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		14.86
67770	05/23/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		14.86
				Check Total:		2,792.20
67771	05/23/2016	Internal Service Fund	Professional Services	RAZZARI FORD\MAZDA		119.00
				Check Total:		119.00
67772	05/23/2016	RDVLPMT Obligation Retirement	Atw Blvd Strscp-Dwntwn Sub	ROLFE CONSTRUCTION		253,835.00
67772	05/23/2016	RDVLPMT Obligation Retirement	Project Retention	ROLFE CONSTRUCTION		-12,691.75
				Check Total:		241,143.25
67773	05/23/2016	Sewer Enterprise Fund	Special Departmental Expense	SAN JOAQUIN VALLEY AIR		123.00
				Check Total:		123.00
67774	05/23/2016	General Fund	Adult Slo-Pitch Softball	JON SCHAEFER		100.00
				Check Total:		100.00
67775	05/23/2016	Sewer Enterprise Fund	Professional Services	SHANNON PUMP CO.		4,320.25
				Check Total:		4,320.25
67776	05/23/2016	General Fund	Professional Services	SIERRA GATEWAY VETERINARY CLINIC		120.00
				Check Total:		120.00
67777	05/23/2016	General Fund	Office Supplies	STAPLES BUSINESS ADVANTAGE		221.18
67777	05/23/2016	General Fund	Office Supplies	STAPLES BUSINESS ADVANTAGE		64.05
67777	05/23/2016	General Fund	Office Supplies	STAPLES BUSINESS ADVANTAGE		95.79
				Check Total:		381.02
67778	05/23/2016	General Fund	Professional Services	STERICYCLE, INC.		27.31
				Check Total:		27.31
67779	05/23/2016	General Fund	Castle Park	TERESA STINSON		170.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67780	05/23/2016	Water Enterprise Fund	Professional Services	TESCO CONTROLS, INC.		170.00
					Check Total:	325.00
67781	05/23/2016	Internal Service Fund	Operations & Maintenance	TIRE DISTRIBUTION SYSTEMS INC.		325.00
					Check Total:	103.00
67782	05/23/2016	Sewer Enterprise Fund	Small Tools	TRACTOR SUPPLY CREDIT PLAN		103.00
67782	05/23/2016	Gas Tax/Street Improvement	Special Departmental Expense	TRACTOR SUPPLY CREDIT PLAN		24.83
67782	05/23/2016	Gas Tax/Street Improvement	Special Departmental Expense	TRACTOR SUPPLY CREDIT PLAN		110.10
67782	05/23/2016	Water Enterprise Fund	Special Departmental Expense	TRACTOR SUPPLY CREDIT PLAN		-110.10
					Check Total:	9.69
67783	05/23/2016	RDVLPMENT Obligation Retirement	Rents & Leases	UNION PACIFIC RAILROAD CO.		34.52
					Check Total:	276.85
67784	05/23/2016	Risk Management Fund	Disability Insurance	UNUM LIFE INSURANCE		276.85
67784	05/23/2016	Risk Management Fund	Disability Insurance	UNUM LIFE INSURANCE		565.00
67784	05/23/2016	Risk Management Fund	Life Insurance	UNUM LIFE INSURANCE		2,432.53
					Check Total:	1,087.06
67785	05/23/2016	General Fund	Communications	VERIZON WIRELESS		4,084.59
67785	05/23/2016	General Fund	Communications	VERIZON WIRELESS		1,437.94
67785	05/23/2016	Gas Tax/Street Improvement	Communications	VERIZON WIRELESS		206.46
67785	05/23/2016	Sewer Enterprise Fund	Communications	VERIZON WIRELESS		33.55
67785	05/23/2016	Water Enterprise Fund	Communications	VERIZON WIRELESS		91.19
67785	05/23/2016	Measure H Fund	Communications	VERIZON WIRELESS		83.56
67785	05/23/2016	General Fund	Communications	VERIZON WIRELESS		54.02
67785	05/23/2016	General Fund	Communications	VERIZON WIRELESS		54.02
67785	05/23/2016	Gas Tax/Street Improvement	Communications	VERIZON WIRELESS		699.02
67785	05/23/2016	Sewer Enterprise Fund	Communications	VERIZON WIRELESS		48.81
67785	05/23/2016	Water Enterprise Fund	Communications	VERIZON WIRELESS		10.80
67785	05/23/2016	General Fund	Communications	VERIZON WIRELESS		64.84
67785	05/23/2016	Internal Service Fund	Communications	VERIZON WIRELESS		108.04
67785	05/23/2016	General Fund	Communications	VERIZON WIRELESS		10.80
67785	05/23/2016	Internal Service Fund	Communications	VERIZON WIRELESS		54.02
67785	05/23/2016	Internal Service Fund	Communications	VERIZON WIRELESS		10.80
					Check Total:	2,967.87
67786	05/23/2016	Internal Service Fund	Utilities	WEST COAST GAS CO. INC.		39.01
					Check Total:	39.01

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67787	05/23/2016	Water Enterprise Fund	Utilities	WGL ENERGY SYSTEMS, INC		22,951.64
67787	05/23/2016	Internal Service Fund	Utilities	WGL ENERGY SYSTEMS, INC		2,178.87
Check Total:						25,130.51
67788	05/23/2016	Northwood Village LD	Professional Services	WILLDAN FINANCIAL SERVICES		568.52
67788	05/23/2016	Orchard Park Estates LD	Professional Services	WILLDAN FINANCIAL SERVICES		473.77
67788	05/23/2016	Wildwood Estates LD	Professional Services	WILLDAN FINANCIAL SERVICES		172.59
67788	05/23/2016	Woodview Garland LA	Professional Services	WILLDAN FINANCIAL SERVICES		104.91
67788	05/23/2016	Shaffer Lakes West LD	Professional Services	WILLDAN FINANCIAL SERVICES		253.80
67788	05/23/2016	Woodhaven LD	Professional Services	WILLDAN FINANCIAL SERVICES		155.67
67788	05/23/2016	Sierra Parks LD	Professional Services	WILLDAN FINANCIAL SERVICES		118.44
67788	05/23/2016	Shaffer Lakes East LD	Professional Services	WILLDAN FINANCIAL SERVICES		1,059.21
67788	05/23/2016	Price Annexation LD	Professional Services	WILLDAN FINANCIAL SERVICES		3,197.91
67788	05/23/2016	Price Annexation LMA	Professional Services	WILLDAN FINANCIAL SERVICES		3,194.54
67788	05/23/2016	Sandlewood Square LD	Professional Services	WILLDAN FINANCIAL SERVICES		355.32
67788	05/23/2016	Sandlewood Square LMA	Professional Services	WILLDAN FINANCIAL SERVICES		355.32
67788	05/23/2016	Pajaro Dunes LD	Professional Services	WILLDAN FINANCIAL SERVICES		196.27
67788	05/23/2016	Pajaro Dunes LMA	Professional Services	WILLDAN FINANCIAL SERVICES		196.27
67788	05/23/2016	Redwood Estates LD	Professional Services	WILLDAN FINANCIAL SERVICES		395.93
67788	05/23/2016	Redwood Estates LMA	Professional Services	WILLDAN FINANCIAL SERVICES		362.09
67788	05/23/2016	Cottage Gardens LD	Professional Services	WILLDAN FINANCIAL SERVICES		47.38
67788	05/23/2016	Cottage Gardens ST & LMA	Professional Services	WILLDAN FINANCIAL SERVICES		47.38
67788	05/23/2016	Airport Business Park LD	Professional Services	WILLDAN FINANCIAL SERVICES		60.91
67788	05/23/2016	Silva Ranch LD	Professional Services	WILLDAN FINANCIAL SERVICES		507.61
67788	05/23/2016	Silva Ranch LNDSCP	Professional Services	WILLDAN FINANCIAL SERVICES		507.61
67788	05/23/2016	Mello Ranch LD	Professional Services	WILLDAN FINANCIAL SERVICES		510.99
67788	05/23/2016	Mello Ranch LNDSCP	Professional Services	WILLDAN FINANCIAL SERVICES		510.99
67788	05/23/2016	Camellia Estates LD	Professional Services	WILLDAN FINANCIAL SERVICES		128.59
67788	05/23/2016	Juniper Meadows LD	Professional Services	WILLDAN FINANCIAL SERVICES		16.92
67788	05/23/2016	Juniper Meadows LNDSCP	Professional Services	WILLDAN FINANCIAL SERVICES		16.92
67788	05/23/2016	Camellia Meadows LD	Professional Services	WILLDAN FINANCIAL SERVICES		104.91
67788	05/23/2016	Camellia Meadows LNDSCP	Professional Services	WILLDAN FINANCIAL SERVICES		104.91
67788	05/23/2016	Stone Creek LD	Professional Services	WILLDAN FINANCIAL SERVICES		632.82
67788	05/23/2016	Stone Creek LNDSCP	Professional Services	WILLDAN FINANCIAL SERVICES		632.82
67788	05/23/2016	America West LD	Professional Services	WILLDAN FINANCIAL SERVICES		43.99
67788	05/23/2016	America West LNDSCP	Professional Services	WILLDAN FINANCIAL SERVICES		43.99
67788	05/23/2016	Bell Crossing LD	Professional Services	WILLDAN FINANCIAL SERVICES		636.20
67788	05/23/2016	Bell Crossing LNDSCP	Professional Services	WILLDAN FINANCIAL SERVICES		636.20
67788	05/23/2016	Atwater South LD	Professional Services	WILLDAN FINANCIAL SERVICES		510.99
67788	05/23/2016	Atwater South LNDSCP	Professional Services	WILLDAN FINANCIAL SERVICES		510.99
67788	05/23/2016	Beluga Court LD	Professional Services	WILLDAN FINANCIAL SERVICES		16.92
67788	05/23/2016	Mello Ranch 2 LD	Professional Services	WILLDAN FINANCIAL SERVICES		439.93
67788	05/23/2016	Mello Ranch 2 LNDSCP	Professional Services	WILLDAN FINANCIAL SERVICES		439.93

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67788	05/23/2016	Meadow View LD	Professional Services	WILLDAN FINANCIAL SERVICES		433.16
67788	05/23/2016	Meadow View LNDSCP	Professional Services	WILLDAN FINANCIAL SERVICES		433.16
67788	05/23/2016	Aspenwood LD	Professional Services	WILLDAN FINANCIAL SERVICES		128.59
67788	05/23/2016	Aspenwood Lndscp	Professional Services	WILLDAN FINANCIAL SERVICES		128.59
67788	05/23/2016	Applegate Ranch LD	Professional Services	WILLDAN FINANCIAL SERVICES		47.38
67788	05/23/2016	Applegate Ranch Lndscp	Professional Services	WILLDAN FINANCIAL SERVICES		47.38
67788	05/23/2016	Reserve LD	Professional Services	WILLDAN FINANCIAL SERVICES		67.68
67788	05/23/2016	Reserve Lndscp	Professional Services	WILLDAN FINANCIAL SERVICES		67.68
67788	05/23/2016	Simon Annexation LD	Professional Services	WILLDAN FINANCIAL SERVICES		3.38
67788	05/23/2016	Simon Annexation LNDSCP	Professional Services	WILLDAN FINANCIAL SERVICES		3.38
					Check Total:	19,630.84
67789	05/23/2016	General Fund	Adult Slo-Pitch Softball	CLINTON WILLIAMS		175.00
					Check Total:	175.00
67790	05/23/2016	Water Enterprise Fund	Special Departmental Expense	WINTON HARDWARE		9.86
					Check Total:	9.86
67791	05/23/2016	General Fund	Castle Park	WINTON WATER & SANITARY DISTRICT		170.00
					Check Total:	170.00
67792	05/23/2016	General Fund	Adult Co-Ed Volleyball	DONALD K WOODS		136.00
					Check Total:	136.00
67793	05/23/2016	General Fund	Adult Co-Ed Volleyball	RICHARD A. ZAMARRIPA		90.00
67793	05/23/2016	General Fund	Adult Slo-Pitch Softball	RICHARD A. ZAMARRIPA		50.00
					Check Total:	140.00
					Report Total:	1,784,249.92



CITY OF ATWATER

CITY COUNCIL AND SUCCESSOR AGENCY TO THE ATWATER REDEVELOPMENT AGENCY

ACTION MINUTES

May 9, 2016

REGULAR SESSION: (Council Chambers)

The City Council of the City of Atwater and the Governing Board of the Successor Agency to the Atwater Redevelopment Agency met in Regular Session this date at 6:00 PM in the City Council Chambers located at the Atwater Civic Center, 750 Bellevue Road, Atwater, California; Mayor/Board Chair Price presiding.

PLEDGE OF ALLEGIANCE TO THE FLAG:

The Pledge of Allegiance was led by Mayor/Board Chair Price.

INVOCATION:

The Invocation was led by Police Chaplain McClellan.

ROLL CALL: (City Council/Governing Board)

Present: *City Council Members/Board Members Raymond, Rivero, Vineyard, Mayor Pro Tem/Board Vice Chair Bergman, Mayor/Board Chair Price*

Absent: *None*

Staff Present: *City Manager/Executive Director/Police Chief Pietro, City Attorney Terpstra, CAL FIRE Battalion Chief Pimentel, Police Lieutenant Joseph, Community Development Director McBride, Interim Public Works Director Faretta, Finance*

Director Deol, City Clerk Del Real, Recording Secretary Bengtson-Jennings

SUBSEQUENT NEED ITEMS:

City Clerk Del Real announced a request for a subsequent need item, a letter of support to Assemblyman Adam Gray for funding for the violence interruption/prevention emergency response (VIPER) program, requiring immediate action subsequent to the agenda being posted.

Police Chief Pietro provided a brief synopsis of the VIPER program.

MOTION: *City Council Member Raymond moved to add the subsequent need item to the agenda under City Council Matters. The motion was seconded by Mayor Pro Tem Bergman and the vote was: Ayes: Vineyard, Raymond, Rivero, Bergman, Price; Noes: None; Absent: None. The motion carried.*

APPROVAL OF AGENDA AS POSTED OR AS AMENDED:

MOTION: *City Council Member/Board Member Vineyard moved to approve the agenda as amended. The motion was seconded by City Council Member/Board Member Rivero and the vote was: Ayes: Bergman, Vineyard, Raymond, Rivero, Price; Noes: None; Absent: None. The motion carried.*

CEREMONIAL MATTERS:

Firefighter of the Year

CAL FIRE Battalion Chief Pimentel accepted the certificate of recognition, on behalf of Fire Captain Robert Ayuso, for Firefighter of the Year.

PRESENTATIONS:

Monthly verbal report by Merced County District 3 Supervisor McDaniel

City Council Member Raymond reported on several items in the absence of Supervisor McDaniel. He thanked Worknet for the recent job fair in which vendor spaces sold out indicating there are jobs in Merced County. He reminded the community of the upcoming Welcome Home Heroes event and job fair May 14, 2016 from 10:00 AM – 4:00 PM, and he invited everyone to “come out and celebrate with the veterans.”

COMMENTS FROM THE PUBLIC:

Notice to the public was read.

CAROLYN POSTON, representing Atwater First Baptist Church, spoke regarding a request to distribute boxes of food at Ralston Park the fourth Saturday of each month from May to December.

Mayor Price asked that the request be submitted to the City in writing and that the item be placed on the next regular City Council meeting agenda of May 23, 2016 for City Council consideration.

GARY BRICE, Atwater, thanked the Public Works Department for their efforts installing the new ADA play structure at Ralston Park.

No one else came forward to speak.

CONSENT CALENDAR:

MOTION: Mayor Pro Tem Bergman moved to approve the consent calendar as listed. The motion was seconded by City Council Member Vineyard and the vote was: Ayes: Raymond, Vineyard, Bergman, Price; Noes: Rivero; Absent: None. The motion carried.

WARRANTS:

1. May 9, 2016

ACTION: Approval of warrants as listed.

MINUTES: (City Council)

2. a) Adjourned meeting, April 25, 2016
b) Regular meeting, April 25, 2016

ACTION: Approval of minutes as listed.

AGREEMENTS:

3. Approving Amendment No. 1 to Professional Services Agreement with VVH Consulting Engineers, Inc. for the Fruitland Avenue Reconstruction Project (Community Development Director McBride)

ACTION: Approval of Amendment No. 1 to the Professional Services Agreement with VVH Consulting Engineers, Inc. for the Fruitland Avenue Reconstruction Project; and authorizes and directs the City Manager to execute the amendment on behalf of the City.

RESOLUTIONS:

4. Calling, giving notice of, and consolidating the 2016 General Municipal Election (City Clerk Del Real)

ACTION: Adoption of Resolution No. 2885-16 calling and giving notice of the holding of a General Municipal Election to be held on Tuesday, November 8, 2016 for the election of the City Clerk, the City Treasurer, and two (2) Members of the City Council, as required by the provisions of the laws of the State of California relating to General Law Cities; and requests the Board of Supervisors of the County of Merced consolidate a General Municipal Election to be held on November 8, 2016 with the Statewide General Election to be held on the date pursuant to Section 10403 of the Election Code.

5. Consenting to inclusion of City of Atwater properties in the CSCDA Open PACE Program (Community Development Director McBride)

ACTION: Adoption of Resolution No. 2884-16 consenting to inclusion of properties within the City of Atwater's jurisdiction in the CSCDA Open PACE Program; and authorizes and directs the City Manager to execute any documents relating to participation on behalf of the City.

REPORTS:

6. Monthly review of local drought emergency (City Attorney Terpstra)

ACTION: Reaffirms the facts and findings in Resolution No. 2823-15 declaring the existence of a local drought emergency.

INFORMATIONAL ITEMS ONLY (NO ACTION REQUIRED):

7. Police Department activities and projects for the month of April, 2016 (Police Lieutenant Joseph)
8. Fire Department activities and projects for the month of April, 2016 (CAL FIRE Battalion Chief Pimentel)
9. Public Works Department activities and projects for the month of April, 2016 (Interim Public Works Director Faretta)

REPORTS AND PRESENTATIONS FROM STAFF:

Refinancing CalPERS Side Fund for Miscellaneous and Safety Plans (Finance Director Deol)

Eric Scriven, Principal at NHA Advisors, was available to answer questions regarding the item.

MOTION: Mayor Price moved to adopt Resolution No. 2880-16 approving the form and authorizing the execution and delivery of certain lease financing documents in connection with the refinancing of a portion of the City's outstanding unfunded accrued actuarial liability to the California Public Employees Retirement System, and providing for other matters properly relating thereto. The motion was seconded by City Council Member Vineyard and the vote was: Ayes: Vineyard, Price; Noes: Rivero, Raymond, Bergman; Absent: None. The motion was rejected.

Approving transfer of Government Use Properties from the former Atwater Redevelopment Agency to the City of Atwater (Community Development Director McBride)

MOTION: City Council Member/Board Member Vineyard moved to adopt Resolution No. SA 2016-2 approving the transfer of real property to the City of Atwater; and Resolution No. 2883-16 accepting the transfer of real property from the Successor Agency to the Atwater Redevelopment Agency to the City of Atwater. The motion was seconded by Mayor Pro Tem/Board Vice Chair Bergman and the vote was: Ayes: Raymond, Rivero, Bergman, Vineyard, Price; Noes: None; Absent: None. The motion carried.

Approving Memorandum of Understanding setting forth certain items of agreement among agencies within the Merced Groundwater Subbasin following the Sustainable Groundwater Management Act (Water Division Manager/Chief Operator Shaw)

MOTION: Mayor Pro Tem Bergman moved to approve the Memorandum of Understanding setting forth certain items of agreement among agencies within the Merced Groundwater Subbasin following the Sustainable Groundwater Management Act; and authorizing and directing the Mayor to execute the Memorandum of Understanding, in a form approved by the City Attorney, on behalf of the City. The motion was seconded by City Council Member Vineyard and the vote was: Ayes: Bergman, Vineyard, Price; Noes: Raymond, Rivero; Absent: None. The motion carried.

CITY COUNCIL MATTERS:

Letter of support to Assemblyman Adam Gray regarding funding for the VIPER program

MOTION: City Council Member Vineyard moved to authorize a letter of support to Assemblyman Adam Gray for funding for the violence interruption/prevention emergency response (VIPER) program. The motion was seconded by City Council Member Rivero and the vote was: Ayes: Bergman, Rivero, Raymond, Vineyard, Price; Noes: None; Absent: None. The motion carried.

City Council comments and requests for future agenda items

City Council Member Raymond thanked those who participated in the recent God Belongs in My City rally.

Mayor Pro Tem Bergman had nothing to report.

City Council Member Vineyard announced that Crestview Neighborhood Watch will meet at Heller Park on May 10, 2016 at 5:30 PM to discuss the possibility of adopting a City park.

City Council Member Rivero announced a 50th year celebration event for Thomas Olaeta School to be held May 19, 2016 beginning with a BBQ at 5:00 PM.

Mayor Price thanked Atwater First Baptist Church for the invitation to speak to the congregation's children recently. He invited the community to attend the Welcome Home Heroes event and job fair May 14, 2016 beginning at 10:00 AM at Castle. He announced a Budget Workshop to be held May 25, 2016 at 4:00 PM and a Supervisors District 4, and possibly District 2, Forum to be held May 19, 2016 at 6:30 PM at the Atwater VFW Hall.

ADJOURNMENT:

The meeting adjourned at 6:44 PM.

JEANNA DEL REAL, CMC
CITY CLERK/BOARD SECRETARY

By: Kim Bengtson-Jennings,
Recording Secretary

May 12, 2016

Honorable Mayor and Members
of the Atwater City Council

City Council Meeting
of May 23, 2016

**AUTHORIZE REIMBURSEMENT AGREEMENT WITH LEE HANCOCK
FOR SARATOGA PLACE APARTMENT PROJECT**

RECOMMENDATION:

It is recommended that the City Council consider:

1. Approving a Reimbursement Agreement with Lee Hancock for the proposed Saratoga Place Apartment Project; and,
2. Authorize the City Manager to execute the amendment on behalf of the City of Atwater.

BACKGROUND:

The city has received preliminary plans prepared on behalf of Mr. Lee Hancock. The Council may be aware that Mr. Hancock is the owner of the Castle Gardens property, formerly the "old base housing." The project Saratoga Place Apartment Project is located at Piro Drive and Buhach Road. Currently the design is for a 10.13 acre project consisting of ten buildings and 273 multi-family residential units. The project could potentially include 32 town houses, 60 single bed single bath, 121 two bed single bath, and 60 two bed two bath units. Additionally the project would include a manager unit, community building, shared pool, carports, and garages. The project area would also include a one acre commercial remainder for future development. The preliminary plan is attached, **(EXHBIT A)**.

ANALYSIS

The proposed project will require several discretionary land use approvals from the city. They will include a General Plan Amendment, Planned Development Master Plan, Final Development Plan, and a Parcel Map. Given the scope of the project and the necessary land use entitlement the project cannot be found exempt under the California Environmental Quality Act (CEQA) therefore the project will require the preparation of an Initial Study and further environmental document. The City will be the lead agency in the preparation of the environmental document. To ensure that the issues are adequately studied the city will take the lead on selecting a qualified environmental consulting firm.

Given the approach it is recommended that a Reimbursement Agreement be executed which will cover the cost for the CEQA work as well as staff time, legal expenses, and any other consultants which may be needed in the preparation of the entitlement

documents. The city has previously used this method on the Ferrari Ranch Project to ensure that the applicant is paying for their full share of the costs.

FISCAL IMPACT:

None, all costs will be billed to Mr. Hancock who will be responsible for paying the expenses needed to approve the project. The City's Finance Department can create any necessary accounts or funds to separate the project and assist in tracking expenditures and reimbursement payments. These can be created for the FY 2016/17 budget.

CONCLUSION:

This staff report is submitted for City Council consideration and possible action.

Respectfully submitted,



Scott McBride
Community Development Director

NEBELA DRIVE

EVA

BUHACH ROAD



Commercial Site
1 Acre

PIRO DRIVE

MAIN ENTRY

PROJECT SUMMARY

SITE AREA: 10.13 ACRES

BY UNIT TYPES

TOWNHOMES:	32	(12%)
1/1 UNITS:	60	(22%)
2/1 UNITS:	121	(44%)
2/2 UNITS:	60	(22%)
TOTAL UNITS:	273	

BY BUILDING TYPES:

BUILDING TYPE 1 (28 UNITS):	7 BUILDINGS =	196 UNITS
BUILDING TYPE 2 (24 UNITS):	1 BUILDINGS =	24 UNITS
BUILDING TYPE 3 (26 UNITS):	2 BUILDINGS =	52 UNITS
MANAGER UNIT		1 UNIT
TOTAL:	10 BUILDINGS =	273 UNITS

DENSITY: 26.9 du/a

PARKING BY TYPE:

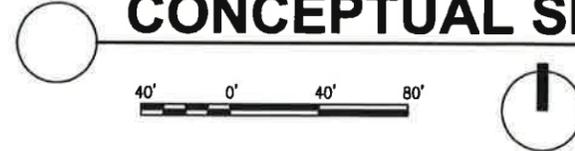
CARPORTS:	250 SPACES
GARAGES (19):	114 SPACES
UNCOVERED:	174 SPACES
TOTAL:	538 SPACES

PARKING BY USER:

1 BR AT 1.5 SPACES PER UNIT:	90 SPACES
2 BR AND TOWNHOME	
AT 2 SPACES PER UNIT:	424 SPACES
SURPLUS (GUEST PARKING):	24 SPACES
TOTAL:	538 SPACES

PARKING RATIO: 1.97 PER UNIT

CONCEPTUAL SITE PLAN



WWW.LCA-ARCHITECTS.COM
CARL E. CAMPOS
DAVID BOGSTAD
PETER STACKPOL
590 YGNACIO VALLE
WALNUT CREEK, CA
(925) 944-1626
1970 BROADWAY, SUITE 200
OAKLAND, CALIFORNIA
(510) 272-1090

2400 SARATOGA BLVD

LCA ARCHITECTS
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CONCEPTUAL SITE PLAN

SCALE:
DATE: 12 / 1

REVISIONS:

PROJECT NO.

A1.0

SHEET



1 BUILDING TYPE 1:
CONCEPTUAL FRONT ELEVATION



2 BUILDING TYPE 1:
CONCEPTUAL SIDE ELEVATION

8' 0' 8' 16'
SCALE: 1/8" = 1'-0"



1 CLUBHOUSE:
CONCEPTUAL SOUTH ELEVATION



2 CLUBHOUSE:
CONCEPTUAL EAST ELEVATION



3 CLUBHOUSE:
CONCEPTUAL NORTH ELEVATION



4 CLUBHOUSE:
CONCEPTUAL WEST ELEVATION

8' 0' 8' 16'
SCALE: 1/8" = 1'-0"

REIMBURSEMENT AGREEMENT

This agreement ("Agreement") is made, and entered into this ____ day of _____, 2016 ("Effective Date") by and between the City of Atwater ("CITY") and Lee Hancock, a California _____ ("DEVELOPER").

WHEREAS, DEVELOPER has applied for land use approvals, including, but not limited to, a Vesting Tentative Parcel Map, Planned Development Master Plan, Planned Development Final Development Plan, and General Plan Amendment all of which are related to use of its property consisting of approximately 11.13 acres located at Piro Drive and Buhach Road, consisting of those Assessor's Parcel Numbers listed on "**Exhibit A**" (the "**Property**"). For purposes of this Agreement, reviewing and processing DEVELOPER'S applications, including, but not limited to, all activities related to the entitlement processing, development, and construction of the above-referenced project and related uses shall be referred to as the "Project."

WHEREAS, DEVELOPER and CITY expect that the Project will require CITY to expend resources in working with DEVELOPER after DEVELOPER'S submission of improvement plans, construction drawings, grading and encroachment permits, a Project Improvement or Subdivision Improvement Agreement, Development Agreement and related permits and entitlements.

WHEREAS, CITY and DEVELOPER have agreed that DEVELOPER shall be responsible for reimbursing CITY for all costs and expenses incurred by CITY with respect to the Project, including costs of staff time, consultants', and attorneys' fees in accordance with the terms of this Agreement.

WHEREAS, CITY and DEVELOPER anticipate that the City Council's approval of the Project will include a condition, among other things, that DEVELOPER indemnify CITY and reimburse CITY for costs associated with said approval.

NOW, THEREFORE, in consideration of the foregoing promises and in order to carry on the intent and purpose of applicable codes, ordinances, resolutions and regulations, DEVELOPER and CITY agree as follows:

SECTION 1. PROJECT COSTS TO BE REIMBURSED

DEVELOPER shall be responsible for payment of all reasonable direct and indirect costs incurred by CITY as a result of the Project ("Project Costs"), which are incurred by the CITY from and after the date of this Agreement. During the term of this Agreement, so long as DEVELOPER is fulfilling its obligations hereunder, CITY shall process DEVELOPER'S application(s) for the Project until such time as CITY approves or denies such application(s). Project Costs shall include, but are not limited to:

- (a) All actual CITY staff time, including, but not limited to, the Community Development Department - Planning Division, Community Development Department - Planning Division Community Development Department – Building Division, Public Works Department, Administration, City Clerk, City Attorney

(Terpstra Henderson Professional Corporation) expended on Project-related activities, drafting or reviewing a Project Improvement Agreement, Development Agreement, entitlements, and necessary exhibits, and/or litigation concerning the Project. Such staff time includes direct labor costs as well as departmental and indirect overhead costs. A schedule of all individuals anticipated to be working on the Project, and their hourly rates, is shown on the attached “**Exhibit B**”.

- (b) All actual costs, not specified in Section 1(a) above, expended on Project-related activities (e.g., costs of telephone, mileage, supplies, postage, etc.). Such costs shall not include general overhead, but shall be limited to cost incurred solely because of the Project. Any travel that will be in excess of twenty-five (25) miles must be approved in advance by DEVELOPER, which approval shall not be unreasonably withheld.
- (c) All actual costs of any outside consultants hired to assist CITY with Project-related activities and/or litigation, including, but not limited to, attorneys, planning and design consultants, engineers, traffic consultants, CEQA – environmental consultants, and other technical and professional consultants as deemed necessary by CITY in developing the Project Improvement Agreement and the permits and entitlements referred to herein. CITY shall use its best efforts to use CITY staff in lieu of outside consultants when CITY staff is available and can perform the same task for less cost than an outside consultant.

SECTION 2. PROCESS FOR REIMBURSEMENT OF PROJECT COSTS

- (a) CITY shall prepare and provide DEVELOPER (by regular mail, electronic mail or facsimile) quarterly summaries reflecting all Project Costs set forth in Sections 1(a)-(c) above incurred during each month.
- (b) Following execution of this Agreement, DEVELOPER shall deposit with the CITY in a separate account (hereinafter the “Cost Deposit”) the amount of Five Thousand Dollars (\$5,000) to pay for all costs set forth in Sections 1 (a)-(c) and any other Project Cost(s). DEVELOPER agrees to replenish and maintain at all times a Cost Deposit balance of at least Five Thousand Dollars (\$5,000). Failure by the DEVELOPER to maintain a Cost Deposit balance of \$5,000 shall be considered a default by the DEVELOPER of the terms and conditions of this Agreement. CITY and DEVELOPER agree to meet in good faith and discuss adjustments to the amount of the Cost Deposit if the actual monthly expenditures for Project Costs routinely (defined as two or more consecutive months) exceed the amount of the Cost Deposit.

CITY shall maintain the Cost Deposit in an interest-bearing dedicated account for the benefit of DEVELOPER. DEVELOPER acknowledges and agrees that in lieu of paying staff costs for maintenance and tracking of interest, DEVELOPER elects to waive any interest on the Cost Deposit. CITY shall at all times maintain

records as to the expenditure of the Cost Deposit; provided, however, CITY may use the Cost Deposit only as set forth herein.

For those Project Costs set forth in Sections 1(a)-(c), CITY shall provide a written, quarterly summary to DEVELOPER of all Project Costs charged by CITY against the Cost Deposit. The written summary shall be supported by appropriate documentation such as timesheets, invoices, and receipts. DEVELOPER shall approve or disapprove CITY'S reimbursement of all costs set forth in each such summary within ten (10) business days of receipt. If CITY does not receive a response from DEVELOPER within this ten business day timeframe, the requested reimbursement shall be deemed approved and CITY shall draw on the Cost Deposit to cover said Project Costs. In the event DEVELOPER notifies CITY in writing within this ten business day timeframe that it does not approve said reimbursement, CITY may still draw on the Cost Deposit to cover said Project Costs subject to resolution of this dispute in accordance with Section 10 below. For those Project Costs set forth in Section 1(c) above, CITY shall pay said costs directly to the outside consultants, list those payments on the monthly summary, and provide appropriate documentation indicating the name of each outside consultant and the services provided. In addition, CITY shall provide DEVELOPER on a quarterly basis (by regular mail, electronic mail, or facsimile) a copy of any and all consultant invoices paid directly by CITY during the preceding month. CITY shall have the right to redact from such documentation any information that CITY reasonably determines is privileged, confidential, or not otherwise subject to release pursuant to the California Public Records Act (Gov't Code § 54950 *et seq.*).

SECTION 3. FEES, PERMITS AND CITY REGULATIONS

DEVELOPER shall be responsible to pay any fee not expressly abrogated by this Agreement, including, but not limited to, any ministerial fee(s) on required Project permits such as building permits, building plan check fees, County Recording Fees, State Fish and Game Filing Fees, grading permits, and the like, and any fees or expenses approved by the Community Development Commission and/or City Council that are made part of the Project's conditions of approval. Nothing in this Agreement shall be deemed to abrogate the responsibility of DEVELOPER to obtain any required permit(s) or comply with any laws associated with any applications, permits, studies, or construction activities related to the Project.

SECTION 4. TERM

Subject to Section 5, the term of this Agreement shall commence on the Effective Date and terminate upon the later of: one (1) year from the issuance of a certificate of completion for the last of the Project-related improvements; or (b) one (1) year from the last date that DEVELOPER is required to maintain Project-related improvements(s) set forth in any applicable improvement or development agreements related to the Project.

SECTION 5. TERMINATION

Developer may, at its option, terminate this Agreement at any time on thirty (30) days' prior written notice to CITY ("Termination Notice") if DEVELOPER determines not to proceed with the Project. In the event of termination, DEVELOPER shall be responsible for the payment of all Project Costs incurred up to and including the date of termination. CITY shall apply the sums maintained in the Cost Deposit to any unreimbursed Project Costs through the termination date, and CITY shall then refund any remaining Cost Deposit funds to DEVELOPER within thirty (30) days of the date of termination.

SECTION 6. INDEMNIFICATION

In addition to Project Costs, DEVELOPER shall defend, indemnify, and hold CITY free and harmless from any and all suits, fees, claims, demands, causes of action, proceedings (hereinafter collectively referred to as "Legal Actions"), costs, losses, damages, liabilities and expenses (including, but not limited to, an award of attorneys' fees, expert witness fees, and court costs) incurred by CITY arising (directly or indirectly) or resulting from the review, processing, consideration, or from the approval of DEVELOPER'S Project or action taken by CITY thereon. In the event DEVELOPER does not wish to defend any Legal Action either as party to said action or as Real Party-in-Interest, DEVELOPER will reimburse CITY for any damages, costs, or fees awarded pursuant to any default judgment or other judgment taken against the CITY as a result of its decision not to defend any Legal Action. The failure of the DEVELOPER to promptly reimburse the CITY for any damages, costs or fees, due and owing under this Section 7 shall entitle the CITY to draw upon any sums maintained by the DEVELOPER in the Security Deposit or Cost Deposit. DEVELOPER'S obligations pursuant to this SECTION 7 shall survive suspension or termination of this Agreement.

- (a) In the event the CITY'S processing of the Project results in any Legal Action being initiated, the CITY shall notify the DEVELOPER promptly of any such action. DEVELOPER will provide and take primary responsibility for the legal defense of itself and the CITY (hereinafter referred to as the "Joint Legal Defense") to the fullest extent possible. DEVELOPER shall defend CITY'S actions with competent legal counsel of DEVELOPER'S choice without charge to CITY, subject to CITY approval. Prior to selecting such legal counsel, DEVELOPER shall meet and confer with CITY in order to obtain CITY'S input on the question of whether such counsel is, indeed, competent with respect to the body of law at issue in the litigation. CITY shall not unreasonably withhold its assent to DEVELOPER'S choice of counsel where such counsel enjoys a good reputation with respect to work under such body of law and can point to notable successes in prior litigation involving that body of law. For purposes of this Agreement, a complaint including the recovery of attorney fees and costs will be considered a request for "monetary damages." The CITY and DEVELOPER shall cooperate in good faith in the defense of any Legal Action that names the CITY as a party and for which the DEVELOPER undertakes the primary responsibility for the Joint Legal Defense of in accordance with the terms of this Section 7. The CITY, through the CITY Attorney's Office, shall be kept apprised by the

DEVELOPER and retained counsel of significant dates and hearings, shall receive copies of all pleadings filed in the matter by any party, and shall be allowed to participate in strategic decisions regarding the development of any applicable defense strategies and in preparing pleadings, prior to filing. DEVELOPER and CITY may enter into a "Joint Legal Defense Agreement" amending any terms hereto.

- (b) In the event of any Legal Action against CITY and/or DEVELOPER, CITY will protect from public disclosure to the fullest extent possible, any communications between its attorneys and those representing DEVELOPER in said action. The parties intend that communications between CITY Counsel, retained counsel, and/or CITY staff, for purposes of the joint defense of a legal action, are entitled to the attorney-client privilege and/or work product privilege and are to be protected from disclosure through the exemption contained in Cal. Gov't. Code § 6254(b) and/or (k), Evidence Code section 954 and/or Code of Civil Procedure section 2018.030. Similarly, communications between City Attorney and the City Council will be held in Closed Session pursuant to Cal. Gov't. Code §54956.9 to the maximum extent possible. Any Legal Action seeking to compel disclosure of privileged communications shall be defended by the DEVELOPER in accordance with the terms and conditions set forth in this Section 6.
- (c) Nothing contained in this Section 6, however, shall be construed to limit the discretion of CITY, in the interest of the public welfare, to settle, defend, or appeal, or to decline settlement or to terminate or forego defense or appeal of a Legal Action at its own expense. In no event shall CITY be required to continue with a legal challenge, although CITY shall have the right to do so, in the event DEVELOPER fails to pay any amounts owing to CITY pursuant to this Agreement. In no event shall CITY have any obligation or liability to DEVELOPER in connection with CITY'S defense or prosecution of litigation related to the Project (including, but not limited to, the outcome thereof) or in the event CITY elects not to prosecute a case or defend litigation brought against it. The failure of the DEVELOPER to undertake the defense of any Legal Action within the scope of this Section 6 or the decision of the DEVELOPER to terminate, forego, or abandon the defense or appeal of a Legal Action may be treated by the CITY as an abandonment of the Project by the DEVELOPER and will relieve the CITY from any further duty, legal or otherwise, to continue to process the DEVELOPER'S Project.
- (d) If either CITY or DEVELOPER determines in good faith that common counsel presents a bona fide conflict of interest, then CITY may employ separate counsel to represent or defend the CITY, and DEVELOPER shall pay the reasonable attorneys' fees and costs of such counsel within thirty (30) days of receiving an itemized billing statement. Failure by the DEVELOPER to reimburse CITY for its separate counsel may be treated as an abandonment of the Project by the DEVELOPER.

SECTION 7. NOTICES

All notices called for in this Agreement shall be given in writing by personal delivery, or electronic mail (with copy of such notice sent not later than the next day by mail or overnight private courier in accordance with the provision herein) or by overnight mail or overnight private courier. Electronic mail notices shall be deemed received on the day sent if sent prior to 6:00 p.m. Pacific Time or if sent after 6:00 p.m. Pacific Time, then deemed received on the next day. Overnight mail or couriered notices shall be deemed received the next business day following deposit into the U.S. mail or delivery to the private courier. First class mail, postage prepaid, shall be deemed received three days after postmark. Mailed or couriered notices shall be addressed as set forth below, but either party may change its contact information by giving written notice thereof to the other in accordance with the provisions of this Section 7.

To the CITY:

City of Atwater Community Development Department
750 Bellevue Road
Atwater, CA 95301

To DEVELOPER:

Lee Hancock
610 Discovery Bay Blvd.
Discovery Bay, CA 94505

SECTION 8. DEFAULT BY DEVELOPER

If DEVELOPER defaults in its obligations to provide and maintain the deposits required by this Agreement or to timely pay for any Project Costs as required under this Agreement, then CITY, at CITY'S option, may suspend any activities related to the Project upon thirty (30) days' written notice to DEVELOPER. During the pendency of any notice period, whether for monetary or non-monetary default(s), CITY, at CITY'S option, may suspend processing and/or consultant activities related to the Project until such default is cured by the DEVELOPER. CITY shall give DEVELOPER written notice of such default and any decision by the CITY to suspend processing and/or consulting activities related to the Project activities. Subject to Section 10 below, CITY may terminate this Agreement and institute legal proceedings, with no further notice to DEVELOPER, if such default is not remedied by DEVELOPER within thirty (30) days after such notice is given by CITY to DEVELOPER. Upon such termination, CITY shall not be obligated to expend any additional funds on Project-related matters; however, CITY may, in its discretion (such discretion to be exercised in good faith), expend Deposit funds after termination of this Agreement as necessary to complete Project-related activities already commenced or for which monetary obligations have already

been incurred. Maintenance of any deposit required by this Agreement shall be made a condition of any Tentative or Final Map for the Project, or, if no map is required, of the first discretionary approval. Subject to Section 9, DEVELOPER consents and agrees not to object to, appeal, or protest any of the conditions and/or payments referenced in this Section 8.

In the event of DEVELOPER'S default, DEVELOPER waives any permit review timelines otherwise applicable under the Permit Streamlining Act, the Subdivision Map Act, or any other applicable laws with respect to each and every map, permit, or discretionary approval that may be delayed as a result of DEVELOPER'S failure to provide CITY with funds as required under this Agreement. In the event of DEVELOPER'S default, no such map, permit or other approval shall be deemed approved by operation of law in connection with the Project.

SECTION 9. DISPUTE RESOLUTION

If a dispute arises related to the interpretation or enforcement of, or compliance with, the terms and provisions of this Agreement ("Dispute"), CITY and DEVELOPER shall first attempt to resolve it through informal discussions. In the event a Dispute cannot be resolved in this manner within sixty days (60) days after the Dispute arises, then CITY and DEVELOPER shall engage in the following Alternative Dispute Resolution procedures:

Mediation: The CITY and DEVELOPER agree that any and all disputes, claims, or controversies between CITY and DEVELOPER and arising of or related to this Agreement shall be submitted to the Sacramento, California office of Judicial Arbitration and Mediation Services, Inc. ("JAMS") for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS for final binding arbitration pursuant to the arbitration clause set forth below. Either CITY or DEVELOPER may commence mediation by providing to JAMS and the other party a written request for mediation setting forth the subject of the dispute and the relief requested. The CITY and DEVELOPER will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals and in scheduling the mediation proceedings. If the parties cannot agree on the appointment of a mediator or the date of the mediation within thirty (30) days after the written request for mediation, then JAMS shall appoint the mediator at its discretion and/or set a mediation date. The CITY and DEVELOPER covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts, and attorneys, and by the mediator and any JAMS employees, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation or other proceedings involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for an action to obtain equitable relief, neither party may commence civil litigation. Either CITY or DEVELOPER may initiate arbitration with respect to the

matters submitted to mediation by filing a written demand for arbitration at any time following completion of the initial mediation session or sixty (60) days after the date of the written request for mediation, whichever occurs last. Mediation may continue after the commencement of arbitration, if CITY and DEVELOPER so desire. Unless otherwise agreed to by CITY and DEVELOPER, the mediator shall be disqualified from serving as the arbitrator in the case. The provisions of this clause may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees, and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered.

Arbitration: Any dispute, claim or controversy between CITY and DEVELOPER arising out of this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, not resolved by the mediation process set forth above, shall be determined by arbitration to be held in San Joaquin County before one arbitrator. Neither party may request an arbitration hearing in conformity with this arbitration clause until after the matter has been submitted to mediation in conformity with the mediation clause set forth above and the initial mediation session has been completed or sixty (60) days has passed since the date of the initial written request for mediation, whichever occurs last. The arbitration shall be administered by the Sacramento, California office of JAMS pursuant to its Streamlined Arbitration Rules and Procedures, which rules shall govern the commencement of the arbitration and the selection of the arbitrator among other things. Judgment on the Arbitrator's Award may be entered in the Atwater CITY Superior Court or any court having jurisdiction. This clause shall not preclude CITY or DEVELOPER from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

The costs and fees of arbitration (including those fees and expenses set forth in JAMS' fee schedule in effect at the time of commencement of the arbitration) shall be borne equally by CITY and DEVELOPER, and each side shall be responsible for its own attorney's fees and expert witness' fees.

The dispute resolution process shall be undertaken in good faith. A mediator or arbitrator other than JAMS may be agreed to by CITY and DEVELOPER in writing. By agreeing to this dispute resolution process, neither CITY nor DEVELOPER hereby loses or waives its right to assert the operation of any applicable statute of limitations as an affirmative defense. The arbitration award shall be final and binding upon CITY and DEVELOPER and each agrees that it will accept such decision and award as binding and conclusive and will abide thereby.

SECTION 10. NO WAIVER OF IMMUNITIES

Nothing in this Agreement shall be construed as a waiver by CITY of any of the immunities granted to it under Federal, State or local law, including the provisions of Sections 818.6, 830.6 and 831.3 of the California Government Code.

SECTION 11. COMPLETE AGREEMENT

Except as may otherwise be explicitly set forth herein, this Agreement constitutes the final, complete, and exclusive statement of the terms hereof between CITY and DEVELOPER related to the subject matter set forth herein. Neither party is relying on any representation or warranty outside those expressly set forth in this Agreement. Any and all amendments to this Agreement shall be in writing, shall be stated as an amendment to this Agreement and shall be executed by both parties.

SECTION 12. EXHIBITS

The Exhibits attached to this Agreement are part of this Agreement and are incorporated into this Agreement by reference.

SECTION 13. UNENFORCEABILITY; SEVERABILITY

If a court of competent jurisdiction holds any Agreement clause to be invalid or unenforceable in whole or in part for any reason, the validity and enforceability of the remaining clauses, or portions of them, shall not be affected unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision. To that end, this Agreement shall be construed as not containing such clause and the provisions of this Agreement are declared to be severable.

SECTION 14. SUCCESSORS AND ASSIGNS

This Agreement shall bind and benefit DEVELOPER and CITY and their successors-in-interest, whether voluntary or involuntary. DEVELOPER agrees to require any successor to assume all duties and obligations set forth herein. The DEVELOPER shall provide CITY with notice of any transfer of ownership interest in the Project or subject property.

SECTION 15. APPLICABLE LAW

This Agreement shall be construed and enforced in accordance with the laws of the State of California. Every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted, and this Agreement shall be read and enforced as though it were included, and if through mistake or otherwise any provision is not inserted or is not correctly inserted, upon application of either party this Agreement shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments on the subject as of the Effective Date and any later changes which do not materially and substantially alter the positions of CITY and DEVELOPER.

SECTION 16. NO THIRD PARTY RIGHTS

This Agreement is not intended to be, and shall not be, construed to create any third party beneficiary rights in any person or entity who is not a party, unless expressly provided herein.

SECTION 17. NO JOINT VENTURE OR PARTNERSHIP

The parties specifically acknowledge that each party is an independent entity with respect to the terms contained in this Agreement. None of the terms of this Agreement shall be deemed to create a partnership between the parties in the businesses of DEVELOPER or the affairs of CITY, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise.

SECTION 18. CONSTRUCTION

Each party hereto declares and represents that in entering into this Agreement, it has relied and is relying solely upon its own judgment, belief, and knowledge of the nature, extent, effect, and consequence relating thereto. Each party further declares and represents that this Agreement is made without reliance upon any statement or representation not contained herein of any other party or any representative, agent, or attorney of the other party. The parties agree that they are aware they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this Agreement and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties. Accordingly, no party shall be deemed to have been the drafter hereof, and the principle of law set forth in Civil Code § 1654 that contracts are construed against the drafter shall not apply.

SECTION 19. TIME IS OF THE ESSENCE

For the purpose of this Agreement and of each provision of this Agreement, time is of the essence.

SECTION 20. COOPERATION

DEVELOPER and CITY shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

SECTION 21. JURISDICTION AND VENUE

This Agreement is executed and is to be performed in the CITY of Atwater, California, and any action or proceeding brought relative to this Agreement shall be heard in the appropriate court in the County of Merced. CITY and DEVELOPER each consent to the personal jurisdiction of the court in any such action or proceeding.

SECTION 22. REPRESENTATIONS OF AUTHORITY

Each party signing this Agreement represents and warrants to the other party that all necessary legal prerequisites to that party's execution of this Agreement have been satisfied and that the signatory has been authorized to sign this Agreement and bind the party on whose behalf the signatory signs.

SECTION 23. NO PROMISE OR REPRESENTATION

DEVELOPER and CITY agree that nothing in this Agreement is to be construed as a representation, promise, or commitment on the part of CITY to give special treatment to, or exercise its discretion favorably for, the Project or DEVELOPER.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

CITY
City of Atwater

DEVELOPER
Lee Hancock

By: _____

By: _____

Date: _____

Date: _____

By: _____

Date: _____

ATTEST
Jeanna Del Real, City Clerk

By: _____

Date: _____

APPROVED AS TO LEGAL FORM
City Attorney

By: _____

Date: _____

Exhibit A
Property – Assessor's Parcel Number

005-070-032

Exhibit B
City Staff Rates
May 4, 2016

City Manager - \$118.89
Community Development Director - \$81.25
Senior Planner - \$59.31
Executive Assistant - \$54.37
Engineering Assistant - \$47.49
Public Works Director - \$83.68
Water Manager - \$59.02

May 12, 2016

Honorable Mayor and Members
of the Atwater City Council

City Council Meeting
of May 23, 2016

**AUTHORIZE A CONTRACT WITH EMC PLANNING GROUP INC., FOR
CEQA CONSULTING SERVICES FOR THE SARATOGA PLACE
APARTMENT PROJECT**

RECOMMENDATION:

It is recommended that the City Council consider:

1. Approving a contract for professional services with EMC Planning Group Inc., Inc. ("EMC") for Building for California Environmental Quality Act (CEQA) consulting services for the Saratoga Place Apartment Project, and
2. Authorize the City Manager to execute the agreement on behalf of the City of Atwater.

BACKGROUND:

The city has received preliminary plans prepared on behalf of Mr. Lee Hancock. The project Saratoga Place Apartment Project is located at Piro Drive and Buhach Road. Currently the design is for a 10.13 acre project consisting of ten buildings and 273 multi-family residential units. The project could potentially include 32 town houses, 60 single bed single bath, 121 two bed single bath, and 60 two bed two bath units. Additionally the project would include a manager unit, community building, shared pool, carports, and garages. The project area would also include a one acre commercial remainder for future development.

The proposed project will require several discretionary land use approvals from the city. They will include a General Plan Amendment, Planned Development Master Plan, Final Development Plan, and a Parcel Map. Given the scope of the project and the necessary land use entitlement the project cannot be found exempt under the California Environmental Quality Act (CEQA) therefore the project will require the preparation of an Initial Study and further environmental document. The City will be the lead agency in the preparation of the environmental document. To ensure that the issues are adequately studied the city will take the lead on selecting a qualified environmental consulting firm.

ANALYSIS:

The city received proposals from two environmental consulting firms specializing in CEQA services. EMC Planning Group's schedule was slightly better and the costs were less than the proposal from Quad Knopf. The city has worked with both firms on previous projects. EMC is currently the lead CEQA consultant on the Ferrari Ranch

project. The applicant – developer has reviewed and is in support of the city proceeding with the contract.

FISCAL IMPACT:

None. All expenses related to the implementation of the project will be reimbursed by Lee Hancock through the Reimbursement Agreement with the City.

CONCLUSION:

This staff report is submitted for City Council consideration and possible action.

Respectfully submitted,



Scott McBride
Community Development Director

PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF ATWATER AND
EMC PLANNING GROUP, INC. (EMC)

This Professional Services Agreement ("Agreement") for consulting services is made by and between the City of Atwater ("City") and EMC PLANNING GROUP INC., ("EMC" or "Consultant") as of May, _____ 2016 (the "Effective Date"). City and Consultant shall be referred to herein separately as a "Party" and collectively as "Parties".

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide on-going City Building Department administration services, Building Official services, inspection services, and plan review – plan check services as described in the Scope of Work attached hereto and incorporated herein as Exhibit "A", at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit "A", the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall remain in effect until cancelled by either Party or amended by the Parties, Consultant shall complete the work described in Exhibit "A" on an on-going basis, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant on a time-and-materials basis and in accordance with the hourly rates described in the Fee Schedule attached hereto and incorporated herein as Exhibit "B", notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's Fee Schedule, attached as Exhibit "B", regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion (a Fixed fee proposal);
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;
- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds the amount allowed under this Agreement and any other agreement between Consultant and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit "A" and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task, task order issued by City or for

the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.4 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the Fee Schedule attached hereto as Exhibit "B".
- 2.5 **Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit "B", and shall not exceed the amounts described in Exhibit "B". Expenses not listed in Exhibit "B" are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.6 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.7 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.8 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

- 4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a

self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, and employees, are to be covered as additional insured as respects: liability to the extent arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant
- c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, and employees, to the extent related to consultant's Scope of Work. Any insurance or self-insurance maintained by the City, its officers, officials, or employees shall be excess of the Consultant's insurance and shall not contribute with it.
- d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after prior

written notice has been provided to the City per standard ISO ACORD form wording.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$1,000,000 covering the licensed professionals' negligent errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least two years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of two years after completion of work under this Agreement.

4.4 All Policies Requirements.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance evidencing required policies delivered to Consultant by the insurer, including complete copies of all endorsements attached to those certificates. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies in the event of a claim.

4.4.3 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

4.4.4 **Wasting Policies.** Except for Professional Liability insurance policy, no policy required by this Section 4 shall include a “wasting” policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 **Waiver of Subrogation.** With respect to Commercial General and Auto Liability insurance coverage only, Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

4.4.6 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.5 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant’s breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT’S RESPONSIBILITIES.

Consultant shall indemnify, defend, and hold harmless City and its officers, officials, employees, and authorized agents from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney’s fees and costs and fees of litigation) (collectively, “Liability”) to the extent caused by Consultant’s negligence or willful misconduct in its performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the negligence or willful misconduct of City.

The Consultant’s obligation to defend and indemnify, to the extent caused by Consultant’s negligence or willful misconduct, shall not be excused because of the Consultant’s inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered

necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

Neither party to this Agreement shall be liable to the other party or any third party claiming through the other respective party, for any special, incidental, indirect, punitive, liquidated, delay or consequential damages of any kind including but not limited to lost profits or use of property, facilities or resources, that may result from this Agreement, or out of any goods or services furnished hereunder.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 30 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 8.6.1 Immediately terminate the Agreement;
 - 8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - 8.6.3 Retain a different consultant to complete the work described in Exhibit "A" not finished by Consultant; or
 - 8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit "A" that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications,

records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties. Consultant not liable for any re-use of documents other than their intended purpose.

- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Merced or in the United States District Court for the Eastern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

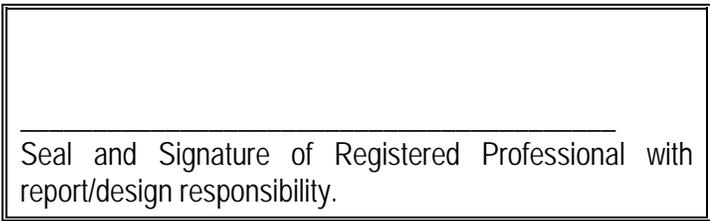
- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by ***Community Development Director Scott McBride*** ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** Any written notice to Consultant shall be sent to:

***Ron Sissem
EMC Planning Group Inc.
301 Lighthouse Ave., Suite C
Monterey, CA 93940***

Any written notice to City shall be sent to:

*Community Development Director
Scott McBride
750 Bellevue Road
Atwater, CA 95301*

10.11 **Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



10.12 **Integration.** This Agreement, including the Scope of Work attached hereto and incorporated herein as Exhibit "A", and the Fee Schedule attached hereto and incorporated herein as Exhibit "B", represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

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

[SIGNATURES ON FOLLOWING PAGE]

The Parties have executed this Agreement as of the Effective Date.

CITY OF ATWATER

CONSULTANT

Frank Pietro,
City Manager

EMC PLANNING GROUP, Inc.

Attest:

Jeanna Del Real, CMC
City Clerk

Approved as to Form:

Thomas Terpstra,
City Attorney



Planning for Success.

CEQA SERVICES PROPOSAL

ATWATER APARTMENTS PROJECT

PREPARED FOR

Scott McBride

February 9, 2016

EMC PLANNING GROUP INC.
A LAND USE PLANNING & DESIGN FIRM

301 Lighthouse Avenue Suite C Monterey California 93940 Tel 831-649-1799 Fax 831-649-8399
www.emcplanning.com

ATWATER APARTMENTS PROJECT

CEQA Services Proposal

PREPARED FOR
Scott McBride
Community Development Director
City of Atwater
750 Bellevue Road
Atwater, CA 95301
Tel 209.357.6369

PREPARED BY
EMC Planning Group Inc.
301 Lighthouse Avenue, Suite C
Monterey, CA 93940
Tel 831.649.1799
Fax 831.649.8399
Ron Sissem
sissem@emcplanning.com
www.emcplanning.com

February 9, 2016



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I.0

PROJECT UNDERSTANDING AND CEQA APPROACH

INTRODUCTION

This section of the proposal includes a summary of background information that is important to provide context for the proposed Atwater Apartments project, and contains a scope of work to conduct the CEQA analysis. The scope of work is comprised of a number of individual tasks, the culmination of which would be completion of CEQA documentation for consideration by the City Council as part of the project decision making process.

EMC Planning Group is well qualified to prepare the CEQA documentation for the project. The highly complex and detailed draft EIR completed by EMC Planning Group in February 2016 for the Ferrari Project provides superior background in light of critical City development issues and the influence of recent CEQA case law on the scope/analysis needed in CEQA documents. Further, in 2008, EMC Planning Group prepared a complete administrative draft EIR for the 112-acre Sietsema Project site located on the south side of the Livingston Canal just below the Atwater Apartments project site. That project did not proceed due to the economic downturn. The EMC Planning Group managers and key staff members that were involved in preparing these documents are still with the firm.

It is EMC Planning Group's intent to prepare CEQA documentation that is a simple and straightforward as possible given the relatively straightforward nature of the project and its setting. Simultaneously, our goal is to ensure that the CEQA documentation is as legally defensible as possible.

PROJECT LOCATION AND SETTING

The approximately 11-acre project site fronts on N. Buhach Road and is bound on the north by Nebela Road and on the south by Piro Road. The project site is currently vacant. Nebela Road and Piro Road appear to have been constructed sometime between 2006-2009 as part of an annexation and subdivision project of which the project site may have been a part. Land to the east is being built out with single-family homes on land that is assumed to have been part of the annexation/subdivision project, as City's 2010 General Plan Land Use Plan illustrates a lotting plan for that area. It is likely that CEQA documentation was prepared for these entitlements (and other possibly additional related actions). However, the documentation was unavailable for review to inform the scope and cost of this proposal.

Land to the north includes a sports field and a dirt bike track. The sports field may be a satellite property associated with a public or private school located elsewhere. Land to the south is in rural residential use/fallow agricultural use. Land to the west across N. Buhach Road is developed with single-family residential uses.

The project site is designated Commercial on the City's 2010 General Plan Land Use Plan, with the developing subdivision to the west shown as Low Density Residential. Parcels to the south are also designated Commercial. The parcels to the north are designated Institutional (sports field), Park, and Low Density Residential.

PROPOSED PROJECT

Our preliminary understanding is that the project applicant is seeking General Plan amendment and Planned Development (rezoning) approvals for approximately 10 acres of the 11-acre site. It is assumed that the General Plan amendment would modify the existing Commercial designation on all but one acre of the site to a higher density residential land use designation. The Planned Development zoning would allow for flexibility in the site design consistent with standards contained in the City's zoning code. The applicant would be required to prepare a Planned Development Master Plan or analogous project plan and submit one or more Final Development Plans consistent with the Planned Development Master Plan.

The applicant has submitted a conceptual site plan to the City. It shows that the site would be developed with 273 one and two-bedroom apartment units with associated parking and landscaping on about 10 acres. The one-acre remainder parcel fronting on N. Buhach Road would be reserved for commercial use consistent with the existing General Plan land use designation.

Per direction from City staff, EMC Planning Group assumes that the CEQA documentation for the project would include analysis of developing the commercial parcel such that future discretionary approvals for developing that site would be streamlined from a CEQA perspective – a value to the applicant/property owner. The project description would, therefore, include a projected building development capacity based on the average floor-to-area ratio assumed in the General Plan for the Commercial land use designation.

CEQA APPROACH

EMC Planning Group’s fundamental CEQA analysis approach is to prepare CEQA documentation that leads to sound, evidence-based and defensible CEQA findings for adoption by the City. To achieve this goal, our analyses must: 1) properly frame the environmental topics being analyzed; 2) evaluate the topics in the specific context of the applicable threshold of significance; 3) utilize internally consistent and readily available factual data and information to describe the environmental setting; 4) provide specific impact analysis and determination statements based on the evidence; and 5) include highly specific mitigation measures that provide clear implementation direction. We would complete the CEQA analysis in the most time- and cost-efficient manner possible.

The project site does not appear to present unique development constraints, nor does the proposed project appear to present substantial, inherent land use conflicts. However, project effects must be scrutinized to ensure that the project is either designed or can be mitigated to reduce any potential conflicts.

Potential effects that could be at issue for the project include, but may not be limited to:

- Traffic

As is often the case, traffic and circulation impacts may be of particular note. EMC Planning Group would retain KD Anderson & Associates (KDA) as a subconsultant to prepare a traffic impact analysis. KDA would utilize the substantial traffic information prepared by KDA for the Ferrari Project annexation/general plan amendment project in 2015, and to the extent valid, reference information in the traffic impact analysis prepared for Buhach Road/Juniper Avenue Commercial Center as background. The goal will be to reduce traffic analysis preparation time and cost by using existing information to the maximum extent feasible. KDA’s scope of work and budget are included in Appendix A.

EMC Planning Group and KDA have made a concerted effort to create a traffic analysis scope of work that is defensible, yet limited to the extent possible given existing information. This has been done to create a reasonable boundary on the potential mitigation obligations of the applicant. Nevertheless, the scope will be discussed with City

staff and potentially the applicant to identify conditions, if any, under which the scope may need to be expanded (e.g. the potential extent to which Caltrans could require evaluation of project impacts on facilities such as the AME expressway interchange. While the proposed scope was informed by the draft traffic impact assessment for the current Juniper/Buhach commercial project, that traffic impact analysis appears significantly deficient. The cost for the KDA analysis represents what is needed to complete a defensible report.

- Water Supply

Given current water supply concerns in the state and county, particular attention will be paid to the sufficiency of water supply for the project. A water supply summary will be provided to assess the net increase in demand that would be generated by the project, with that demand evaluated in light of local and regional water supply conditions.

- Biological Resources

An EMC Planning Group biologist would conduct a brief site visit and prepare a preliminary biological resource assessment. The site appears to be near a recorded site of special-status species nesting Swainson's hawks and burrowing owls, and near recorded observations of San Joaquin kit fox. These issues will be reviewed. Mitigations for impact avoidance and pre-construction surveys to avoid impacts during construction may be needed. If more rigorous mitigation may be required, EMC Planning Group would inform the City as soon as possible to discuss mitigation options/solutions. Given its disturbed nature, the site is not expected to provide habitat for other special-status species, but this determination can only be made based on results of the site reconnaissance.

- Noise

Traffic generated by the proposed project will be distributed onto local roadways. The change in traffic levels on those roadways and possible effects on adjacent noise-sensitive uses will be discussed qualitatively. At this time, it is assumed that a separate acoustical analysis is not required for the project, though this need will be examined more closely in coordination with City staff.

Based on a December 2015 California Supreme Court case, effects of existing environmental conditions on a proposed project are not subject to analysis as CEQA impacts in most circumstances. Therefore, effects of existing traffic, aircraft, or other existing noise sources on the proposed project would not be identified as significant environmental impacts.

- Air Quality/Greenhouse Gas

EMC Planning Group will model criteria air pollutants and GHG volumes using the California Emissions Estimator Model. Results will be reported in the air quality and greenhouse gas emissions sections of the IS. Volumes will be compared to San Joaquin Valley Air Pollution Control District standards of significance. As needed, mitigation measures will be included to reduce air and GHG emissions to less than significant if possible. A November 2015 California Supreme Court case may be interpreted to render use of the air district's GHG reduction target as susceptible to challenge. EMC Planning Group will discuss options for this analysis that could reduce risk of challenge while considering the analysis precedent that could be set.

Given the limited size of the project and the range of issues anticipated, it is assumed that an Initial Study (IS) checklist may be prepared in support of a Mitigated Negative Declaration (MND) supported. However, if during the analysis process, project-specific effects with the potential to be significant and unavoidable are identified, thus necessitating preparation of an environmental impact report, City staff will be notified immediately. If an EIR is required, a contract amendment would be needed.

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2.0

SCOPE OF WORK

Task 1 Project Management/Administration/Consultation

- This task includes project contract execution, preparation of project and contract files, preparation and monitoring of project budgets, consultation with the City and applicant, and coordination of personnel.

Task 2 Meetings and Conference Calls

- Attend kick-off meeting with City staff and the applicant (as deemed appropriate by City staff) to discuss the following: site and project history, environmental baseline conditions, issues with similar projects, technical resources and reference documents, project description, required approvals, and the project schedule. The kick-off meeting would also include an initial site visit to review and photo document existing site and surrounding area conditions.

The project budget also includes time to conduct up to three, one-hour conference calls to discuss project issues with City staff and the applicant or other associated interests.

Task 3 Research & Investigation

- Gather and analyze data, review various reports, files, and related materials such as the City and County general plans, County general plan background report, documentation provided by the applicant (including the project application), the City Municipal Code, existing resource information available from the City, County, state and/or local and regional resource agencies, and other relevant documents.

Task 4 Tribal Consultation

Per Senate Bill 18 and Assembly Bill 52, the City is required to consult with Native American tribes prior to considering approval of a general plan amendment and to address Tribal Cultural Resources, respectively. Per City staff request, to comply with these requirements, EMC Planning Group has included the following actions as part of the scope of work:

- Identify Native American tribes recognized by the Native American Heritage Commission by communicating with the Commission.
- Prepare and circulate a request for consultation to applicable tribes pursuant to Assembly Bill 52 if in fact any local or regional tribe has submitted a request for consultation at the time the project CEQA analysis is initiated.
- Circulate the IS/MND to recognized tribes pursuant to Senate Bill 18 along with a request for consultation.
- If one or more tribes request consultation with the City, EMC Planning Group would provide up to three (3) hours of assistance to City staff to coordinate the meeting(s). The project budget does not include EMC Planning Group staff attending any meeting(s) that may be requested. Attendance can be added to the scope of work with a contract amendment.

Task 5 Draft IS/MND

- Prepare the draft IS and MND and provide one (1) electronic copy via email and three (3) hardcopies to City staff for review and comment. The draft IS will be prepared in accordance with Public Resources Code section 21000 *et seq.* and the CEQA Guidelines. The format will be based on CEQA Guidelines Appendix G. The IS will include a brief description of the environmental and planning setting and a description of the proposed project.

All of sources used to prepare IS will be included with web links when available.

Task 6 Public Review IS/MND/MMRP

- Review comments on the draft IS/MND submitted by the City. It is assumed that comments from various City staff/departments will be reviewed by a City staff member before being forwarded to EMC Planning Group. The purpose would be to eliminate duplication or screen out comments that are not applicable to the CEQA process.

- Prepare a public review IS/MND, incorporating any changes and/or addressing applicable comments provided by City staff. Print fifteen (15) hardcopies and prepare 20 CDs for use by City staff.
- Prepare a draft mitigation monitoring program (MMP) and submit one electronic copy for review and comment by City staff. Prepare a final MMP by incorporating any changes recommended by City staff.

Task 7 Noticing

- Prepare materials for the California State Clearinghouse public review process. Materials would include a Notice of Completion, a Project Summary Form, and 15 CDs of the IS/MND on CD. Prepare materials and submit one electronic copy to City staff for review and comment. Prepare one copy of the final materials. Forward materials to the State Clearinghouse to start the state agency public review process.
- Prepare a draft Notice of Availability Exemption (NOA) and provide one (1) electronic copy via email to City staff for review and comment. Prepare a final NOA based on comments from City staff.
- Prepare up to twenty-five (25) CDs of the IS/MND and per City staff request, distribute the document along with the NOA to recipients on the City's CEQA document distribution list.

It is assumed that City staff will arrange for publication of the NOA in a local newspaper, deliver the NOA to the County Clerk for posting, and make copies of the NOA and IS/MND available for public review at the local library and the Community Development Department.

Task 8 Address Public Comments

- In coordination with City staff, EMC Planning Group will review public comments on the IS/MND. A determination will then be made in collaboration with City staff about whether a formal written response to comment document will be prepared. If minimal comments are received, it may be possible to summarize the comments and prepare brief responses for inclusion in the staff report as deemed necessary by City staff. The project budget includes up to eight (8) hours of effort to address public comments in a summary form suitable for input to the staff report. If an additional level of effort is required, a contract amendment may be needed.

Task 9 Public Hearings

- EMC Planning Group staff would attend up to two (2) public hearings for the proposed project. EMC Planning Group staff would be available to support City staff with CEQA process information for inclusion in the staff reports, and be available to answer CEQA related questions at the public hearings. It is assumed that City staff will make the presentations and prepare supporting presentation materials.

3.0

SCHEDULE AND BUDGET

SCHEDULE

The following table shows an illustrative schedule for preparing CEQA documentation. The schedule can be reviewed and modified as needed after the project kick-off meeting.

Main Project Tasks	Anticipated Schedule
Authorization to Proceed	Week 1
Research and Site Visit	Weeks 1-3
Prepare Draft IS/MND	Weeks 3-10
Lead Agency Review	Week 11
Prepare Final IS/MND	Week 12
Distribution/Public Review	Weeks 13-17
Respond to Comments	Week 18
Public Hearings	TBD

BUDGET

The proposed budget is presented on the following page. The level of effort/cost included in the budget is based on several assumptions:

- The IS/MND preparation process would not exceed 26 weeks, including public hearings. If the project duration exceeds 26 weeks, a contract amendment may be required.

PROPOSAL

- Costs include only those related to tasks included in this proposal. Addition of new tasks or modification of existing tasks may require a contract amendment.
- Based on input from City staff, the CEQA process for the proposed project is expected to be straightforward. If sources of controversy arise that require more in-depth review/analysis of specific topics or issues, a contract amendment may be required.
- This proposal is valid for 60 days.

Additional assumptions are noted in the descriptions of specific scope of work tasks.

Atwater Apartments CEQA								
Task							Total Hours	Total Cost
Staff	Principal	Principal Planner	Associate Biologist	Assistant Planner	Graphics	Admin/Production		
Billing Rate (Per Hour)	\$200.00	\$190.00	\$125.00	\$110.00	\$110.00	\$95.00		
Management/Admin	2.0	14.0	0.0	12.0	0.0	0.0	28.0	\$4,380.00
Meetings/Phone Conferences	0.0	12.0	0.0	4.0	0.0	0.0	16.0	\$2,720.00
Research/Investigation	0.0	3.0	0.0	8.0	0.0	0.0	11.0	\$1,450.00
Tribal Consultation	0.0	0.0	0.0	8.0	2.0	1.0	11.0	\$1,195.00
Draft IS/MND	3.0	20.0	42.0	50.0	18.0	4.0	137.0	\$17,510.00
Public Review IS/MND	0.0	6.0	0.0	18.0	4.0	4.0	32.0	\$3,940.00
SCH/Local Noticing/Doc Distribution	0.0	0.0	0.0	8.0	0.0	4.0	12.0	\$1,260.00
Address Public Comments	0.0	4.0	0.0	4.0	0.0	0.0	8.0	\$1,200.00
Public Hearings	0.0	16.0	0.0	0.0	0.0	0.0	16.0	\$3,040.00
Subtotal (Hours)	5.0	75.0	42.0	112.0	24.0	13.0	Total Hours	Total Cost
Subtotal (Cost)	\$1,000.00	\$14,250.00	\$5,250.00	\$12,320.00	\$2,640.00	\$1,235.00	271.0	\$36,695.00

Additional Costs	
Production Costs	\$750.00
Travel Costs	\$350.00
Postal/Deliverables	\$150.00
Miscellaneous	\$100.00
Administrative Overhead 10%	\$135.00
Total	\$1,485.00

Subconsultant Fees	
KD Anderson & Associates (Traffic)	\$14,480.00
Subconsultant Overhead 10%	\$1,448.00
Total	\$15,928.00

Total Costs	\$54,108.00
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APPENDIX A

KD ANDERSON & ASSOCIATES
TRAFFIC IMPACT ANALYSIS SCOPE OF WORK

February 8, 2016

Mr. Ron Sissem
EMC
301 Lighthouse Avenue, Suite C
Monterey, CA 93940

RE: REVISED PROPOSAL TO PROVIDE ENGINEERING CONSULTANT SERVICES RELATING TO TRAFFIC STUDY FOR BUHACH ROAD / PIRO DRIVE APARTMENTS, ATWATER, CA.

Dear Mr. Sissem:

Thank you for considering our firm for preparation of the Traffic Impact Analysis required by the City of Atwater for the **Apartment Project at Buhach Road / Piro Drive**. As we have discussed, the 10 acre project site is generally located east of Buhach Road between Nebela Drive and Piro Drive in eastern Atwater. The project envisions development of 273 apartment units. The project proposes a driveway on Piro Drive.

Our work program and study area limits are based on our understanding of the City's objectives for the project and our experience with the Ferrari ranch Annexation EIR traffic study. The traffic study will describe the current setting as it exists today in 2016, but the baseline for impact evaluation will be the opening day for the project (Year 2017) when the AME phase 1A reduced project is assumed to be complete. That scenario will assume that other approved projects are completed, but will not attempt to include any part of Ferrari Ranch. The traffic study will also address long term conditions which assume that only AME phase 1a reduced has proceeded.

The study area limits are commensurate with the project's size and location. We anticipate addressing a.m. and p.m. peak hour conditions at three (3) intersections north and south of the project site.

Work Program. Our work plan is summarized below:

Task 1 Describe Existing Setting. We will assemble current weekday a.m. and p.m. peak hour traffic volume information for three study area intersections and their associated roadway segments to be confirmed in consultation with the City. We will use this information to determine current Levels of Service using procedures that are accepted by the City of Atwater. The following three (3) intersections will be included in the study, along with the project's driveway:

1. Buhach Road / Avenue Two
2. Buhach Road / Piro Drive
3. Buhach Road / Bellevue Road

Current operating Levels of Service will be calculated and 95th percentile queues identified using the procedures contained in the 2010 Highway Capacity Manual (2010 HCM) using SYNCHRO software. The extent of existing and planned facilities for alternative transportation modes, including pedestrians, bicyclists and transit users will be identified.

Task 2 Identify Baseline Year 2017 Traffic Volumes. The project's impacts will be evaluated within the context of Year 2017 conditions which assume completion of AME phase 1a Reduced, ambient background growth and occupancy of any approved / pending projects identified by the City of Atwater. Those forecasts are expected to come from the traffic studies completed for other approved projects, but we will review the Ferrari Ranch EIR work to help create volumes at Bellevue Road. Improvements that should be assumed to accompany other projects will be identified in consultation with City staff. Resulting Levels of Service will be identified.

Task 3 Evaluate Baseline Plus Project Impacts. The amount of traffic generated by this project will be estimated based on Institute of Transportation Engineers (ITE) rates for proposed site uses. The directionality of new trips will be identified based on the site proximity to SR 99, to local schools and to commercial areas of eastern Atwater. Project trips will be superimposed onto the baseline opening day condition to create the "Year 2017 Plus Project" condition. Resulting operating Levels of Service will be identified, and the extent to which forecast conditions exceed Atwater minimum standards will be determined. Project impacts will also be evaluated with regards to 95th percentile queues at affected intersections.

Task 4 Evaluate Access / Circulation Design. We will evaluate the feasibility of developing access as proposed. We will evaluate the adequacy of the driveway throat depth based on 95th percentile queues in driveways. We will review the internal circulation layout to identify potential conflicts.

Task 5 Identify Long Term Cumulative Traffic Volumes / Impacts. Future traffic volumes will be created using the technical resources and approach conducted for the Ferrari Ranch EIR. Development of the Ferrari Ranch / Annexation will be assumed. Circulation system improvements to be assumed will be identified in consultation with City staff, but the AME is not assumed to be extended beyond Green Sands Ave. Forecasts with and without the proposed project will be created. Resulting intersection Levels of Service will be identified, and significant impacts will be identified based on adopted significance criteria.

Task 6 Identify / Quantify Mitigation Measures. Mitigation measures needed to reduce identified impacts to a less than significant level will be identified. We will consider those potential improvements included in the City's current CIP program or Regional Fee Program, as well as improvements previously identified in other reports. Resulting Levels of Service will be calculated. If applicable, "fair share" calculations for cumulative mitigations will be provided.

KDA

Task 7 Prepare Draft Report. A written report will be prepared documenting our analysis assumptions, methodologies and conclusions. The report will be provided to the client for review prior to submittal by the City. We will finalize the report in response to one (1) set of Client comments. Further revisions will be billed as an extra service.

Schedule. We propose to complete this study and provide our draft report within ten (10) weeks of authorization to proceed and approval of the work program by the City of Atwater.

Budget. Our budget to complete this base scope of work is \$14,480, as outlined in the table that follows.

Buhach Road / Piro Drive Apartments Traffic Study Budget (2/8/16)					
Task	Description	Personnel Hours			
		Principal Engineer	Transportation Engineer	Tech / Clerical	Total
1	Describe Existing Setting	2	12	0	14
2	Identify Baseline Year 2017	2	20	0	22
3	Evaluate Baseline Plus Project Impacts	2	12	0	14
4	Evaluate Access / Circulation Design	1	2	0	3
5	Identify Long Term Traffic Volumes / Impacts	4	20	0	24
5	Identify / Quantify Mitigation Measures	1	4	0	5
6	Prepare Draft Report / Finalize	12	2	12	26
	Total Hours	24	72	12	108
	Billing Rate per Hour	\$150	\$135	\$50	
	Labor Cost	\$3,600	\$9,720	\$600	\$13,920.00
	Direct Costs (2 am/pm counts)				\$560.00
	Project Budget				\$14,480.00

Please feel free to contact me at (916) 660-1555 if you have any questions.

Sincerely yours,

KD Anderson & Associates, Inc.



Kenneth D. Anderson, P.E.
 President

Atwater Apartments CEQA

Task	Principal	Principal Planner	Associate Biologist	Assistant Planner	Graphics	Admin/Production	Total Hours	Total Cost
Staff	\$200.00	\$190.00	\$125.00	\$110.00	\$110.00	\$95.00		
Billing Rate (Per Hour)								
Management/Admin	2.0	14.0	0.0	12.0	0.0	0.0	28.0	\$4,380.00
Meetings/Phone Conferences	0.0	12.0	0.0	4.0	0.0	0.0	16.0	\$2,720.00
Research/Investigation	0.0	3.0	0.0	8.0	0.0	0.0	11.0	\$1,450.00
Tribal Consultation	0.0	0.0	0.0	8.0	2.0	1.0	11.0	\$1,195.00
Draft IS/MND	3.0	20.0	42.0	50.0	18.0	4.0	137.0	\$17,510.00
Public Review IS/MND	0.0	6.0	0.0	18.0	4.0	4.0	32.0	\$3,940.00
SCH/Local Noticing/Doc Distribution	0.0	0.0	0.0	8.0	0.0	4.0	12.0	\$1,260.00
Address Public Comments	0.0	4.0	0.0	4.0	0.0	0.0	8.0	\$1,200.00
Public Hearings	0.0	16.0	0.0	0.0	0.0	0.0	16.0	\$3,040.00
Subtotal (Hours)	5.0	75.0	42.0	112.0	24.0	13.0	Total Hours	Total Cost
Subtotal (Cost)	\$1,000.00	\$14,250.00	\$5,250.00	\$12,320.00	\$2,640.00	\$1,235.00	271.0	\$36,695.00

Additional Costs

Production Costs	\$750.00
Travel Costs	\$350.00
Postal/Deliverables	\$150.00
Miscellaneous	\$100.00
Administrative Overhead 10%	\$135.00
Total	\$1,485.00

Subconsultant Fees

KD Anderson & Associates (Traffic)	\$14,480.00
Subconsultant Overhead 10%	\$1,448.00
Total	\$15,928.00

Total Costs	\$54,108.00
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Margarita Saavedra

Subject: FW: Block Party 2016

From: Adam Aguilar [<mailto:adamag24@yahoo.com>]
Sent: Tuesday, April 05, 2016 11:21 AM
To: Margarita Saavedra
Subject: Re: Block Party 2016

Subject: Request from White Pines Court Neighborhood

Request: To block off White Pines Court for 4th of July Block Party 2016

Date: July 4, 2016 from 4:00PM thru 12:00AM

Location: White Pines Court - located off Augusta Lane in Atwater.

Message to City Council Members:

Please feel free to come and enjoy our bbq pot luck dinner and small family entertainment. I would like to thank you for letting us have our block party for the past 3 years. The families enjoy it and it gives us a chance to meet our new neighbors that have just recently moved in.

Adam Aguilar
209-356-8083

Margarita Saavedra

Subject: FW: MDA Boot Drive

From: Robert Blais
Sent: Thursday, May 12, 2016 11:26 AM
To: Margarita Saavedra

Subject: RE: MDA Boot Drive

We would like to request to have the MDA Boot drive placed on the City Council Agenda. The date is May 28th and we would like to utilize 5 corners from 7:00 AM to 2:00 PM. Any questions or concerns you can contact me.

Thank you,
Station 41
CAL FIRE / Atwater City Fire Department
Madera-Mariposa-Merced Unit
Office: (209) 357-6352
Fax: (209) 357-6336
E-mail: MMU.AtwaterStn41@fire.ca.gov

STATEMENT OF CHANGES IN CASH BALANCE, UNAUDITED
BY FUND
AS OF 4/30/16

FUND	BEG. BALANCE	CASH DEBITS	CASH CREDITS	ENDING BAL.
0001 General Fund	(2,879,336.33)	799,880.03	664,690.20	(2,744,146.50)
0003 General Fund Capital	(119,762.38)	0.00	0.00	(119,762.38)
0004 Measure H Fund	1,237,374.62	108,100.00	44,684.05	1,300,790.57
0005 Ferrari Ranch Project Fund	(41,708.86)	0.00	12,313.76	(54,022.62)
1005 Police Grants Fund	2,218.06	168,656.48	39,088.20	131,786.34
1011 Gas Tax/Street Improvement	1,763,425.65	0.00	88,244.04	1,675,181.61
1013 Local Transportation Fund	24,708.81	1,064.20	0.00	25,773.01
1015 Traffic Circulation Fund	884,534.40	3,276.82	2,514.00	885,297.22
1016 Applegate Interchange	723,385.68	0.00	0.00	723,385.68
1020 Parks and Recreation Fund	1,568,564.26	10,055.94	21,240.00	1,557,380.20
1050 Buhach Colony High School	221,477.58	0.00	0.00	221,477.58
1055 Neighborhood Stabilization	211,379.33	0.00	0.00	211,379.33
1059-78 Housing Grant Funds	199,095.12	0.00	0.00	199,095.12
1091 Police Facility Impact Fee	39,666.84	1,692.88	4,870.00	36,489.72
1093 Fire Facility Impact Fee	44,976.92	2,195.24	0.00	47,172.16
1095 Government Building Facility	100,189.86	1,598.99	0.00	101,788.85
3064-67 Redevelopment/Successor Agency Funds	901,885.55	954.95	104,643.40	798,197.10
4020 Performance Bond Trust	216,775.06	0.00	6,639.40	210,135.66
4030 Narcotics Program Trust	5,264.92	0.00	0.00	5,264.92
4060 Section 125 Medical	479.40	485.16	0.00	964.56
4070 Section 125 Dependent Care	(2,756.94)	416.66	0.00	(2,340.28)
4090 CFD No. 1 Trust	48,511.73	0.00	0.00	48,511.73
5000-54 All Maintenance Districts	1,840,602.07	5,200.00	18,232.15	1,827,569.92
5050 CFD Districts	(468,153.29)	0.00	0.00	(468,153.29)
6000 Water Enterprise Fund	(8,144,003.81)	283,119.10	133,448.74	(7,994,333.45)
6001 Water Fund Capital Replacement	8,131,055.12	0.00	20,000.00	8,111,055.12
6002 DBCP Settlement	666,084.58	0.00	0.00	666,084.58
6004 Water Well- Buhach Colony	149,084.87	1,146.32	0.00	150,231.19
6005 Water Capital Impact Fees	1,022,514.92	13,040.65	0.00	1,035,555.57
6006 Water Operating Reserve Fund	172,495.33	0.00	0.00	172,495.33

STATEMENT OF CHANGES IN CASH BALANCE, UNAUDITED
BY FUND
AS OF 4/30/16

FUND	BEG. BALANCE	CASH DEBITS	CASH CREDITS	ENDING BAL.
6010 Sewer Enterprise Fund	5,551,518.42	794,483.20	3,539,928.50	2,806,073.12
6011 Sewer Fund Capital Replacement	2,028,256.50	17,169.40	92,172.89	1,953,253.01
6020 Sanitation Enterprise	800,303.68	251,941.50	203,630.92	848,614.26
7000 Internal Service Fund	547,889.58	3,495.21	60,915.11	490,469.68
7010 Employee Benefits Fund	806,601.31	1,413.00	57,373.51	750,640.80
7020 Risk Management	449,755.60	24,955.23	5,970.25	468,740.58
7030 Information Technology	114,047.89	0.00	20,219.81	93,828.08
9090 Accrued Interest Fund	0.00	5,732.30	0.00	5,732.30
TOTAL	18,818,402.05	2,500,073.26	5,140,818.93	16,177,656.38

Prepared by: *Patricia Tejada*
 Patricia Tejada, Accountant II

Approved by: *Jim Heller*
 Jim Heller, City Treasurer

**Statement of Changes in Cash Balance
by Bank
As of 4/30/16**

	Beg. Period Balance	Cash Debits	Cash Credits	End Period Balance
City - LAIF	5,389,605.63	2,005,714.17		7,395,319.80
City Checking & Investment Accounts	10,285,468.33	494,321.01	5,140,818.93	5,638,970.41
RA Obligation Retirement Fund	825,401.77	19.95		825,421.72
City - RMA Long-Term Investment Fund	1,036,774.00			1,036,774.00
Wells Fargo Mutual Fund	1,230,771.24	10.12		1,230,781.36
Rabobank - Money Market	50,381.08	8.01		50,389.09
Totals	<u>18,818,402.05</u>	<u>2,500,073.26</u>	<u>5,140,818.93</u>	<u>16,177,656.38</u>

Prepared by: Patricia Tejada
Patricia Tejada, Accountant II

Approved by: Jim Heller
Jim Heller, City Treasurer

(The following statements are required by California Govt. Code Section 53646 (b) (2,3))

Investments are made pursuant to the City Council approved Investment Policy and Guidelines.

The City of Atwater has the ability to meet its pooled expenditure requirements for the next six months.

Bank Account Detail			
City LAIF	7,395,319.80	Westamerica Bank Checking	5,903,339.76
Chandler Asset Mgt.	1,036,774.00	Westamerica Bank (Transfer Account)	100,000.00
Wells Fargo Mutual Fund	1,230,781.36	Westamerica Bank Rdvipmnt Obligation Checking	825,421.72
Rabobank Money Market	50,389.09		

AGENDA POLICY

City of Atwater

The purpose of this policy is to improve the efficiency and effectiveness of creating the City Council agenda.

The City Council is a policy-making body and the staff is the operational part of the organization. With that in mind, the following defines the roles and responsibility of each as part of creating the City Council agenda.

Staff: Roles & Responsibilities

Preparation of the City Council agenda involves the cooperation and teamwork of many individuals, as described below:

City Manager

The role of the City Manager in the agenda process is to ensure that agenda item materials contain necessary policy analysis to present options for council consideration, and to include a recommendation, when appropriate. To fulfill this role, the City Manager has the following responsibility:

- Facilitate staff meetings to review with Department Heads the upcoming agenda items 
- Work with the Department Heads to review items that will come before the City Council;
- Delegate City Council requested items to the appropriate Department Head;
- Review the final agenda.

City Clerk

The role of the City Clerk or his/her designee is to oversee, monitor, and coordinate the preparation of the printing of meeting agendas. To fulfill this role, the City Clerk or his/her designee has the following responsibility:

- Track items for future agendas and planning calendars as they proceed toward Council consideration;
- Compile and update the draft agenda for council meetings;
- Identify appropriate placement of items on the agenda, including Consent Agenda;
- Be available upon request to consult with staff to ensure clarity of agenda items;
- Modify agenda language to ensure appropriate action is listed for consideration by the City Council;
- Ensure timely publication of notices before and after Council meetings;

City Attorney

The City Attorney's office reviews agenda material with regard to legal issues and has the following responsibility:

- Prepare or assist in the preparation of the initial draft of an ordinance or resolution, and finalize the resolution or ordinance in consultation with the originating department;
- Review or create proposed contracts;
- Review any staff reports related to legal items;
- Upon request, provide oral or written legal analysis pertaining to agenda items.

Department Heads

The Department Heads typically are the subject expert for items related to their department. Department Heads have the following responsibility:

- Initiate agenda items consistent with City Council policy;
- Prepare the staff report that includes background information, policy discussion, fiscal impact, and recommendation (if appropriate);
- Work with the City Attorney and Finance Director on aspects of legal and fiscal issues before submitting to the City Clerk;
- Coordinate with the City Clerk to ensure sufficient time to adhere to public hearing notice requirements.

City Council: Roles & Responsibilities

The City Council is the governing body of the City, which provides policy direction to staff. At times, City Council members may have items they request be included on a future agenda. It is important the City Council members have the same information with which to make decisions and understand the issues related to policy. With this in mind, the following procedure is to be followed by City Council members requesting items to be placed on the agenda:

1. If the Mayor or a Council member wants to put something on the agenda, he/she must do so in writing, using a form provided by the City Clerk. The Mayor or a City Council member may announce his/her intent to place an item on an upcoming agenda at a City Council meeting, but the request must still be made using this procedure. The request is to be submitted to the City Manager.
2. The City Manager is responsible for putting together (or delegating, as necessary) a staff report as needed. The Councilmember's written request may be an attachment to the staff report or may be provided as a stand alone attachment for the item. After the staff report is prepared, the item will be placed on the next available City Council agenda. There may be some situations where the timing is tight and the City Manager will need to streamline the process.

May 5, 2016

Honorable Mayor and Members
of the Atwater City Council

City Council Meeting
of May 23, 2016

**RESOLUTION NO. 2887-16 OF THE CITY COUNCIL OF THE CITY OF
ATWATER ADOPTING THE REVISED AGENDA POLICY**

RECOMMENDATION:

It is recommended that the City Council consider:

- Adopting Resolution No. 2887-16 regarding the Revised Agenda Policy.

BACKGROUND AND ANALYSIS:

On April 25, 2016, the City Council of the City of Atwater held an open and public workshop to consider a revised Agenda Policy. The Agenda Policy is intended to clearly set forth how and under what circumstances items are placed on the City Council's agenda. The Policy outlines the respective roles of the City Manager, City Clerk, City Attorney and city staff, as well as Council members. After the presentation of the Policy by the City Attorney, the revised Agenda Policy was reviewed and discussed by City staff and the members of the City Council. Following the opportunity for public comment, staff was directed to bring a resolution for adoption of the Revised Agenda Policy to the City Council for consideration. The attached resolution is recommended by staff for approval.

FISCAL IMPACT:

None.

CONCLUSION:

This staff report is submitted for City Council consideration and possible action.

Respectfully submitted,

/s/ Thomas H. Terpstra

Thomas H. Terpstra
City Attorney

DRAFT

CITY OF ATWATER

**MAYOR AND CITY COUNCIL MEMBERS
AGENDA ITEM REQUEST FORM**

Request by: _____

Request for City Council meeting of _____

Item requested will be for: Informational/Discussion only Discussion/Action

Title of agenda item:

Brief description/summary of the agenda item (as you would like it to appear on the agenda):

Are supporting documents or exhibits attached? Yes No

STAFF USE ONLY

Fiscal Impact: _____ Prior City Council Action: Yes No

Consent item: Yes No Review complete, Item approved not approved:

City Manager: _____

-----**TRACKING**-----

Date Received by Clerk: _____ Date reviewed at Staff Meeting: _____

Department/s Assigned: _____ Date item routed _____

Comments: _____

Item set for:
 Administrative Action _____ Action Taken: _____

Work Session (discussion) _____ City Council (action) agenda _____

On **proposed** Agenda Date: _____

Contact person notified of action or meeting date: _____ By: _____



**CITY COUNCIL
OF THE
CITY OF ATWATER**

RESOLUTION NO. 2887-16

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF ATWATER ADOPTING THE AGENDA POLICY**

WHEREAS, on April 25, 2016, the City Council of the City of Atwater held an open and public workshop to consider an Agenda Policy; and

WHEREAS, the Agenda Policy, attached hereto as "**EXHIBIT A**", was reviewed and discussed by City staff and the members of the City Council; and

WHEREAS, after opportunity for public comment, staff was directed to bring a resolution for adoption of the Agenda Policy to the City Council for consideration.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. That the Agenda Policy attached hereto as Exhibit "A" is hereby adopted.
2. That upon the effective date of Ordinance No. 973, Chapter 2.08 of the Atwater Municipal Code, the Agenda Policy attached hereto as Exhibit "A" shall become effective.

The foregoing resolution is hereby adopted this 23rd day of May, 2016.

AYES:

NOES:

ABSENT:

APPROVED:

JAMES E. PRICE, MAYOR

ATTEST:

JEANNA DEL REAL, CITY CLERK

May 5, 2016

Honorable Mayor and Members
of the Atwater City Council

City Council Meeting
of May 23, 2016

**ORDINANCE NO. CS 973 AMENDING CHAPTER 2.08 OF THE
ATWATER MUNICIPAL CODE TO RELATING TO CITY COUNCIL
MEETINGS**

RECOMMENDATION:

It is recommended that the City Council consider:

- Waiving the first reading and introducing Ordinance No. CS 973 to amend Chapter 2.08 of the Atwater Municipal Code relating to City Council Meetings.

BACKGROUND AND ANALYSIS:

Consistent with the materials presented and discussed at a recent City Council meeting, the City Attorney's Office has prepared the attached Ordinance which would substantially revise Chapter 2.08 of the Atwater Municipal Code. The most basic change is to eliminate the use of "Robert's Rules of Order" and replace that source with "Rosenberg's Rules of Order". In addition, a number of corresponding revisions have been added, and some previous subsections of Chapter 2.08 have been removed, to assure consistency with Rosenberg's Rules of Order. Staff believes these revisions will facilitate and promote fairness, consistency and a more understandable process for both Council members and the public.

FISCAL IMPACT:

None.

CONCLUSION:

This staff report is submitted for City Council consideration and possible action.

Respectfully submitted,

/s/ Thomas H. Terpstra

Thomas H. Terpstra
City Attorney

CHAPTER 2.08 - CITY COUNCIL MEETINGS

2.08.010 - Time.

Regular meetings of the City Council shall be held on the second Monday of each month through April 30, 2015. Thereafter, beginning May 1, 2015, regular meetings of the City Council shall be held on the second and fourth Mondays of each month. The meetings shall commence at 6:00 p.m. Meetings of the Council for the purpose of canvassing election returns shall be at their usual place of meeting at 6:00 p.m. of the first Tuesday after the election to canvass the returns and install the newly elected officers. In the event the regular meeting date falls upon a legal holiday, then the Council shall hold its regular meeting on the next succeeding business day.

(Prior Code § 2-1.101(a); Ord. CS 365, 1978; Ord. CS 722, 1-23-1995; Ord. CS 781, 3-13-2000; Ord. CS 957, § 1, 8-25-2014)

2.08.020 - Place.

All regular meetings of the City Council shall be convened in the Council Chambers. The Council Chamber building at the Civic Center, 750 Bellevue Road, Atwater, California, is designated as the Council chambers. If, by reason of fire, flood, earthquake, or other emergency, it is unsafe to meet in the designated place, the meetings may be held for the duration of the emergency at such place as is designated by the presiding officer of the Council.

(Prior Code § 2-1.101(b))

2.08.030 - Meetings to be public.

All regular meetings of the City Council shall be open to the public, in accordance with the state law as it exists now and may exist in the future on this subject, including the exceptions contained therein.

(Prior Code § 2-1.101(c))

2.08.040 - Study sessions.

Study sessions shall be held on the first and third Mondays of each month, if necessary, following the regular meetings of the Atwater Redevelopment Agency. The place for such study sessions shall be in the Council Chambers or in the Conference Room within the Civic Center Complex, and such sessions shall be held in accordance with the state law as it exists now or as it may exist in the future.

(Prior Code § 2-1.101(d); Ord. CS 365, 1978)

2.08.050 - Special meetings.

A special meeting may be ordered at any time by the Mayor whenever in his opinion the public business may require it or on the written request of any three members of the Council. Whenever a special meeting shall be called, written notice of such meetings shall be delivered personally or by mail by the City Clerk in accordance with state law as it exists now or as it may exist in the future.

(Prior Code § 2-1.102)

2.08.060 - Agenda.

In order to facilitate the orderly conduct of the business of the Council, the City Manager shall be notified no later than 12:00 noon of the Tuesday immediately preceding the Monday of the regular Council meeting of all reports, communications, ordinances, resolutions, contract documents or other matters to be submitted to the Council at such meetings. Immediately thereafter the City Manager shall arrange a list of such matters according to the Order of Business and furnish each member of the Council, the City Clerk, the City Attorney, and each department head with a copy of the same prior to the Council meeting and as far in advance of the meeting as time for preparation will permit. No matters not included on the agenda may be presented to the Council without obtaining a 75 percent vote of the members present, except as hereinafter provided.

(Prior Code § 2-1.103; Ord. CS 415, 1979; Ord. CS 456, 1980)

2.08.070 - Presiding officer.

- A. The Mayor shall be the president of the Council and shall preside at all its meetings and perform such other duties consistent with this office as may be imposed by the Council or by vote of the people.
- B. He shall be entitled to, and must vote, but shall possess no veto power.
- C. He shall be recognized as the official head of the City for all ceremonial purposes, by the courts for the purpose of serving civil process, and by the governor for military purposes.
- D. In the time of public danger or emergency he may, with the consent of the Council, take command of the police, maintain order and enforce laws.
- E. The Mayor shall preserve strict order and decorum at all regular and special meetings of the Council.
- F. He shall state every question coming before the Council, call for the vote, announce the decision of the Council on all subjects and decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order.
- G. He shall sign all ordinances adopted by the Council during his presence. In the event of the absence of the Mayor, the Mayor Pro Tempore shall sign ordinances then adopted.

(Prior Code § 2-1.104)

2.08.080 - Call to order.

The Mayor, or in his absence, the Mayor Pro Tempore shall take the chair precisely at the hour appointed for the meeting, and shall immediately call the Council to order. In the absence of the Mayor or Mayor Pro-Tem, the City Clerk, or the acting City Clerk shall call the Council to order whereupon a temporary chairman shall be elected by the members of the Council present. Upon the arrival of the Mayor or Mayor Pro-Tem, the temporary chairman shall immediately relinquish the chair upon the conclusion of the business immediately before the Council.

(Prior Code § 2-1.105)

2.08.090 - Roll call.

Before proceeding with the business of the Council, the City Clerk or the acting City Clerk shall call the roll of the member and the names of those present shall be entered in the minutes.

(Prior Code § 2-1.106)

2.08.100 - Quorum.

A majority of the members of the Council shall constitute a quorum for the transaction of business, but a less number than a quorum may adjourn from time to time. If all members are absent from any regular or adjourned regular meeting, the City Clerk may declare the meeting adjourned to a stated time and place. If he does, he shall cause written notice of the adjournment to be given in the same manner as provided in Section 2.08.050 for special meetings unless the notice is waived as provided for special meetings. Whenever a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meetings fails to state the hour at which the adjourned meeting shall be held, it shall be held at the hour specified for regular meetings by Section 2.08.010.

(Prior Code § 2-1.107)

2.08.110 - Order of business.

- A. Promptly at the hour set by law on the date of each regular meeting, the members of the Council, the City Clerk, City Attorney and City Manager shall take their regular stations in the Council Chambers and the business of the Council shall be taken up for consideration and disposition in the order of an agenda, which agenda shall be established by the Council by resolution.
- B. Matters may be taken up out of the order of the established agenda by the four-fifths vote of the Council.

(Prior Code § 2-1.108)

2.08.120 - Reading of minutes.

Unless the reading of the minutes of a Council meeting is required by a member of the Council, such minutes may be approved without reading if the Clerk has previously furnished each member with a copy thereof.

(Prior Code § 2-1.109)

2.08.130 - Rules of debate—Power of presiding officer.

The Mayor or other such member of the Council as may be presiding may move, second and debate from the chair, subject only to such limitations of debate as are by these rules imposed upon all members. He shall not be deprived of any of the rights and privileges of a Councilman by reason of his acting as the presiding officer.

(Prior Code § 2-1.110(a))

2.08.140 - Rules of debate—Getting the floor.

Every member desiring to speak shall address the chair, and, upon recognition by the presiding officer, shall confine himself to the question under debate, avoiding all personalities and indecorous language.

(Prior Code § 2-1.110(b))

2.08.150 - Rules of debate—Interruptions.

A member, once recognized, shall not be interrupted when speaking unless it is to call him to order, or as herein otherwise provided. If a member, while speaking, is called to order, he shall cease speaking until the question or order is determined, and, if in order, he shall be permitted to proceed.

(Prior Code § 2-1.110(c))

2.08.160 - Rules of debate—Privilege of closing debate.

The Councilman moving the adoption of an ordinance or resolution shall have the privilege of closing the debate.

(Prior Code § 2-1.110(d))

2.08.170 - Rules of debate—Motion to reconsider.

A motion to reconsider any action taken by the Council may be made only on the day such action was taken. It may be made either immediately during the same session or at a recessed or adjourned session thereof. Such motion must be made by one of the prevailing side, but may be seconded by any member, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

2.08.180 - Rules of debate—Remarks of Councilman.

A Councilman may request through the presiding officer the privilege of having an abstract of his statement on any subject under consideration by the Council entered in the minutes.

(Prior Code § 2-1.110(f))

2.08.190 - Rules of debate—Synopsis.

The Clerk may be directed by the presiding officer with the consent of the Council to enter in the minutes a synopsis of the discussion on any question coming regularly before the Council.

(Prior Code § 2-1.110(g))

2.08.200 - Rules of order.

Except as otherwise provided in this chapter, the most current, revised edition of "Robert's Rules of Order," shall govern the conduct of the meetings of the City Council."

(Prior Code § 2-1.110(h); Ord. CS 756, 10-27-1997)

2.08.210 - Addressing the Council—Generally.

Any person desiring to address the Council at a meeting shall first secure the permission of the presiding officer to do so; provided, however that under the following headings of business, any qualified and interested person shall have the right to address the Council upon obtaining recognition by the presiding officer:

- A. Written Communications. Interested parties or their authorized representatives may address the Council by written communications in regard to matters then under discussion.
- B. Oral Communications. Taxpayers or residents of the City or their authorized representatives may address the Council by oral communications on any matter concerning the City's business, or any matter over which the Council has control; provided, however, that preference shall be given to those persons who have notified the City Clerk in advance of their desire to speak in order that the same may appear on the agenda of the Council.

(Prior Code § 2-1.111)

2.08.220 - Addressing the Council—After motion made.

After a motion is made by the Council, no person shall address the Council without first securing the permission of the Council to do so.

(Prior Code § 2-1.112)

2.08.230 - Addressing the Council—Manner.

Each person addressing the Council shall stand and give his name and address in an audible tone of voice for the records. All remarks shall be addressed to the Council as a body and not to any member thereof. No person, other than the Council and person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the presiding officer. No question shall be asked a Councilman except through the presiding officer.

(Prior Code § 2-1.113)

2.08.240 - Voting.

- A. All members of the City Council, when present at a meeting of the City Council, shall be eligible to vote on all matters requiring a vote unless they are disqualified from participating in the subject matter of the action as hereinafter provided.
- B. A member of the Council shall not be required to vote upon any action in which he has been disqualified. Disqualification from acting shall occur when the member shall announce to the meeting that the City Attorney has ruled that he is legally disqualified from participating in the action. Any member who has been so disqualified from participating shall be deemed, for the purposes of the vote, to be absent from the meeting, but shall not be deemed to be absent from the meeting for the purposes of a quorum.

(Prior Code § 2-1.114; Ord. CS 756, 10-27-1997)

2.08.250 - Decorum.

- A. By Council Members. While the Council is in session, the members must preserve order and decorum, and a member shall neither, by conversation or other wise, delay or interrupt the proceedings or the peace of the Council nor disturb any members while speaking or refuse to obey the orders of the Council or its presiding officer, except as otherwise herein provided.
- B. By Other Persons. Any person making personal, impertinent, or slanderous remarks or who becomes boisterous during the Council meeting shall be forthwith, by the presiding officer, barred from further audience at the meeting before the Council, unless permission to continue is granted by a majority vote of the Council.

(Prior Code § 2-1.115)

2.08.260 - Persons authorized to be on platform.

No person, except City officials, their representatives and newspaper and radio reporters, shall be permitted on the platform in front of the Council Chamber, without the express consent of the Council.

(Prior Code § 2-1.116)

2.08.270 - Special committees.

All special committees shall be appointed by the presiding officer.

(Prior Code § 2-1.117)

2.08.280 - Standing committees.

The only standing committee of the Council shall be the committee of the whole. The president of the Council shall be the presiding officer of the committee of the whole, and the rules of proceedings in the Council shall be observed in the committee of the whole so far as the same may be applicable.

(Prior Code § 2-1.118)

2.08.290 - Protests.

Any Council member shall have the right to have the reasons for his dissent from, or protest against, any action of the Council entered in the minutes.

(Prior Code § 2-1.119)

2.08.300 - Reports and resolutions to be filed with Clerk.

All reports and resolutions shall be filed with the Clerk and entered on the minutes.

(Prior Code § 2-1.120)

2.08.310 - Adjournment.

A motion to adjourn shall always be in order and decided without debate.

(Prior Code § 2-1.121)

2.08.320 - Council not to interfere in administrative service.

Neither the Council nor any of its committees or members shall direct, request or attempt to influence, either directly or indirectly, the appointment of any person to office or employment by the City Manager, or in any manner interfere with the City Manager or prevent him from exercising his own judgment in the appointment of officers and employ employees in the administrative service. Except for the purposes of inquiry as stated in Section 2.04.050, the Council and its members shall deal with the

administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any of the subordinates of the City Manager, either publicly or privately.

(Prior Code § 2-1.122; Ord. CS 375, 1978)

2.08.330 - Title of City Manager.

Whenever the title Administrative officer or administrative official or City administrator occurs in this Code, ordinances or resolutions, the title City Manager is understood to replace it until the old sections are revised for other reasons.

(Prior Code § 2-1.123; Ord. CS 375, 1978)

2.08.340 - Notice of meeting and resolutions pertaining to rate changes.

- A. Before the City Council shall adopt a resolution of a rate change relating to charges for services furnished by the City to the public generally, including but not limited to, service for water and garbage, a notice of the meeting, and its date, time, and place, at which such rate change is going to be considered shall be given by publishing in a newspaper of general circulation in the City such notice at least once, not less than ten days nor more than 15 days before the date of such meeting. Such notice shall in general terms set forth the proposed or recommended rate change.
- B. Following the adoption of a resolution changing rates for such services, a copy of the resolution or notice of its adoption (which notice shall specify in detail the newly adopted rates) shall be published at least once in a news paper of general circulation in the City prior to the effective date of the newly adopted rates.

(Prior Code § 2-1.124)



Rosenberg's Rules of Order

REVISED 2011

Simple Rules of Parliamentary Procedure for the 21st Century

By Judge Dave Rosenberg



MISSION AND CORE BELIEFS

To expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

VISION

To be recognized and respected as the leading advocate for the common interests of California's cities.

About the League of California Cities

Established in 1898, the League of California Cities is a member organization that represents California's incorporated cities. The League strives to protect the local authority and autonomy of city government and help California's cities effectively serve their residents. In addition to advocating on cities' behalf at the state capitol, the League provides its members with professional development programs and information resources, conducts education conferences and research, and publishes Western City magazine.

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ABOUT THE AUTHOR

Dave Rosenberg is a Superior Court Judge in Yolo County. He has served as presiding judge of his court, and as presiding judge of the Superior Court Appellate Division. He also has served as chair of the Trial Court Presiding Judges Advisory Committee (the committee composed of all 58 California presiding judges) and as an advisory member of the California Judicial Council. Prior to his appointment to the bench, Rosenberg was member of the Yolo County Board of Supervisors, where he served two terms as chair. Rosenberg also served on the Davis City Council, including two terms as mayor. He has served on the senior staff of two governors, and worked for 19 years in private law practice. Rosenberg has served as a member and chair of numerous state, regional and local boards. Rosenberg chaired the California State Lottery Commission, the California Victim Compensation and Government Claims Board, the Yolo-Solano Air Quality Management District, the Yolo County Economic Development Commission, and the Yolo County Criminal Justice Cabinet. For many years, he has taught classes on parliamentary procedure and has served as parliamentarian for large and small bodies.



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INTRODUCTION

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that has not always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules — *Robert's Rules of Order* — which are embodied in a small, but complex, book. Virtually no one I know has actually read this book cover to cover. Worse yet, the book was written for another time and for another purpose. If one is chairing or running a parliament, then *Robert's Rules of Order* is a dandy and quite useful handbook for procedure in that complex setting. On the other hand, if one is running a meeting of say, a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order.

Hence, the birth of *Rosenberg's Rules of Order*.

What follows is my version of the rules of parliamentary procedure, based on my decades of experience chairing meetings in state and local government. These rules have been simplified for the smaller bodies we chair or in which we participate, slimmed down for the 21st Century, yet retaining the basic tenets of order to which we have grown accustomed. Interestingly enough, *Rosenberg's Rules* has found a welcoming audience. Hundreds of cities, counties, special districts, committees, boards, commissions, neighborhood associations and private corporations and companies have adopted *Rosenberg's Rules* in lieu of *Robert's Rules* because they have found them practical, logical, simple, easy to learn and user friendly.

This treatise on modern parliamentary procedure is built on a foundation supported by the following four pillars:

1. **Rules should establish order.** The first purpose of rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings.
2. **Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate; and those who do not fully understand and do not fully participate.
3. **Rules should be user friendly.** That is, the rules must be simple enough that the public is invited into the body and feels that it has participated in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of rules of procedure is to encourage discussion and to facilitate decision making by the body. In a democracy, majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself, but not dominate, while fully participating in the process.

Establishing a Quorum

The starting point for a meeting is the establishment of a quorum. A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The default rule is that a quorum is one more than half the body. For example, in a five-member body a quorum is three. When the body has three members present, it can legally transact business. If the body has less than a quorum of members present, it cannot legally transact business. And even if the body has a quorum to begin the meeting, the body can lose the quorum during the meeting when a member departs (or even when a member leaves the dais). When that occurs the body loses its ability to transact business until and unless a quorum is reestablished.

The default rule, identified above, however, gives way to a specific rule of the body that establishes a quorum. For example, the rules of a particular five-member body may indicate that a quorum is four members for that particular body. The body must follow the rules it has established for its quorum. In the absence of such a specific rule, the quorum is one more than half the members of the body.

The Role of the Chair

While all members of the body should know and understand the rules of parliamentary procedure, it is the chair of the body who is charged with applying the rules of conduct of the meeting. The chair should be well versed in those rules. For all intents and purposes, the chair makes the final ruling on the rules every time the chair states an action. In fact, all decisions by the chair are final unless overruled by the body itself.

Since the chair runs the conduct of the meeting, it is usual courtesy for the chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the chair should not participate in the debate or discussion. To the contrary, as a member of the body, the chair has the full right to participate in the debate, discussion and decision-making of the body. What the chair should do, however, is strive to be the last to speak at the discussion and debate stage. The chair should not make or second a motion unless the chair is convinced that no other member of the body will do so at that point in time.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, often published agenda. Informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon roadmap for the meeting. Each agenda item can be handled by the chair in the following basic format:



First, the chair should clearly announce the agenda item number and should clearly state what the agenda item subject is. The chair should then announce the format (which follows) that will be followed in considering the agenda item.

Second, following that agenda format, the chair should invite the appropriate person or persons to report on the item, including any recommendation that they might have. The appropriate person or persons may be the chair, a member of the body, a staff person, or a committee chair charged with providing input on the agenda item.

Third, the chair should ask members of the body if they have any technical questions of clarification. At this point, members of the body may ask clarifying questions to the person or persons who reported on the item, and that person or persons should be given time to respond.

Fourth, the chair should invite public comments, or if appropriate at a formal meeting, should open the public meeting for public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of public speakers. At the conclusion of the public comments, the chair should announce that public input has concluded (or the public hearing, as the case may be, is closed).

Fifth, the chair should invite a motion. The chair should announce the name of the member of the body who makes the motion.

Sixth, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member of the body who seconds the motion. It is normally good practice for a motion to require a second before proceeding to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and vote on a motion even when there is no second. This is a matter left to the discretion of the chair.

Seventh, if the motion is made and seconded, the chair should make sure everyone understands the motion.

This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the chair should now invite discussion of the motion by the body. If there is no desired discussion, or after the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or very brief discussion, then the vote on the motion should proceed immediately and there is no need to repeat the motion. If there has been substantial discussion, then it is normally best to make sure everyone understands the motion by repeating it.

Ninth, the chair takes a vote. Simply asking for the “ayes” and then asking for the “nays” normally does this. If members of the body do not vote, then they “abstain.” Unless the rules of the body provide otherwise (or unless a super majority is required as delineated later in these rules), then a simple majority (as defined in law or the rules of the body as delineated later in these rules) determines whether the motion passes or is defeated.

Tenth, the chair should announce the result of the vote and what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members of the body, if any, who voted in the minority on the motion. This announcement might take the following form: “The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring a 10-day notice for all future meetings of this body.”

Motions in General

Motions are the vehicles for decision making by a body. It is usually best to have a motion before the body prior to commencing discussion of an agenda item. This helps the body focus.

Motions are made in a simple two-step process. First, the chair should recognize the member of the body. Second, the member of the body makes a motion by preceding the member’s desired approach with the words “I move . . .”

A typical motion might be: “I move that we give a 10-day notice in the future for all our meetings.”

The chair usually initiates the motion in one of three ways:

1. **Inviting the members of the body to make a motion**, for example, “A motion at this time would be in order.”
2. **Suggesting a motion to the members of the body**, “A motion would be in order that we give a 10-day notice in the future for all our meetings.”
3. **Making the motion**. As noted, the chair has every right as a member of the body to make a motion, but should normally do so only if the chair wishes to make a motion on an item but is convinced that no other member of the body is willing to step forward to do so at a particular time.

The Three Basic Motions

There are three motions that are the most common and recur often at meetings:

The basic motion. The basic motion is the one that puts forward a decision for the body’s consideration. A basic motion might be: “I move that we create a five-member committee to plan and put on our annual fundraiser.”

The motion to amend. If a member wants to change a basic motion that is before the body, they would move to amend it. A motion to amend might be: “I move that we amend the motion to have a 10-member committee.” A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

The substitute motion. If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they would move a substitute motion. A substitute motion might be: “I move a substitute motion that we cancel the annual fundraiser this year.”

“Motions to amend” and “substitute motions” are often confused, but they are quite different, and their effect (if passed) is quite different. A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor, and substitute a new and different motion for it. The decision as to whether a motion is really a “motion to amend” or a “substitute motion” is left to the chair. So if a member makes what that member calls a “motion to amend,” but the chair determines that it is really a “substitute motion,” then the chair’s designation governs.

A “friendly amendment” is a practical parliamentary tool that is simple, informal, saves time and avoids bogging a meeting down with numerous formal motions. It works in the following way: In the discussion on a pending motion, it may appear that a change to the motion is desirable or may win support for the motion from some members. When that happens, a member who has the floor may simply say, “I want to suggest a friendly amendment to the motion.” The member suggests the friendly amendment, and if the maker and the person who seconded the motion pending on the floor accepts the friendly amendment, that now becomes the pending motion on the floor. If either the maker or the person who seconded rejects the proposed friendly amendment, then the proposer can formally move to amend.

Multiple Motions Before the Body

There can be up to three motions on the floor at the same time. The chair can reject a fourth motion until the chair has dealt with the three that are on the floor and has resolved them. This rule has practical value. More than three motions on the floor at any given time is confusing and unwieldy for almost everyone, including the chair.

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that is made. For example, assume the first motion is a basic “motion to have a five-member committee to plan and put on our annual fundraiser.” During the discussion of this motion, a member might make a second motion to “amend the main motion to have a 10-member committee, not a five-member committee to plan and put on our annual fundraiser.” And perhaps, during that discussion, a member makes yet a third motion as a “substitute motion that we not have an annual fundraiser this year.” The proper procedure would be as follows:

First, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passed*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions.

Second, if the substitute motion *failed*, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would then move to consider the main motion (the first motion) as *amended*. If the motion to amend *failed*, the chair would then move to consider the main motion (the first motion) in its original format, not amended.

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee), or if *amended*, would be in its amended format (10-member committee). The question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are not debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

Motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. It requires a simple majority vote.

Motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote.

Motion to fix the time to adjourn. This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: “I move we adjourn this meeting at midnight.” It requires a simple majority vote.

Motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on “hold.” The motion can contain a specific time in which the item can come back to the body. “I move we table this item until our regular meeting in October.” Or the motion can contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

Motion to limit debate. The most common form of this motion is to say, “I move the previous question” or “I move the question” or “I call the question” or sometimes someone simply shouts out “question.” As a practical matter, when a member calls out one of these phrases, the chair can expedite matters by treating it as a “request” rather than as a formal motion. The chair can simply inquire of the body, “any further discussion?” If no one wishes to have further discussion, then the chair can go right to the pending motion that is on the floor. However, if even one person wishes to discuss the pending motion further, then at that point, the chair should treat the call for the “question” as a formal motion, and proceed to it.

When a member of the body makes such a motion (“I move the previous question”), the member is really saying: “I’ve had enough debate. Let’s get on with the vote.” When such a motion is made, the chair should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body.

NOTE: A motion to limit debate could include a time limit. For example: “I move we limit debate on this agenda item to 15 minutes.” Even in this format, the motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item*. This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

Majority and Super Majority Votes

In a democracy, a simple majority vote determines a question. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions come up when the body is taking an action which effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super majority) to pass:

Motion to limit debate. Whether a member says, “I move the previous question,” or “I move the question,” or “I call the question,” or “I move to limit debate,” it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

Motion to close nominations. When choosing officers of the body (such as the chair), nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers and it requires a two-thirds vote to pass.

Motion to object to the consideration of a question. Normally, such a motion is unnecessary since the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to suspend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

Counting Votes

The matter of counting votes starts simple, but can become complicated.

Usually, it’s pretty easy to determine whether a particular motion passed or whether it was defeated. If a simple majority vote is needed to pass a motion, then one vote more than 50 percent of the body is required. For example, in a five-member body, if the vote is three in favor and two opposed, the motion passes. If it is two in favor and three opposed, the motion is defeated.

If a two-thirds majority vote is needed to pass a motion, then how many affirmative votes are required? The simple rule of thumb is to count the “no” votes and double that count to determine how many “yes” votes are needed to pass a particular motion. For example, in a seven-member body, if two members vote “no” then the “yes” vote of at least four members is required to achieve a two-thirds majority vote to pass the motion.

What about tie votes? In the event of a tie, the motion always fails since an affirmative vote is required to pass any motion. For example, in a five-member body, if the vote is two in favor and two opposed, with one member absent, the motion is defeated.

Vote counting starts to become complicated when members vote “abstain” or in the case of a written ballot, cast a blank (or unreadable) ballot. Do these votes count, and if so, how does one count them? The starting point is always to check the statutes.

In California, for example, for an action of a board of supervisors to be valid and binding, the action must be approved by a majority of the board. (California Government Code Section 25005.) Typically, this means three of the five members of the board must vote affirmatively in favor of the action. A vote of 2-1 would not be sufficient. A vote of 3-0 with two abstentions would be sufficient. In general law cities in

California, as another example, resolutions or orders for the payment of money and all ordinances require a recorded vote of the total members of the city council. (California Government Code Section 36936.) Cities with charters may prescribe their own vote requirements. Local elected officials are always well-advised to consult with their local agency counsel on how state law may affect the vote count.

After consulting state statutes, step number two is to check the rules of the body. If the rules of the body say that you count votes of “those present” then you treat abstentions one way. However, if the rules of the body say that you count the votes of those “present and voting,” then you treat abstentions a different way. And if the rules of the body are silent on the subject, then the general rule of thumb (and default rule) is that you count all votes that are “present and voting.”

Accordingly, under the “present and voting” system, you would **NOT** count abstention votes on the motion. Members who abstain are counted for purposes of determining quorum (they are “present”), but you treat the abstention votes on the motion as if they did not exist (they are not “voting”). On the other hand, if the rules of the body specifically say that you count votes of those “present” then you **DO** count abstention votes both in establishing the quorum and on the motion. In this event, the abstention votes act just like “no” votes.

How does this work in practice?

Here are a few examples.

Assume that a five-member city council is voting on a motion that requires a simple majority vote to pass, and assume further that the body has no specific rule on counting votes. Accordingly, the default rule kicks in and we count all votes of members that are “present and voting.” If the vote on the motion is 3-2, the motion passes. If the motion is 2-2 with one abstention, the motion fails.

Assume a five-member city council voting on a motion that requires a two-thirds majority vote to pass, and further assume that the body has no specific rule on counting votes. Again, the default rule applies. If the vote is 3-2, the motion fails for lack of a two-thirds majority. If the vote is 4-1, the motion passes with a clear two-thirds majority. A vote of three “yes,” one “no” and one “abstain” also results in passage of the motion. Once again, the abstention is counted only for the purpose of determining quorum, but on the actual vote on the motion, it is as if the abstention vote never existed — so an effective 3-1 vote is clearly a two-thirds majority vote.

Now, change the scenario slightly. Assume the same five-member city council voting on a motion that requires a two-thirds majority vote to pass, but now assume that the body **DOES** have a specific rule requiring a two-thirds vote of members “present.” Under this specific rule, we must count the members present not only for quorum but also for the motion. In this scenario, any abstention has the same force and effect as if it were a “no” vote. Accordingly, if the votes were three “yes,” one “no” and one “abstain,” then the motion fails. The abstention in this case is treated like a “no” vote and effective vote of 3-2 is not enough to pass two-thirds majority muster.

Now, exactly how does a member cast an “abstention” vote?

Any time a member votes “abstain” or says, “I abstain,” that is an abstention. However, if a member votes “present” that is also treated as an abstention (the member is essentially saying, “Count me for purposes of a quorum, but my vote on the issue is abstain.”) In fact, any manifestation of intention not to vote either “yes” or “no” on the pending motion may be treated by the chair as an abstention. If written ballots are cast, a blank or unreadable ballot is counted as an abstention as well.

Can a member vote “absent” or “count me as absent?” Interesting question. The ruling on this is up to the chair. The better approach is for the chair to count this as if the member had left his/her chair and is actually “absent.” That, of course, affects the quorum. However, the chair may also treat this as a vote to abstain, particularly if the person does not actually leave the dais.

The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself; the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed.

A motion to reconsider requires a majority vote to pass like other garden-variety motions, but there are two special rules that apply only to the motion to reconsider.

First, is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted in the majority on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body — including a member who voted in the minority on the original motion — may second the motion). If a member who voted in the minority seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. At the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focuses on the item and the policy in question, not the personalities of the members of the body. Debate on policy is healthy, debate on personalities is not. The chair has the right to cut off discussion that is too personal, is too loud, or is too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body.

Can a member of the body interrupt the speaker? The general rule is “no.” There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be, “point of privilege.” The chair would then ask the interrupter to “state your point.” Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person’s ability to hear.

Order. The proper interruption would be, “point of order.” Again, the chair would ask the interrupter to “state your point.” Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded, and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, “return to the agenda.” If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair’s determination may be appealed.

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

Special Notes About Public Input

The rules outlined above will help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did.



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Rosenberg's Rules of Order at a Glance

The Three Basic Motions

Simple majority to pass / open to debate

Basic Motion: "I move that we..."

Motion to Amend: suggests changes to the basic motion.

Motion to Substitute: replaces the basic motion entirely.

Special Motions

Simple majority to pass / no debate, goes directly to vote

Motion to Adjourn: ends the meeting.

Motion to Fix a Time to Adjourn: ends the meeting at a set time.

Motion to Recess: break in the meeting. Chair sets length of the break.

Motion to Table: defers the motion under discussion to a future date.

Motions that Permanently Close Discussion

2/3 majority to pass / no debate, goes directly to vote

Motion to Limit Debate: stops debate. "I move the question."

Motion to Close Nominations: stops new nominations for a position.

Motion to Object to the Consideration of a Question: rare, stronger form of tabling. Used before debate has begun.

Motion to Suspend the Rules: temporarily changes meeting rules. Cannot be used to suspend non-parliamentary bylaws. Can be debated.

Meeting Interruptions

May be used at any time. Chair responds by asking you to state your point.

Point of Privilege: points out uncomfortable surroundings, like a cold room or being unable to hear a speaker.

Point of Order: points out failure to follow correct meeting procedures.

Call for Orders of the Day: points out that the discussion has strayed from the agenda.

Appeal: reverses a Chair's ruling when passed by simple majority. Requires a second and can be debated.

Withdraw a Motion: used by the person making the motion. Others may immediately reintroduce the motion if they wish.

Motion to Reconsider

Simple majority to pass / open to debate

May only be made by a member who previously voted in the majority for the item. Must be made during the same meeting (or at the very next meeting, assuming it's been added to the agenda).

Life of a Motion

1. Chair announces item subject and number
2. Sponsor introduces item
3. Board asks technical questions for clarification purposes
4. Public comment on the item
5. Chair asks for motion
6. Chair asks for second
7. Board debates motion
8. Board votes
9. Chair announces result

Notes:

- All motions require a second before they can be voted upon.
- You must be recognized by the Chair before speaking.
- Chair may set limits on debate time or number of speakers.
- Abstentions don't count in vote tally.
- A tie vote fails to pass.
- To recuse, publicly state reason for recusal and leave room during debate and vote.



CITY COUNCIL OF THE CITY OF ATWATER

ORDINANCE NO. CS 973

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATWATER AMENDING CHAPTER 2.08 OF THE ATWATER MUNICIPAL CODE RELATING TO CITY COUNCIL MEETINGS

The City Council of the City of Atwater does hereby ordain:

SECTION 1: Chapter 2.08 "City Council Meetings" of the Atwater Municipal Code is hereby amended to read as follows:

CHAPTER 2.08 CITY COUNCIL MEETINGS

Sections:

- 2.08.010 Time
- 2.08.020 Place
- 2.08.030 Study Sessions
- 2.08.040 Special Meetings
- 2.08.050 Agenda
- 2.08.060 Presiding Officer
- 2.08.070 Call to Order
- 2.08.080 Roll Call
- 2.08.090 Quorum
- 2.08.100 Order of Business
- 2.08.110 Reading of Minutes
- 2.08.120 Rule of Order
- 2.08.130 Special Committees
- 2.08.140 Standing Committees
- 2.08.150 Protests
- 2.08.160 Reports and Resolutions to be filed with Clerk.
- 2.08.170 Adjournment
- 2.08.180 Council not to Interfere in Administrative Service.
- 2.08.190 Title of the City Manager
- 2.08.200 Notice of Meeting and Resolutions Pertaining to Rate Changes

2.08.010 Time

Regular meetings of the City Council shall be held on the second and fourth Mondays of each month. The meetings shall commence at 6:00 p.m. Meetings of the Council for the purpose of canvassing election returns shall be at their usual place of meeting at 6:00 p.m. of the first Tuesday after the election to canvass the returns and install the newly elected officers. In the event the regular meetings date falls upon a legal holiday, then the Council shall hold its regular meeting on the next succeeding business day.

(Prior Code § 2-1.101(a); Ord. CS 365, 1978; Ord. CS 722, 1-23-1995; Ord. CS 781, 3-13-2000; Ord. CS 957, § 1, 8-25-2014)

2.08.020 Place

All regular meetings of the City Council shall be convened in the Council Chambers. The Council Chamber building at the Civic Center, 750 Bellevue Road, Atwater, California, is designated as the Council Chambers. If, by reason of fire, flood, earthquake, or other emergency, it is unsafe to meet in the designated place, the meetings may be held for the duration of the emergency at such place as is designated by the presiding officer of the council.

(Prior Code § 2-1.101(b))

2.08.030 Study Sessions

Study sessions shall be held on the first and third Mondays of each month, if necessary. The place for such study sessions shall be in the Council Chambers or in the Conference Room within the Civic Center Complex.

(Prior Code § 2-1.101(d); Ord. CS 365, 1978)

2.08.040 Special Meetings

A special meeting may be ordered at any time by the Mayor whenever in his opinion the public business may require it or on the written request of any three members of the Council. Whenever a special meeting shall be called, written notice of such meetings shall be delivered personally or by mail by the City Clerk in accordance with state law as it exists now or as it may exist in the future.

(Prior Code § 2-1.102)

2.08.050 Agenda

The City Council may, by resolution, establish a policy or policies for the placement of items on the agenda, and may amend any such policy from time to time by resolution.

2.08.060 Presiding Officer

- A. The Mayor shall be the president of the Council and shall preside at all its meetings and perform such other duties consistent with this office as may be imposed by the Council or by vote of the people.
- B. He shall be entitled to, and must vote, but shall possess no veto power.
- C. He shall be recognized as the official head of the City for all ceremonial purposes, by the courts for the purpose of serving civil process, and by the governor for military purposes.
- D. In the time of public danger or emergency he may, with the consent of the Council, take command of the police, maintain order and enforce laws.
- E. The mayor shall preserve strict order and decorum at all regular and special meetings of the Council.
- F. He shall sign all ordinances adopted by the Council during his presence. In the event of the absence of the Mayor, the Mayor Pro Tempore shall sign ordinances then adopted.

(Prior Code § 2-1.104)

2.08.070 Call to Order

The Mayor, or in his absence, the Mayor Pro Tempore shall take the chair precisely at the hour appointed for the meeting, and shall immediately call the Council to order. In the absence of the Mayor or Mayor Pro-Tem, the City Clerk, or the acting City Clerk shall call the Council to order whereupon a temporary chairman shall be elected by the members of the Council present. Upon the arrival of the Mayor or Mayor Pro-Tem, the temporary chairman shall immediately relinquish the chair upon the conclusion of the business immediately before the Council.

(Prior Code § 2-1.105)

2.08.080 Roll Call.

Before proceeding with the business of the Council, the City Clerk or the acting City Clerk shall call the roll of the member and the names of those present shall be entered in the minutes.

(Prior Code § 2-1.106)

2.08.090 Quorum.

A majority of the members of the Council shall constitute a quorum for the transaction of business, but a less number than a quorum may adjourn from time to time. If all members are absent from any regular or adjourned regular meeting, the City Clerk may

declare the meeting adjourned to a stated time and place. Whenever a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meetings fails to state the hour at which the adjourned meeting shall be held, it shall be held at the hour specified for regular meetings by Section 2.08.010.

(Prior Code §2-1.107)

2.08.100 Order of Business

- A. Promptly at the hour set by law on the date of each regular meeting, the members of the Council, the City Clerk, City Attorney and City Manager shall take their regular stations in the Council Chambers and the business of the Council shall be taken up for consideration and disposition in the order of an agenda, which agenda shall be established by the City Council by resolution.
- B. Matters may be taken up out of the order of the established agenda by the four-fifths vote of the Council.

(Prior Code § 2-1.108)

2.08.110 Reading of Minutes

Unless the reading of the minutes of a Council meeting is required by a member of the Council, such minutes may be approved without the reading if the Clerk has previously furnished each member with a copy thereof.

(Prior Code § 2-1.109)

2.08.120 Rules of Order

Except as otherwise provided in this chapter, the most current, revised edition of Rosenberg's Rules of Order," shall govern the conduct of the meetings of the City Council."

(Prior Code § 2-1.110(h); Ord. CS. 756, 10-27-1997)

2.08.130 Special Committees

All special committees shall be appointed by the presiding officer.

(Prior Code § 2-1.117)

2.08.140 Standing Committees

The only standing committee of the Council shall be the committee of the whole. The president of the Council shall be the presiding officer of the committee of the whole, and the rules of proceedings in the Council shall be observed in the committee of the whole so far as the same may be applicable.

(Prior Code § 2-1.118)

2.08.150 Protests

Any Council member shall have the right to have the reasons for his dissent from, or protest against, any action of the Council entered in the minutes.

(Prior Code § 2-1.119)

2.08.160 Reports and Resolutions to be filed with Clerk

All reports and resolutions shall be filed with the Clerk and entered on the minutes.

(Prior Code § 2-1.120)

2.08.170 Adjournment

A motion to adjourn shall always be in order and decided without debate.

(Prior Code § 2-1.121)

2.08.320 Council not to interfere in administrative service

Neither the Council nor any of its committees or members shall direct, request or attempt to influence, either directly or indirectly, the appointment of any person to office or employment by the City Manager, or in any manner interfere with the City Manager or prevent him from exercising his own judgment in the appointment of the officers and employ employees in the administrative service. The Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give order to any of the subordinates of the City Manager, either publicly or privately.

(Prior Code § 2-1.122; Ord. CS 375, 1978)

2.08.190 Title of City Manager

Whenever the title of Administrative officer or administrative official or City administrator occurs in this Code, ordinances or resolutions, the title City Manager is understood to replace it until the old sections are revised for other reasons.

(Prior Code § 2-1.123; Ord. CS 375, 1978)

2.08.200 Notice of Meeting and Resolutions Pertaining to Rate Changes

- A. Before the City Council shall adopt a resolution of a rate change relation to charges for services furnished by the City to the public generally, including but not limited to, service for water and garbage, a notice of the meeting, and its date, time, and place, at which such rate change is going to be considered shall be given by publishing in a newspaper of general circulation in the City such

notice at least once, not less than ten days nor more than 15 days before the date of such meeting. Such notice shall in general terms set forth the proposed or recommended rate change.

- B. Following the adoption of a resolution changing rates for such services, a copy of the resolution or notice of its adoption (which notice shall specify in detail the newly adopted rates) shall be published at least once in a newspaper of general circulation in the City prior to the effective date of the newly adopted rates.

(Prior Code § 2-1.124)

SECTION 3: If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses or phrases be declared, invalid or unconstitutional.

SECTION 4: The City Council finds the approval of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the approval of this ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

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 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: EFFECTIVE DATE. This ordinance shall take effect and be in force thirty (30) days after the date of its passage and the City Clerk shall certify to the adoption of this ordinance and shall cause the same to be published in the Merced Sun Star within fifteen (15) days from the adoption hereof.

INTRODUCED:

ADOPTED:

AYES:

NOES:

ABSENT:

APPROVED:

JAMES E. PRICE, MAYOR

ATTEST:

JEANNA DEL REAL, CITY CLERK

May 5, 2016

Honorable Mayor and Members
of the Atwater City Council

City Council Meeting
of May 23, 2016

**ORDINANCE NO. CS 974 AMENDING CHAPTER 8.50 OF THE
ATWATER MUNICIPAL CODE TO CHAPTER 8.60 IMPOSING AN
EXPRESS BAN ON COMMERCIAL MARIJUANA CULTIVATION,
PROCESSING, DELIVERY ORIGINATING FROM WITHIN CITY LIMITS,
AND DISPENSING OF MEDICAL MARIJUANA AND REGULATING
THE PERSONAL CULTIVATION OF MEDICAL MARIJUANA IN THE
CITY**

RECOMMENDATION:

It is recommended that the City Council consider:

1. Providing direction to staff regarding requested revisions to Ordinance No. CS 974 amending Chapter 8.50.

BACKGROUND AND ANALYSIS:

In 1996, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Section 11362.5 *et seq.* and entitled "The Compassionate Use Act of 1996" referred to herein as the "CUA"). The intent of the CUA was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law once a physician has deemed the use beneficial to a patient's health.

In May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., et al.*, holding that cities have the authority to ban medical marijuana land uses. Under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 *et seq.*, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need.

On October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" ("Act"), which is comprised of the state legislative bills known as AB 243, AB 266, and SB 643, into law. The Act became effective January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients. The Act also contains new statutory provisions that:

- Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));

- Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a));
- Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government’s right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c)); and
- Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m) of the Act, from operating within the local government’s boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a)).

The negative impacts of marijuana cultivation, processing and distribution activities are well known to law enforcement and citizens of Atwater. They include offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests. Additional problems associated with marijuana cultivation and distribution are outlined in the proposed Ordinance.

Based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing and distribution activities.

The Atwater Municipal Code does not expressly address the cultivation, processing, delivery, and distribution of medical marijuana, but pursuant to the principles of permissive zoning, the City adopted Resolution No. 2868-15 affirming the prohibition of cultivation of marijuana in the City of Atwater.

If the City Council wishes to prohibit these activities for commercial sale and to regulate these activities for personal use by qualified patients and primary caregivers, it must adopt an ordinance to that effect, finding that it is in the interest of the City, its residents, and its lawfully permitted businesses that City Council adopt the proposed ordinance to expressly prohibit the establishment and operation of marijuana cultivation, processing, delivery originating from within city limits, and dispensary activities as well as the issuance of any use permit, variance, building permit, or any other entitlement, license, or permit for any such activity, and to regulate these activities for personal use by qualified patients and primary caregivers, except where the City is otherwise preempted by federal or state law.

Included with this staff report is a draft Ordinance No. CS 974, which would amend Chapter 8.50 entitled “Medical Marijuana” of the Atwater Municipal Code. The draft

Ordinance contains the same provisions as were previously presented to the City Council, incorporating the recently requested revisions. Staff is in need of further direction from the City Council and will further revise the Ordinance if requested, or alternatively, prepare the final version for City Council's consideration and adoption.

FISCAL IMPACT:

None.

CONCLUSION:

This staff report is submitted for City Council consideration and possible action.

Respectfully submitted,

/s/ Thomas H. Terpstra

Thomas H. Terpstra
City Attorney



**CITY COUNCIL
OF THE
CITY OF ATWATER**

ORDINANCE NO. ~~_____~~ **CS 974**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATWATER, CALIFORNIA, AMENDING CHAPTER 8.50 OF THE ATWATER MUNICIPAL CODE TO CHAPTER 8.60 IMPOSING AN EXPRESS BAN ON MARIJUANA COMMERCIAL CULTIVATION, MARIJUANA PROCESSING, MARIJUANA DELIVERY ORIGINATING FROM WITHIN CITY LIMITS, AND MARIJUANA DISPENSINGARIES OF MEDICAL MARIJUANA AND REGULATING THE PERSONAL CULTIVATION OF MEDICAL MARIJUANA IN THE CITY

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996" referred to herein as the "CUA");

WHEREAS, the intent of the CUA was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law once a physician has deemed the use beneficial to a patient's health;

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program ("MMP"), codified as Health and Safety Code Section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal Code;

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction;

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, et al., holding that cities have the authority to ban medical marijuana land uses;

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need;

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" ("Act"), which is comprised of the state legislative bills known as AB 243, AB 266, and SB 643, into law;

WHEREAS, the Act becomes effective January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients. The Act also contains new statutory provisions that:

- Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));

- Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a));

- Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c)); and

- Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a));

WHEREAS, several California cities have reported negative impacts of marijuana cultivation, processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests;

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors;

WHEREAS, in the case of multiple qualified patients who are in control of the same legal parcel, or parcels, of property, or in the case of collective or cooperative cultivation, or in the case of a caregiver growing for numerous patients, a very large

number of plants could be cultivated on the same legal parcel, or parcels, within the City of Atwater ("City");

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery;

WHEREAS, the unregulated indoor cultivation of marijuana has potential adverse effects to the structural integrity of the building, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a clear and present danger to the building and its occupants;

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security ~~3~~ increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime;

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of processing and distribution activities;

WHEREAS, The City Council is vested with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, Pursuant to the principles of permissive zoning, the City adopted Resolution No. 2868-15 affirming the prohibition of cultivation of marijuana in the City of Atwater. In addition, existing Atwater Municipal Code Chapter 5.60 prohibits outdoor cultivation of marijuana;

WHEREAS, prior to the effective date of this ordinance, the cultivation, processing and distribution of medical marijuana is prohibited in the City to the extent such activities are prohibited by the Federal Controlled Substances Act or other law;

WHEREAS, based on the findings above, the potential establishment of the cultivation, processing and distribution of medical marijuana for commercial sale in the City without an express ban on such activities poses a current and immediate threat to the public health, safety, and welfare in the City due to the negative impacts of such activities as described above;

WHEREAS, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for indoor or outdoor marijuana cultivation, processing, delivery, and/or distribution of medical marijuana for

commercial sale will result in the aforementioned threat to public health, safety, and welfare; ~~and~~

WHEREAS, it is in the interest of the City, its residents, and its lawfully permitted businesses that City adopts this ordinance to expressly prohibit the establishment and operation of marijuana cultivation (whether indoor or outdoor), processing, delivery, and dispensing ~~any activities of medical marijuana for commercial sale~~, as well as the issuance of any use permit, variance, building permit, or any other entitlement, license, or permit for any such activity, except where the City is preempted by federal or state law from enacting a prohibition on any such activity or a prohibition on the issuance of any use permit, variance, building permit, or any other entitlement, license, or permit for any such activity;

WHEREAS, it is also in the interest of the City, its residents, and its lawfully permitted businesses that the City adopt this ordinance to expressly regulate the personal cultivation and delivery of medical marijuana as authorized by state law; and

WHEREAS, the regulations in this ordinance do not interfere with a qualified patient's right to obtain and use marijuana as authorized under state law, nor do they criminalize the possession of marijuana by qualified patients or their primary caregivers. It is neither the intent nor the effect of this ordinance to condone or legitimize the illegal use, consumption, or cultivation of marijuana under federal, state or local law, nor is it the intent of this ordinance to regulate the possession of processed marijuana under federal, state or local law.

NOW, THEREFORE, the City Council of the City of Atwater does hereby ordain:

SECTION 1: The City Council of the City of Atwater hereby finds that the above recitals are true and correct and are incorporated into the substantive portion of this ordinance.

SECTION 2: The City Council hereby ~~adds~~ amends Chapter 8.50 entitled "Medical Marijuana" to the City of Atwater Municipal Code to read in full as follows:

CHAPTER 8.60 – MEDICAL MARIJUANA

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8.560.010 Legislative Findings and Statement of Purpose.

A. The City Council finds that the prohibitions on indoor and outdoor marijuana cultivation, marijuana processing, marijuana delivery originating from within city limits, and marijuana dispensing for commercial sale and the regulation of cultivation and delivery of medical marijuana for personal use are necessary for the preservation and protection of the public health, safety, and welfare for the City and its community. The City Council's prohibition of such activities is within the authority conferred upon the City Council in its Charter and state law.

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A.B. On October 9, 2015, the governor signed the "Medical Marijuana Regulation and Safety Act" ("Act") into law. The Act becomes effective January 1, 2016 and contains new statutory provisions that:

1. Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));
2. Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a));
3. Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c)); and
4. Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a)).

B.C. The City Council finds that this chapter: (1) expresses its intent to prohibit the indoor and outdoor cultivation, processing and dispensing of medical marijuana for commercial sale in the City and to not administer a conditional permit program pursuant to Health & Safety Code section 11362.777 for the cultivation of marijuana in the City; (2) expresses its intent to regulate the personal cultivation and delivery of medical marijuana in the City; (3) exercises its local authority to enact and enforce local regulations and ordinances, including those regarding the permitting, licensing, or other entitlement of the activities prohibited by this chapter; and (34) exercises its police power to enact and enforce regulations for the public benefit, safety, and welfare of the City and its community; ~~and (4) expressly prohibits the delivery of marijuana in the City.~~

8.560.020 Definitions.

For purposes of this chapter, the following definitions shall apply:

A. "Allowable structure" means a building or other structure that is fully enclosed and secure; complies with the City's Building Code and Planning and Development Code; has a complete roof enclosure supported by connecting

walls extending from the ground to the roof; has a foundation, slab, or equivalent base to which the floor is secured by bolts or similar attachments; is secure against unauthorized entry; and is accessible only through one or more lockable doors. Walls and roofs must be constructed of solid, non-transparent material, that cannot be easily breached, such as two inch by four inch or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting or similar products, regardless of gauge, do not satisfy this requirement. ~~"Marijuana" means any or all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin or separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term "marijuana" shall also include "medical marijuana" as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).~~

B. ~~"Marijuana Cultivation"~~ means growing, planting, harvesting, drying, curing, grading, trimming, or processing of marijuana, whether such activities take place indoors or outdoors.

~~B.C.~~ "Live plants" means living medical cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants.

D. "Marijuana" means any or all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin or separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term "marijuana" shall also include "medical marijuana" as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act). ~~"Marijuana Processing" means any method used to prepare marijuana or its byproducts for commercial retail and/or wholesale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.~~

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G.E. "Marijuana Delivery" shall have the same meaning in Business and Professions Code section 19300.5(m) and includes the commercial delivery, transfer or transport, or the arranging for the commercial delivery, transfer or transport, or the use of any technology platform to arrange for or facilitate the commercial delivery, transfer or transport of marijuana, marijuana edibles, and/or any marijuana products, including, but not limited to, fibers, oils, and cakes, and expressly excluding seeds, to or from any location within the jurisdictional limits of the City of Atwater, and any and all associated business and/or operational activities.

G.F. "Marijuana Dispensary" or "Marijuana Dispensaries" means any business, office, store, facility, location, retail storefront or wholesale component of any establishment, cooperative or collective that delivers (as defined in Business & Professions Code section 19300.5(m) or any successor statute thereto) whether mobile or otherwise, dispenses, distributes, exchanges, transmits, transports, sells or provides marijuana to any person for any reason, including members of any medical marijuana cooperative or collective consistent with the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California, or for the purposes set forth in California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

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G. "Medical marijuana collective" or "cooperative or collective" means any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

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H. "Outdoor" means any location in the City that is within a residential zone or parcel used for residential use, and that is not within an allowable structure.

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I. "Premises" means a single parcel of property or contiguous parcels under common ownership or control.

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J. "Primary caregiver" is defined in strict accordance with California Health and Safety Code section 11362.5 et seq.

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K. "Processing" means any method used to prepare marijuana or its byproducts for commercial retail and/or wholesale, including but not limited to: drying, cleaning,

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curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.

D.L. "Qualified patient" is defined in strict accordance with California Health and Safety Code section 11362.5 et seq.

8.560.0430 Prohibited Activities.

A. Commercial Use. Marijuana cultivation (whether it occurs indoors or outdoors), marijuana processing, marijuana delivery originating from within city limits, and marijuana dispensaries for commercial sale shall be prohibited activities in the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the activities of marijuana cultivation, marijuana processing, marijuana delivery originating from within city limits, or the establishment or operation of a marijuana dispensary for commercial sale in the City, and no person shall otherwise establish or conduct such activities in the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity for which the use permit, variance, building permit, or any other entitlement, license, or permit is sought.

B. Personal Use. Medical marijuana for personal use may be cultivated in conformance with the following standards:

1. A qualified patient or primary caregiver, who resides full-time on the premises where the marijuana cultivation is to occur, may cultivate medical marijuana in residential zones or on premises used for residential use within an allowable structure, which shall conform to the following minimum standards:
 - a. Regardless of how many qualified patients or primary caregivers are residing at the premises, the cumulative area used for cultivation on the premises shall not exceed four hundred (400) square feet.
 - b. Regardless of how many qualified patients or primary caregivers are residing at the premises, the cumulative cultivation of medical marijuana shall be limited to twelve (12) live marijuana plants on the premises.
 - c. Indoor grow lighting systems shall not exceed three thousand eight hundred (3,800) watts, shall be shielded to confine light and glare to the interior of the allowable structure, and shall comply with the City building code and fire prevention code.
 - d. Allowable structures shall have ventilation and filtration systems installed that prevent medical marijuana plant odors from exiting the interior of the structure. The ventilation and filtration system shall

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- be approved by the building official and installed prior to commencing cultivation within the allowable structure.
 - e. Medical marijuana cultivation shall not take place in the kitchen, bathroom, or bedrooms of any allowable structure.
 - f. Medical marijuana cultivation shall be concealed from public view at all stages of growth and there shall be no exterior evidence of cultivation occurring at the premises from a public right-of-way or from an adjacent parcel.
 - g. The medical marijuana cultivation shall not create offensive odors; create excessive dust, heat, noise, smoke, traffic, or other impacts that are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public; or be hazardous due to use or storage of materials, processes, products, or wastes.
 - h. The medical marijuana cultivation shall not create a humidity, mold or other nuisance condition.
 - i. Medical marijuana cultivation areas, whether in a detached building or inside a residence, shall not be accessible to persons under eighteen (18) years of age.
 - 2. The use of gas products for medical marijuana cultivation is prohibited.
 - 3. The outdoor cultivation of marijuana is prohibited in all areas of the City.
 - 4. The cultivation of medical marijuana for sale is prohibited in all areas of the City.
- C. Marijuana Delivery. Mobile distribution of medical marijuana, other than for personal use by qualified patients or primary caregivers and as described in this Section 8.60.030, is prohibited within the City.
- 1. Marijuana delivery originating from outside city limits and delivering medical marijuana to qualified patients or primary caregivers within city limits shall only be allowed by a state licensed dispensary in an amount authorized and determined by the Bureau of Medical Marijuana Regulation, Department of Consumer Affairs.
 - 2. Marijuana delivery originating from within city limits are prohibited.

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8.560.0450 Public Nuisance.

Any use or condition caused or permitted to exist in violation of this chapter shall be and is hereby declared ~~to be~~ a public nuisance and may be abated by the City or subject to any available legal remedies, including, but not limited to, civil injunctions.

8.560.0560 Violations.

Any violation of this chapter shall be punishable as a misdemeanor. In the alternative, and in the discretion of the Chief of Police, a violation of this chapter may be

prosecuted as an infraction punishable pursuant to the provisions of Section 1.01.110 of this Code. In addition, the City may abate any public nuisance associated with any violation of this chapter using the abatement procedures set forth in Chapter 8.32.

Each day a violation is allowed to continue and every violation of this chapter shall constitute a separate violation and shall be subject to all remedies.

In the event any civil suit or action is brought by the City to enforce this chapter, the prevailing party shall be entitled to recover the amount of its reasonable costs incurred in the action or proceeding, including, but not limited to, attorney's fees.

SECTION 3: If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses or phrases be declared, invalid or unconstitutional.

SECTION 4: The City Council finds the approval of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the approval of this ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

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 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: EFFECTIVE DATE. This ordinance shall take effect and be in force thirty (30) days after the date of its passage and the City Clerk shall certify to the adoption of this ordinance and shall cause the same to be published in the Merced Sun Star within fifteen (15) days from the adoption hereof.

INTRODUCED:
ADOPTED:
AYES:
NOES:

ABSENT:

APPROVED:

JAMES E. PRICE, MAYOR

ATTEST:

JEANNA DEL REAL, CMC
CITY CLERK

May 11, 2016

Honorable Mayor and Members
of the Atwater City Council

City Council Meeting
of May 23, 2016

**PUBLIC HEARING WAIVING THE FIRST READING AND
INTRODUCING ORDINANCE NO. CS 972 AMENDING TITLE 13,
"PUBLIC SERVICES," CHAPTER 13.13 "WATER CONSERVATION
PROGRAM" OF THE ATWATER MUNICIPAL CODE**

RECOMMENDATION:

It is recommended that the City Council consider:

1. Opening the Public Hearing and taking any testimony given regarding Ordinance No. CS 972; and
2. Waiving the first reading and introducing Ordinance No. CS 972 amending Title 13, "Public Services," Chapter 13.13 "Water Conservation Program" of the Atwater Municipal Code.

BACKGROUND:

At their regular meeting of April 28, 2014, City Council adopted Ordinance No. CS 953 amending Title 13, "Public Services," Chapter 13.13 "Water Conservation Program" of the Atwater Municipal Code. The amendments specified watering days and times for consumers based on odd or even address. The fines for violations were also increased.

At their regular meeting of April 25, 2016, by City Council consensus, staff was given direction to proceed with modifications to the existing water conservation code, namely watering hours, taking into consideration the recommendations of the City Council.

A public hearing for the ordinance amending the City of Atwater's Water Conservation Program was published for the City Council meeting of May 23, 2016.

ANALYSIS

On January 17, 2014, Governor Jerry Brown proclaimed a State of Emergency for drought conditions in the State of California. City Council responded to the State of Emergency by requiring stringent watering guidelines. The modifications proposed by Ordinance No. CS 972 clearly defines watering timeframes and hours.

FISCAL IMPACT:

None.

CONCLUSION:

This staff report is submitted for City Council consideration and possible action.

Respectfully submitted,



Brian Shaw
Water Division Manager/Chief Operator



CITY COUNCIL OF THE CITY OF ATWATER

ORDINANCE NO. CS 972

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATWATER AMENDING TITLE 13, "PUBLIC SERVICES", CHAPTER 13.13 "WATER CONSERVATION PROGRAM" OF THE ATWATER MUNICIPAL CODE

The City Council of the City of Atwater does hereby ordain:

SECTION 1: Subsection B of Section 13.13.030 of Chapter 13.13 "Water Conservation Program," of the Atwater Municipal Code is hereby amended to read in full as follows:

B. Gardens and Landscaping

Consumers shall not irrigate any lawn or landscaped area between the hours of 7:00 ~~10:00~~ a.m. and 7:00 ~~5:00~~ p.m. on any day of the week.

1. Even numbered addresses are assigned watering days on Tuesdays and Saturdays from 12:01 AM to 10:00 AM and 5:00 PM to 11:59 PM.
2. Odd numbered addresses are assigned watering days on Sundays and Wednesdays from 12:01 AM to 10:00 AM and 5:00 PM to 11:59 PM.
3. Watering on Mondays, Thursdays, and Fridays is prohibited.
4. This section shall not apply to commercial growers or nurseries.

SECTION 2. 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 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 3. EFFECTIVE DATE: This ordinance shall take effect and be in force thirty (30) days after the date of its passage and the City Clerk shall certify to the adoption of this ordinance and shall cause the same to be published in the Atwater Signal within fifteen (15) days from the adoption hereof.

INTRODUCED:
ADOPTED:
AYES:
NOES:
ABSENT:

APPROVED:

JAMES E. PRICE, MAYOR

ATTEST:

JEANNA DEL REAL, CMC
CITY CLERK

May 10, 2016

Honorable Mayor and Members
of the Atwater City Council

City Council Meeting
of May 23, 2016

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
ATWATER GRANTING AN EXEMPTION TO CASTLE
VISTA SENIOR COMMUNITY FROM THE WATERING
SCHEDULE SET FORTH IN SECTION 13.13.030(B) OF
THE ATWATER MUNICIPAL CODE**

RECOMMENDATION:

It is recommended that the City Council consider:

- Adopting Resolution No. 2886-16 exempting Castle Vista Senior Community from the water schedule set forth in Section 13.13.030(B) of the Atwater Municipal Code.

BACKGROUND:

At their regular meeting of June 8, 2009 City Council adopted Ordinance No. CS 906 deleting Section 13.12.085, "Water Conservation," of Chapter 13.12 "Water Services," of the Atwater Municipal Code in its entirety and amended Title 13 "Public Services," to add Chapter 13.13, "Water Conservation Program". The purpose of this Chapter was to promote the efficient use and reuse of water by all City of Atwater water service customers by requiring that all new construction projects and existing customers use water as efficiently as possible and comply with new development standards, landscape water use efficiency standards and water waste prohibition regulations. On March 1, 2014, Governor Jerry Brown proclaimed a State of Emergency for drought conditions in the State of California. On May 26, 2015, the City Council of the City of Atwater adopted Resolution No. 2823-15, which declared a local drought emergency and encouraged water conservation measures. The Council also enacted Ordinance No. CS 966 amending Chapter 13.13 of the Atwater Municipal Code to amend the City's Water Conservation Program.

Castle Vista Senior Community ("Community") is a 77 acre, 238 unit, gated community with one pump that services the entire Community's watering needs. The pump requires 12 hours to prime and the system which runs the pump cannot be modified to run according to odd and/or even addresses. As a result, the Community is unable to comply with the current watering schedule restrictions found in Section 13.13.030(B) of the Atwater Municipal Code.

The Council has expressed an interest in granting an exemption to the Castle Vista Senior Community from the City's watering schedule as long as the Community meets a targeted 36% reduction in their water use.

FISCAL IMPACT:

None.

CONCLUSION:

This staff report is submitted for City Council consideration and possible action.

Respectfully submitted,



Brian Shaw
Water Division Manager/Chief Operator



**CITY COUNCIL
OF THE
CITY OF ATWATER**

RESOLUTION NO. 2886-16

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF ATWATER GRANTING AN EXEMPTION
TO CASTLE VISTA SENIOR COMMUNITY FROM
THE WATERING SCHEDULE SET FORTH IN
SECTION 13.13.030(B) OF THE ATWATER
MUNICIPAL CODE**

WHEREAS, at their regular meeting of June 8, 2009 City Council adopted Ordinance No. CS 906 deleting Section 13.12.085, "Water Conservation," of Chapter 13.12 "Water Services," of the Atwater Municipal Code in its entirety and amended Title 13 "Public Services," is to add Chapter 13.13, "Water Conservation Program"; and

WHEREAS, California is currently facing one of the most severe droughts on record; and

WHEREAS, on January 17, 2014, the Governor of the State of California declared a state of emergency in the State of California due to current drought conditions in the state; and

WHEREAS, on April 25, 2014, Governor Brown issued an executive order to strengthen the state's ability to manage water and habitat effectively in drought conditions and called on Californians to double their efforts to conserve water; and

WHEREAS, the State Water Resources Control Board adopted emergency regulations for urban water conservation at its meeting on July 15, 2014; and

WHEREAS, the State Water Resources Control Board adopted additional emergency regulations for urban water conservation at its meeting on March 17, 2015; and

WHEREAS, on April 1, 2015, Governor Brown signed an executive order imposing additional drought restrictions and directed the State Water Board to impose restrictions to achieve a statewide 25% reduction in potable urban water usage through February 28, 2016; and

WHEREAS, on May 26, 2015, the City Council of the City of Atwater adopted Resolution No. 2823-15, which declared a local drought emergency and encouraged water conservation measures; and

WHEREAS, on May 26, 2015, the City Council of the City of Atwater enacted Ordinance No. CS 966 amending Chapter 13.13 of the Atwater Municipal Code to amend the City's Water Conservation Program and imposing mandatory water conservation measures; and

WHEREAS, Castle Vista Senior Community ("Community") is a 77 acre, 238 unit, gated community with one pump that services the entire Community's watering needs. The pump requires 12 hours to prime and the system which runs the pump cannot be modified to run according to odd and/or even addresses. As a result, the Community is unable to comply with the current watering schedule restrictions found in Section 13.13.030(B) of the Atwater Municipal Code; and

WHEREAS, the Community is supplied with non-potable water from the City of Atwater; and

WHEREAS, the Community has targeted a 36% reduction in their water use.

NOW, THEREFORE, BE IT RESOLVED AND DECLARED that the City Council of the City of Atwater does hereby order that Castle Vista Senior Community is exempt from the watering schedule set forth in Section 13.13.030(B) of the Atwater Municipal Code, as long as the Community exceeds the 36% targeted reduction in their water use..

The foregoing resolution is hereby adopted this 23rd day of May, 2016

AYES:

NOES:

ABSENT:

APPROVED:

JAMES E. PRICE, MAYOR

ATTEST:

**JEANNA DEL REAL, CMC
CITY CLERK**

May 16, 2016

Honorable Mayor and Members
of the Atwater City Council

City Council Meeting
of May 23, 2016

APPROVING AGREEMENT BETWEEN THE CITY OF ATWATER AND YOSEMITE CHURCH FOR THE IMPROVEMENT AND USAGE OF ATWATER COMMUNITY CENTER LOCATED AT 760 EAST BELLEVUE ROAD AND TO AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

RECOMMENDATION:

It is recommended that the City Council:

1. Consider approving an agreement between the City of Atwater and the Yosemite Church for the improvement to and usage of the Atwater Community Center and monthly fees for use of Atwater Community Center on Sundays.
2. Authorize and direct the City Manager to execute the Agreement on behalf of the City.

BACKGROUND:

After many negotiations the City of Atwater Community Services Department and Yosemite Church have come to a verbal agreement on Community Center Improvements and fees to be charged for use of Community Center for the purpose of Yosemite Church holding church services on Sunday at the Community Center.

ANALYSIS:

Staff has met with Dr. Tino Ballesteros, Jr., Executive Pastor, Yosemite Church and formulated a proposed improvement and usage agreement between the City and the Church. The proposed agreement is for two (2) years, with the addition of two (2) more years if needed, and provides for phased construction as follows:

- A. Within two (2) months from the approval date of this agreement, Tenant shall complete the following improvements to "Atwater Community Center";
 1. Remove existing floor and base, install new plank flooring and base in Multipurpose Room at the cost of \$16,318.
 2. Remove existing floor and base and install new plank flooring and base over existing floor in Evelyn Chambers Room at the cost of \$5,200.
 3. Remaining funds of \$11,396 will go toward improvements of the Community Center *Additional Funds for sign must be provided by City.
 4. Yosemite Church will donate and professionally install three 65" high definition televisions in the Jessie Frago Meeting Room and Andy Longinotti Teen room at an approximate cost of \$8,000.
 5. Donate and professionally install sound attenuation panels for the Multipurpose

Room at an approximate cost of \$10,000.

6. Upgrade the entire building's wi-fi system for greater effectiveness and stronger coverage at an approximate cost of \$4,200.

B. Tenant shall agree to;

1. Yosemite Church will pay the $\$77 \times 52 \text{ weeks} = \4004 yearly or $\$333.67/\text{month}$.
2. Overhead cost will be paid on a monthly basis of $\$833.33$.
3. Total rent per month for all fees for Yosemite Church would be $\$1,166.99$ due the Thursday before the first Sunday of the month.
4. August 1, 2016 - July 31, 2017 ($\$16,457$ Capital Improvement/ $\$10,000$ over head Cost)
5. August 1, 2017 - July 31, 2018 ($\$16,457$ Capital Improvements/ $\$10,000$ Over head Cost)
6. Some storage may be provided for the duration of the contract in the MPR storage closet.
7. Capital Improvement Funds for the first two years totaling $\$32,914$ can be utilized at any time after the contract is signed.
8. Additional hourly rental rates will be at $\$85$ per hour.

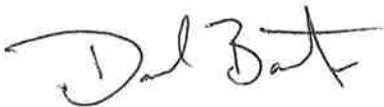
FISCAL IMPACT:

The charges covered on the rent per month should cover all cost associated with rental of Community Center. The additional improvements being made are greater value than what would be normally charged for a rental.

CONCLUSION:

This request is submitted to the City Council for its consideration and possible action.

Respectfully submitted,



Daniel Barton
Recreation Supervisor

AGREEMENT BETWEEN THE CITY OF ATWATER, A MUNICIPAL CORPORATION (HEREINAFTER REFERRED TO AS "CITY") AND YOSEMITE CHURCH, A NON-PROFIT CORPORATION (HEREINAFTER REFERRED TO AS "TENANT") FOR THE IMPROVEMENT AND USAGE OF ATWATER COMMUNITY CENTER, WHICH ARE LOCATED AT 760 EAST BELLEVUE ROAD.

WITNESSETH

WHEREAS, the City of Atwater ("City") is the owner and administrator of Community Center Premises (the "Premises") is dedicated to provide a safe environment for the youth and adults of our community that participate in worship service and children/youth programs; and

WHEREAS, Yosemite Church "Tenant" desires to make certain improvements to the Premises and to continue providing organized worship service programs to the Atwater community; and

WHEREAS, the City of Atwater desires to continue to allow the use of the Premises for the purpose of providing organized worship service

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter contained, the parties agree for themselves, their successors, legal representatives, and assign as follows:

1. The City hereby grants to Tenant, subject to the terms and conditions hereinafter contained, the right to use, subject to reasonable scheduling and accessibility, the Premises known as the Atwater Community Center located at 760 East Bellevue Road, Atwater, California. The City retains the right to schedule the use of the Premises for City sponsored events and other activities deemed appropriate by the City. The Premises will only be available to the tenant when the City of Atwater Community Services Division is not utilizing the Premises, on Sundays as described herin, and any further use would be separate.
2. The term of this Agreement shall commence on August 7, 2016, and shall end as of August 6, 2018, with the option of a third and fourth year ,cancelable by either party upon thirty (30) days written notice. Options for year 3 and 4 at the same yearly rental rate of \$26,457 (breakdown of capital improvements and overhead expenses at the discretion of Atwater Community Center).The Tenant shall be entitled to use from 7 am - 1 pm every Sunday. There shall be no charge in the form of rent or deposit imposed on the Tenant for use of or access to the Premises except as set forth in Section 4 of this Agreement.
3. The City agrees to furnish utilities to include, electrical, water, sewer and refuse collection and general maintenance services (mowing, weed eating, general maintenance) to the Tenant through August 31, 2018. At any time prior to August

31, 2018, upon mutual consent, the parties shall meet for the purpose of evaluating this particular arrangement and discussing the possibility of sharing the costs related to the ongoing provision of these services.

4. In consideration of the above City contributions, Tenant shall make the following improvements to the Community Center. At the time of completion all said improvements hereinafter contained, will become the property of the City.

A. Within one (1) year from the approval date of this agreement, the Tenant shall complete the following improvements to the "Atwater Community Center

1. Remove existing floor and base, install new plank flooring and base in Multipurpose Room at the cost of \$16,318.
2. Remove existing floor and base and install new plank flooring and base over existing floor in Evelyn Chambers Room at the cost of \$5,200.
3. Remaining funds of \$11,396 will go toward improvements of the Community Center *Additional Funds for sign must be provided by City.
4. Yosemite Church will donate and professionally install three 65 " high definition televisions in the Jessie Frago Meeting Room and Andy Longinotti Teen room at an approximate cost of \$8,000.
5. Donate and professionally install sound attenuation panels for the Multipurpose Room at an approximate cost of \$10,000.
6. Upgrade the entire building's wi-fi system for greater effectiveness and stronger coverage at an approximate cost of \$4,200.

B. The yearly rental rate of \$26,457 will be divided up into:

1. August 1, 2016 - July 31, 2017 (\$16,457 Capital Improvement/\$10,000 over head Cost)
2. August 1, 2017 - July 31, 2018 (\$16,457 Capital Improvements/\$10,000 Over head Cost)
3. Overhead cost will be paid on a monthly basis of \$833.33.
4. Capital Improvement Funds for the first two years totaling \$32, 914 can be utilized at any time after the contract is signed.
5. Additional hourly rental rates will be at \$85 per hour.

6. Some storage may be provided for the duration of the contract in the MPR storage closet.
7. Yosemite Church will pay the $\$77 \times 52 \text{ weeks} = \4004 yearly or $\$333.67/\text{month}$.
8. Total rent per month for all fees for Yosemite Church would be $\$1,166.99$ due the Thursday before the first Sunday of the month.

C. The Tenant agrees to the standards of cleanliness, and agrees to maintain the Premises as follows:

1. Walls, doors, and woodwork will be thoroughly cleaned, ensuring that dirt, grease, and marks are completely removed. After cleaning, ensure that all cleaner residues are removed from all surfaces. Do not use abrasive cleansers or cleaning materials, which may scratch, or damage wall or woodwork finishes.
2. Floors will be thoroughly cleaned ensuring that dirt, grease and marks are completely removed. Do not use abrasive cleansers or cleaning materials, which may scratch or damage floors.
3. Lavatories, commodes, urinals, mirrors, floors, and fixtures will be cleaned to the highest degree. Partitions and walls will be cleaned free of soap film corrosion, fungus growth and all other removable stains. Do not use abrasive cleansers or cleaning materials that may scratch or damage surfaces.
4. Decorating is limited to the tables only. All decorations must be removed immediately. All surfaces shall be cleaned thoroughly ensuring the removal of tape, glue or other substances. Staples and nails shall not be used to affix decorations or table cloths. No staples or nails may be used to adhere materials to table or walls.
5. All parts of the stove must be free of grease, food particles, carbon cleaner residue and dirt. Stoves must be left in an assembled working condition. Do not use abrasive cleansers or excessive water to clean the stove or submerge the open doors in water, as this will ruin the insulation. If this should happen, you may be required to pay for repairs. Ovens will not be left on with the doors open as this will burn out the thermostat.
6. All exterior surfaces of cabinets must be free of dirt, dust, grease, smudges, and food particles. Wash cabinets with mild detergent. To assure cleanliness, go over cabinets with clean, damp cloth to remove

soap film or cleaner residue. Sinks and plumbing fixtures will be free of grease, stains, grime and smudges. Do not use abrasive cleaners or cleaning materials, which may damage cabinet and sink finishes.

7. Damage to City property during use and/or cleaning process is the responsibility of the user. Do not use abrasive cleansers or cleaning materials that might scratch or otherwise damage the finish on the walls, floors, woodwork, cabinets, doors, appliances, and fixtures. This type of damage is not considered normal "wear and tear" and the user will be charged the costs associated with repair and/or replacement of any and/or all of these items.

D. Tenant further covenants and agrees:

1. To meet all expenses of operation, except as noted in paragraph 3, above, including, without limitation by reason of enumeration, all employment and non-employment taxes, permit fees and City business license fees, and that it will secure all such permits and licenses, if required by City.
 2. No person or groups of persons on the grounds of race, creed, religion, sex, marital status, color or national origin or ancestry or disability shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of said Premises or services by Tenant.
 3. That in the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate the Agreement and keep all contributions the tenant has made.
 4. To pick up and dispose of all trash generated from Tenant sponsored activities, including not driving on the grass and keeping the Premises clean indoors and outdoors.
 5. It is the responsibility of the Tenant to make sure that all companies hired for their events have a current City of Atwater business license to do business in the City of Atwater.
 6. In the event that maximum occupancy levels for each room rented are exceeded for any reason, the function may be subject to immediate termination and all deposits and rentals fees shall be forfeited.
5. Tenant shall keep and hold harmless City from and indemnify City against any and all claims, demands, suits, judgments, costs and expenses asserted by any

person or persons, including agents or employees of City or Tenant, by reason of death or injury to persons, or loss or damage to property occurring in, on, or about the Premises during the period of time and for those activities specifically related to the use, improvement and maintenance of property by Tenant. For the purposes of this section, "Premises" is expanded to include the surrounding parking lot and grounds.

6. Tenant agrees to provide Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability policy form GC 0001, or the exact equivalent with limits of no less than one million (\$1,000,000) per occurrence for all covered losses and two million (\$2,000,000) general aggregate that covers bodily injury, property damage, personal injury, and advertising injury and \$50,000 for property damages and specifically insuring performance by Tenant of his indemnity agreement set forth above. Such insurance shall be procured from an insurer authorized to do business in California and approved in writing by City. This includes liability
 1. Arising out of ownership, maintenance or use of real property;
 2. Arising out of operations away from the business premises by employees or agents of the insured;
 3. Assumed by contract;
 4. Arising out of the products manufactured, distributed or sold; and
 5. Arising out of operations that have been completed away from the premises.

Tenant shall, prior to commencement of the lease term, deliver to the City a copy of said policy or policies, or a certificate of insurance, together with satisfactory evidence that the premiums have been paid and shall, not less than thirty days prior to the expiration of any such insurance coverage, deliver to City satisfactory evidence of payment of the renewal premium of said policy or policies of insurance.

Tenant shall provide the City with certificate of insurance evidencing all such insurance prior to exercising any of the privileges conferred by this Agreement.

7. In the event of abandonment of the Premises or any portion thereof, or discontinuance of Tenant's operations or required services, or any portion thereof, City shall not be responsible for the custodial protection of merchandise, fixtures or equipment abandoned, even though it is necessary for the City to remove same from the premises for storage or disposal
8. In the event of breach of this Agreement by Tenant, City shall be entitled to all

rights and remedies provided by law in addition to the specific remedies pertinent herein.

It is expressly agreed that in the event Tenant creates or causes any breach of this Agreement or the terms thereof or holds over after the expiration of this lease, City shall have the right and option to enter said the Premises, take possession thereof, and remove all persons and property there from without the benefit of court order, and to exercise any and all rights provided by law or by this lease.

9. At the expiration of this Agreement, Tenant promises and agrees to deliver unto the City the Premises in as good condition as at the date of the execution of this Agreement, reasonable wear and tear excepted.
10. City shall be permitted to enter and view the Premises at any and all times for the purpose of inspecting, maintaining or doing any and all things with reference thereto which City is obligated to do or which may be deemed necessary or desirable. City will provide onsite facility attendant during all functions.
11. The Premises shall not be used for any illegal purpose; and Tenant, in using the Premises, shall comply with all federal, state and local laws, statutes and ordinances, rules, regulations, polices, procedures, orders and directives.
12. Any notice or communication to City or Tenant shall be deemed validly served upon deposit in the United States mail, registered and proper postage prepaid, addressed to the respective party at the address as either party may designate to the other by notice in accordance with the provisions hereof.
13. This Agreement shall not be modified except by writing signed by all parties.
14. This Agreement is not assignable.
15. Any waiver of any breach of covenants or conditions herein contained to be kept and performed by either party shall be effective only if in writing and shall not operate to bar or prevent the other party from declaring a forfeiture or exercising its rights for any succeeding breach of either the same or other condition or covenant.
16. The following is not permitted at the Atwater Community Center, no exceptions:
 - a. Staples and/or nails are not allowed to be used on our tables.
 - b. Glitter and confetti of any kind is not permitted anywhere in the building.
 - c. Decorating is limited to table and floor decorations only.
 - d. There will be no taping or tacking on the walls.
 - e. All candles must be pre-approved by the Fire Chief at the Atwater Fire Department.
 - f. No tape of smoke effects or incense will be permitted.

- g. No alcohol is permitted.
- h. No vehicle of any kind shall be permitted on the sidewalks or lawn at any time.
- i. There will be no smoking permitted inside the building.
- j. Children are not allowed to wander the facility unattended. Children must be supervised at all times.
- k. No frying in the kitchen. It must be done outside behind the Multipurpose Room with a protective barrier placed underneath the fryers.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on this _____ day of _____ 2016.

CITY OF ATWATER
A Municipal Corporation

Yosemite Church

City Manager

President

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

OFFICE OF THE CITY COUNCIL

May 23, 2016

Edward H. Lujano, Chief Executive Officer
Castle Family Health Centers
3605 Hospital Road
Atwater, CA 95301

Dear Mr. Lujano

The Atwater City Council is proud to support Castle Family Health Centers application for funding for through a New Access Point (HRSA-17-009) by the federal Health Resources and Services Administration / Bureau of Primary Health Care.

Atwater's population is a young, poor, and racially diverse community. Many of the residents fall within the poverty guidelines and seek health care at Castle Family Health Centers because of their ability to serve the underserved population. Health care access continues to be a challenge for our community; and with the Affordable Healthcare Act more, residents received health coverage however the availability of providers in our community remain strained.

Castle Family Health Centers would be a welcome partner in providing health care services to those in our community and region with the most need for such services. The ability for Castle Family Health Centers to provide primary healthcare services in an integrated environment along with specialty and behavioral health care is critical to improving community health and access to services in City of Atwater, County of Merced.

The Atwater City Council supports the mission of Castle Family Health Centers to provide access to quality, integrated health care in a comprehensive and culturally respectful manner to individuals and families. The Atwater City Council looks forward to continued collaboration and partnership with Castle Family Health Centers to improve the lives of low income and uninsured residents in City of Atwater County of Merced.

Sincerely,

James E. Price, Mayor

Larry Bergman, Mayor Pro Tem

Joe Rivero, City Council Member

James Vineyard, City Council Member

Brian Raymond, City Council Member



**CITY COUNCIL
OF THE
CITY OF ATWATER**

RESOLUTION NO. 2812-15

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF ATWATER APPROVING VACANT BUILDING SALES
TAX REBATE PROGRAM**

WHEREAS, in order to facilitate job creation and economic growth, the City Council desires to provide incentives for sales tax generating businesses to locate in the City of Atwater; and

WHEREAS, in order to reduce or eliminate blight, the City Council also desires to provide incentives for businesses to locate in vacant commercial buildings within the City of Atwater; and

WHEREAS, the attached "Vacant Buildings Sales Tax Rebate Program" is designed to achieve the aforementioned goals and objectives.

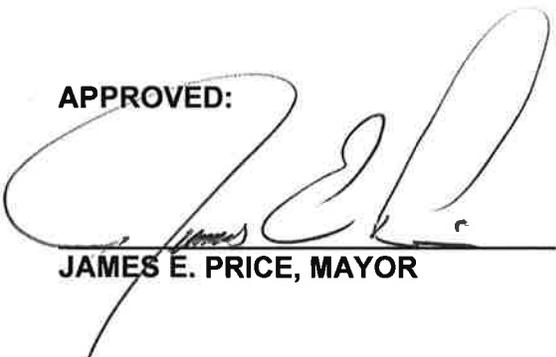
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Atwater as follows:

SECTION 1. The Policy attached as "Exhibit A" is hereby adopted. The City Council shall review the effectiveness and fiscal impacts of the Program annually commencing on the first regularly scheduled City Council meeting of May, 2016.

The foregoing resolution is hereby adopted this 11th day of May, 2015.

AYES: Bergman, Vineyard, Raymond, Price
NOES: Rivero
ABSENT: None

APPROVED:



JAMES E. PRICE, MAYOR

ATTEST:



**JEANNA DEL REAL, CMC
CITY CLERK**

EXHIBIT "A"

VACANT BUILDINGS SALES TAX REBATE PROGRAM

1. **STATEMENT OF PURPOSE** The City of Atwater desires to create additional jobs and economic growth in the City, and to eliminate potential blight caused by vacant commercial buildings. In order to achieve these objectives, the City proposes the adoption of this Vacant Buildings Sales Tax Rebate Program, for businesses which qualify under the criteria set forth herein.
2. **PROGRAM BENEFITS** An eligible new business can qualify for the rebate of 50% of the City's share of general sales taxes (excluding Measure H) during the businesses' first 18 months of operation. An eligible expanded business can qualify for a rebate of 50% of the City's share of new general sales taxes (that is, sales taxes in excess of those previously generated by the business at its original location, using a three-year average as the baseline) attributable to the expansion. The City Finance Director shall determine the amount of the rebate using official general sales tax reports. Payment shall consist of 50% of the amount of new general sales tax revenue actually received by the City (excluding Measure H) as a result of the new business operations in an eligible vacant building, beginning with the first full quarter of operation following business startup.
3. **ELIGIBILITY** In order to be eligible for the Vacant Buildings Sales Tax Rebate Program, all of the following criteria must be met to the satisfaction of the City Finance Director:
 - a) The business must have a valid City of Atwater business license and any necessary use or operating permits, and must be engaged in retail sales which generate general sales taxes.
 - b) The business shall either be a "new business" (i.e. a retail commercial business which was previously not located in Atwater) or an "expanded business" (i.e. an existing retail commercial business which relocates to an eligible vacant building and expands its floor area by more than 25%).
 - c) An eligible "vacant building" is a building within the City which is presently not occupied for business purposes. The City Finance Director shall make the determination as to eligibility under this criteria, based upon evidence submitted by the applicant and his/her own investigation of available data.
 - d) The owner/operator of the business shall make reasonable efforts to employ local Atwater residents.
 - e) The City shall have concluded that the business does not meet the criteria set forth in Government Code Section 53084.
 - f) In the case of a business which generates sales tax in excess of \$200,000 annually, as a precondition to the receipt of any sales tax rebate under this program, the business shall supply the necessary information to the City to enable compliance with requirements of Government Code Section 53083. Upon satisfactory compliance with said requirements, appropriate sales tax rebates can be provided.
4. **APPLICATION PROCESS** The City Finance Director shall determine the necessary information for applications for participation in the Program, and shall, within 30 days of receipt of a complete application, determine whether an applicant is eligible for participation in the Program. The Finance Director's decision of eligibility for the Program shall be made in writing. Within 10 days following receipt of the City Finance Director's written decision, the applicant may appeal said decision to the City Council by sending written notification thereof to the City Manager. The appeal shall state in detail the factual back ground and basis for the appeal. The appeal shall be heard by the City Council not more than 60 days following receipt thereof by the City Manager. The decision of the City Council shall be final.