

AGENDA

**TEHACHAPI CITY COUNCIL REGULAR MEETING,
TEHACHAPI REDEVELOPMENT SUCCESSOR AGENCY REGULAR MEETING,
TEHACHAPI PUBLIC FINANCING AUTHORITY REGULAR MEETING, AND
TEHACHAPI CITY FINANCING CORPORATION REGULAR MEETING
Monday, March 7, 2016 - 6:00 P.M.**

Persons desiring disability-related accommodations should contact the City Clerk no later than ten days prior to the need for the accommodation. A copy of any writing that is a public record relating to an open session item of this meeting is available at City Hall, 115 South Robinson Street, Tehachapi, California, 93561.

CALL TO ORDER

ROLL CALL

INVOCATION

Participation in the invocation is strictly voluntary. Each City Councilmember, city employee, and each person in attendance may participate or not participate as he or she chooses.

PLEDGE TO FLAG

CONSENT AGENDA/OPPORTUNITY FOR PUBLIC COMMENT

All items listed with an asterisk (*) are considered to be routine and non-controversial by city staff. Consent items will be considered first and may be approved by one motion if no member of the council or audience wishes to comment or ask questions. If comment or discussion is desired by anyone, the item will be removed from the consent agenda and will be considered in listed sequence with an opportunity for any member of the public to address the city council concerning the item before action is taken. Staff recommendations are shown in caps. Please turn all cellular phones off during the meeting.

AUDIENCE ORAL AND WRITTEN COMMUNICATIONS

The City Council welcomes public comments on any items within the subject matter jurisdiction of the Council. We respectfully request that this public forum be utilized in a positive and constructive manner. Persons addressing the Council should first state their name and area of residence, the matter of City business to be discussed, and the organization or persons represented, if any. To ensure accuracy in the minutes, please fill out a speaker's card at the podium. Comments directed to an item on the agenda should be made at the time the item is called for discussion by the Mayor. Questions on non-agenda items directed to the Council or staff should be first submitted to the City Clerk in written form no later than 12:00 p.m. on the Wednesday preceding the Council meeting; otherwise response to the question may be carried over to the next City Council meeting. No action can be taken by the Council on matters not listed on the agenda except in certain specified circumstances. The Council reserves the right to limit the speaking time of individual speakers and the time allotted for public presentations.

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TEHACHAPI CITY FINANCING CORPORATION REGULAR MEETING**

Monday, March 7, 2016- 6:00 P.M. - PG. 2

1. General public comments regarding matters not listed as an agenda item.
2. Mayor to present a Certificate of Recognition to Steve Denman
3. Mayor to present a Certificate of Recognition to Del Troy

CITY CLERK REPORTS

Tehachapi City Council Unassigned Res. No. 05-16
Tehachapi City Council Unassigned Ord. No. 16-01-731
Tehachapi Redevelopment Successor Agency Unassigned Res. No. 01-16
Tehachapi Public Financing Authority Unassigned Res. No. 01-16

- *4. **ALL ORDINANCES SCHEDULED FOR INTRODUCTION OR ADOPTION AT THIS MEETING SHALL BE READ BY TITLE ONLY**
- *5. Minutes for the Tehachapi City Council, Tehachapi Redevelopment Successor Agency, Tehachapi Public Financing Authority, and the Tehachapi City Financing Corporation regular meeting on February 16, 2016 – **APPROVE AND FILE**
- *6. Disposition of Property – **ADOPT A RESOLUTION AUTHORIZING THE DISPOSITION OF PERSONAL PROPERTY**

FINANCE DIRECTOR REPORTS

- *7. Disbursements, bills, and claims for February 9, 2016 through March 2, 2016 – **AUTHORIZE PAYMENTS**
8. **PUBLIC HEARING** – As part of the annual Public Transit Claim for Transportation Development Act funding, it is necessary to conduct a public hearing to receive public testimony concerning the transit needs within the City. Currently, the City of Tehachapi provides a transit service named Dial-A-Ride, through Kern Regional Transit. The average cost per rider from July 2014 to June 2015 was \$27.95 – **OPEN HEARING; NOTICE OF PUBLIC HEARING AND CORRESPONDENCE; STAFF REPORT; RECEIVE PUBLIC COMMENT; CLOSE HEARING; ADOPT A RESOLUTION FINDING THAT THERE ARE NO UNMET TRANSIT NEEDS THAT ARE REASONABLE TO MEET WITHIN THE CITY**

PUBLIC WORKS DIRECTOR REPORTS

9. Injury and Illness Prevention Program update – **ADOPT THE INJURY AND ILLNESS PREVENTION PROGRAM (IIPP) AND AUTHORIZE THE CITY MANAGER TO SIGN**

DEVELOPMENT SERVICES DIRECTOR REPORTS

- *10. Minor support services agreements – **INFORMATION ONLY**
11. Calendar Year 2016 Construction Projects Update – **INFORMATION ONLY**

TEHACHAPI CITY COUNCIL REGULAR MEETING,
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TEHACHAPI PUBLIC FINANCING AUTHORITY REGULAR MEETING, AND
TEHACHAPI CITY FINANCING CORPORATION REGULAR MEETING

Monday, March 7, 2016- 6:00 P.M. - PG. 3

CITY ATTORNEY REPORTS

12. County requested ordinances regarding food safety education, psychoactive bath salts, psychoactive herbal incense (spice) & other synthetic drugs, and tobacco retailers permits – **SECOND READING AND ADOPTION OF THREE ORDINANCES – (1) ADOPTING ORDINANCE NO. G-8612 OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN, STATE OF CALIFORNIA ADDING CHAPTER 8.59 TO TITLE 8 OF THE KERN COUNTY ORDINANCE CODE REGARDING FOOD SAFETY EDUCATION; (2) ADDING CHAPTER 9.36 TO THE TEHACHAPI MUNICIPAL CODE WHICH ADOPTS ORDINANCE NO. G-8602 OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN, STATE OF CALIFORNIA ADDING CHAPTER 9.44 TO TITLE 9 OF THE KERN COUNTY ORDINANCE CODE REGARDING PSYCHOACTIVE BATH SALTS, PSYCHOACTIVE HERBAL INCENSE (SPICE), AND OTHER SYNTHETIC DRUGS; AND (3) AMENDING CHAPTER 8.52 OF THE TEHACHAPI MUNICIPAL CODE AND ADOPTING ORDINANCE NOS. G-7724, G-8006, G-8495, AND G-8586 OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN, STATE OF CALIFORNIA AMENDING CHAPTER 8.60 TO TITLE 8 OF THE KERN COUNTY ORDINANCE CODE RELATING TO TOBACCO RETAILER’S PERMIT**

13. Introduction of an ordinance prohibiting medical marijuana dispensaries, cooperatives, and collectives and the mobile delivery, cultivation, and processing of marijuana – **INTRODUCTION ONLY**

14. Introduction of an ordinance regulating massage establishments – **INTRODUCTION ONLY**

ASSISTANT CITY MANAGER REPORTS

15. SBA cell phone tower lease amendment – **APPROVE THE AMENDMENT TO THE COMMUNICATIONS SITE LEASE BETWEEN THE CITY OF TEHACHAPI AND SBA 1012 TC ASSETS, LLC AND AUTHORIZE THE MAYOR TO SIGN**

- *16. Update to the City’s Travel Policy – **ADOPT A RESOLUTION APPROVING THE 2016 TRAVEL POLICY AND REPEALING RESOLUTION 01-10**

- *17. Amendment to the Employee Personnel Manual to include reference to the updated Travel Policy – **ADOPT A RESOLUTION APPROVING AN AMENDED EMPLOYEE PERSONNEL MANUAL AND REPEALING RESOLUTION NO. 11-14**

CITY MANAGER REPORTS

18. Report to Council regarding current activities and programs – **VERBAL REPORT**

COUNCILMEMBER REPORTS

On their own initiative, a Councilmember may ask a question for clarification, make a brief announcement, provide a reference to staff or other resources for factual information, take action to have staff place a matter of business on a future agenda, request staff to report back at a subsequent meeting concerning any matter, or make a brief report on his or her own activities. (Per Gov’t. Code §54954.2(a))

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Monday, March 7, 2016- 6:00 P.M. - PG. 4

CLOSED SESSION

1. Conference with real property negotiator (City Manager) regarding first right of refusal of Airport property described as Hangar 02W per Government Code Section 54956.8

ADJOURNMENT

MINUTES

**TEHACHAPI CITY COUNCIL REGULAR MEETING,
TEHACHAPI REDEVELOPMENT SUCCESSOR AGENCY REGULAR MEETING,
TEHACHAPI PUBLIC FINANCING AUTHORITY REGULAR MEETING, AND
TEHACHAPI CITY FINANCING CORPORATION REGULAR MEETING
Tuesday, February 16, 2016 – 6:00 P.M.**

NOTE: Sm, Gr, Wi, Ni and Wa are abbreviations for Council Members Smith, Grimes, Wiggins, Nixon and Wahlstrom, respectively. For example, Gr/Sm denotes Council Member Grimes made the motion and Council Member Smith seconded it. The abbreviation Ab means absent, Abd abstained, Ns noes, and NAT no action taken.

ACTION TAKEN

CALL TO ORDER

Meeting called to order by Mayor Wiggins at 6:00 p.m.

ROLL CALL

Roll call by City Clerk Tori Marsh

Present: Mayor Wiggins, Mayor Pro-Tem Nixon, Councilmembers Grimes and Wahlstrom

Absent: Councilmember Smith

INVOCATION

By Mayor Pro-Tem Nixon

PLEDGE TO THE FLAG

Led by Councilmember Wahlstrom

CONSENT AGENDA

Approved consent agenda

Approved Consent Agenda
Gr/Ni Motion Carried
Ab Sm

AUDIENCE ORAL COMMUNICATIONS

1. General public comments regarding matters not listed as an agenda item were received from:
 - a. None received

CITY CLERK REPORTS

- *2. **ALL ORDINANCES SCHEDULED FOR INTRODUCTION OR ADOPTION AT THIS MEETING SHALL BE READ BY TITLE ONLY.**

All Ord. Read By Title Only

ACTION TAKEN

<p>*3. Minutes for the Tehachapi City Council, Tehachapi Redevelopment Successor Agency, Tehachapi Public Financing Authority, and the Tehachapi City Financing Corporation regular meeting on January 19, 2016 - APPROVED AND FILED.</p> <p>4. Introduction of County requested ordinances regarding food safety education, psychoactive bath salts, psychoactive herbal incense (spice) & other synthetic drugs, and tobacco retailers permits – INTRODUCED BY TITLE ONLY</p>	<p>Approved & Filed Gr/Ni Motion Carried Ab Sm</p> <p>Introduction by Title Only Ni/Gr Motion Carried Ab Sm</p>
<p><u>FINANCE DIRECTOR REPORTS</u></p>	
<p>*5. Disbursements, bills and claims for January 13, 2016 through February 8, 2016 – AUTHORIZED PAYMENTS</p>	<p>Authorized Payments Gr/Ni Motion Carried Ab Sm</p>
<p>*6. City of Tehachapi Treasurer’s Report through January 2016 – RECEIVED REPORT</p>	<p>Received Report Gr/Ni Motion Carried Ab Sm</p>
<p>7. 2015 Financial Report – FINANCE DIRECTOR HANNAH CHUNG GAVE STAFF REPORT; COMMENTS RECEIVED BY KEN HETGE BUSINESS OWNER; INFORMATION ONLY</p>	
<p><u>PUBLIC WORKS DIRECTOR REPORTS</u></p>	
<p>*8. Amendment to Agreement with Alpha Scapes for maintenance of certain City-owned landscape areas – PUBLIC WORKS DIRECTOR JON CURRY GAVE STAFF REPORT; APPROVED THE AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF TEHACHAPI AND ALPHA SCAPES AND AUTHORIZED THE MAYOR TO SIGN</p>	<p>Approved The Amendment To The Agreement Between The City Of Tehachapi And Alpha Scapes And Authorized The Mayor To Sign Gr/Ni Motion Carried Ab Sm</p>
<p><u>DEVELOPMENT SERVICES DIRECTOR REPORTS</u></p>	
<p>9. Curry and Valley Intersection Improvement Project Notice of Completion – CITY ENGINEER JAY SCHLOSSER GAVE STAFF REPORT; APPROVED THE NOTICE OF COMPLETION FOR THE CURRY AND VALLEY INTERSECTION IMPROVEMENT PROJECT AND DIRECTED STAFF TO RECORD SAME</p>	<p>Approved The Notice Of Completion For The Curry And Valley Intersection Improvement Project And Directed Staff To Record Same Ni/Wa Motion Carried Ab Sm</p>
<p><u>POLICE CHIEF REPORTS</u></p>	
<p>*10. Resolution amending the Employee Personnel Manual to include an annual uniform allowance for uniformed Police Department personnel who are not represented by the Tehachapi Police Officers Association – ADOPTED RESOLUTION 04-16 ADDING SECTION 3B, ITEM 6D (UNIFORM ALLOWANCE) TO THE RULES AND REGULATIONS FOR ADMINISTRATION OF THE PERSONNEL SYSTEM</p>	<p>Adopted 04-16 Resolution Adding Section 3b, Item 6d (Uniform Allowance) To The Rules And Regulations For Administration Of The Personnel System Gr/Ni Motion Carried Ab Sm</p>

ACTION TAKEN

CITY ATTORNEY REPORTS

- *11. The City Attorney's Spring Conference sponsored by the League of California Cities will be on May 4 – 6, 2016 in Newport Beach. The registration fee is \$625.00 and a one (1) night stay in the hotel is \$199.00. A range of subjects relevant to the City will be covered including Medical Marijuana, Conservation Based Water Rates, and Proposition 218 Requirements as well as Municipal Litigation Updates, and Labor and Employment Updates. The cost to the City would be \$275.00 – **APPROVED FOR THE CITY ATTORNEY TO ATTEND CITY ATTORNEY'S SPRING CONFERENCE FOR MAXIMUM COST OF \$275.00**

Approved For The City Attorney To Attend City Attorney's Spring Conference For Maximum Cost Of \$275.00
Gr/Ni Motion Carried
Ab Sm

ASSISTANT CITY MANAGER REPORTS

12. Social Media Policy – **ASSISTANT CITY MANAGER CHRIS KIRK GAVE STAFF REPORT; APPROVED THE CITY OF TEHACHAPI SOCIAL MEDIA POLICY**

Approved The City Of Tehachapi Social Media Policy
Gr/Ni Motion Carried
Ab Sm

CITY MANAGER REPORTS

13. Report to Council regarding current activities and programs – **VERBAL REPORT.**

COUNCIL MEMBER ANNOUNCEMENTS OR REPORTS

14. Councilmember Wahlstrom - **Status of appeal by Guy and Jennifer Williams and how councilmembers speak in the public to the public**
15. Councilmember Grimes commented on the success of the Valentine Wine Walk
16. Mayor Wiggins commented on the success of the Valentine Wine Walk

CLOSED SESSION

1. Conference with real property negotiator (City Manager) regarding first right of refusal of Airport property described as Hangars 02W, 07W, 08W and 09W, per Government Code Section 54956.8

Directed Staff To Exercise The City's First Right Of Refusal
Ni/Wi Motion Carried
Ab Sm

ADJOURNMENT

The City Council/Boards adjourned at 7:15 pm to a Tehachapi City Council, Tehachapi Redevelopment Successor Agency, Tehachapi Public Financing Authority and Tehachapi City Financing Corporation Regular Meeting to be held on Monday, March 7, 2016, at 6:00p.m.

Tehachapi City Council Regular Meeting – Tuesday, February 16, 2016
Tehachapi Redevelopment Successor Agency Regular Meeting
Tehachapi Public Financing Authority Regular Meeting And
Tehachapi City Financing Corporation Regular Meeting

ACTION TAKEN

<p>Approved this 7th day Of March, 2016.</p> <hr/> <p>SUSAN WIGGINS Mayor, City of Tehachapi</p>	
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TORI MARSH
City Clerk, City of Tehachapi



COUNCIL REPORTS

APPROVED

DEPARTMENT HEAD: *[Signature]*

CITY MANAGER: *[Signature]*

MEETING DATE: MARCH 7, 2016 AGENDA SECTION: CITY CLERK

TO: HONORABLE MAYOR SMITH AND COUNCIL MEMBERS

FROM: ASHLEY WHITMORE, DEPUTY CITY CLERK

DATE: MARCH 3, 2016

SUBJECT: DISPOSITION OF PROPERTY

BACKGROUND

The City is in possession of a number of items which are either inoperable or no longer serve a purpose for City business. Staff intends to use GovDeals.com or a similar site to auction these items. Prior to donating, selling or disposing of any items, the City Council must adopt a resolution authorizing their disposition.

A list of items set for disposition is attached.

RECOMMENDATION

ADOPT A RESOLUTION AUTHORIZING THE DISPOSITION OF PERSONAL PROPERTY

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
TEHACHAPI AUTHORIZING THE DISPOSITION OF PERSONAL
PROPERTY**

WHEREAS, the City of Tehachapi ("City") has in its possession numerous items of personal property which are either outdated or inoperable, a list of which is attached hereto as Exhibit "A" and by this reference made a part hereof; and

WHEREAS, as to those items listed as "Outdated", they are not able to be updated and therefore have no value for continued use; and

WHEREAS, as to those items identified as "Inoperable", they are either irreparable or cannot be made operable at a cost which justifies doing so; and

WHEREAS, pursuant to Government Code Section 37350, the City Council of the City of Tehachapi has the authority to sell, give or otherwise dispose of said personal property in any manner that it chooses.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEHACHAPI that the personal property described in Exhibit "A" shall be sold at public bids, donated, or disposed of at the landfill in a manner as is authorized by law.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Tehachapi
at a regular meeting this 7th day of March, 2016.

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

SUSAN WIGGINS, Mayor
of the City of Tehachapi, California

ATTEST:

Tori Marsh
City Clerk of the City of Tehachapi, California

I hereby certify that the foregoing resolution was duly and regularly adopted by
the City Council of the City of Tehachapi at a regular meeting thereof held on March 7, 2016.

Tori Marsh
City Clerk of the City of Tehachapi, California

Item

- | | |
|--|---------------------------------|
| 1. Unit TE-01, 2007 Crown Victoria,
VIN#2FAHP71W87X139501 | Reached useful service lifespan |
| 2. Unit TE-03, 2007 Crown Victoria,
VIN#2FAHP71WX7X139497 | Reached useful service lifespan |
| 3. Unit TE-08, 2003 Crown Victoria,
VIN#2FAFP71WX3X146371 | Reached useful service lifespan |
| 4. Unit TE-09, 2008 Expedition,
VIN#1FMFU16588LA19523 | Reached useful service lifespan |
| 5. Unit TE-10, 2008 Expedition,
VIN#1FMFU165X8LA19524 | Reached useful service lifespan |
| 6. 2002 BMW Motorcycle,
VIN#WB10499AX2ZE88764 | Reached useful service lifespan |
| 7. Fargo High Def ID Card Printer
Model# 088000 | Inoperable |

City of Tehachapi
Council Batch List
2016.02.10908

Vendor#	Vendor Name	Account	Invoice#	Amount	Date
27	Atco International	444-403-7430-000	I0453723	2447.09	2/18/2016
27	Atco International	001-000-2127-000	I0453723-1	198.41	2/18/2016
35	BC Laboratories Inc.	442-401-6780-000	B225979	25	2/6/2016
35	BC Laboratories Inc.	442-403-6780-000	B225979-1	36	2/6/2016
35	BC Laboratories Inc.	444-403-6780-000	B225693	325	2/5/2016
35	BC Laboratories Inc.	444-403-6780-000	B226243	325	2/11/2016
35	BC Laboratories Inc.	444-403-6780-000	B226770	36	2/18/2016
136	Environmental Concepts	121-121-7131-000	216130	3918.63	2/17/2016
182	P&J Electric Inc.	442-401-7120-000	5168	3232.4	2/2/2016
193	Hach Company	444-403-6080-000	9788388	143.56	2/9/2016
241	Kern Bros. Trucking Inc.	447-447-7100-000	2201	743.2	2/15/2016
241	Kern Bros. Trucking Inc.	121-121-7131-000	2076	599.04	2/1/2016
241	Kern Bros. Trucking Inc.	442-403-7150-000	2144	597.42	2/10/2016
260	Liebert Cassidy Whitmore	001-100-6740-000	1416801	529	1/31/2016
260	Liebert Cassidy Whitmore	001-100-6740-000	1416802	845	1/31/2016
263	Lebeau Thelen LLP	001-100-6740-000	4	525	1/31/2016
263	Lebeau Thelen LLP	001-010-6741-002	56	5365.5	1/31/2016
300	Mission Linen & Uniform Service	444-403-6730-000	501904187	49.4	2/16/2016
300	Mission Linen & Uniform Service	444-403-6730-000	501859007	49.4	2/9/2016
300	Mission Linen & Uniform Service	001-030-6730-000	501859006	99.1	2/9/2016
300	Mission Linen & Uniform Service	001-030-6730-000	501904186	104.52	2/9/2016
300	Mission Linen & Uniform Service	001-030-6730-000	501947876	99.1	2/23/2016
300	Mission Linen & Uniform Service	444-403-6730-000	501947877	49.4	2/23/2016
362	RSI Petroleum Products	001-030-7400-000	291310	688.18	2/17/2016
362	RSI Petroleum Products	001-030-7400-000	291047	655.1	2/9/2016
362	RSI Petroleum Products	001-030-7400-000	290826	724.73	2/2/2016
372	Southern California Edison	001-010-7300-000	2202016-A	628.22	2/20/2016
372	Southern California Edison	001-080-7300-000	2202016-B	243.65	2/20/2016
372	Southern California Edison	001-010-7300-000	2242016	138.31	2/24/2016
372	Southern California Edison	001-030-7300-000	2202016-C	99.49	2/20/2016
372	Southern California Edison	121-121-7520-000	2242016-A	93.42	2/24/2016
372	Southern California Edison	001-030-7300-000	2202016-D	124.56	2/20/2016
372	Southern California Edison	001-035-7102-000	2242016-B	169.17	2/24/2016
372	Southern California Edison	001-030-7300-000	2202016-E	91.71	2/20/2016
372	Southern California Edison	121-121-7520-000	2242016-C	175.05	2/24/2016
372	Southern California Edison	001-030-7300-000	2202016-F	205.62	2/20/2016
372	Southern California Edison	001-120-7300-000	2242016-D	252.67	2/24/2016
372	Southern California Edison	444-403-7300-000	2202016-G	318.83	2/20/2016
372	Southern California Edison	001-100-7300-000	2252016	1400.34	2/25/2016
372	Southern California Edison	447-447-7300-000	2202016-H	97.75	2/20/2016
372	Southern California Edison	608-608-7520-000	2252016-A	106.38	2/25/2016
372	Southern California Edison	447-447-7300-000	2202016-I	97.01	2/20/2016
372	Southern California Edison	001-010-7300-000	2252016-B	25.08	2/25/2016

372 Southern California Edison	447-447-7300-000	2202016-J	34.92	2/20/2016
372 Southern California Edison	121-121-7520-000	2252016-C	21.93	2/25/2016
372 Southern California Edison	447-447-7300-000	2202016-K	78.1	2/20/2016
372 Southern California Edison	702-702-7510-000	2262016	27.41	2/26/2016
372 Southern California Edison	447-447-7300-000	2202016-L	162.95	2/20/2016
372 Southern California Edison	121-121-7520-000	2262016-A	26.3	2/26/2016
372 Southern California Edison	447-447-7300-000	2202016-M	49.3	2/20/2016
372 Southern California Edison	121-121-7520-000	2262016-B	160.92	2/26/2016
372 Southern California Edison	447-447-7300-000	2202016-N	259.05	2/20/2016
372 Southern California Edison	001-010-7300-000	2262016-C	56.75	2/26/2016
372 Southern California Edison	447-447-7300-000	2202016-O	24.24	2/20/2016
372 Southern California Edison	001-010-7300-000	2262016-D	47.53	2/26/2016
372 Southern California Edison	001-010-7300-000	2262016-E	25.57	2/26/2016
372 Southern California Edison	447-447-7300-000	2202016-P	140.47	2/20/2016
372 Southern California Edison	444-403-7300-000	2262016-F	1486.78	2/26/2016
372 Southern California Edison	447-447-7300-000	2202016-Q	61.23	2/20/2016
372 Southern California Edison	444-403-7300-000	2262016-G	5610.84	2/26/2016
372 Southern California Edison	001-030-7300-000	2262016-H	51.24	2/26/2016
373 Schroeter Attorney @ Law Thomas	001-010-6740-000	2252016	6246.5	2/25/2016
373 Schroeter Attorney @ Law Thomas	442-403-6741-000	2252016-1	130	2/25/2016
373 Schroeter Attorney @ Law Thomas	447-447-6741-000	2252016-2	877.5	2/25/2016
373 Schroeter Attorney @ Law Thomas	001-000-2320-000	2252016-3	-427.24	2/25/2016
395 Gas Company The	001-010-7300-000	2192016	214.79	2/19/2016
395 Gas Company The	447-447-7300-000	2192016-1	122.99	2/19/2016
395 Gas Company The	001-100-7300-000	2192016-2	815.22	2/19/2016
395 Gas Company The	447-447-7300-000	2192016-3	232.51	2/19/2016
395 Gas Company The	001-080-7300-000	2192016-4	388.91	2/19/2016
395 Gas Company The	001-010-7300-000	2172016	91.23	2/17/2016
399 Sparkletts	444-403-6080-000	4.37E+12	20	2/1/2016
445 Tehachapi Senior Center Inc.	001-000-2126-000	2292016	400	2/29/2016
450 USA Bluebook	442-403-7100-000	864903	563.02	2/4/2016
450 USA Bluebook	444-403-6080-000	864926	126.32	2/4/2016
450 USA Bluebook	442-401-7100-000	871100	234.95	2/11/2016
476 WITTS Everything for the Office	001-010-6010-000	140485-0	98.88	2/23/2016
476 WITTS Everything for the Office	447-447-6010-000	140421-0	96.72	2/17/2016
476 WITTS Everything for the Office	001-010-6010-000	140543-0	89.52	2/29/2016
476 WITTS Everything for the Office	001-100-7105-000	140442-0	261.06	2/18/2016
476 WITTS Everything for the Office	001-010-6010-000	140434-0	79.53	2/18/2016
476 WITTS Everything for the Office	001-010-6010-000	140499-0	15.04	2/24/2016
476 WITTS Everything for the Office	001-010-6010-000	140346-0	34.39	2/10/2016
476 WITTS Everything for the Office	001-010-6010-000	140432-0	25.4	2/18/2016
476 WITTS Everything for the Office	001-010-6010-000	140293-0	17.73	2/5/2016
476 WITTS Everything for the Office	001-010-6010-000	140294-0	154.3	2/5/2016
476 WITTS Everything for the Office	001-010-6010-000	140342-0	34.39	2/10/2016
476 WITTS Everything for the Office	001-010-6010-000	140351-0	34.72	2/10/2016
476 WITTS Everything for the Office	001-010-6010-000	140339-0	81.41	2/10/2016
476 WITTS Everything for the Office	001-010-6010-000	140320-0	39.76	2/9/2016

476 WITTS Everything for the Office	001-010-6010-000	140359-0	3.64	2/10/2016
476 WITTS Everything for the Office	001-010-6010-000	140319-0	64.41	2/11/2016
476 WITTS Everything for the Office	001-010-6310-000	140319-1	119.61	2/12/2016
476 WITTS Everything for the Office	001-010-6010-000	140368-0	71.27	2/12/2016
509 Safety-Kleen Systems Inc.	001-030-7120-000	69486023	385.62	2/11/2016
543 BSE Rents	328-328-8160-000	79631	995.93	2/5/2016
897 Mojave's #1 Service Center	001-030-7120-000	1311946	399.78	2/19/2016
956 League of California Cities	001-010-6300-000	7456	137.68	1/20/2016
1055 Mercury Graphics	001-010-6710-000	4742	402.7	2/9/2016
1430 Sully & Sons Hydraulics Inc.	001-030-7120-000	0107174-IN	312.53	2/2/2016
1430 Sully & Sons Hydraulics Inc.	442-403-7120-000	0107174-IN-1	312.53	2/2/2016
1469 Kern County Auditor-Controller-Cou	661-661-6760-000	2242016	50	2/24/2016
1724 Banks Pest Control Inc.	001-100-7300-000	477875	95	1/22/2016
1801 HD Supply Waterworks LTD	442-403-7130-000	F121909	61.56	2/15/2016
1801 HD Supply Waterworks LTD	442-403-8005-000	F096047	651.46	2/5/2016
1801 HD Supply Waterworks LTD	442-403-7130-000	F093341	176.3	2/8/2016
1801 HD Supply Waterworks LTD	442-403-6005-000	F018957	152.36	2/9/2016
1801 HD Supply Waterworks LTD	442-403-8005-000	E909251	2010.87	2/3/2016
1822 Grimes Ed	001-110-6220-000	2172016	49.14	2/17/2016
1947 Tehachapi Lawn and Garden Equipm	001-035-7120-000	2916	14.6	2/9/2016
1982 SSD Systems	447-447-6730-000	1161609-A	39.25	2/12/2016
1982 SSD Systems	001-040-6730-000	1161609-AB	37.01	2/12/2016
1982 SSD Systems	001-080-6730-000	1161609-AC	49	2/12/2016
1982 SSD Systems	001-030-6730-000	1161609-AD	49.66	2/12/2016
1982 SSD Systems	444-403-6730-000	1161609-AE	66.17	2/12/2016
1982 SSD Systems	442-403-6730-000	1161609-AF	54.95	2/12/2016
1982 SSD Systems	001-140-6730-000	1161609-AG	84.37	2/12/2016
1982 SSD Systems	001-100-6730-000	1161609-AH	149.52	2/12/2016
1982 SSD Systems	001-010-6730-000	1161609-AI	37.01	2/12/2016
1982 SSD Systems	447-447-6730-000	1161609-AJ	24.67	2/12/2016
1982 SSD Systems	001-030-7100-000	406363-S	238	2/4/2016
2147 Coffee Break Service Inc.	001-010-6010-000	227139	446.23	2/11/2016
2707 MailFinance	001-010-6730-000	H5800604	454.5	2/24/2016
2752 Fastenal Company	444-403-7106-000	CATEH9807	6.25	2/2/2016
2752 Fastenal Company	444-403-7106-000	CATEH9806	10.59	2/2/2016
2752 Fastenal Company	444-403-6005-000	CATEH9614	124.69	1/29/2016
2776 Consolidated Electrical Dist.	447-447-7100-000	351-518090	520.52	2/3/2016
2827 SymbolArts	001-100-6005-000	0250010-IN	260	2/5/2016
2874 Department of Justice Accounting C	001-000-4325-000	148749	290	2/3/2016
2902 Sim Sanitation Inc	447-447-6730-000	33518	82	2/24/2016
2963 AT&T	001-100-7320-000	7669936	165.95	2/13/2016
2963 AT&T	444-403-7320-000	7647743	20.02	2/6/2016
2963 AT&T	001-100-7320-000	7663308	299.21	2/11/2016
2994 Richards Watson & Gershon	001-010-6765-000	205541	1176.35	2/17/2016
3004 Motor City Auto Center	001-035-7110-000	GCCS779329	2627.2	2/17/2016
3011 Verizon Wireless	001-015-7320-000	9760501547	619.05	2/13/2016
3011 Verizon Wireless	442-403-7320-000	9760501547-	15.01	2/13/2016

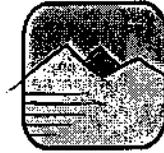
3011 Verizon Wireless	444-403-7320-000	9760501547-	15.01	2/13/2016
3011 Verizon Wireless	001-010-7320-000	9760790405	30.02	2/20/2016
3011 Verizon Wireless	001-080-7320-000	9760697335	38.01	2/18/2016
3011 Verizon Wireless	442-403-7320-000	9760697335-	19	2/18/2016
3011 Verizon Wireless	444-403-7320-000	9760697335-I	19.01	2/18/2016
3011 Verizon Wireless	001-080-7320-000	9760697335-I	38.01	2/18/2016
3011 Verizon Wireless	001-010-7320-000	9760697335-I	38.01	2/18/2016
3011 Verizon Wireless	447-447-7320-000	9760697335-I	38.01	2/18/2016
3011 Verizon Wireless	442-403-7320-000	9760697335-I	14.82	2/18/2016
3011 Verizon Wireless	444-403-7320-000	9760697335-I	14.83	2/18/2016
3011 Verizon Wireless	001-010-7320-000	9760697335-I	29.65	2/18/2016
3011 Verizon Wireless	001-080-7320-000	9760697335-I	29.65	2/18/2016
3011 Verizon Wireless	442-403-7320-000	9760697335-	15.01	2/18/2016
3011 Verizon Wireless	444-403-7320-000	9760697335-I	15.01	2/18/2016
3062 Municipal Code Corporation	001-010-6730-000	266362	500	2/5/2016
3104 Hilltop Publishers	001-010-6320-000	17092	400	2/7/2016
3173 Soto Tire & Wheels	001-030-7110-000	490	160	2/3/2016
3274 Bright House Networks	001-010-7320-000	6.45E+13	173.76	2/15/2016
3674 Secure On-Site Shredding	001-100-6730-000	2672440	35	1/31/2016
3680 Vortex Industries Inc.	444-403-7100-000	42-1004838-1	202	2/10/2016
3680 Vortex Industries Inc.	442-403-7100-000	42-1004838-2	202	2/10/2016
3708 Customized Custodial Services	444-403-6735-000	COT0216SS	620	2/9/2016
3708 Customized Custodial Services	001-010-6735-000	COT0316	979	2/15/2016
3708 Customized Custodial Services	001-100-6735-000	COT0316-A	2145	2/15/2016
3708 Customized Custodial Services	001-140-6735-000	COT0316-B	275	2/15/2016
3708 Customized Custodial Services	001-080-6735-000	COT0316-C	594	2/15/2016
3708 Customized Custodial Services	444-403-6735-000	COT0316-D	583	2/15/2016
3708 Customized Custodial Services	447-447-6735-000	COT0316-E	308	2/15/2016
3708 Customized Custodial Services	001-140-6735-000	COT0316-F	308	2/15/2016
3708 Customized Custodial Services	001-010-6735-000	COT0316-G	495	2/15/2016
3708 Customized Custodial Services	001-100-6735-000	COT0216SS2	565	2/18/2016
3747 The Garage	442-403-7110-000	4874	178.48	2/18/2016
3747 The Garage	442-401-7110-000	4874-1	178.47	2/18/2016
3776 Stewart Gayle	001-000-2190-004	2172016	187.45	2/17/2016
3837 CEMEX Construction Materials Pac I	442-403-7150-000	9412696800	897.79	2/16/2016
3848 O'Reilly Automotive Inc	442-403-7120-000	4447148668	64.46	1/4/2016
3848 O'Reilly Automotive Inc	001-030-7120-000	4447150856	133.72	1/20/2016
3848 O'Reilly Automotive Inc	442-403-7120-000	4447150856-	133.72	1/20/2016
3848 O'Reilly Automotive Inc	121-121-7110-000	4447150989	-44	1/21/2016
3848 O'Reilly Automotive Inc	121-121-7120-000	4447151514	53.2	1/26/2016
3855 Central Valley Occupational Med Gr	001-100-6730-000	5717-12	88	2/11/2016
3924 Good Year Commercial Tire	001-100-7110-000	2301025112	2040.78	2/22/2016
3925 Cal Prime Inc	329-329-8160-000	214004-2	32856.7	3/1/2016
3925 Cal Prime Inc	226-003-8150-001	R06010-6	40776.21	3/1/2016
3977 ARCOR INC	129-129-6730-000	2659-1	4027.5	2/24/2016
3977 ARCOR INC	128-128-6730-000	2659	4027.5	2/24/2016

155015.5

Accounts Payable

Checks by Date - Summary By Check Date

User: afrescas
 Printed: 2/24/2016 - 11:41 AM



CITY OF
TEHACHAPI
 CALIFORNIA

Check Amount

Check No:	44444	Check Date:	02/18/2016	
Vendor:	1729	Vendor Name:	Alpha Landscape Maintenance	17,600.46
Check No:	44445	Check Date:	02/18/2016	
Vendor:	2963	Vendor Name:	AT&T	76.14
Check No:	44446	Check Date:	02/18/2016	
Vendor:	0035	Vendor Name:	BC Laboratories Inc.	282.00
Check No:	44447	Check Date:	02/18/2016	
Vendor:	1505	Vendor Name:	Benz Construction Services	649.07
Check No:	44448	Check Date:	02/18/2016	
Vendor:	0041	Vendor Name:	Benz Propane Company Inc.	2,203.31
Check No:	44449	Check Date:	02/18/2016	
Vendor:	3925	Vendor Name:	Cal Prime Inc	35,625.00
Check No:	44450	Check Date:	02/18/2016	
Vendor:	2752	Vendor Name:	Fastenal Company	432.53
Check No:	44451	Check Date:	02/18/2016	
Vendor:	3972	Vendor Name:	Fence Specialties, Inc.	137.92
Check No:	44452	Check Date:	02/18/2016	
Vendor:	0304	Vendor Name:	Mojave Sanitation	132.36
Check No:	44453	Check Date:	02/18/2016	
Vendor:	3674	Vendor Name:	Secure On-Site Shredding	195.00
Check No:	44454	Check Date:	02/18/2016	
Vendor:	0372	Vendor Name:	Southern California Edison	19,483.80
Check No:	44455	Check Date:	02/18/2016	
Vendor:	0433	Vendor Name:	Tehachapi Recycling	14,725.75
Check No:	44456	Check Date:	02/18/2016	
Vendor:	0434	Vendor Name:	Tehachapi Sanitation	83,799.95
Check No:	44457	Check Date:	02/18/2016	
Vendor:	2676	Vendor Name:	USPS-Hasler	1,000.00
Date Total:				176,343.29
Check No:	44458	Check Date:	02/23/2016	
Vendor:	3973	Vendor Name:	Antelope Valley Economic Resear	2,500.00
Check No:	44459	Check Date:	02/23/2016	
Vendor:	2963	Vendor Name:	AT&T	873.11
Check No:	44460	Check Date:	02/23/2016	
Vendor:	1097	Vendor Name:	Hannah H. Chung	231.12
Check No:	44461	Check Date:	02/23/2016	
Vendor:	3708	Vendor Name:	Customized Custodial Services	5,170.00
Check No:	44462	Check Date:	02/23/2016	
Vendor:	0565	Vendor Name:	CWEA	164.00
Check No:	44463	Check Date:	02/23/2016	
Vendor:	2478	Vendor Name:	DataProse Inc.	1,644.53
Check No:	44464	Check Date:	02/23/2016	
Vendor:	3844	Vendor Name:	Franchise Tax Board	373.00

Check No:	44465	Check Date:	02/23/2016	
Vendor:	3104	Vendor Name:	Hilltop Publishers, Home of the L	2,300.00
Check No:	44466	Check Date:	02/23/2016	
Vendor:	1286	Vendor Name:	M&M's Sports Uniforms & Embro	1,450.18
Check No:	44467	Check Date:	02/23/2016	
Vendor:	2236	Vendor Name:	Pacific West Sound Inc.	915.90
Check No:	44468	Check Date:	02/23/2016	
Vendor:	0689	Vendor Name:	Pioneer True Value Home Center	139.75
Check No:	44469	Check Date:	02/23/2016	
Vendor:	3199	Vendor Name:	Slick Fish Marketing Co.	1,119.00
Check No:	44470	Check Date:	02/23/2016	
Vendor:	3903	Vendor Name:	South Street Digital, Inc	220.33
Check No:	44471	Check Date:	02/23/2016	
Vendor:	0372	Vendor Name:	Southern California Edison	4,941.80
Check No:	44472	Check Date:	02/23/2016	
Vendor:	3622	Vendor Name:	Van Lant & Fankhanel LLP	27,500.00
Check No:	44473	Check Date:	02/23/2016	
Vendor:	3011	Vendor Name:	Verizon Wireless	819.40
Date Total:				50,362.12
Report Total:				226,705.41



APPROVED	
DEPARTMENT HEAD:	
CITY MANAGER:	

COUNCIL REPORTS

MEETING DATE: MARCH 7, 2016 AGENDA SECTION: FINANCE

TO: HONORABLE MAYOR WIGGINS AND COUNCIL MEMBERS

FROM: HANNAH CHUNG, FINANCE DIRECTOR

DATE: MARCH 1, 2016

SUBJECT: PUBLIC HEARING AND PROPOSED RESOLUTION DEALING with TRANSIT NEEDS WITHIN THE CITY

BACKGROUND

As part of the annual Public Transit Claim for Transportation Development Act (TDA) funds, it is necessary to conduct a public hearing to receive public testimony concerning the transit needs within the City.

The City of Tehachapi provides the transit service Dial-A-Ride through Kern Regional Transit. Utilizing two buses, the current transit service operating hours are as follows:

Monday through Friday:	05:45 am to 11:45 am
	12:45 pm to 04:00 pm
	05:15 pm to 07:00 pm
Saturday:	07:30 am to 11:30 am
	01:30 pm to 05:30 pm

The Dial-A-Ride services are available within the city limit of Tehachapi as well as between the City and certain areas of the County. The current one-way fares are as listed below:

General Public	\$1.00	Seniors (62 and over)	\$0.75
Disabled	\$0.75	Youth (5 ~ 15)	\$0.75
Children 4 and under	Free		

Ridership increased 25% in fiscal year 2014/15 whereas total costs increased 7%. This is the kind of trend the City is looking for. As a result, the average cost per rider in 2014/15 was \$27.95 which was \$4.43 less (or 14% less) than the average cost per rider in 2013/14. However, the City still does not meet the 10% farebox ratio (ratio of farebox revenue to total expense) requirement. The current ratio is approximately 3%.

The efforts to inform residents about the Dial-A-Ride transit service continue by communicating through utility billings as well as the City's newsletter, Talk It Up.

The City is required to adopt a resolution annually proving that "there are no areas within the City with unmet public transit needs which could be reasonably met by expansion of the existing system or establishment of a new system." This resolution also authorizes the City Manager to execute and file claims for TDA apportionment and allocations for FY 2016-17. The public hearing notice was published in the Tehachapi News on February 2, 2016.

FISCAL IMPACT

This resolution allows the City to file for TDA funds that are used both for transit needs and our public roads. The TDA apportionment for the fiscal year 2015/16 for the City was \$656,905. The apportionment for the fiscal year 2016/17 is not available yet.

RECOMMENDATION

ADOPT THE RESOLUTION FINDING THAT THERE ARE NO UNMET TRANSIT NEEDS THAT ARE REASONABLE TO MEET WITHIN THE CITY.

City of Tehachapi
Tehachapi Dial-A-Ride from July 1, 2014 through June 30, 2015

G:\Transit\TDA\10-11 TDA Sch B Allocation.xls\TDA10-11B

Month	Days of Service		Operating Hours		Ridership		Mileage		Fairbox Revenue \$		Expenditure \$	
	City	County	City	County	City	County	City	County	City	County	City	County
July	26	26	172.8	172.8	413.5	413.5	2157	2157	337.22	337.22	11,978.72	11,978.72
August	26	26	175.2	175.2	534	534	2189	2169	435.88	427.98	11,975.41	11,983.31
September	25	25	179	179	618.0	618.00	2292.5	2292.5	484.89	484.89	12,283.21	12,283.21
October	27	27	194.3	194.3	759	759	2777	2777	590.37	590.37	13,783.21	13,783.21
November	27	27	187.3	187.3	545.5	545.5	2045.5	2045.5	449.97	449.97	11,654.20	11,654.20
December	24	24	186.5	186.5	621	621	2220	2220	501.42	501.42	12,776.99	12,778.99
January	26	26	178.8	178.8	684	684	2522	2522	547.73	547.73	12,527.33	12,527.33
February	24	24	171	171	659.5	659.5	2249	2249	533.29	533.29	11,803.13	11,803.13
March	26	26	186.5	186.5	640	640	2489.5	2489.5	511.09	511.09	12,967.72	12,967.72
April	26	26	186.5	186.5	651	651	2254	2254	543.63	543.63	12,799.37	12,799.37
May	25	25	175	175	581	581	2169	2169	498.75	498.75	12,124.42	12,124.42
June	26	26	186.5	186.5	350.5	350.5	1682	1682	302.90	302.90	12,519.23	12,519.23
Total	308	308	2,159	2,159	7,057	7,057	27,027	27,027	\$5,737.14	\$5,729.24	\$149,194.94	\$149,202.84
Average	25.67	25.67	179.95	179.95	588	588	2,252.21	2,252.21	\$ 478.10	\$ 477.44	\$ 12,432.91	12,433.57
	Days per Month		Operating Hrs per Mo.		Passengers per Month		Miles per Month		Avg Fairbox Revenue/Mo.		Avg Expense/ Mo.	

1.2461593

\$1.27

RIDERSHIP

	General Public		Seniors		Disabled		Youth			Total Passengers
	within zone	B/W zones	within zone	B/W zones	within zone	B/W zones	within zone	B/W zones	Non Paying	
July	170.5	10	99.5	13.5	81.5	13	2.5	1	22	414
August	226.5	22	82	9	85	4.50	71	0.05	33.5	534
September	205.5	58.5	68	6.5	107	18	93.50	7	54	618
October	273.50	42.50	92.50	8.00	94.50	25.00	137.00	14.00	72.00	759
November	224.5	19.5	97	10.50	81.5	25	78	6.00	23.5	546
December	230.50	29.50	109.50	11.00	70.50	40.50	84.00	11.50	34.00	621
January	274.00	32.00	90.50	7.00	72.50	14.00	122.00	20.50	51.50	684
February	242.50	36.50	92.50	4.00	83.00	18.00	118.00	28.50	36.50	660
March	222.50	45.50	90.00	8.00	90.50	19.00	122.00	0.00	43.50	641.00
April	233.00	36.50	346.00	19.50	0.00	0.00	0.00	0.00	16.00	651
May	222.00	45.00	299.00	10.00	0.00	0.00	0.00	0.00	5.00	581
June	155.00	30.00	134.50	26.00	0.00	0.00	0.00	0.00	5.00	351
Total	2,680	408	1,801	133	746	177	828	89	397	7,058
	3,088		1,734		923		1,313			
Percentage	44%		25%		13%		19%			100%

OPERATIONAL CONTRACT COSTS

CITY ONLY										Total
	First Transit	Insurance	Maint	Fuel	Depreciation	Storage	CHP Cert	Advertising	Misc	
July	8,366.62	243.84	1,317.32	582.44	334.40	102.50	6.25	0.00	1,362.57	12,315.94
August	8,475.01	248.62	1,324.32	543.89	333.96	102.50	6.25	0.00	1,376.74	12,411.29
September	8,671.12	252.46	1,399.89	569.05	354.13	102.50	6.25	0.00	1,412.70	12,768.10
October	9,414.10	273.51	1,695.62	918.54	428.07	102.50	6.25	0.00	1,534.99	14,373.58
November	8,086.22	237.61	1,249.82	787.79	321.25	102.50	6.25	0.00	1,312.73	12,104.17
December	9,036.52	262.81	1,355.99	698.00	345.50	102.50	6.25	0.00	1,472.84	13,280.41
January	8,658.94	252.12	1,540.21	713.54	390.80	102.50	6.25	0.00	1,410.68	13,075.04
February	8,281.36	241.42	1,373.46	634.59	348.31	102.50	6.25	0.00	1,348.54	12,336.43
March	9,036.52	262.81	1,520.09	693.93	383.86	102.50	6.25	0.00	1,472.85	13,478.81
April	9,086.28	257.37	1,374.94	681.82	338.10	102.50	6.25	0.00	1,495.73	13,342.99
May	8,526.00	241.50	1,323.09	694.98	325.35	102.50	6.25	0.00	1,403.50	12,623.17
June	9,086.28	257.37	1,026.02	595.68	252.30	102.50	6.25	0.00	1,495.73	12,822.13
Total	104,724.97	3,031.44	16,500.77	8,114.25	4,156.03	1,230.00	75.00	0.00	17,099.60	154,932.06

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
TEHACHAPI FINDING THAT THERE ARE NO UNMET
TRANSIT NEEDS THAT ARE REASONABLE TO MEET WITHIN
THE CITY.**

WHEREAS, the City of Tehachapi City Council conducted a public hearing on Monday, March 7, 2016, to consider possible unmet transit needs within the City, and;

WHEREAS, the City of Tehachapi currently provides public transportation service within the City of Tehachapi, and;

WHEREAS, the objectives of providing the public transportation system are to meet the public need for limited cost transportation, to serve the mobility limited population, and to provide an alternative to private vehicle transportation.

NOW, THEREFORE, BE IT RESOLVED by the City of Tehachapi City Council that, after holding a duly advertised public hearing and receiving public testimony, it finds there are no areas within the City with unmet public transit needs which could be reasonably met by expansion of the existing system or establishment of a new system.

BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to the Kern County Council of Governments in conjunction with the filing of claims for Transportation Development Act Funds for Fiscal Year 2016-17 and that the City Manager is authorized to execute said claims.

PASSED AND ADOPTED by the City Council of the City of Tehachapi this 7th day of March, 2016.

AYES: _____

NOES: _____

ABSENT: _____

ABSTAIN: _____

SUSAN WIGGINS, Mayor
of the City of Tehachapi, California

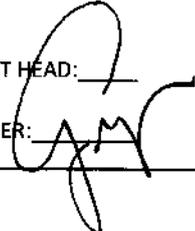
ATTEST:

TORI MARSH
City Clerk of the City of Tehachapi, California

I hereby certify that the foregoing resolution was duly and regularly adopted by the City Council of the City of Tehachapi at a regular meeting thereof held on March 7, 2016.

TORI MARSH
City Clerk of the City of Tehachapi, California

COUNCIL REPORTS

APPROVED
DEPARTMENT HEAD: _____
CITY MANAGER: 

MEETING DATE: March 7th, 2016 **AGENDA SECTION:** Public Works Director

TO: **HONORABLE MAYOR WIGGINS AND COUNCIL MEMBERS**

FROM: **JON CURRY, PUBLIC WORKS DIRECTOR**

DATE: **March 2nd, 2016**

SUBJECT: **ADOPTION OF THE INJURY AND ILLNESS PREVENTION PROGRAM**

BACKGROUND

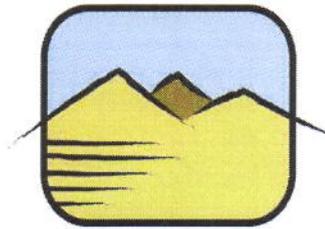
In May of 2013, the City Council adopted the Injury and Illness Prevention Plan (IIPP) that was presented by Staff. Due to changes and updates in Occupational Safety and Health (OSHA) regulations and guidelines, the time has come to update the City's IIPP. By OSHA definition "an injury and illness prevention program is a proactive process to help employers find and fix workplace hazards before workers are hurt." Staff has conferred with the Central San Joaquin Valley Risk Management Authority (CSJVRMA) to develop the 2016 update to the IIPP. The IIPP will outline the commitment of management, the responsibility of the employees and establish the basis for a safe, healthy and productive workplace.

This updated IIPP will serve as the backbone of the City's Workplace Safety Program and covers the required areas of:

- Responsibility and Authority
- Safety Compliance
- Hazard Communication
- Hazard Assessment
- Accident/Incident Investigation
- Hazard Correction
- Training and Instruction
- Recordkeeping and Documentation

RECOMMENDATION

Adopt the Injury and Illness Prevention Program (IIPP)



CITY OF
TEHACHAPI
CALIFORNIA

Injury Illness Prevention Plan
Revised: February 2016

City of Tehachapi Injury Illness Prevention Program (IIPP)

Policy

The City of Tehachapi has established this written Injury and Illness Prevention Program (IIPP) in accordance with Title 8, California Code of Regulations, Section 3203, of the General Industry Safety Orders. All employees are required to comply with our safety and health policies and practices. This includes employees at every level and in all positions.

Our chosen profession is neither free of inherent hazard nor free of risk. However, we believe that there is always a way to safely perform our work assignments. We are committed eliminating or controlling hazards we deal with on a daily basis to ensure that our employees return home safely at the end of each day.

This IIPP includes the following elements:

- Responsibility and Authority
- Compliance
- Communication
- Hazard Assessment
- Accident/Incident Investigations
- Hazard Correction
- Training and Instruction
- Record Keeping

Responsibility and Authority

The Public Works is the designated IIPP Administrator and has the authority and responsibility for implementing and maintaining this IIPP. The Public Works Direct has the authority to designate an individual manager or supervisor to be the designated IIPP Administrator if necessary.

Managers and supervisors are responsible for implementing and maintaining the IIPP in their work areas and for answering employee questions about the IIPP. Employees are responsible for understanding and following the requirements of the IIPP and for asking questions when direction is unclear.

Our safety core values begin with each and every employee. We all have an obligation to ourselves, our co-workers, and others who depend on us to operate in a safe and efficient manner, maintain a safe and controlled work place, report safety hazards and to immediately correct safety hazards we have control over.

Compliance

The system to ensure all employees comply with these practices includes the following:

- Informing employees of the requirements within our IIPP in a readily understandable language

- Training all employees on general safety policies, rules, and work practices
- Recognizing employees who perform safe and healthful work practices
- Providing additional training to employees whose safety performance is deficient
- Disciplining employees for failure to comply with safe and healthful work practices

Communication

All managers and supervisors are responsible for communicating with all employees about occupational safety and health in a form readily understandable by all employees. Our communication system encourages all employees to inform their managers and supervisors about workplace hazards without fear of reprisal. Employees can report workplace hazards anonymously by utilizing the Safety Suggestion Boxes in their respective department. These suggestions are reviewed on a Quarterly basis by the Safety Committee and corrective action (if needed) is delegated to the Department Heads. If imminent hazards are noticed, staff must report these items immediately to their supervisor. The Supervisor must ensure these hazards are addressed immediately.

Our communication system includes:

- New employee orientation including a discussion of safety and health policies and procedures. New employees will be given initial training and documentation for the City of Tehachapi's Safety Programs and Policies as well as a copy of the most current IIPP.
- Review of our IIPP
- Safety training programs
- Regularly scheduled safety meetings
- Posted or distributed safety information
- A safety committee that includes employee participation from multiple departments

Safety Committee

The City of Tehachapi has established a Safety Committee that is comprised of staff from multiple departments within the City. The goal and mission of the Safety Committee is twofold; to ensure our employees remain free of injury and illness, and to assist all personnel achieve success in safety. This will be accomplished by providing the needed resources, expertise and oversight. The Safety Committee's responsibilities include:

- Meeting at a minimum of once per quarter
- Promoting and encouraging the core value of safety
- Provide support and safety resources to the jobsites and workplaces as needed
- Provide safety consultation and guidance to jobsites and office locations
- Coach and mentor all employees on safe behaviors and safe operations
- Ensuring that all required safety programs are written and updated as required and that training on these programs is offered
- Ensuring that all safety requirements and programs are provided to the management or employees in a manner that is clearly understood
- Ensuring that resources for safety meetings and discussions are available to those as needed
- Provide training or arrange for training on specialized safety processes or regulations as needed
- Review all safety suggestions and comments from staff in a timely manner to ensure

deficiencies are properly mitigated

- Prepares and makes available to the affected employees, written records of the safety and health issues discussed at the committee meetings and, maintained for review by the Division upon request. The committee meeting records shall be maintained for at least one (1) year
- Reviews results of the periodic, scheduled worksite inspections
- Reviews investigations of occupational accidents and causes of incidents resulting in occupational injury, occupational illness, or exposure to hazardous substances and, where appropriate, submits suggestions to management for the prevention of future incidents
- Reviews investigations of alleged hazardous conditions brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspection and investigation to assist in remedial solutions

Hazard Assessment

Periodic inspections will be conducted to evaluate physical hazards, use of hazardous materials, and safe work practices. The Public Works Director will determine who will conduct these inspections. The inspections may be conducted by City Staff and/or a third party consulting firm. The schedule for inspections are listed below:

Location	Inspection Frequency
City Hall	Quarterly
City Hall Annex	Quarterly
Police Department	Quarterly
Wastewater Treatment Plant	Monthly
Public Works Yard	Monthly
Airport Work Areas	Monthly

In addition to the department periodic inspection schedule, inspections will be conducted as required in the following situations:

- When we initially established our IIPP;
- When new substances, processes, procedures, or equipment that present potential new hazards are introduced into our workplace;
- When new, previously unidentified hazards are recognized;
- When occupational injuries and illnesses occur; and
- Whenever workplace conditions warrant an inspection

Hazard Correction

When unsafe or unhealthy work conditions, practices, or procedures are observed or discovered, they will be corrected in a timely manner based on the severity of the hazards. When an imminent hazard exists that cannot be immediately corrected, the exposed employees will be removed from the immediate hazard except those needed to correct the condition and to address security

issues. Employees who are required to correct the hazardous condition will be provided with the necessary protection.

Accident/Incident Investigations

Procedures for investigating workplace accidents and hazardous substance exposures include:

- Interviewing injured employees and witnesses;
 - Examining the workplace for factors associated with the accident/exposure;
 - Determining the cause of the accident/exposure;
 - Taking corrective action to prevent the accident/exposure from reoccurring; and
 - Recording the findings and actions taken.
- The Public Works Director has the authority to appoint an Investigation Team to determine the cause of the accident/exposure. This team can be made up of City Staff, Outside Agencies or Consulting Firms. If the accident/exposure involves the Public Works Director the City Manager would have the authority to appoint the investigation team.

Training and Instruction

All employees will participate in safety training on general and job-specific hazards and safe work practices. Each supervisor and manager will be trained on all health and safety hazards to which employees under their immediate direction and control are exposed.

The designated IIPP Administrator or appointed designee shall ensure that training material, resources, and other needs are available to all who require them.

In addition to hazard-specific safety training, training will be provided when:

- The IIPP is first established
- New employees are hired
- Employees are reassigned to a new area or task with no prior training
- New substances, operations, or equipment are introduced
- Weekly Tail Gate Training (For Public Works and Utilities Staff)

Record Keeping

All the following IIPP documentation is maintained for three years:

- Safety training for each employee, including the employee's name, training dates, type of training, and training providers
- Inspections, including the person(s) conducting the inspection; the unsafe conditions and work practices identified; corrective action, and follow up
- Accidents, illnesses, and near-miss inspections that identify the root cause and corrective action taken
- Safety committee meeting minutes
- Weekly Tail Gate Training
- Annual program reviews

This IIPP shall go into effect on: _____

Most recent update of this IIPP was conducted by the City of Tehachapi's Safety Committee in February 2016

Safety Director's Signature: _____

Public Works Director

City Manager's Signature: _____

Greg Garrett, City Manager



COUNCIL REPORTS

APPROVED
DEPARTMENT HEAD: 
CITY MANAGER: 

MEETING DATE: MARCH 7, 2016 AGENDA SECTION: DEVELOPMENT SERVICES

TO: HONORABLE MAYOR WIGGINS AND COUNCIL MEMBERS

FROM: JOHN (JAY) SCHLOSSER, P.E.

DATE: FEBRUARY 25, 2016

SUBJECT: MINOR SUPPORT SERVICES AGREEMENTS FOR DEVELOPMENT SERVICES (INFORMATION ONLY)

BACKGROUND

On August 12, 2012, and December 7, 2015, the City Council approved the minor engineering support services agreement template and the minor planning and building support services agreement template, respectively. These agreements authorize the City Manager to execute all future minor engineering, planning and building support services agreements, up to a maximum value of \$15,000.00, in support of Council authorized projects and budgeted activities. Council also requested a report of these contracts be made on a re-occurring basis at the next council meeting.

DESCRIPTION

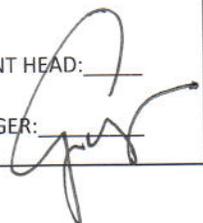
In February 2016, the City Manager authorized an agreement with Hughes Surveying Incorporated in the amount of \$15,000.00. Hughes Surveying performs minor surveying tasks associated with property and right-of-way boundaries on capital projects.

THIS REPORT IS PROVIDED FOR INFORMATION ONLY



COUNCIL REPORTS

APPROVED
DEPARTMENT HEAD: _____
CITY MANAGER: _____

A handwritten signature in black ink is written over the signature lines of the approval box.

MEETING DATE: MARCH 7, 2016 **AGENDA SECTION:** DEVELOPMENT SERVICES

TO: HONORABLE MAYOR WIGGINS AND COUNCIL MEMBERS

FROM: JAY SCHLOSSER, DEVELOPMENT SERVICES DIRECTOR
JON CURRY, PUBLIC WORKS DIRECTOR

DATE: MARCH 2, 2016

SUBJECT: CALENDAR YEAR 2016 CONSTRUCTION PROJECTS UPDATE (INFORMATION ONLY)

BACKGROUND

As the City Council is aware, the Development Services Department is responsible for managing the Capital Improvements Program for the City of Tehachapi. In parallel, the Public Works Department is responsible for maintenance of City public assets. Each year, these departments undertake a series of improvement efforts to rehabilitate failing assets, expand the capacity of current facilities, or generally improve the community through the construction of a new amenity. In order to efficiently execute this work, Staff meets on a reoccurring basis to plan and schedule these activities. Staff recently met to schedule our expected work for calendar year 2016.

THIS REPORT IS PROVIDED FOR INFORMATION ONLY

2016 Capital Improvements Schedule

Updated: 3/2/2016

		2016																																															
		February					March					April					May					June				July				August				September				October				November				December			
Project #	Project Name	2/1	2/8	2/15	2/22	2/29	3/7	3/14	3/21	3/28	4/4	4/11	4/18	4/25	5/2	5/9	5/16	5/23	5/30	6/6	6/13	6/20	6/27	7/4	7/11	7/18	7/25	8/1	8/8	8/15	8/22	8/29	9/5	9/12	9/19	9/26	10/3	10/10	10/17	10/24	10/31	11/7	11/14	11/21	11/28	12/5	12/12	12/19	12/26
R-06010	Tehachapi Blvd. Imp. Phase III/Dennison Widening																																																
S-13004	Recycled Water Pump Station																																																
W-13016	Snyder Well Intertie																																																
Z-14004	Freedom Plaza																																																
R-14014	HSIP East Tehachapi Signalization																																																
R-14003	Tehachapi Blvd. Rehab Phase III																																																
R-15004	Valley Blvd. Bikeway Phase II																																																
G-12011	Event Center Infrastructure Phase I																																																
Z-15017	Moto-Cross Track																																																
R-14013	Mill St./Capital Hills Pkwy. Rehab.																																																
R-15018	Industrial Pkwy Extension																																																
R-15005	SRTS Gap Closure Project																																																
R-15010	Tehachapi Blvd. Class I Bike Lane Phase I																																																
R-14015	Tucker Road Rehab																																																
R-16005	Rail Corridor Pedestrian Safety Project																																																
G-160XX	Northside Sidewalk Project																																																
R-170XX	FY '17 RSTP Project																																																
Z-14004	Freedom Plaza Visitor Center																																																

Design	
Bidding	
Construction	
Close Out	
Other	



APPROVED
DEPARTMENT HEAD: _____
CITY MANAGER: _____

[Handwritten signature]

COUNCIL REPORTS

MEETING DATE: March 7, 2016 AGENDA SECTION: City Attorney

TO: HONORABLE MAYOR WIGGINS AND COUNCIL MEMBERS

FROM: TOM SCHROETER, CITY ATTORNEY

DATE: MARCH 2, 2016

SUBJECT: COUNTY REQUESTED ORDINANCES REGARDING FOOD SAFETY EDUCATION, PSYCHOACTIVE BATH SALTS, PSYCHOACTIVE HERBAL INCENSE (SPICE) & OTHER SYNTHETIC DRUGS, AND TOBACCO RETAILERS PERMITS

BACKGROUND

Recently, the Kern County Board of Supervisors adopted three (3) ordinances that establish standards for the requirement of individuals to attend Food Safety Education courses and to pass a competency examination when found to have posed to the risk and safety of the community; declare certain activities involving synthetic drugs to be a public nuisance and subject to all available civil remedies and provide the County of Kern with reasonable measures to address the dangers to the community that are not regulated by the State or Federal law; and prohibit any person from acting as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer's permit and to set forth the terms and conditions of obtaining the permit. The Environmental Health Division, which is the designated enforcement agency, in order to ensure uniform policy countywide, is recommending the City update its ordinances to include the same language.

RECOMMENDATION

ADOPT THREE ORDINANCES – (1) ADOPTING ORDINANCE NO. G-8612 OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN, STATE OF CALIFORNIA ADDING CHAPTER 8.59 TO TITLE 8 OF THE KERN COUNTY ORDINANCE CODE REGARDING FOOD SAFETY EDUCATION; (2) ADDING CHAPTER 9.36 TO THE TEHACHAPI MUNICIPAL CODE WHICH ADOPTS ORDINANCE NO. G-8602 OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN, STATE OF CALIFORNIA ADDING CHAPTER 9.44 TO TITLE 9 OF THE KERN COUNTY ORDINANCE CODE REGARDING PSYCHOACTIVE BATH SALTS, PSYCHOACTIVE HERBAL INCENSE (SPICE), AND OTHER SYNTHETIC DRUGS; AND (3) AMENDING CHAPTER 8.52 OF THE TEHACHAPI MUNICIPAL CODE AND ADOPTING ORDINANCE NOS. G-7724, G-8006, G-8495, AND G-8586 OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN, STATE OF CALIFORNIA AMENDING CHAPTER 8.60 TO TITLE 8 OF THE KERN COUNTY ORDINANCE CODE RELATING TO TOBACCO RETAILER'S PERMIT

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEHACHAPI
ADDING CHAPTER 8.64 TO THE TEHACHAPI MUNICIPAL CODE
WHICH ADOPTS ORDINANCE NO. G-8612 OF THE BOARD OF
SUPERVISORS OF THE COUNTY OF KERN, STATE OF CALIFORNIA
ADDING CHAPTER 8.59 TO TITLE 8 OF THE KERN COUNTY
ORDINANCE CODE REGARDING FOOD SAFETY EDUCATION

THE CITY COUNCIL OF THE CITY OF TEHACHAPI DOES HEREBY ORDAIN AS
FOLLOWS:

Section 1. **ADDITION.**

Chapter 8.64 is hereby added to the Tehachapi Municipal Code as follows:

CHAPTER 8.64

FOOD SAFETY EDUCATION

Sections:

- 8.64.010.** **General purpose.**
8.64.020. **Incorporation by reference.**

8.64.010. **General Purpose.** The purpose of this Chapter is to establish standards for the requirement of individuals to attend Food Safety Education courses and to pass a competency examination when found to have a posed to the risk and safety of the community.

8.64.020. **Incorporation by Reference.** Pursuant to Government Code Sections 50022.1 et seq., Ordinance No. G-8612 of the Board of Supervisors of the County of Kern, State of California which adds Chapter 8.59 to Title 8 of the Kern County Ordinance Code regarding food safety education and each and every term, provision, rule, and regulation therein is hereby incorporated by this reference as if fully set forth herein verbatim.

Section 2. **SEVERABILITY.**

The provisions of this Ordinance are severable. If any provision shall be declared to be invalid, the remaining provisions shall not be affected thereby but shall remain in full force and effect.

Section 3. **ENVIRONMENTAL QUALITY ACT**

This ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines and is not a project which has the potential for causing a significant effect on the environment.

Section 4. EFFECTIVE DATE.

This Ordinance shall take effect 30 days after the date of its passage and within 15 days of its passage a summary of same shall be posted at the three public posting places in the City of Tehachapi.

INTRODUCED at a regular meeting of the City Council of the City of Tehachapi, California on the 16th day of February, 2016.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Tehachapi, California on the ____ day of _____, 2016, by the following votes:

AYES: Councilmembers: _____

NOES: Councilmembers: _____

ABSTAIN: Councilmembers: _____

ABSENT: Councilmembers: _____

SUSAN WIGGINS, Mayor of the City
of Tehachapi, California

ATTEST:

TORI MARSH, City Clerk
of the City of Tehachapi, California

I hereby certify that the forgoing Ordinance was duly and regularly adopted by the City Council of the City of Tehachapi at a regular meeting thereof held on _____, 2016.

TORI MARSH, City Clerk
of the City of Tehachapi, California

Published: February 9, 2016
Posted: February 3, 2016

December 15, 2015

Board of Supervisors
Kern County Administrative Center
1115 Truxtun Avenue
Bakersfield, CA 93301

**PUBLIC HEARING REGARDING PROPOSED ORDINANCE ADDING CHAPTER 8.59 TO
TITLE 8 OF THE KERN COUNTY ORDINANCE CODE CONCERNING FOOD SAFETY EDUCATION
(Fiscal Impact: None)**

The purpose of this letter is to request your Board's approval of the proposed Ordinance adding Chapter 8.59 to Title 8 of the Kern County Ordinance Code. The proposed Ordinance implements a food safety education program.

The Public Health Services Department, Environmental Health Division's food program is responsible for assuring that food is safe for consumption and has been prepared under conditions and using practices that are safe and sanitary. Inspection staff review retail food facilities for proper food handling practices, personal health and hygiene of food service employees, methods of food preparation, source of food products, and overall sanitation. All retail food handling facilities are inventoried, permitted, and inspected between one and three times each year, determined by level of risk. Food related complaints and incidents involving food contamination are also investigated by the Department.

The proposed Ordinance furthers the Department's role in this process to include a mandated educational component for those facilities who have repeatedly demonstrated violations of critical risk factors affecting food safety, failed to ensure that all employees handling unpackaged food have sufficient knowledge and understanding of how to safely prepare and serve food, and/or have demonstrated poor decision making skills. This educational component will consist of a course taught by Environmental Health staff. The course will cover, at a minimum, all of the following topics:

- Causes and contributing factors of food-borne illness;
- The relationship between time and temperature and food-borne illness;
- The relationship between personal hygiene and food safety;
- Methods to prevent food contamination in all stages of food handling;
- Procedures for cleaning and sanitizing food handling equipment and utensils; and
- Proper decision making assistance for instances including, but not limited to, power outage, sewage spills, and rodent and/or roach infestation.

The proposed Ordinance authorizes the Department to require the facility owner send all staff who engage in food preparation and/or service to the food safety education course. The required attendees will be determined based on the contributing factors leading up to the referral to the food safety education course. The proposed Ordinance requires attendees take a food safety education competency examination following the conclusion of the course. If the attendee fails to achieve at least a 75% accuracy rate on the competency examination, the attendee will be required to re-attend the food safety education course. The proposed Ordinance provides the authority to suspend the facility's health permit for failure to pass the exam on the second attempt until the attendee can demonstrate at least a 75% accuracy rate on the exam. Alternatively, if an employee fails to pass the exam after a second attempt, the owner of the facility may submit a written corrective action plan, indicating the employee who has failed to pass the exam will not work in a food preparation and/or service capacity until the employee

demonstrates a 75% accuracy rate on the exam. The corrective action plan must be approved by the Department.

A fee has not been established for attendance at the food safety education course. While this proposed Ordinance outlines the authority to mandate attendance at the food safety education course, the Department would also like to be proactive and offer the course to facilities that handle food in an attempt to protect the community. Should the Department experience a great demand for this course, the Department will return to your Board to establish a fee that will cover the costs to provide this service based on actual costs incurred.

County Counsel has reviewed and approved the proposed Ordinance as to form.

It has been determined this is not a project subject to the requirements of the California Environmental Quality Act (CEQA). However, in the event it is determined to be a project, such project would be exempt from further CEQA review pursuant to sections 15061(b)(3), 15321 and 15322 of the State CEQA Guidelines.

Therefore, IT IS RECOMMENDED that your Board open public hearing; receive public comment; close public hearing; make finding this is not a project subject to the requirements of CEQA but if determined to be a project it is exempt from further CEQA review pursuant to sections 15061(b)(3), 15321 and 15322 of the State CEQA Guidelines; waive reading; and enact Ordinance.

Respectfully Submitted,



Matthew Constantine
Director of Public Health Services

MC:bnc

Attachment

C: County Administrative Office
County Counsel

ORDINANCE NO. G- _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ADDING CHAPTER 8.59 TO TITLE 8 OF THE ORDINANCE CODE CONCERNING FOOD SAFETY EDUCATION

The following ordinance, consisting of two (2) sections, was regularly passed and adopted by the Board of Supervisors at a regular meeting held on this _____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

Chairman of the Board of Supervisors of
the County of Kern, State of California

(SEAL)

ATTEST:

KATHLEEN KRAUSE
Clerk of the Board of Supervisors

By _____, Deputy Clerk

THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN ORDAINS AS FOLLOWS:

Section 1. This ordinance shall be published in accordance with Government Code section 25124 and it shall take effect and be in full force on and after the _____ day of _____, 2016.

Section 2. Chapter 8.59 is added to Title 8 of the Ordinance Code as follows:
Chapter 8.59
FOOD SAFETY EDUCATION

- 8.59.010 Purpose
- 8.59.020 General Requirements
- 8.59.030 Course Attendance Requirements
- 8.59.040 Course Contents
- 8.59.050 Required Knowledge Demonstration

8.59.010 Purpose

The purpose of this chapter is to establish standards for the requirement of individuals to attend food safety education courses and to pass a competency examination when found to have posed a risk to the health and safety of the community.

8.59.020 General Requirements

When the Director of Public Health Services or his designee determines one or more of the following, he may require employees of the facility to attend food safety education courses, in addition to submission of a detailed, written corrective action plan to prevent reoccurrence.

- a. The food facility has repeated violations of critical risk factors affecting food safety; and/or
- b. The owner or employee with Food Safety Certification has failed to ensure that all employees who handle unpackaged food have sufficient knowledge and understanding of how to safely prepare and serve food; and/or
- c. Upon closure of the facility or as a result of the Department having to take action at the facility due to poor decision making skills demonstrated by the operator and/or manager of the food facility.

8.59.030 Course Attendance Requirements

Upon determination that a facility must attend food safety education courses, the Director of Public Health Services may require the owner to send all staff who engage in food preparation and/or service.

8.59.040 Course Contents

The food safety education course shall include, but not be limited to, the following:

- a. Causes and contributing factors of foodborne illness;
- b. The relationship between time and temperature and foodborne illness;
- c. The relationship between personal hygiene and food safety;
- d. Methods to prevent food contamination in all stages of food handling;
- e. Procedures for cleaning and sanitizing food handling equipment and utensils; and
- f. Proper decision making assistance for instances including, but not limited to, power outage, sewage spills, and rodent and/or roach infestation.

8.59.050 Required Knowledge Demonstration

Attendees will be required to pass a food safety education competency examination following the conclusion of the presentation of the course contents. The competency examination will not be given without attendance of the food safety education course.

- a. Failure to pass the competency examination with a 75% accuracy rate will result in the requirement to retake the course.
- b. Failure to pass the competency examination with a 75% accuracy rate after the second attempt will result in suspension of the facility's health permit until at least a 75% accuracy rate has been demonstrated, unless a viable written corrective action plan is provided to and approved by the Department indicating that the employee who has failed to pass the competency exam will no longer engage in food preparation and/or service until he/she has passed the competency examination.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEHACHAPI ADDING CHAPTER 9.36 TO THE TEHACHAPI MUNICIPAL CODE WHICH ADOPTS ORDINANCE NO. G-8602 OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN, STATE OF CALIFORNIA ADDING CHAPTER 9.44 TO TITLE 9 OF THE KERN COUNTY ORDINANCE CODE REGARDING PSYCHOACTIVE BATH SALTS, PSYCHOACTIVE HERBAL INCENSE (SPICE), AND OTHER SYNTHETIC DRUGS

THE CITY COUNCIL OF THE CITY OF TEHACHAPI DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. ADDITION.

Chapter 9.36 is hereby added to the Tehachapi Municipal Code as follows:

CHAPTER 9.36

PSYCHOACTIVE BATH SALTS, PSYCHOACTIVE HERBAL INCENSE (SPICE), AND OTHER SYNTHETIC DRUGS

Sections:

- 9.36.010. General purpose.**
- 9.36.020. Incorporation by reference.**
- 9.36.030 Enforcement and penalties**

9.36.010. General Purpose. Recreational or other use of psychoactive bath salts, psychoactive herbal incense (commonly referred to as "Spice" or "Synthetic Marijuana") and similar products commonly known as "synthetic drugs", has been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal thoughts, and death. While State and Federal laws and regulations prohibit some synthetic drugs, the makers of these drugs continually alter the composition of the compounds in their products so as to escape the purview of such laws and regulations. The purpose and intent of this Chapter is to protect the public health and safety within the County of Kern from the dangers and ill effects of all synthetic drugs by declaring certain activities involving synthetic drugs to be a public nuisance and subject to all available civil remedies and, to provide the County of Kern with reasonable measures to address the dangers to the community posed by synthetic drugs that are not regulated by State or Federal law.

9.36.020. Incorporation By Reference. Pursuant to Government Code Sections 50022.1 et seq., Ordinance No. G-8602 of the Board of Supervisors of the County of Kern, State of California which adds Chapter 9.44 to Title 9 of the Kern County Ordinance Code concerning psychoactive bath salts, psychoactive Herbal Incense (Spice) and other synthetic drugs and each and every term, provision, rule, and regulation therein is hereby incorporated by this reference as if fully set forth herein verbatim. Provided, however, that all references to "unincorporated areas of the County of Kern" are hereby replaced with "the County of Kern" and this ordinance shall apply within the City's boundaries.

9.36.030. Enforcement and Penalties.

9.44.070 Declaration of Public Nuisance

(a) It is a public nuisance for any person to provide, display for sale, sell, distribute, or possess with the intent to sell, any synthetic drug within the County of Kern.

(b) It is a public nuisance for any person to allow the provision, display for sale, sell, distribution, or possession with the intent to sell, of any synthetic drug on property owned, controlled or managed by such person within the County of Kern.

(c) It is a public nuisance for any person to provide, display for sale, sell, distribute, or possess with the intent to sell, any substance claimed or represented to be a synthetic drug within the County of Kern.

(d) It is a public nuisance for any person to allow the provision, display for sale, sell, distribution, or possession with the intent to sell, of any substance claimed or represented to be a synthetic drug on property owned, controlled or managed by such person within the unincorporated areas of the County of Kern.

(e) To determine if a person is claiming or representing that a substance or product is a synthetic drug, an enforcing officer may consider any of the evidentiary factors set forth in section 9.44.050.

(f) Possession that is not described in subdivisions (a) through (d) of this section is declared to be a public nuisance when such possession injuriously affects any person or persons, other than the person in possession, in such other person's or persons' health, safety, welfare, or comfortable enjoyment of life or property.

9.44.080 Abatement Authority and Procedures; Summary Abatement; Other Remedies

(a) If a public nuisance exists pursuant to this Chapter, any of the persons identified in section 9.44.120 may proceed under Title 8, Chapter 8.44, Public Nuisances, sections 8.44.010 et seq.

(b) Because the use of synthetic drugs has been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal thoughts, and death, any violation of this Chapter may present an immediate threat and grave and imminent danger not only to the person consuming the synthetic drug, but also to the public at large. If any of the persons identified in section 9.44.120, based on the facts then known, determines that a violation of this Chapter presents an immediate threat,

imminent danger or hazard, or is imminently injurious to the public health or safety, then that violation is punishable by the summary abatement procedures set forth in section 8.44.070 or other law.

(c) Nothing in this Chapter shall be construed to prevent the County of Kern from pursuing any and all other legal remedies that may be available, including, but not limited to, civil actions filed by County Counsel seeking any and all appropriate relief such as civil injunctions, penalties and forfeiture.

9.44.090 Modification, Suspension, or Revocation of Permit, License, or Other Grant of Authority

(a) If a person violates any provision of this Chapter, such violation shall be grounds for, in addition to any other enforcement action or remedy authorized by this Code or other law, modification, suspension, or revocation of any permit, license, or other grant of authority by the County issued to the person, or issued to any business, firm, company, corporation, public corporation, club, trust, partnership, association, and/or similar organization owned, controlled, or managed by such person (hereafter "Entity"), in accordance with the procedure of this Code or other law applicable to the respective permit, license, or other grant of authority.

(b) Upon determination that a violation of this Chapter exists, the Director of Public Health Services will impose the following sanction:

(1) For the first violation, any and all licenses or permits issued by the Kern County Public Health Services Department for the Entity found to be in violation will be suspended for thirty (30) days.

(2) For the second violation, any and all licenses or permits issued by the Kern County Public Health Services Department for the Entity found to be in violation will be revoked.

9.44.100 Seizure of Evidence

Any product or substance provided, distributed, sold or possessed for the purpose of providing, distributing or selling the product or substance, in violation of any provision of this Chapter, may be seized by any County official or officer who issues a criminal citation under this Chapter and removed and stored as evidence in accordance with the law.

9.44.110 Enforcement, Remedies, and Penalties

(a) In addition to any enforcement action and remedy authorized by this Chapter, a violation of any provision of this Chapter may be subject to the enforcement and remedy provisions of Title 1, Chapter 1.12, General Penalty, sections 1.12.010 through 1.12.030 and any other applicable enforcement and remedy provisions provided under the law.

(b) Any person identified in section 9.44.120 may, based on the facts then known, determine that, in the interest of justice, a violation of this Chapter constitutes an infraction.

9.44.120 Authority to Administer and Enforce

This Chapter may be administered and enforced by the Director of Public

Health or his/her designee(s), or any other County official or officer so designated.

Section 2. SEVERABILITY.

The provisions of this Ordinance are severable. If any provision shall be declared to be invalid, the remaining provisions shall not be affected thereby but shall remain in full force and effect.

Section 3. ENVIRONMENTAL QUALITY ACT

This ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines and is not a project which has the potential for causing a significant effect on the environment.

Section 4. EFFECTIVE DATE.

This Ordinance shall take effect 30 days after the date of its passage and within 15 days of its passage a summary of same shall be posted at the three public posting places in the City of Tehachapi.

INTRODUCED at a regular meeting of the City Council of the City of Tehachapi, California on the 16th day of February, 2016.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Tehachapi, California on the ____ day of _____, 2016, by the following votes:

AYES: Councilmembers: _____

NOES: Councilmembers: _____

ABSTAIN: Councilmembers: _____

ABSENT: Councilmembers: _____

SUSAN WIGGINS, Mayor of the City
of Tehachapi, California

ATTEST:

TORI MARSH, City Clerk
of the City of Tehachapi, California

I hereby certify that the forgoing Ordinance was duly and regularly adopted by the City Council of the City of Tehachapi at a regular meeting thereof held on _____, 2016.

TORI MARSH, City Clerk
of the City of Tehachapi, California

Published: February 9, 2016
Posted: February 3, 2016

OFFICE OF THE
COUNTY COUNSEL
COUNTY OF KERN

THERESA A. GOLDNER
COUNTY COUNSEL

MARK L. NATIONS
ASSISTANT COUNTY COUNSEL

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*Certified Workers' Compensation Law Specialist
The State Bar of California,
Board of Legal Specialization

+Certified Child Welfare Law Specialist
The National Association of Counsel for Children

Administrative Center
1115 Truxtun Avenue, Fourth Floor
Bakersfield, California 93301

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November 3, 2015

Board of Supervisors
County Administrative Center
1115 Truxtun Avenue
Bakersfield, CA 93301

**PUBLIC HEARING ON PROPOSED ORDINANCE AMENDING
SECTION 9.44.090 OF CHAPTER 9.44, TITLE 9, OF THE
ORDINANCE CODE CONCERNING PSYCHOACTIVE BATH
SALTS, PSYCHOACTIVE HERBAL INCENSE (SPICE), AND
OTHER SYNTHETIC DRUGS
(Fiscal Impact: None)**

On September 1, 2015, your Board adopted Chapter 9.44, Title 9, of the Ordinance Code concerning Psychoactive Bath Salts, Psychoactive Herbal Incense (Spice), and other synthetic drugs. The Ordinance became effective on October 2, 2015. At the request of the Director of Public Health Services Department, the enforcing agency of Chapter 9.44, this Office proposes that the Board make the attached revisions to improve enforcement of this Chapter.

Section 9.44.090 provides, in pertinent part,

If a person violates any provision of this Chapter, such violation shall be grounds for, in addition to any other enforcement action or remedy authorized by this Code or other law, modification, suspension, or revocation of any permit, license, or other grant of authority by the County issued to the person. . . .

Because the Director of Public Health Services is tasked with enforcement of this Chapter, and due to the type of entities generally engaged in the sale of synthetic drugs, it reasons that most licenses or

Board of Supervisors
November 3, 2015
Page 2

permits in question will be those issued by Public Health Services. Section 9.44.090 leaves to the discretion of the Director of Public Health, or his designee, whether to modify, suspend or revoke any permit or license issued by Public Health Services, and how long such modification, suspension or revocation will be.

Due to the potential serious health risks associated with violations of this Chapter, in order to protect the public health and safety within the unincorporated areas, and to place persons who violate this Chapter on clear notice as to what will happen to any license or permit issued by Public Health Services, it is requested that Section 9.44.090 be amended to include that: 1) sanctions for a first violation will be a thirty (30) day suspension of any license or permit issued by Public Health Services; and 2) sanctions for a second violation will be revocation of any license or permit issued by Public Health Services.

This is not a project subject to the requirements of the California Environmental Quality Act (CEQA). In the event it is determined to be a project, such project would be exempt from further CEQA review pursuant to sections 15061(b)(2), 15061(b)(3) and 15321 of the State CEQA Guidelines.

Therefore, IT IS RECOMMENDED that your Board open public hearing; receive public comment; close public hearing; make finding the Ordinance is not a project subject to requirements of CEQA and if determined to be a project it is exempt from further CEQA review pursuant to sections 15061(b)(2), 15061(b)(3), and 15321 of the State CEQA Guidelines; waive reading; and, enact Ordinance.

Very truly yours,

OFFICE OF COUNTY COUNSEL



THERESA A. GOLDNER
KERN COUNTY COUNSEL

cc: County Administrative Office
Clerk of the Board
Public Health Services Department

TAG/klg

#22C7653

ORDINANCE NO. G-_____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN ADDING CHAPTER 9.44 TO TITLE 9 OF THE ORDINANCE CODE CONCERNING PSYCHOACTIVE BATH SALTS, PSYCHOACTIVE HERBAL INCENSE (SPICE), AND OTHER SYNTHETIC DRUGS

The following ordinance, consisting of two (2) sections, was regularly passed and adopted by the Board of Supervisors at a regular meeting held on the ____ day of _____, 2015, by the following vote:

AYES:
NOES:
ABSENT:

Chairman of the Board of Supervisors of
the County of Kern, State of California

(SEAL)
ATTEST:

KATHLEEN KRAUSE
Clerk of the Board of Supervisors

By _____, Deputy Clerk

THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN ORDAIN AS
FOLLOWS:

Section 1. This ordinance shall be published in accordance with Government Code section 25124 and it shall take effect and be in full force on and after the ____ day of _____, 2015.

Section 2. Chapter 9.44 is added to Title 9 of the Ordinance Code as follows:

**Chapter 9.44
PSYCHOACTIVE BATH SALTS, PSYCHOACTIVE HERBAL
INCENSE (SPICE), AND OTHER SYNTHETIC DRUGS**

**9.44.010 Purpose and Intent
9.44.020 Definitions**

9.44.030	Legislative History and Findings
9.44.040	Provision, Display for Sale, Sell, Distribution, or Possession with Intent to Sell, of Synthetic Drugs - Prohibited
9.44.050	Provision, Display for Sale, Sell, Distribution, or Possession with Intent to Sell, of Substances Claimed or Represented To Be Synthetic Drugs - Prohibited
9.44.060	Possession or Use of Synthetic Drugs - Prohibited
9.44.070	Declaration of Public Nuisance
9.44.080	Abatement Authority and Procedures; Summary Abatement; Other Remedies
9.44.090	Modification, Suspension, or Revocation of Permit, License, or Other Grant of Authority
9.44.100	Seizure of Evidence
9.44.110	Enforcement, Remedies, and Penalties
9.44.120	Authority to Administer and Enforce
9.44.130	Exclusions
9.44.140	Severability

9.44.010 Purpose and Intent

Recreational or other use of psychoactive bath salts, psychoactive herbal incense (commonly referred to as "Spice" or "Synthetic Marijuana") and similar products commonly known as "synthetic drugs" has been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal thoughts, and death. While state and federal laws and regulations prohibit some synthetic drugs, the makers of these drugs continually alter the composition of the compounds in their products so as to escape the purview of such laws and regulations. The purpose and intent of this Chapter is to protect the public health and safety within the unincorporated areas of the County of Kern from the dangers and ill effects of all synthetic drugs by declaring certain activities involving synthetic drugs to be a public nuisance and subject to all available civil remedies and, to provide the County of Kern with reasonable measure to address the dangers to the community posed by synthetic drugs that are not regulated by state or federal law.

9.44.020 Definitions

- (a) Consume, Consuming or Consumption - To ingest, inhale, inject, smoke or snort (insufflate).
- (b) Distribute, Distributing or Distribution - To furnish, give away, exchange, transfer, deliver or supply, whether or not for monetary gain.
- (c) Person - Includes any natural person, business, firm, company, corporation, public corporation, club, trust, partnership, association or similar organization.
- (d) Possess, Possessing or Possession - To have for consumption, distribution, or sale in one's actual or constructive custody or control, or under one's authority or power, whether such custody, control, authority or power be exercised solely or jointly with others.
- (e) Provide, Providing or Provision - Offering to distribute or sell a product or substance to any person, whether or not for monetary gain.
- (f) Psychoactive Bath Salts - Any crystalline or powder product that contains a synthetic chemical compound that, when consumed, elicits psychoactive or psychotropic stimulant effects. The term psychoactive bath salts includes, without limitation:
 - (1) Products that elicit psychoactive or psychotropic stimulant effects and contain any of the following intoxicating chemical compounds:
 - (i) Cathinone (2-amino-1-phenyl-1-propanone), 4-methylmethcathinone (2-methylamino-1-(4-methylphenyl)propan-1-one), 4-

methoxymethcathinone (1-(4-methoxyphenyl)-2-(methylamino)propan-1-one), MDPV (methylenedioxypropylamphetamine), MDMA (3,4-methylenedioxy-N-methylamphetamine), methylene (3,4-methylenedioxy-N-methylcathinone), methcathinone (2-(methylamino)-1-phenyl-propan-1-one), flephedrone (4-fluoromethcathinone), 3-FMC (3-fluoromethcathinone), ethcathinone (2-ethylamino-1-phenyl-propan-1-one), butylone (13-keto-N-methylbenzodioxolylbutanamine), a-PPP (a-pyrrolidinopropiophenone), MPPP (4'-methyl-a-pyrrolidinopropiophenone), MDPPP (3',4'-methylenedioxy-a-pyrrolidinopropiophenone), a-PVP (1-phenyl-2-(1-pyrrolidinyl)-1-pentanone) or naphyrone (1-naphthalen-2-yl-2-pyrrolidin-1-ylpentan-1-one);

(ii) Any derivative of the above listed intoxicating chemical compounds;

(iii) Any synthetic substance and its isomers with a chemical structure similar to the above listed compounds;

(iv) Any chemical alteration of the above listed intoxicating chemical compounds; or

(v) Any other substantially similar chemical structure or compound.

(2) Products that elicit psychoactive or psychotropic stimulant effects and are marketed under any of the following trade names: Bliss, Blizzard, Blue Silk, Bonzai Grow, Charge Plus, Charlie, Cloud Nine, Euphoria, Hurricane, Ivory Snow, Ivory Wave, Lunar Wave, Ocean, Ocean Burst, Pixie Dust, Posh, Pure Ivory, Purple Wave, Red Dove, Scarface, Snow Leopard, Stardust, Vanilla Sky, White Dove, White Night and White Lightning. This list of names is not all inclusive and is intended only as a guide which is contemporaneous with passage of this Chapter. It is in no way intended to limit enforcement of these provisions to the trade names listed herein.

(3) The term psychoactive bath salts shall not include any product, substance, material, compound, mixture or preparation that is specifically excepted by the California Uniform Controlled Substances Act ("UCSA") (California Health and Safety Code section 11000 et seq.), listed in one of the UCSA's schedules of controlled substances (California Health and Safety Code sections 11053 – 11058), regulated by one of the UCSA's synthetic drug laws (California Health and Safety Code sections 11357.5, 11375.5, 11401), regulated by the federal Controlled Substances Act (the "CSA") (21 USC section 801 et seq.) or approved by the Food and Drug Administration ("FDA").

(g) Psychoactive Herbal Incense (aka "Spice" or "Synthetic Marijuana") - Any organic product consisting of plant material that contains a synthetic stimulant compound that, when consumed, elicits psychoactive or psychotropic euphoric effects. The term "psychoactive herbal incense" includes, without limitation:

(1) Products that elicit psychoactive or psychotropic euphoric effects and contain any of the following chemical compounds:

(i) Cannabicyclohexanol (2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methylnonan-2-yl)phenol), JWH-018 (naphthalene-1-yl-(1-pentylindol-3-yl)methanone), JWH-073 (naphthalen-1-yl-(1-butylindol-3-yl)methanone), JWH-200 ((1-(2-morpholin-4-ylethyl)indol-2-yl)-naphthalen-1-yl)methanone), HU-210 ((6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol), CP 47,497 (2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol) CP 47,497 (2-[1R,3S]-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol) or AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-(naphthalen-1-yl)methanone);

(ii) Any derivative of the above listed intoxicating chemical compounds;

(iii) Any synthetic substance and its isomers with a chemical structure similar to the above listed intoxicating chemical compounds;

(iv) Any chemical alteration of the above listed intoxicating chemical compounds; or

(v) Any other substantially similar chemical structure or compound.

(2) Products that elicit psychoactive or psychotropic euphoric effects and are marketed under any of the following names: K2, K3, Spice, Genie, Smoke, Potpourri, Buzz, Spice 99, Voodoo, Pulse, Hush, Mystery, Earthquake, Stinger, Ocean Blue, Serenity, Fake Weed, No More Mr. Nice Guy and Black Mamba. This list of names is not all inclusive and is intended only as a guide which is contemporaneous with passage of this Chapter. It is in no way intended to limit enforcement of these provisions to the trade names listed herein.

(3) The term psychoactive herbal incense shall not include any product, substance, material, compound, mixture, or preparation that is specifically excepted by the UCSA (California Health and Safety Code section 11000 et seq.), listed in one of the UCSA's schedules of controlled substances (California Health and Safety Code sections 11053 – 11058), regulated by one of the UCSA's synthetic drug laws (California Health and Safety Code sections 11357.5, 11375.5, 11401), regulated by the CSA (21 USC section 801 et seq.) or approved by the FDA.

(h) Psychoactive Or Psychotropic Euphoric Effects - Affecting the central nervous system or brain function to change perception, mood, consciousness, cognition or behavior in ways that are similar to the effects of cannabis.

(i) Psychoactive or Psychotropic Stimulant Effects - Affecting the central nervous system or brain function to change perception, mood, consciousness, cognition or behavior in ways that are similar to the effects of cocaine, methylphenidate or amphetamines.

(j) Sell, Selling or Sale - To furnish, exchange, transfer, deliver or supply for monetary gain.

(k) Synthetic Drug - Includes "psychoactive bath salts" and "psychoactive herbal incense", as those terms are defined herein.

9.44.030 Legislative History and Findings

(a) On October 9, 2011, Health and Safety Code section 11375.5 was enacted criminalizing the sale, distribution and possession for sale or distribution of psychoactive synthetic stimulants commonly sold as "bath salts." On January 1, 2012, Health and Safety Code section 11357.5 became effective, criminalizing the sale, distribution and possession for sale or distribution of "synthetic cannabinoids" commonly marketed as "herbal incense" or "Spice." These laws are aimed at combating the growing popularity and dangerous health risks of these "designer drugs." As of the time of enactment of this Ordinance, pending legislation seeks to also criminalize the personal use or possession of these synthetic drugs.

(b) Psychoactive Bath Salts - "Bath Salts" products contain synthetic stimulants in a class of drugs known as synthetic cathinones, including MDPV, Mephedrone and Methyone. These cathinone derivatives have effects similar to cocaine, amphetamine or MDMA (Ecstasy), and may have a high risk for overdose. Doctors at poison centers and emergency rooms have reported the drug can cause paranoia and violent behavior, hallucinations, delusions, suicidal thoughts, seizures, panic attacks, increased blood pressure and heart rate, chest pain, nausea and vomiting. According to the American Association of Poison Control Centers, in 2015, through June 30, poison centers received reports of 267 exposures to bath salts. While this number is decreasing from reported exposures in 2011 of 6,138, in 2012 of 2,691 and in 2013 of 995, the numbers have remained steady since 2014 which had 582 reported exposures. The drug seems to be most popular with people who are between the ages of 20 and 29. However, poison centers have seen bath salts exposures in a wide range of ages, from younger than 6 to older than 59. The drugs come in powder and crystal forms like traditional bath salts – however, they are not the bath salts used in a bath. Users typically snort, inject or smoke them.

(c) Psychoactive Herbal Incense (aka "Spice" or "Synthetic Marijuana") - "Herbal Incense" products are most commonly a combustible leafy plant material that has been sprayed with research chemicals called synthetic cannabinoids. While synthetic cannabinoids

and natural marijuana act on the body's natural cannabinoid receptors, synthetic cannabinoids are not marijuana. Research and anecdotal reports show that synthetic cannabinoids produce dangerous symptoms not normally associated with marijuana. Making matters worse, synthetic cannabinoids may be combined with other toxic substances. Emergency room physicians report that users of these products experience serious side effects, including severe agitation and anxiety; disorientation, fast, racing heartbeat and higher blood pressure; nausea and vomiting; convulsions, muscle spasms, seizures, and tremors; intense hallucinations and psychotic episodes; suicidal and other harmful thoughts and/or actions. According to the American Association of Poison Control Centers, in 2015 (through July 6), poison centers received reports of 4,377 exposures to synthetic marijuana. While it appeared reports of exposures were beginning to decline in 2012, the number of exposures has risen since 2014. In 2010, there were 2,906 reported exposures; in 2011, there were 6,959 reported exposures; in 2012, there were 5,230 reported exposures; in 2013, there were 2,668 reported exposures; and, in 2014, there were 3,682 reported exposures. These products typically appear as packaged dried plant product or leaves, and are sold at gas stations, liquor stores, convenient stores, smoke shops, or on the Internet. While they sometimes have warning labels against human consumption, they are intended specifically for that use.

9.44.040 Provision, Display for Sale, Sell, Distribution, or Possession with Intent to Sell, of Synthetic Drugs - Prohibited

(a) It is unlawful for any person to provide, display for sale, sell or distribute, or possess with the intent to sell, any synthetic drug within the unincorporated areas of the County of Kern.

(b) Including a disclaimer in any form or in any location that a synthetic drug is "not safe for human consumption", or any similar disclaimer, will not avoid the application of this section.

9.44.050 Provision, Display for Sale, Sell or Distribution, or Possession with Intent to Sell, of Substances Claimed or Represented To Be Synthetic Drugs - Prohibited

(a) It is unlawful for any person to claim or represent that a product that person is providing, displaying for sale, selling or distributing, or possessing with the intent of selling, is a synthetic drug within the unincorporated areas of the County of Kern.

(b) To determine if a person is claiming or representing that a product is a synthetic drug, an enforcing official or officer may consider any of the following evidentiary factors:

(1) The product is not suitable for its marketed use (such as a crystalline or powder product being marketed as "glass cleaner");

(2) The business providing, displaying for sale, distributing or selling the product does not typically provide, distribute or sell products that are used for that product's marketed use (such as a liquor store selling "plant food");

(3) The product contains a warning label that is not typically present on products that are used for that product's marketed use (such as "not for human consumption", "not for purchase by minors", or "does not contain chemicals banned by Health And Safety Code section 11357.5");

(4) The product is significantly more expensive than products that are used for that product's marketed use (such as half of a gram of a substance marketed as "glass cleaner" costing \$50.00);

(5) The product resembles an illicit street drug (such as cocaine, methamphetamine or marijuana); or

(6) The product's name or packaging uses images or slang referencing an illicit street drug (such as "Eight Ballz" or "Green Buddha").

(c) Including a disclaimer in any form or in any location that a synthetic drug is "not safe for human consumption", or any similar disclaimer, will not avoid the application of this section.

9.44.060 Possession or Use of Synthetic Drugs - Prohibited

It is unlawful for any person to possess or use any synthetic drug within the unincorporated areas of the County of Kern.

9.44.070 Declaration of Public Nuisance

(a) It is a public nuisance for any person to provide, display for sale, sell, distribute, or possess with the intent to sell, any synthetic drug within the unincorporated areas of the County of Kern.

(b) It is a public nuisance for any person to allow the provision, display for sale, sell, distribution, or possession with the intent to sell, of any synthetic drug on property owned, controlled or managed by such person within the unincorporated areas of the County of Kern.

(c) It is a public nuisance for any person to provide, display for sale, sell, distribute, or possess with the intent to sell, any substance claimed or represented to be a synthetic drug within the unincorporated areas of the County of Kern.

(d) It is a public nuisance for any person to allow the provision, display for sale, sell, distribution, or possession with the intent to sell, of any substance claimed or represented to be a synthetic drug on property owned, controlled or managed by such person within the unincorporated areas of the County of Kern.

(e) To determine if a person is claiming or representing that a substance or product is a synthetic drug, an enforcing officer may consider any of the evidentiary factors set forth in section 9.44.050.

(f) Possession that is not described in subdivisions (a) through (d) of this section is declared to be a public nuisance when such possession injuriously affects any person or persons, other than the person in possession, in such other person's or persons' health, safety, welfare, or comfortable enjoyment of life or property.

9.44.080 Abatement Authority and Procedures; Summary Abatement; Other Remedies

(a) If a public nuisance exists pursuant to this Chapter, any of the persons identified in section 9.44.120 may proceed under Title 8, Chapter 8.44, Public Nuisances, sections 8.44.010 et seq.

(b) Because the use of synthetic drugs has been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal thoughts, and death, any violation of this Chapter may present an immediate threat and grave and imminent danger not only to the person consuming the synthetic drug, but also to the public at large. If any of the persons identified in section 9.44.120, based on the facts then known, determines that a violation of this Chapter presents an immediate threat, imminent danger or hazard, or is imminently injurious to the public health or safety, then that violation is punishable by the summary abatement procedures set forth in section 8.44.070 or other law.

(c) Nothing in this Chapter shall be construed to prevent the County of Kern from pursuing any and all other legal remedies that may be available, including, but not limited to, civil actions filed by County Counsel seeking any and all appropriate relief such as civil injunctions, penalties and forfeiture.

9.44.090 Modification, Suspension, or Revocation of Permit, License, or Other Grant of Authority

(a) If a person violates any provision of this Chapter, such violation shall be grounds for, in addition to any other enforcement action or remedy authorized by this Code or other law, modification, suspension, or revocation of any permit, license, or other grant of authority by the County issued to the person, or issued to any business, firm, company, corporation, public corporation, club, trust, partnership, association, and/or similar organization owned, controlled, or managed by such person (hereafter "Entity"), in accordance with the procedure of this Code or other law applicable to the respective permit, license, or other grant of authority.

(b) Upon determination that a violation of this Chapter exists, the Director of Public Health Services will impose the following sanction:

(1) For the first violation, any and all licenses or permits issued by the Kern County Public Health Services Department for the Entity found to be in violation will be suspended for thirty (30) days.

(2) For the second violation, any and all licenses or permits issued by the Kern County Public Health Services Department for the Entity found to be in violation will be revoked.

9.44.100 Seizure of Evidence

Any product or substance provided, distributed, sold or possessed for the purpose of providing, distributing or selling the product or substance, in violation of any provision of this Chapter, may be seized by any County official or officer who issues a criminal citation under this Chapter and removed and stored as evidence in accordance with the law.

9.44.110 Enforcement, Remedies, and Penalties

(a) In addition to any enforcement action and remedy authorized by this Chapter, a violation of any provision of this Chapter may be subject to the enforcement and remedy provisions of Title 1, Chapter 1.12, General Penalty, sections 1.12.010 through 1.12.030 and any other applicable enforcement and remedy provisions provided under the law.

(b) Any person identified in section 9.44.120 may, based on the facts then known, determine that, in the interest of justice, a violation of this Chapter constitutes an infraction.

9.44.120 Authority to Administer and Enforce

This Chapter may be administered and enforced by the Director of Public Health or his/her designee(s), or any other County official or officer so designated.

9.44.130 Exclusions

(a) This Chapter shall not apply to drugs or substances lawfully prescribed or to intoxicating chemical compounds that have been approved by the FDA or which are specifically permitted by California law, including, without limitation, intoxicating chemical compounds that are specifically excepted by the UCSA (California Health and Safety Code section 11000 et seq.).

(b) This Chapter shall not apply to drugs or substances that are prohibited by state or federal law, including, without limitation, California Health and Safety Code sections 11357.5, 11375.5, and 11401 and the CSA.

(c) This Chapter shall not be deemed to prescribe any act that is positively permitted, prohibited or preempted by any state or federal law or regulation.

9.44.140 Severability

If any subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted

by State or Federal legislation, such decision or legislation shall not affect the validity of the remaining portions of this Chapter. The Board of Supervisors declares that it would have passed this Chapter and each and every subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

KLG:klg
2274058

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEHACHAPI AMENDING CHAPTER 8.52 OF THE TEHACHAPI MUNICIPAL CODE AND ADOPTING ORDINANCE NOS. G-7724, G-8006, G-8495, AND G-8586 OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN, STATE OF CALIFORNIA AMENDING CHAPTER 8.60 TO TITLE 8 OF THE KERN COUNTY ORDINANCE CODE RELATING TO TOBACCO RETAILER'S PERMIT

THE CITY COUNCIL OF THE CITY OF TEHACHAPI DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. **AMENDMENT.**

Chapter 8.52 of the Tehachapi Municipal Code is hereby amended as follows:

CHAPTER 8.52

TOBACCO RETAILER'S PERMIT

Sections:

- 8.52.010. General purpose.**
- 8.52.020. Incorporation by reference.**
- 8.52.030. Enforcement and penalties.**

8.52.010. General Purpose. The purpose of this Chapter is to prohibit any person from acting as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer's permit and to set forth the terms and conditions of obtaining the permit.

8.52.020. Incorporation by Reference. Pursuant to Government Code Sections 50022.1 et seq., Ordinance Nos. G-7724, G-8006, G-8495, and G-8586 of the Board of Supervisors of the County of Kern, State of California which amended Chapter 8.60 of Title 8 of the Kern County Ordinance Code regarding tobacco retailer's permit and each and every term, provision, rule, and regulation therein is hereby incorporated by this reference as if fully set forth herein verbatim.

8.52.030. Enforcement and Penalties.

8.60.100. Administrative penalties.

- A. Upon a determination by the Department that a person has engaged in any conduct that violates the provisions of this chapter, the Director may suspend a tobacco

retailer's permit, impose administrative penalties, or both suspend the permit and impose administrative penalties.

- B. The Department shall notify the tobacco retail facility owner that there has been an initial determination of violation under the provisions of this chapter. The initial determination notice will specify the violation and the sanction imposed, including the effective date of the suspension, if applicable. The notice shall further state that the tobacco retail facility owner may, within fifteen (15) days, submit to the Department any written or documentary evidence to contest the initial determination of violation.
- C. After receiving such evidence, if applicable and provided, the Director shall prepare a final written decision and shall serve this decision upon the tobacco retailer. Upon written request, the offender shall have the right to receive copies of any records or files upon which the administrative decision is based. This final determination shall be served through certified mail within sixty (60) days of the final determination.
- D. When this chapter permits the Director to suspend a permit, the following sanction may be imposed:
1. For the first violation in any five-year period, the tobacco retailer shall receive a notice of violation from the Department.
 2. For the second violation in any five-year period, the person's tobacco retailer's permit shall be suspended for up to thirty (30) days.
 3. For a third violation in any five-year period, the person's tobacco retailer's permit shall be suspended for up to ninety (90) days.
 4. For a fourth or subsequent violation in any five-year period, the person's tobacco retailer's permit shall be suspended for up to one hundred eighty (180) days and/or revoked.
- E. When this chapter allows the Director to impose an administrative penalty, the following penalty may be imposed:
1. For the first violation, a penalty in the amount of two hundred fifty dollars (\$250.00);
 2. For the second violation within five (5) years from the date of the first violation, a penalty in the amount of five hundred dollars (\$500.00);
 3. For the third and each subsequent violation within five (5) years from the date of the first violation, a penalty in the amount of one thousand dollars (\$1,000.00).
- F. Upon determination by the Department that a tobacco retailer has violated any provision of this chapter and that the tobacco retailer did not violate any provision of this chapter in the five (5) years immediately preceding the violation, the Director may suspend the imposition of any sanction under subsection (D) or penalty under subsection (E) for a period of six (6) months.
1. Within fifteen (15) days of the Director's decision to suspend the imposition of any sanction or penalty pursuant to this subsection, the tobacco retailer shall pay a fee of five hundred dollars (\$500.00) for the cost of inspections during the six-month period. Failure to pay this fee shall immediately restore the imposition of any sanction under subsection (D) or penalty under subsection (E).
 2. During the six-month period, the Department shall inspect the tobacco retail facility for compliance as deemed necessary by the Department.

3. A determination by the Department that the tobacco retailer has engaged in any conduct that violates the provisions of this chapter during the six-month period shall restore the imposition of any sanction under subsection (D) or penalty under subsection (E) immediately and without further right to appeal.
4. If and only if the tobacco retailer completes the six-month period without violating the provisions of this chapter as determined by the Department, the sanction under subsection (D) or penalty under subsection (E) previously imposed shall be permanently stayed.

8.60.110. Right to administrative review and procedures.

- A. The tobacco retailer shall have the right to appeal the decision of the Department to the City Council. To obtain a review of the final determination, the tobacco retailer must file with the clerk of the Board of Supervisors within fifteen (15) days of the date of the final determination, a written request for a hearing. The timely filing of a request for hearing shall hold in abeyance any license suspension until the administrative review is heard and decided.
- B. If a review is requested, the clerk of the Board of Supervisors shall provide written notice, within thirty (30) days of its receipt of the request, to the tobacco retailer of the date, time and place of the hearing on the appeal.
- C. At the time fixed in the notice, the Board of Supervisors shall proceed to hear testimony from any interested person regarding the specified violation deemed by the Department to be the basis for the proposed administrative penalty, and any other matter which the Board of Supervisors may deem pertinent thereto.
- D. Upon the conclusion of the hearing the Board of Supervisors will make a determination based on the evidence presented at the hearing, and may impose a suspension penalty without regard to the limits in Section 8.60.100.
- E. The decision of the Board of Supervisors shall be final.

Section 2. SEVERABILITY.

The provisions of this Ordinance are severable. If any provision shall be declared to be invalid, the remaining provisions shall not be affected thereby but shall remain in full force and effect.

Section 3. ENVIRONMENTAL QUALITY ACT

This ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines and is not a project which has the potential for causing a significant effect on the environment.

Section 4. EFFECTIVE DATE.

This Ordinance shall take effect 30 days after the date of its passage and within 15 days of its passage a summary of same shall be posted at the three public posting places in the City of Tehachapi.

INTRODUCED at a regular meeting of the City Council of the City of Tehachapi, California on the 16th day of February, 2016.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Tehachapi, California on the ____ day of _____, 2016, by the following votes:

AYES: Councilmembers: _____

NOES: Councilmembers: _____

ABSTAIN: Councilmembers: _____

ABSENT: Councilmembers: _____

SUSAN WIGGINS, Mayor of the City
of Tehachapi, California

ATTEST:

TORI MARSH, City Clerk
of the City of Tehachapi, California

I hereby certify that the forgoing Ordinance was duly and regularly adopted by the City Council of the City of Tehachapi at a regular meeting thereof held on _____, 2016.

TORI MARSH, City Clerk
of the City of Tehachapi, California

Published: February 9, 2016
Posted: February 3, 2016



August 11, 2015

Board of Supervisors
Kern County Administrative Center
1115 Truxtun Avenue
Bakersfield, CA 93301

**PUBLIC HEARING ON PROPOSED REVISIONS TO UNCODIFIED ORDINANCE FOR
PERMIT FEES AND PROPOSED ORDINANCE AMENDING SECTION 8.60 TO
IMPLEMENT RISK-BASED TOBACCO RETAIL PERMIT PROGRAM
(Fiscal Impact: FY 2016-17 \$37,725 Estimated Revenue; Fees; Not Budgeted;
Discretionary)**

The purpose of this letter is to request your Board's approval of the amendment of Kern County Ordinance Code Section 8.60 to implement a risk-based approach to the Tobacco Retailer Permit program. Should your Board approve this approach and the proposed fee changes, it is estimated that permit fees will increase by approximately \$37,725 annually, commencing Fiscal Year 2016-17.

The Environmental Health Division is responsible for the permitting of tobacco retail facilities. Through grant funding, the Division also provides a youth tobacco purchase survey, verifying that tobacco facilities are not selling tobacco products to children. The proposed Ordinance before your Board implements a risk-based approach to the permitting of tobacco retailers based on their compliance with the youth tobacco purchase survey. This is a three-tiered approach that incentivizes compliance and focuses resources where they are most needed.

- A low risk tobacco retail facility is one that has maintained compliance with the youth tobacco purchase survey for the most recent five-year period. Low risk tobacco retail facilities will receive one environmental health inspection and one youth tobacco purchase survey each year.
- A moderate risk tobacco retail facility has had one incident of non-compliance with the youth tobacco purchase survey for the most recent five-year period. Moderate risk tobacco retail facilities will receive one environmental health inspection and two youth tobacco purchase surveys each year. Their permit fee will be an increased amount from the low risk tobacco retail facility permit fee, as they will be receiving a greater level of service due to their increased risk to the community.
- A high risk tobacco retail facility has had two or more incidents of non-compliance with the youth tobacco purchase survey for the most recent five-year period. High risk tobacco retail facilities will receive one environmental health inspection and three youth tobacco purchase surveys each year. Their permit fee will be an increased amount from the moderate risk tobacco retail facility permit fee, as they will be receiving a greater level of service due to their increased risk to the community.

This proposed Ordinance also provides clarity for the penalties and appeal hearing process for those tobacco retail facilities who have been determined to be in violation of the youth tobacco purchase survey. Dependent on the number of violations, a tobacco retail facility could have a suspension and/or administrative penalty sanctioned against them. In the current Ordinance, the administrative penalty amount is based on the number of violations within the most recent one-year period, while the suspension is based on the number of violations within the most recent five-year period. The proposed Ordinance makes both the amount of the administrative penalty and the suspension duration based on the number of violations within the most recent five-year period.

In the event that a tobacco retail facility requests to appeal a violation of the youth tobacco purchase survey, the Ordinance outlines an appeal process, wherein the tobacco retail facility may appeal to the Director of Public Health Services. Currently, the Ordinance allows the Director to either uphold the penalty or grant the appeal and revoke the penalty. However, the goal of the program is to deter the behavior from reoccurring. In an attempt to achieve this goal, the proposed Ordinance will allow the Director to hold the penalty in abeyance. While the penalty is held in abeyance, the tobacco retail facility will be responsible for paying the Division to perform three youth tobacco purchase surveys over a six month period. If the tobacco retail facility passes all three youth tobacco purchase surveys, the Director can then grant the appeal and revoke the penalty, as the tobacco retail facility has demonstrated they have implemented an effective corrective action. Should the tobacco retail facility fail any of the three youth tobacco retail purchase surveys, the Director can implement the originally proposed penalty, as the tobacco retailer has failed to implement effective corrective actions to prevent the sale of tobacco products to children.

This proposed Ordinance removes the permit fee from within Chapter 8.60 of the Kern County Ordinance Code and adds it to the uncodified ordinance that serves as the Division's fee schedule and clarifies the timeline of the Department's responsibility to inform the appealing tobacco retail facility of the final decision made in the appeal request. Additionally, to implement the risk-based approach, this proposal changes the fee structure from a flat fee to a risk-based fee of \$190 for low risk, \$380 for moderate risk, and \$570 for high risk. This requires an amendment to the uncodified ordinance. This amendment will also combine the previous changes that were adopted in two previously separate uncodified ordinances into one complete uncodified fee schedule. No other changes to the previous uncodified ordinances are made with this request.

A letter has been sent to all currently permitted tobacco retail facilities detailing the proposal before your Board. Two copies of each proposed ordinance have been attached; one being a redline version.

The proposed changes to both the Ordinance Code and the uncodified Ordinance Code have been reviewed and approved as to form by County Counsel.

It does not appear this is a project subject to the requirements of the California Environmental Quality Act (CEQA). However, in the event it is determined to be a project, such project would

be exempt from further CEQA review pursuant to section 15061(b)(3) and 15321 of the State CEQA Guidelines.

Therefore, IT IS RECOMMENDED that your Board waive reading and introduce the ordinance amending Kern County Ordinance Code Section 8.60.010 related to Tobacco Retailer Permits and the ordinance amending uncodified Ordinances G-8557 and G-8560, make finding that project is exempt from further CEQA review pursuant to section 15061(b)(3) and 15321 of the State CEQA Guidelines, open public hearing, receive public comment, close hearing, and enact Ordinances.

Respectfully submitted,



Matthew Constantine
Director of Public Health Services

MC:bnc
Attachment
CC: County Administrative Office
County Counsel

ORDINANCE NO. G- _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN, STATE OF CALIFORNIA, AMENDING SUBSECTION (J) AND ADDING SUBSECTIONS (L), (M), AND (N) TO SECTION 8.60.010, AND AMENDING SECTIONS 8.60.050, 8.60.060 AND SECTION 8.60.100, AND ADDING SUBSECTION (F) TO SECTION 8.60.100, AND AMENDING SUBSECTION (B) OF SECTION 8.60.120, IN CHAPTER 8.60, TITLE 8, OF THE KERN COUNTY ORDINANCE CODE RELATING TO TOBACCO RETAILER'S PERMIT

The following ordinance, consisting of six (6) sections, was regularly passed and adopted by the Board of Supervisors at a regular meeting held on this _____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

Chairman of the Board of Supervisors of
the County of Kern, State of California

(SEAL)

ATTEST:

KATHLEEN KRAUSE
Clerk of the Board of Supervisors

By _____, Deputy Clerk

THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN ORDAINS AS FOLLOWS:

Section 1. This ordinance shall be published in accordance with Government Code section 25124 and it shall take effect and be in full force on and after the _____ day of _____, 2015.

Section 2. Subsection (J) of Section 8.60.010, Chapter 8.60, of the Kern County Ordinance Code is amended to read as:

J. "Electronic smoking device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substance. "Electronic smoking devices" include any such electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. "Electronic smoking device" does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

Section 3. Subsections (L), (M), and (N) are added to Section 8.60.010, Chapter 8.60, of the Kern County Ordinance Code to read as:

L. "Tobacco retail facility low risk" means a tobacco retail facility that has not been determined by the Department to have violated the provisions of Kern County Ordinance 08.06.090 in the previous five years.

M. "Tobacco retail facility moderate risk" means a tobacco retail facility that has been determined by the Department to have violated the provisions of Kern County Ordinance 08.06.090 one time in the previous five years.

N. "Tobacco retail facility high risk" means a tobacco retail facility that has been determined by the Department to have violated the provisions of Kern County Ordinance 08.06.090 two or more times in the previous five years.

Section 4. Sections 8.60.050, 8.60.060 and 8.60.100 of Chapter 8.60 of the Kern County Ordinance Code are amended to read as:

8.60.050 – Display of permit.

Each permittee shall prominently display the permit at each location where tobacco retailing occurs. The permit shall be posted at or near each entrance to the retail facility used by its patrons or in a conspicuous place approved by the Director. The permit shall not be defaced, marred, camouflaged, hidden, or removed.

8.60.060 – Fees for permit.

The environmental health permit fee for each establishment, business or activity shall be established by uncodified ordinance.

8.60.100 – Administrative penalties.

A. Upon a determination by the Department that a person has engaged in any conduct that violates the provisions of this chapter, the Director may suspend a Tobacco Retailer's Permit, impose administrative penalties, or both suspend the permit and impose administrative penalties.

B. The Department shall notify the tobacco retail facility owner that there has been an initial determination of violation under the provisions of this chapter. The initial determination notice will specify the violation and the sanction imposed, including the effective date of the suspension, if applicable. The notice shall further state that the tobacco retail facility owner may, within fifteen (15) days, submit to the Department any written or documentary evidence to contest the initial determination of violation.

C. After receiving such evidence, if applicable and provided, the Director shall prepare a final written decision and shall serve this decision upon the tobacco retailer. Upon written request, the offender shall have the right to receive copies of any records or files upon which the administrative decision is based. This final determination shall be served through certified mail within sixty (60) days of the final determination.

D. When this chapter permits the Director to suspend a permit, the following sanction may be imposed:

1. For the first violation in any five (5) year period, the tobacco retailer shall receive a notice of violation from the Department.
2. For the second violation in any five (5) year period, the person's Tobacco Retailer's Permit shall be suspended for up to thirty (30) days.
3. For a third violation in any five (5) year period, the person's Tobacco Retailer's Permit shall be suspended for up to ninety (90) days.
4. For a fourth or subsequent violation in any five (5) year period, the person's Tobacco Retailer's Permit shall be suspended for up to one hundred eighty (180) days and/or revoked.

E. When this chapter allows the Director to impose an administrative penalty, the following penalty may be imposed:

1. For the first violation, a penalty in the amount of two hundred fifty dollars (\$250);
2. For the second violation within five (5) years from the date of the first violation, a penalty in the amount of five hundred dollars (\$500);
3. For the third and each subsequent violation within five (5) years from the date of the first violation, a penalty in the amount of one thousand dollars (\$1,000).

Section 5. Subsection (F) is added to Section 8.60.100, Chapter 8.60, of Kern County Ordinance Code to read as:

F. Upon determination by the Department that a tobacco retailer has violated any provision of this chapter and that the tobacco retailer did not violate any provision of this chapter in the five (5) years immediately preceding the violation, the Director may suspend the imposition of any sanction under subsection (D) or penalty under subsection (E) for a period of six (6) months.

1. Within fifteen (15) days of the Director's decision to suspend the imposition of any sanction or penalty pursuant to this subsection, the tobacco retailer shall pay a fee of \$500 for the cost of inspections during the six-month period. Failure to pay this fee shall immediately restore the imposition of any sanction under subsection (D) or penalty under subsection (E).
2. During the six-month period, the Department shall inspect the tobacco retail facility for compliance as deemed necessary by the Department.

3. A determination by the Department that the tobacco retailer has engaged in any conduct that violates the provisions of this chapter during the six-month period shall restore the imposition of any sanction under subsection (D) or penalty under subsection (E) immediately and without further right to appeal.

4. If and only if the tobacco retailer completes the six-month period without violating the provisions of this Chapter as determined by the Department, the sanction under subsection (D) or penalty under subsection (E) previously imposed shall be permanently stayed.

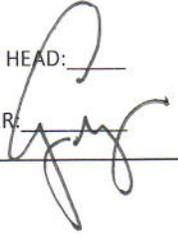
Section 6. Subsection (B) of Section 8.60.120 of Chapter 8.60 of the Kern County Ordinance Code is amended to read as:

B. The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Department or the California Department of Public Health.

COUNCIL REPORTS

APPROVED

DEPARTMENT HEAD: _____

CITY MANAGER: _____
**MEETING DATE:** JANUARY 19, 2016 **AGENDA SECTION:** City Attorney

TO: HONORABLE MAYOR WIGGINS AND COUNCIL MEMBERS

FROM: TOM SCHROETER, CITY ATTORNEY

DATE: January 11, 2016

SUBJECT: ORDINANCE PROHIBITING MEDICAL MARIJUANA DISPENSARIES COOPERATIVES, AND COLLECTIVES AND THE MOBILE DELIVERY, CULTIVATION, AND PROCESSING OF MARIJUANA

BACKGROUND:

Effective January 1, 2016, the "Medical Marijuana Regulation and Safety Act" went into effect. The Act allows local governments to enact ordinances prohibiting marijuana cultivation, processing, delivery, and medical marijuana dispensaries. A city with "permissive" zoning is deemed to have prohibited these activities without further action. Tehachapi's zoning ordinance arguably is permissive and therefore prohibits these activities. In 2008 and 2009, appellate courts held that if a city's zoning ordinance contained a provision to the effect that any uses not specifically authorized under the zoning ordinance were prohibited, then marijuana activities were deemed prohibited if not specifically authorized. The city has always relied on these decisions to prohibit such activities without adopting an ordinance to specifically prohibit them. This is now set forth in state law.

Although the appellate court decisions were clear, state law is not. State law uses the term "permissive zoning" but does not define it. Additionally, the term could later be defined in a way that would allow certain marijuana activities or it could be removed all together. Consequently, staff has determined that it is better to adopt an ordinance specifically prohibiting those activities rather than relying on the concept of "permissive zoning." The ordinance to be introduced would prohibit the cultivation and processing of marijuana, marijuana delivery, marijuana dispensaries, and medical marijuana collectives and cooperatives.

RECOMMENDATION:

Introduce the following ordinance: An ordinance of the City Council of the City of Tehachapi making findings including an exemption from the California Environmental Quality Act and adding Chapter 8.64 to the Tehachapi Municipal Code prohibiting medical marijuana dispensaries, cooperatives and collectives, including the mobile delivery of marijuana, the cultivation of marijuana, and the processing of marijuana.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEHACHAPI MAKING FINDINGS INCLUDING AN EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND ADDING CHAPTER 8.64 TO THE TEHACHAPI MUNICIPAL CODE PROHIBITING MEDICAL MARIJUANA DISPENSARIES, COOPERATIVES, AND COLLECTIVES, INCLUDING THE MOBILE DELIVERY OF MARIJUANA, THE CULTIVATION OF MARIJUANA, AND THE PROCESSING OF MARIJUANA

THE CITY COUNCIL OF THE CITY OF TEHACHAPI DOES ORDAIN AS FOLLOWS:

Section 1. FINDINGS.

The City Council of the City of Tehachapi ("City") makes the following findings:

A. That the manufacture, sale, distribution, possession, and cultivation of marijuana, whether for medical purposes or for recreational use, has significant adverse impacts or the potential for significant adverse impacts on the City.

B. That these impacts include damage to residences and other buildings, dangerous electrical alterations and use, inadequate ventilation, increased robberies and other crime, and the nuisance of strong and noxious odors and other similar negative effects on the public health, safety and welfare to the residents and businesses in the City.

C. That many California cities have experienced negative impacts from marijuana cultivation, processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, homicide, fire hazards, and problems associated with mold, fungus, and pests as chronicled in detail by a report prepared by the California Police Chiefs Association dated April 22, 2009 reporting increases in crimes such as burglary, drug dealing, armed robbery, and murder connected to marijuana dispensaries and having quality of life impacts such as adverse traffic and noise.

D. That the 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.

E. That 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 increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

F. That the potential establishment of the cultivation, processing and distribution of medical marijuana in the City without an expressed ban on such activities poses a current and immediate threat to the public health, safety, and welfare of the City due to the negative impacts of such activities as described above.

G. That the issuance or approval of business licenses, use permits, building permits, or any other applicable entitlement for marijuana cultivation, processing, delivery, or distribution will result in a further threat to public health, safety, and welfare.

Section 2. AMENDMENTS.

A. Chapter 8.64 entitled "Medical Marijuana" is hereby added to the City of Tehachapi Municipal Code to read as follows:

8.64.010 Legislative Findings and Statement of Purpose. A. The City Council finds that the prohibitions on marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries 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 by state law.

B. The City Council finds that this chapter:

1. Prohibits the cultivation of marijuana in the City and administration of a conditional permit program pursuant to Health and Safety Code Section 11362.777 for the cultivation of marijuana in the City;
2. 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;
3. 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.

8.64.020 Definitions. For purposes of this chapter, the following definitions shall apply.

A. "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 food stuff or any other ingestible or consumable product containing marijuana. The term 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 provisions of California Health and Safety Code Section 11362.5 or Sections 11362.7 to 11362.83.

B. "Marijuana cultivation" means to farm, till, work, grow, plant, harvest, dry, cure, grade, trim, process, or develop marijuana, whether within a structure completely or partially enclosed or outdoors."

C. "Marijuana dispensary," "marijuana dispensaries," or "marijuana delivery" means any use, facility, location, business, office, store, retail store front or wholesale component of any establishment, cooperative, or collective that delivers (as defined in Business and 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 or Sections 11362.7 to 11362.83."

D. "Marijuana processing" means any method used to prepare marijuana or its byproducts for commercial retail or wholesale, including but not limited to drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.

E. "Medical marijuana collective" and "medical marijuana cooperative" 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 provisions of the California Health and Safety Code Section 11362.5 or Sections 11362.7 to 11362.83.

8.64.030 Prohibited Activities. Marijuana cultivation, marijuana processing, marijuana delivery, marijuana dispensaries, and medical marijuana collectives and cooperatives shall be prohibited activities in the City. No use permit, variance, building permit, or any other entitlement, or business license or permit, whether administrative or discretionary, shall be approved or issued for the activities of marijuana cultivation, marijuana processing, marijuana delivery, or the establishment or operation of a marijuana dispensary or medical marijuana collective or cooperative in the City, and no person shall otherwise establish or conduct such activities in the City.

8.64.040 Public Nuisance. Any violation of this chapter is hereby declared to be a public nuisance.

8.64.050 Violations. Any violation of this chapter shall be punishable as provided in Section 1.20.010 of this Code or any successor section thereto.

Section 2. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions

of this Ordinance.

Section 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT.

This ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines and is not a project which has the potential for causing a significant effect on the environment.

Section 4. EFFECTIVE DATE.

This Ordinance shall take effect 30 days after the date of its passage and within 15 days of its passage shall be published in a newspaper of general circulation, printed and published in the City of Tehachapi.

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INTRODUCED at a regular meeting of the City Council of the City of Tehachapi on the _____ day of _____, 2016.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Tehachapi on the _____ day of _____, 2016, by the following votes:

AYES: Councilpersons _____

NOES: Councilpersons _____

ABSTAIN: Councilpersons _____

ABSENT: Councilpersons _____

SUSAN WIGGINS, Mayor of
the City of Tehachapi, California

ATTEST:

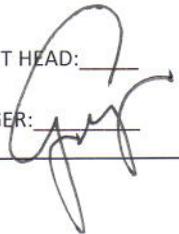
TORI MARSH, City Clerk
of the City of Tehachapi, California

Published: _____

COUNCIL REPORTS

APPROVED

DEPARTMENT HEAD: _____

CITY MANAGER: _____
**MEETING DATE:** January 19, 2016**AGENDA SECTION:** City Attorney

TO: HONORABLE MAYOR WIGGINS AND COUNCIL MEMBERS

FROM: TOM SCHROETER, CITY ATTORNEY

DATE: January 19, 2016

SUBJECT: AN ORDINANCE REGULATING MASSAGE ESTABLISHMENTS

BACKGROUND:

Last year, the legislature adopted more stringent rules regulating massage therapists. This legislation prohibited cities from enacting or enforcing ordinances that conflict with state law. However, the legislation also authorized cities to adopt or enforce local ordinances that govern zoning, business license or reasonable health and safety requirements for establishments or businesses of a licensed or certified healing arts professional, including a certified massage therapist. Previously, cities did not have this authority.

The ordinance requires all such businesses to obtain an Establishment Registration Certificate (ERC) issued by the police chief to operate a massage establishment. The certificate would be good for one year and would have to be renewed annually thereafter. There is a process outlined for issuing the ERC or for revoking or suspending it if necessary. Operational requirements are described in the Ordinance. Only a massage therapist who maintains a California Massage Therapy Council certificate may work in such a business. Hours of operation, attire, and condition of the premises and supplies, among other things are regulated. Inspections by City officials are authorized. Additionally, no massage business may be located fewer than 1000 feet from another massage establishment.

RECOMMENDATION:

Introduce the following ordinance: An Ordinance of the City Council of the City of Tehachapi Adding Chapter 5.40 to the Tehachapi Municipal Code Regulating Massage Establishments.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEHACHAPI ADDING CHAPTER 5.40 TO THE TEHACHAPI MUNICIPAL CODE REGULATING MASSAGE ESTABLISHMENTS.

THE CITY COUNCIL OF THE CITY OF TEHACHAPI DOES ORDAIN AS FOLLOWS:

Section 1. AMENDMENTS.

Chapter 5.40 attached hereto as Exhibit "A" and by this reference made a part hereof is hereby added to the Tehachapi Municipal Code.

Section 2. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is held to be invalid or unconstitutional such decision shall not affect the validity of the remaining portions of this Ordinance.

Section 3. ENVIRONMENTAL QUALITY ACT.

This ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines and is not a project which has the potential for causing a Significant effect on the environment.

Section 4. EFFECTIVE DATE.

This Ordinance shall take effect 30 days after the date of its passage and within 15 days of its passage shall be published in the newspaper of general circulation, printed and published in the City of Tehachapi.

INTRODUCED at a regular meeting of the City Council of the City of Tehachapi on the _____ day of _____, 2016. .

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Tehachapi on the day _____ of _____, 2016, by the following votes:

AYES: Councilpersons _____

NOES: Councilpersons _____

ABSTAIN: Councilpersons _____

ABSENT: Councilpersons _____

SUSAN WIGGINS, Mayor of
the City of Tehachapi, California

ATTEST:

TORI MARSH, City Clerk
of the City of Tehachapi, California

EXHIBIT A

CHAPTER 5.40

Massage Establishment Regulation

- 5.40.010- Definitions
- 5.40.020- Authority
- 5.40.030- Establishment Registration Certificate
- 5.40.040- Application for Establishment Registration Certificate
- 5.40.050- Approval or Denial of Establishment Registration Certificate
- 5.40.060- No Transfer of Establishment Registration Certificate
- 5.40.070- Establishment Registration Certificate Expiration and Renewal
- 5.40.080- Revocation or Suspension of Establishment Registration Certificate
- 5.40.090- Establishment Registration Certificate Revocation or Suspension Hearing
- 5.40.100- Reapplication after Denial
- 5.40.110- Exemptions
- 5.40.120- Massage Establishment Requirements
- 5.40.130- Massage Establishment Operation
- 5.40.140- Outcall Massages
- 5.40.150- Massage Establishment Prohibited Conduct
- 5.40.160- Inspection by Officials
- 5.40.170- Violation/Penalty
- 5.40.180- Separate Violations
- 5.40.190- Unlawful Operations Declared Nuisance or Civil Citation
- 5.40.200- Severability

5.40.010 Definitions

“Applicant” means an individual or business seeking to open a Massage Establishment who maintains a current CAMTC Certification or will employ only CAMTC Certified Massage Therapists, and is applying for an Establishment Registration Certificate from the City.

“California Massage Therapy Council” or **“CAMTC”** means the organization created by the State of California, pursuant to Division 2, Chapter 10.5 of the Business and Professions Code, to regulate massage businesses, training, practices, and techniques.

“Establishment Registration Certificate” means a City permit issued by the Police Chief to operate a Massage Establishment.

“Manager” (or **“Operator”**) means the person, who is 18 years of age or older, managing day-to-day operations of a Massage Establishment. A Manager must be an employee or Owner of the Massage Establishment. A Manager may not be an independent contractor of the Massage Establishment.

“Massage Establishment” means any massage business located in, and permitted by, the City, where Massage Therapy for compensation occurs. Massage Establishments

must possess all City permits and licenses including a City Business License, and an Establishment Registration Certificate.

“Massage Therapy” (or “Massage”) means any method of person-to-person contact by a Massage Therapist that involves pressure on, friction against or stroking, kneading, rubbing, tapping, pounding, or vibrating the external parts of the human body, except for genitals. These person-to-person contact methods may include use of a Massage Therapist’s hands, the aid of any mechanical or electrical apparatus or appliance, and other similar preparations commonly used in this practice.

“Massage Therapist” means any person who is 18 years of age or older, who maintains a current CAMTC Certificate pursuant to Division 2, Chapter 10.5 of the California Business and Professions Code.

“Owner” means the individual or business entity listed as the Owner on the City Business License.

5.40.020 Authority

- A. This Chapter is intended to supplement State Law, including Division 2, Chapter 10.5 of the Business and Professions Code, Government Code Section 51034, and any other applicable State Law, for the regulation of massage businesses.
- B. The City’s Police Chief has the authority, at his or her sole discretion, to permit, inspect, or otherwise regulate Massage Establishments. The Police Chief may revoke, suspend, or deny any Establishment Registration Certificate. Any and all of these rights and duties provided to the Police Chief by this Chapter are delegable at his or her discretion to other City authorities, departments, or agencies.

5.40.030 Establishment Registration Certificate

All Massage Establishments seeking to open and conduct business in the City must first obtain an Establishment Registration Certificate. It is unlawful to open or operate a massage business in the City without having first obtained an Establishment Registration Certificate.

5.40.040 Application for Establishment Registration Certificate

A City-provided application form must be completed before obtaining an Establishment Registration Certificate. The Applicant must provide all information required on the application, provide any supplemental information requested by the City, and attest under penalty of perjury that all information presented on the application is true and correct.

- A. All Applicants must submit to, and participate in, a background check by the City. No Establishment Registration Certificate will be issued if the background check reveals any of the following:

1. The Applicant has been convicted of any felony, or conspiracy to commit, or attempt to commit, the same, as defined by Federal or State law; or
 2. The Applicant has been convicted of any misdemeanor, or conspiracy to commit, or attempt to commit, the same, which is sexual in nature, as defined by State or local law; or
 3. The Applicant has been convicted of any crime of moral turpitude, or conspiracy to commit, or attempt to commit, the same, as defined by State or local law; or
 4. The Applicant has had an individual or business permit or license with any agency, board, city, county, territory, or state denied, revoked, restricted, or suspended within the last five years; or
 5. The Applicant has been subject to an injunction for nuisance, as defined by State or local laws, within the last five years.
- B. The Applicant shall provide the non-refundable Establishment Registration Certificate application fee at the time the application is submitted in an amount established by Resolution of the City Council.
- C. Upon receipt of the completed Establishment Registration Certificate application, the Police Chief will commence an application review and background check. The Police Chief will approve or deny the application within 60 days. If 60 days pass without a response from the Police Chief, the application is automatically deemed denied.

5.40.050 Approval or Denial of Establishment Registration Certificate

- A. An Establishment Registration Certificate may be issued by the Police Chief to any Applicant that demonstrates all of the following:
1. The Applicant's background check does not reveal violations contemplated by Section 5.40.040(A) of this Chapter; and
 2. For new Massage Establishments, the proposed location for the Massage Establishment is no fewer than 1,000 feet from another Massage Establishment as measured from the property lines; and
 3. The Massage Establishment complies or will comply with all applicable Federal, State, and local laws, including the City's Building Codes, Zoning Codes, State Health Regulations, and all requirements of this Chapter; and
 4. The Applicant possesses a valid City Business License; and
 5. The Applicant truthfully, accurately, and completely provided all information, assurances, and documentation required by the City on the Establishment Registration Certificate application and additional information required by the Police Chief; and
 6. The Massage Establishment employs only CAMTC Certified Massage

Therapists.

B. The Applicant for the Establishment Registration Certificate may be denied for failure to satisfy any of the requirements in this Chapter.

5.40.060 Transfer of Establishment Registration Certificate

An Establishment Registration Certificate is not transferrable.

5.40.070 Establishment Registration Certificate Expiration and Renewal

Unless earlier revoked or suspended, an Establishment Registration Certificate shall be valid for one year; renewals will be required thereafter. The term of the Establishment Registration Certificate will coincide with the dates appearing on the Applicant's City-issued Business License.

5.40.080 Revocation or Suspension of Establishment Registration Certificate

A. In addition to civil and criminal penalties, Establishment Registration Certificates may be suspended or revoked upon any of the following grounds:

1. The City has determined that an Establishment Registration Certificate holder has made a material misrepresentation on the application for an Establishment Registration Certificate or renewal; or
2. The City determines that the Establishment Registration Certificate holder has violated any of the provisions of this Chapter, or for any violation of Federal, State, or local laws, or any conditions of the Establishment Registration Certificate; or
3. Any employee or independent contractor of the Massage Establishment violates any provisions of this Chapter.

B. The provisions of this Chapter shall apply to all existing Establishment Registration Certificates regardless of the date any Establishment Registration Certificate was issued.

C. No Massage Establishment shall be opened at the same address where a Massage Establishment was closed or Establishment Registration Certificate revoked in violation of any provision of this Chapter, or for any violation of Federal, State, or local laws, for at least 24 months.

D. Following suspension or revocation, the Police Chief may post a notice of revocation or suspension on the premises, and the notice shall state the reasons for the revocation or suspension. The Police Chief may direct the premises to be closed or locked, thereby prohibiting any public access.

E. It is unlawful for any person to conduct the business of a Massage Establishment after the Establishment Registration Certificate has been suspended or revoked.

5.40.090 Establishment Registration Certificate Revocation or Suspension Hearing

Notice of a revocation or suspension by the City of an Establishment Registration Certificate will be provided to the Establishment Registration Certificate holder and will contain a statement of the violations that constitute the basis for such revocation or suspension. The notice will also include information regarding the steps that must be taken for an appeal.

- A. Appeals to the Police Chief under this Chapter shall be in writing, shall clearly state all applicable grounds for the appeal, and shall be filed with the City Clerk not later than 15 calendar days following the date of notice of revocation or suspension issued by the Police Chief.
- B. The City will not accept an appeal, and no hearing may be conducted, unless the appellant has paid a filing fee at the time of serving the appeal papers, in an amount set by Resolution of the City Council.
- C. The scope of the appeal hearing pursuant to this section shall be limited to those issues raised by the appellant in the appeal papers, as submitted pursuant to Subsection A of this Section.
- D. Within 10 days after the Police Chief renders a decision, the Establishment Registration Certificate holder may timely-file a written appeal to the City Manager. The Police Chief shall set the matter for hearing before the City Manager or his or her designee within 30 days of the receipt of the appeal. Unless mutually agreed, the hearing shall be held not fewer than 10 calendar days and not more than 30 calendar days from the date of the appeal request. The hearing may be continued from time to time upon the mutual consent of the parties.
- E. The appellant shall be provided with notice of the time and place of the appeal hearing, as well as a copy of all relevant materials at least 10 calendar days prior to the hearing.
- F. The City will provide a written decision no more than 30 days after the hearing is conducted.

5.40.100 Re-Application after Denial

After an Establishment Registration Certificate has been revoked or denied, no re-application for an Establishment Registration Certificate will be accepted within two years from any person, Applicant, Owner, Operator, Manager, Massage Therapist, or any other person or persons, partnership, or corporation who was listed on an Establishment Registration Certificate. If, however, an Establishment Registration Certificate was denied for the sole reason that a Massage Therapist did not maintain CAMTC Certification, re-application may occur after proper CAMTC Certification has been reinstated.

5.40.110 Exemptions

The provisions of this Chapter shall not apply to the following:

- A. Physicians, surgeons, chiropractors, osteopaths, acupuncturists, and physical therapists duly licensed to practice in the State of California and hospitals, nursing homes, sanitariums, or other health care facilities duly licensed by the State of California; or
- B. Registered or licensed vocational nurses duly registered by the State of California; or
- C. Barbershops and beauty salons; or
- D. Accredited high schools and colleges and their employees; or
- E. Trainers of any amateur, semi-professional, or professional athlete or athletic team; or
- F. Massage Therapy provided by a Massage Therapist according to the terms of a prescription for certain treatment issued by a California licensed health care provider; or
- G. Physical therapy students and Massage Therapy students who are currently enrolled in a licensed program for physical therapy or Massage Therapy in a State recognized or accredited school/educational program, and who provide massage services under the direct supervision of a California licensed instructor; or
- H. Owners of stand-alone hotels with more than 100 on-site rooms for rent, which provide Massage Therapy for their guests on site by a Massage Therapist.

5.40.120 Massage Establishment Requirements

All Massage Establishments shall comply with the following requirements:

- A. Subject to applicable provisions of the Municipal Code, a legible and easy to read sign shall be posted at the main entrance of the Massage Establishment identifying the business as a Massage Establishment; and
- B. A minimum level of artificial lighting sufficient to discern the activity occurring in the Massage Establishment and each separate massage room must be present at all times. This minimum level of artificial lighting is equivalent to an activated 40-watt light bulb in each approximate 100 square feet of indoor space; and
- C. Only equipment and chemicals approved by the County Health Department for disinfecting, cleaning, and sterilizing shall be used in the Massage Establishment; and
- D. Hot and cold running water shall be provided within the Massage Establishment at all times; and
- E. Clean linen shall be stored in a closed cabinet. Approved receptacles acceptable to the County Health Department shall be provided for the deposit of used linens; and
- F. Only professional massage tables that are generally accepted in the professional massage industry may be placed in massage rooms and utilized for Massage Therapy. No beds, mattresses, or waterbeds are allowed in Massage Establishments; and

G. All Massage Establishments shall be subject to periodic inspections by the City, or other government agencies, for compliance with applicable Federal, State, and local health, safety, and building laws and standards.

5.40.130 Massage Establishment Operation

Every Massage Establishment shall comply with the following operating requirements:

- A. Only a Massage Therapist may provide Massage Therapy; and
- B. Massage Therapists must wear their CAMTC issued identification card on the outside of their clothing and in plain view as a name badge at all times while in the Massage Establishment. All non-CAMTC Certified employees and independent contractors working at the Massage Establishment must wear a name badge displaying his or her true and correct name; and
- C. Massage Establishments may only be open between the hours of 8:00 a.m. and 10:00 p.m. The hours of operation must be displayed in a conspicuous place in the lobby or in any front window clearly visible from outside the Massage Establishment. All massages must conclude at or before 10:00 p.m.; and
- D. Massage Therapists shall be clothed at all times. Clothing shall be of completely non-transparent material. Massage Establishment employees and independent contractors may not:
 - 1. Wear attire that substantially exposes the undergarments; or
 - 2. Wear swimsuit attire, unless the Massage Therapist is providing water-based Massage Therapy approved by CAMTC; or
 - 3. Dress in a manner that exposes the employee's or contractor's breasts, buttocks, or genitals; or
 - 4. Dress in a manner that violates the indecent exposure provisions of California Penal Code Section 314 (as may be amended); and
- E. A Manager must be present at the Massage Establishment and on the premises at all times during the Massage Establishment's operating hours; and
- F. Towels, linens, and coverings may not be used on more than one patron unless the towel, linen, or covering has first been laundered and disinfected. Disposable towels, linens, and coverings shall not be used on more than one patron; and
- G. Wet and dry heat rooms, steam or vapor rooms or cabinets, warming appliances, shower rooms and compartments, and toilet rooms and pools, shall be thoroughly cleaned and disinfected at least once each day the Massage Establishment is open. Bathtubs shall be thoroughly cleaned after each use; and
- H. Instruments utilized in Massage Therapy shall not be used on more than one patron unless they have been sterilized using approved sterilizing methods; and
- I. The Owner or Manager of the Massage Establishment shall keep a complete and current list or roster of the legal names, residential addresses, and CAMTC Certificate

numbers of all Massage Therapists, and the legal names and residential addresses of all non-CAMTC Certified employees and independent contractors working at the Massage Establishment. That list shall also include the legal name and residential address of the Manager of the Massage Establishment. This roster shall be kept at the Massage Establishment premises and be available at all times for inspection by the City; and

J. Except as provided for in this Chapter, friends, family, and visitors are not allowed in the Massage Establishment while it is open for business. Only the Owner, Manager, Massage Establishment employees and independent contractors, and patrons are allowed in the Massage Establishment during operating hours; and

K. All doors leading into a Massage Establishment or area where Massage Therapy is performed shall remain unlocked during business hours. Internal offices or areas where cash or valuables are stored may be locked; and

L. Every Massage Establishment Owner or Operator shall report in writing immediately to the Police Chief any and all changes of the Massage Establishment address or ownership of the Massage Establishment; and

M. The following notice shall be posted in a conspicuous place in the Massage Establishment. The notice must be easy to read by any person, must be displayed in English and must be visible to anyone entering the Massage Establishment:

NOTICE TO ALL PATRONS: THIS MESSAGE ESTABLISHMENT AND THE MESSAGE ROOMS DO NOT PROVIDE COMPLETE PRIVACY AND ARE SUBJECT TO INSPECTION BY AUTHORIZED CITY OF TEHACHAPI PERSONNEL WITHOUT PRIOR NOTICE.

and

N. A list of all Massage Therapy services and their costs shall be posted in an open and conspicuous place near the entrance of the Massage Establishment. No Massage Establishment Owner or Manager shall permit, and no employee or independent contractor of the Massage Establishment shall offer to perform, any Massage Therapy services, or charge any fees, other than those posted; and

O. No portion of the Massage Establishment will be used for sleeping or residential purposes.

5.40.140 Outcall Massages

No Massage Therapy shall be conducted in a hotel or motel room except as allowed in Section 5.40.110.H, or in the private residence of the Massage Therapist. A Massage Therapist is permitted to provide outcall massage services at a private residence only between the hours of 8:00 a.m. and 10:00 p.m.

5.40.150 Massage Establishment—Prohibited Conduct

In addition to the conduct, activities, items, and substances prohibited by Federal and

State Laws, the following conduct is prohibited at Massage Establishments:

- A. The sale, service, or consumption of alcohol or marijuana; and
- B. Audio or video recording of, or monitoring of, the patron, the Massage Therapist, or the Massage Therapy, without the prior written consent of the patron; and
- C. Massage Therapy, touching, fondling, or otherwise intentional contact with the genitals, breasts of a female patron, or anus of any patron. To perform Massage Therapy on the breasts of a female patron, the Massage Therapist must have obtained prior written consent from the patron and a prior written referral from a licensed California health care provider; and
- D. Massage Therapy at any time while breasts of female patrons are uncovered or the genitals of any patron is uncovered; and
- E. Advertising or marketing illegal activity, advertising or marketing sexual content related to Massage Therapy, or advertising or marketing sexual content in the promotion of the Massage Establishment; and
- F. Use or possession of adult-oriented merchandise, including "sex toys" and condoms, in any part of a Massage Establishment; and
- G. Any sexual activity at a Massage Establishment.

During the hours of operation, only the client receiving Massage Therapy is allowed in the massage rooms except as follows: (1) the parents or guardian of a patron who is a minor child may be present; (2) the minor child of a patron may be present in the Massage Therapy room with the patron; or (3) the conservator, aide, or other caretaker of a patron may be present in the massage room.

5.40.160 Inspection by Officials

The City, County, or any investigating official shall have the right to enter the premises of the Massage Establishment from time to time during regular business hours to conduct reasonable inspections to enforce compliance with this Chapter and with building, fire, electrical, plumbing, and State and local health and safety regulations.

No person shall refuse to permit or interfere with a lawful inspection of the Massage Establishment by City or County investigating officials.

5.40.170 Violation—Penalty

Any person violating provisions of this Chapter shall be guilty of a misdemeanor, punishable by a fine of \$1,000.00 or by imprisonment in the County jail for a period not to exceed six months, or by both such fine and imprisonment. Whenever any City official inspects a Massage Establishment and finds that any provision of this Chapter has been violated, a notice of such violation shall be issued by means of a written notice, including, but not limited to, a letter, an inspection report, a notice of violation, or by issuing a civil or criminal citation for each and every violation, including those contemplated by this

Chapter, and Federal, State, City, and other applicable laws.

5.40.180 Separate Violations

Each violation described in this Chapter, or those provided for by State Laws, shall constitute a separate violation. Each violation may be charged as a separate count in the event of administrative or criminal enforcement action. Violations by employees or independent contractors of Massage Establishments shall be considered violations committed by the Massage Establishment, and termination of the employee/contractor shall not relieve the Owner or Establishment Registration Certificate holder of any civil or criminal liability.

5.40.190 Unlawful Operation Declared Nuisance or Civil Citation

Any Massage Establishment operated, conducted, or maintained contrary to the provisions of this Chapter and State laws shall be and the same is hereby declared to be unlawful and a public nuisance. The City Attorney may, in addition to, or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings for abatement, removal, or enjoinder thereof, in the manner provided by law. The City Attorney shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as shall abate or remove such Massage Establishment and restrain and enjoin any Owner, Operator, Manager, Massage Therapist, or any other person from operating, conducting, or maintaining a Massage Establishment in the City.

5.40.200 Severability

Nothing in this Chapter is intended to conflict or supersede Division 2, Chapter 10.5 of the Business and Professions Code as may be amended. If any Section, subsection, phrase, or clause of this Chapter is for any reason held to be invalid by a Court of law, such judicial decision shall not affect the validity of the remaining portion of this Chapter. The City Council declares that it would have adopted this Chapter and each Section, subsection, phrase, or clause contained herein irrespective of the fact that any one or more Sections, subsections, sentences, phrases, or clauses may be declared invalid.



COUNCIL REPORTS

APPROVED	
DEPARTMENT HEAD:	
CITY MANAGER:	

MEETING DATE: March 7, 2016 AGENDA SECTION: ASST. CITY MANAGER

TO: HONORABLE MAYOR WIGGINS AND COUNCIL MEMBERS

FROM: CHRIS KIRK, ASSISTANT CITY MANAGER

DATE: March 2, 2016

SUBJECT: SBA Cell Phone Tower Lease Amendment

BACKGROUND

As the Council is aware, multiple companies currently hold lease agreements with the City for cell phone towers on the Airport Hill, or Rock Pile. The revenue generated from these leases is a significant source of operating funds for the airport and the impacts associated with the cell tower operations are negligible.

In July 2000, the City entered into an site lease agreement with Nextel Communications to be for the construction and operation of a cell tower which commenced on October 2, 2000. This lease was later transferred to TowerCo, who then subleased space to Metro PCS for an additional fee, a portion of which was payable to the City. Since the approval of the lease agreement and subsequent amendments, the tower has posed little to no issue for the City and has generated significant revenues for the airport.

Pursuant to the terms of the original lease, the agreement is set to terminate on October 1, 2020. As such, the tenant has requested an amendment to the agreement (attached) that will both extend the lease, and will modify some terms of the lease.

A summary of key provisions of the lease amendment are as follows:

1. Upon expiration of the original term, the agreement will include five additional successive five year terms. Each five year renewal term will be automatically extended unless terminated in writing.
2. Current rent, including annual increases stipulated in the original agreement, will continue. Additionally, the City will be paid an additional 30% revenue share for any future co-location tenants on the tower, beginning with the third tenant.
3. Upon execution of the agreement, the City lessee will pay the City a one-time payment of \$50,000.

*Note – these funds will go to the Airport Fund and will then be used to pay down existing debt that the airport owes to the General Fund.

RECOMMENDATION

APPROVE THE AMENDMENT TO THE COMMUNICATIONS SITE LEASE BETWEEN THE CITY OF TEHACHAPI AND SBA 2012 TC ASSETS, LLC

Prepared by: Karen Mello
After recording return to: Khreshmore Spence
SBA Network Services, LLC
8051 Congress Avenue
Boca Raton, FL 33487-1307
Ph: 1-800-487-7483 ext. 7795

Parcel ID: 415-012-07; 415-012-20;
040-460-01

**MEMORANDUM OF AMENDMENT TO COMMUNICATIONS
SITE LEASE AGREEMENT (GROUND)**

THIS MEMORANDUM OF AMENDMENT TO COMMUNICATIONS SITE LEASE AGREEMENT (GROUND) ("Memorandum of Amendment") is executed this _____ day of _____, 2016, by and between **CITY OF TEHACHAPI, a California municipal corporation**, having an address at Tehachapi Municipal Airport, 115 S. Robinson Street, Tehachapi, CA 93561-1722 ("Lessor") and **SBA 2012 TC ASSETS, LLC, a Delaware limited liability company**, having a principal office located at 8051 Congress Avenue, Boca Raton, Florida 33487-1307 ("Lessee").

WHEREAS, Lessor and Nextel of California, Inc., a Delaware corporation, d/b/a Nextel Communications entered into that certain unrecorded Communications Site Lease Agreement (Ground), dated July 3, 2000, as amended, and ultimately assigned to Lessee f/k/a TowerCo Assets LLC, a Delaware limited liability company, successor by merger to Tower Entity 7 LLC, a Delaware limited liability company, pursuant to that certain Assignment and Assumption of Ground Lease recorded March 2, 2009, as Document #0209029161, of the Assessor and Recorder's Office of Kern County, California (collectively, "Agreement") for Lessee's use of a portion of the real property ("Premises") located at 314-1/2 North Hayes Street at East J Street / Airport, Tehachapi, CA 93561 ("Land"), being more particularly described in the attached Exhibit "A"; and

WHEREAS, the Premises is leased by Lessee under the terms of the Agreement, along with any corresponding easements granted, lies within the described property on Exhibit "A" attached hereto.

WHEREAS, Lessor and Lessee desire to enter into this Memorandum of Amendment to give notice of an amendment to said Agreement ("Amendment") and all of its terms, covenants and conditions to the same extent as if the same were fully set forth herein.

NOW, THEREFORE, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration including the rents reserved and the covenants and conditions more particularly set forth in the Agreement, Lessor and Lessee do hereby covenant, promise and agree as follows:

In addition to the Renewal Terms as referenced in the Agreement, the Agreement is hereby amended to include five (5) additional successive terms of five (5) years (each an "Additional Renewal Term"). Each Additional Renewal Term shall be deemed automatically extended, unless Lessee notifies Lessor of its intention not to renew the Agreement prior to the commencement of the succeeding Additional Renewal Term. Upon Lessee's notification of Lessor of its intention not to renew the Agreement, the Agreement shall terminate and Lessee shall, within one hundred eighty (180) days, remove all improvements, fixtures, and personal property constructed or installed on the Premises by Lessee and restore the Premises to substantially the same condition prior to the construction of the tower, normal wear and tear and casualty excepted. Lessee shall not be required to remove any foundations, driveways, or underground cables or wires located more than three (3) feet below grade level. All costs to restore the property are to be the responsibility of Lessee. This obligation shall survive termination of this Agreement.

The first Additional Renewal Term shall commence on October 2, 2020 ("Additional Renewal Term Commencement Date"), upon the expiration of the Renewal Term expiring on October 1, 2020.

The sole purpose of this instrument is to give notice of said Amendment and all its terms, covenants and conditions to the same extent as if the same were fully set forth herein. The Amendment contains certain other rights and obligations in favor of Lessor and Lessee which are more fully set forth therein.

{The remainder of this page is intentionally left blank. Signatures to follow.}

IN WITNESS WHEREOF, the parties have executed this Memorandum of Amendment as of the day and year first above written.

WITNESSES:

LESSOR:

CITY OF TEHACHAPI, a California municipal corporation

Print Name: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

STATE OF CALIFORNIA
COUNTY OF _____

On the ____ day of _____, 2016, before me, _____, a Notary Public, personally appeared _____, as _____ of City of Tehachapi, a California municipal corporation, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

(NOTARY SEAL)

Notary Public

WITNESSES:

Print Name: _____

Print Name: _____

LESSEE:

SBA 2012 TC ASSETS, LLC, a Delaware limited liability company

By: _____

Alyssa Houlihan
Vice President, Site Leasing

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me on the _____ day of _____, 2016, by Alyssa Houlihan, Vice President, Site Leasing of SBA 2012 TC Assets, LLC, a Delaware limited liability company, on behalf of the company and who is personally known to me.

Notary Public

Print Name: _____

My Commission Expires: _____

(NOTARY SEAL)

EXHIBIT 'A'

Legal description to be incorporated upon receipt of final survey.

SITUATED IN THE COUNTY OF KERN AND STATE OF CALIFORNIA AND DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF SECTIONS 16 AND 21, TOWNSHIP 32 SOUTH, RANGE 33 EAST, MDM, COUNTY OF KERN, STATE OF CALIFORNIA, BEING A PARCEL OF LAND DESCRIBED AS:

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AMENDMENT TO COMMUNICATIONS SITE LEASE AGREEMENT (GROUND)
[DO NOT RECORD]

THIS AMENDMENT TO COMMUNICATIONS SITE LEASE AGREEMENT (GROUND) ("Amendment") is executed this _____ day of _____, 2016, by and between **CITY OF TEHACHAPI, a California municipal corporation**, having an address at Tehachapi Municipal Airport, 115 S. Robinson Street, Tehachapi, CA 93561-1722 ("Lessor") and **SBA 2012 TC ASSETS, LLC, a Delaware limited liability company**, having a principal office located at 8051 Congress Avenue, Boca Raton, Florida 33487-1307 ("Lessee").

WHEREAS, Lessor and Nextel of California, Inc., a Delaware corporation, d/b/a Nextel Communications entered into that certain unrecorded Communications Site Lease Agreement (Ground), dated July 3, 2000, as amended, and ultimately assigned to Lessee f/k/a TowerCo Assets LLC, a Delaware limited liability company, successor by merger to Tower Entity 7 LLC, a Delaware limited liability company, pursuant to that certain Assignment and Assumption of Ground Lease recorded March 2, 2009, as Document #0209029161, of the Assessor and Recorder's Office of Kern County, California (collectively, "Agreement") for Lessee's use of a portion of the real property ("Premises") located at 314-1/2 North Hayes Street At East J Street / Airport, Tehachapi, CA 93561 ("Land"), being more particularly described in the attached Exhibit "A"; and

WHEREAS, the Premises leased by Lessee under the terms of the Agreement, along with any corresponding easements granted, lies within the described property on Exhibit "A" attached hereto. The initial term of the Agreement was five (5) years and commenced on October 2, 2000, and ended on October 1, 2005, together with three (3) renewal terms of five (5) years each. The terms of the Agreement shall run with the land described in Exhibit "A". The original Agreement is on file with Lessee at 8051 Congress Avenue, Boca Raton, Florida 33487-1307.

WHEREAS, Lessor and Lessee desire and intend to amend and supplement the Agreement as provided herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant, agree and bind themselves to the following modifications to the Agreement:

1. The last sentence of **Section 4. Term**, of the Agreement is hereby deleted in its entirety and replaced as follows:

In addition to the Renewal Terms as referenced in the Agreement, the Agreement is hereby amended to include five (5) additional successive terms of five (5) years (each an "Additional Renewal Term"). Each Additional Renewal Term shall be deemed automatically extended, unless Lessee notifies Lessor of its intention not to renew the Agreement prior to the commencement of the succeeding Additional Renewal Term. Upon Lessee's notification of Lessor of its intention not to renew the Agreement,

the Agreement shall terminate and Lessee shall, within one hundred eighty (180) days, remove all improvements, fixtures, and personal property constructed or installed on the Premises by Lessee and restore the Premises to substantially the same condition prior to the construction of the tower, normal wear and tear and casualty excepted. Lessee shall not be required to remove any foundations, driveways, or underground cables or wires located more than three (3) feet below grade level. All costs to restore the property are to be the responsibility of Lessee. This obligation shall survive termination of this Agreement.

The first Additional Renewal Term shall commence on October 2, 2020 (“Additional Renewal Term Commencement Date”), upon the expiration of the Renewal Term expiring on October 1, 2020.

2. **Section 5. Rent**, of the Agreement is hereby amended to include:

(c) Effective upon full execution of this Amendment, in addition to the Rent, Lessor shall receive an additional thirty percent (30%) monthly revenue sharing (“Revenue Share”) beginning with the third (3rd) broadband telephony sublessee, including but not limited to, PCS providers such as AT&T, Verizon, T-Mobile and Sprint-Nextel (collectively, “Broadband”), using the Tower or the Premises. Notwithstanding the foregoing, all Revenue Share contained herein shall be payable one month in arrears upon Lessee’s receipt of rental payment from its sublessees. Lessee shall provide Lessor a summary report listing the sublessees on the tower and the sublessee’s monthly rent with Lessor’s monthly rent check. In the event the second (2nd) Broadband sublessee is no longer a tenant on the Premises, the third (3rd) Broadband sublessee who collocated on the Premises will take the place of the second (2nd) Broadband sublessee for purposes of being excluded from the revenue sharing provisions of this Section. In no event shall any Revenue Share be paid if there are less than three (3) Broadband tenants.

3. **Section 18(d). Miscellaneous**, of the Agreement is hereby amended as follows:

Lessee:

SBA 2012 TC Assets, LLC
Attn: Site Administration
8051 Congress Avenue
Boca Raton, FL 33487-1307
Re: CA45201-A/Tehachapi

4. Upon full execution of this Amendment, Lessee shall pay to the Lessor a one-time payment of Fifty Thousand and no/100 Dollars (\$50,000.00) to be delivered within fourteen (14) business days.

5. Capitalized terms not defined in this Amendment will have the meaning ascribed to such terms in the Agreement.
6. This Amendment will be governed by and construed and enforced in accordance with the laws of the state of California without regard to principles of conflicts of law.
7. Except as specifically set forth in this Amendment, the Agreement is otherwise unmodified and remains in full force and effect and is hereby ratified and reaffirmed. In the event of any inconsistencies between the Agreement and Amendment, the terms of this Amendment shall take precedence.
8. Lessor represents and warrants to Lessee that the Lessor is the sole owner in fee simple title to the Premises and easements and the Lessor's interest under the Agreement and that consent or approval of no other person is necessary for the Lessor to enter into this Memorandum and Amendment.
9. This Amendment may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same Memorandum and Amendment.
10. Lessee shall have the right to record a Memorandum of Amendment.

[The remainder of this page is intentionally left blank. Signatures to follow.]

IN WITNESS WHEREOF, the parties have executed this Memorandum and Amendment as of the day and year first above written.

WITNESSES:

Print Name: _____

Print Name: _____

LESSOR:

**CITY OF TEHACHAPI, a California
municipal corporation**

By: _____

Print Name: _____

Title: _____

WITNESSES:

Print Name: _____

Print Name: _____

LESSEE:

**SBA 2012 TC ASSETS, LLC, a Delaware
limited liability company**

By: _____

Alyssa Houlihan
Vice President, Site Leasing

EXHIBIT 'A'

Legal description to be incorporated upon receipt of final survey.

SITUATED IN THE COUNTY OF KERN AND STATE OF CALIFORNIA AND DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF SECTIONS 16 AND 21, TOWNSHIP 32 SOUTH, RANGE 33 EAST, MDM, COUNTY OF KERN, STATE OF CALIFORNIA, BEING A PARCEL OF LAND DESCRIBED AS:

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COUNCIL REPORTS

APPROVED	
DEPARTMENT HEAD:	
CITY MANAGER:	

MEETING DATE: March 7, 2016 AGENDA SECTION: ASST. CITY MANAGER

TO: HONORABLE MAYOR WIGGINS AND COUNCIL MEMBERS

FROM: CHRIS KIRK, ASSISTANT CITY MANAGER

DATE: March 2, 2016

SUBJECT: TRAVEL POLICY

BACKGROUND

Over the past several months, City staff have been working on an update to the City's Travel Policy. The primary goals of the update are to clarify and simplify policy, and to improve accountability. The proposed policy (attached) replaces the previously adopted policies for Local Travel and Out-of-Area Travel.

Notice of the proposed Travel Policy change was provided to all employees and all employee bargaining units for review prior to presenting the policy to the Council for adoption. A copy of the memo to City employees is also attached to this report.

RECOMMENDATION

ADOPT THE RESOLUTION APPROVING THE 2016 TRAVEL POLICY AND REPEALING RESOLUTION NO. 01-10

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
TEHACHAPI APPROVING NEW TRAVEL POLICY AND
REPEALING RESOLUTION NO. 01-10**

WHEREAS, the City adopted travel policies for local travel and out-of-city travel in 2010 (the "2010 Travel Policies") by Resolution No. 01-10 ("RES 01-10"); and

WHEREAS, the City Council wishes to replace the 2010 Travel Policies with travel policy attached hereto as Exhibit "A" and by this reference made a part hereof (the "2016 Travel Policy") and repeal RES 01-10 to the extent the implementation of the 2016 Travel Policy has satisfied any meet and confer obligations as required for represented employees under the Meyers-Milias-Brown Act, Cal. Gov't Code §§ 3500, *et. seq.* ("MMBA").

WHEREAS, the City Council finds that to the extent that the implementation of any of the 2015 Travel Policy has not yet satisfied the meet and confer obligations as required for covered employees under the MMBA, the existing 2010 Travel Policies as adopted in Resolution No 01-10 will prevail and remain in effect until such time as the 2015 Travel Policy has been properly implemented for such represented employees in accordance with the MMBA.

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

1. That the foregoing recitals are true and correct.
2. That the City Council hereby repeals RES 01-10 and adopts the 2016 Travel Policy to replace the 2010 Travel Policies, except where the implementation of the 2016 Travel Policy has not yet satisfied the meet and confer obligations as required for represented employees under the MMBA.

PASSED AND ADOPTED by the City Council of the City of Tehachapi at a regular meeting on the 7th day of March, 2016.

AYES: COUNCIL MEMBERS: _____

NOES: COUNCIL MEMBERS: _____

ABSTAIN: COUNCIL MEMBERS: _____

ABSENT: COUNCIL MEMBERS: _____

SUSAN WIGGINS, Mayor of the City of
Tehachapi, California

ATTEST:

TORI MARSH, City Clerk of the City
of Tehachapi, California

POLICIES AND PROCEDURES MANUAL: PERSONNEL
Subject: TRAVEL POLICY

INTRODUCTION

As a responsible employer, the City of Tehachapi acknowledges the value of professional seminars, conferences, training and meetings and recognizes the need for City employees to travel outside the City to conduct City business. It is the intent of the City to provide travel and expense funds for reasonable expenses incurred in the course of such travel.

This policy addresses the guidelines and procedures for travel on City business for all City employees, the City Manager and elected officials, including authorization and reimbursement for travel and related expenses.

POLICY STATEMENT

The City shall pay for essential travel expenses which directly and logically relate to the conduct of City business. Travel requests and reimbursement claims shall conform to the provisions of this policy and other applicable law, grants, contracts or policies. Expenses shall be documented as required and shall leave no reasonable question that such expenditures did, in fact, relate to and were necessary for conducting City business.

Employees should always use the method of travel that is the most efficient, direct, and economical mode of transportation required by the occasion. City employees and elected officials are expected to exercise sound judgment when incurring and submitting travel expenses, in keeping with standards and proprieties of a visible and accountable public agency.

TRAVEL AUTHORIZATION

Travel authorization for any person officially representing the City at an event is mandatory even if the City will not be funding the travel expenses. All travel by employees will require prior authorization of the department head and City Manager whether or not the employee is requesting reimbursement. Prior authorization from the City Council for elected officials or City Manager travel is recommended if the elected officials or City Manager wishes to be assured of reimbursement.

Travel requests shall include an itinerary and itemized list of reasonable anticipated expenses. Travel requests shall include informational material such as a brochure on overall content of the event, the relationship between the travel and work functions and the benefit to the City.

Budgeted funds for reimbursement must be available and authorized.

Whenever possible travel expenses such as conference registration, lodging, air or rail transportation should be paid by City credit card (through the Finance Department) or through the established warrant procedure.

Before Travel

Estimated expenses for such travel shall be reported to the Finance Department on the Travel Pre-Authorization Form after approval by the appropriate department head and City Manager. If per diem prepayment is requested, an Advance Travel Check Request Form with the prerequisite signatures should be submitted to accounts payable.

Mileage reimbursement amount should be estimated in budgeting for travel/training when using a private vehicle.

After Travel

Receipts for conference registration; commercial air or rail transportation; lodging; automobile rental; and other miscellaneous expenses not included in the per diem allowance shall be attached to the Final Travel Expense Detail Report Form. The travel expense report is due within 2 weeks of travel.

Arrangements for transportation, lodging or registration fees that have cancellation or change penalties shall be carefully monitored by the department. If cancellation/change occurs due to direction by the employee's department head or designee, or the City Manager, the City will cover the penalty cost. If the cancellation/change occurs due to a traveler's personal request or obligations, the traveler will be required to pay the penalty. Exceptions shall be made when a traveler is unable to travel because of hospitalization or serious sickness either of the traveler or of a member of his/her immediate family; or when the department head certifies that the reason for the employee's absence was legitimate and authorized.

TRAVEL TIME

When possible, employees should travel during their normal working hours to avoid overtime expense. If it is not possible to travel during normal working hours due to scheduling conflict, distance of travel or day of travel (i.e. traveling on a weekend or overnight when not normally working), then it will be necessary for employees to get pre-authorization for overtime from their supervisor.

If an employee travels outside of working hours overtime compensation is limited by the Federal Standards Labor Act (FLSA) to only the hours of travel in which the employee is the driver of an automobile. If the employee travels on public transportation or as a passenger in an automobile, the time is non-compensable. Further, the time must be approved before traveling. Time allowed for travel will be calculated by using a source such as Google Maps to determine reasonable estimated driving times.

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TRANSPORTATION

Employees should utilize the use of a City vehicle to travel whenever possible. If Employees are required to fuel a City vehicle at their own expense they may claim the actual fuel costs expended by them. Receipts must accompany the claim with the odometer reading written on the receipts.

Employee mileage to the regular or main place of work from home, and back, is considered commuting and may not be claimed. The starting and ending locations of travel are the office work place or the residence, depending on the work schedule and the work status of the traveler at the time of departure and arrival. When the use of a private automobile is authorized, the mileage included from the person's home and regularly assigned workplace shall be deducted prior to reimbursement for business-related travel.

Transportation Allowance

Certain city employees, as determined by the City Manager based on travel requirements of the employee's position, receive a monthly car allowance that shall be determined by the City Manager for each position but shall not exceed \$400.00 per month. This allowance shall cover up to 150 miles of travel. Mileage for travel over 150 miles shall be reimbursed at the allowable IRS rate in effect at the time the expense is incurred. An employee who receives a monthly car allowance has the option to use a City vehicle and gas card for travel outside Kern County or the Greater Antelope Valley.

Private Vehicle Requirements

It is understandable that there may be times when a City vehicle is unavailable or another legitimate reason arises when an employee needs to use their personal vehicle.

If a City employee chooses to use a private vehicle instead of an alternative mode of transportation chosen by the department head because of personal preferences or obligations, his/her mileage reimbursement shall not exceed the cost of using the alternative mode of transportation unless the department head determines that the additional reimbursement is appropriate and justified.

Travel by private vehicle will be reimbursed at the IRS rate for business use of a personal vehicle in effect at the time of travel plus tolls and parking fees. The Department of Finance shall be responsible for administering and announcing the current IRS mileage rate for business-related travel.

To use his/her private vehicle, the employee must possess a valid California driver's license and carry current liability insurance on the vehicle as mandated by the State of California. In addition, the vehicle must be equipped with seat belts and adequate

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for the work to be performed. Employees are prohibited from using a private vehicle on City business, if these requirements are not met. Any damage to the car, needed service, or repair occurring on the trip will be the responsibility of the employee.

Due to liability concerns, non-City employees and/or non-government officials should not be transported as passengers in City vehicles without advance authorization of the City Manager or designee.

Public Transportation Requirements

Employee travel by air, rail or bus shall be at coach accommodations on approved scheduled carriers unless only single class service is offered.

The employee shall be responsible for excess costs and additional travel expenses resulted from taking an indirect route or a delayed return trip for personal preference or convenience.

If the employee is traveling by air, rail or bus and local transportation is also needed, the use of public transit or shuttle services is appropriate. Taxi use is allowable when these services are not reasonably available. Rental automobiles may be used under following the guidelines:

1. Vehicles may be rented for transportation when the employee travels to the destination via commercial common carrier and the cost of the rental will be less than the charge for shuttle or taxi service to and from the carrier termination point to the function or hotel accommodations;
2. Government rates shall be requested. Employees shall choose the least expensive size and mileage limits appropriate to the use required by the traveler(s). Rental expenses for luxury cars, motorcycles and recreational vehicles may not be claimed;
3. Rental cars shall be refueled and returned to the rental agency on time to reduce cost to the City;
4. It is recommended by the Central San Joaquin Valley Risk Management Authority that vehicle insurance offered by the rental agency is purchased and shall be reimbursable by the City;
5. When rental vehicles are authorized for a person conducting official City business the IRS mileage rates will **not** be paid for rental vehicles; only receipted fuel expenses will be reimbursed;
6. If more than one City employee is traveling to the same function, only one rental vehicle may be claimed and then only if it is available for use by all of the travelers.

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The following necessary transportation expenses may be claimed at actual cost (receipt required) when directly related to necessary transportation to and from the destination point:

Taxi, shuttle, or public transit fares;

Parking fees (airport long-term parking is required for travel exceeding 24 hours);

Bridge, road or ferry tolls;

Other actual transportation expenses determined to be reasonable and necessary by the department head and the Director of Finance.

The following transportation expenses are personal and may **not** be claimed:

Traffic and parking violations;

Emergency repairs or non-emergency repairs on non-City vehicles;

Personal travel while at an out-of-city location;

Other actual transportation expenses determined to be unreasonable or unnecessary by the department head or the Director of Finance.

Employees may retain frequent flyer/hotel rewards and similar program benefits. However, participation in these programs must not influence flight/hotel/etc. selection, which would result in incremental cost to the City beyond the lowest available airfare/hotel cost unless the difference is paid by the traveler.

Free tickets or cash allowances for volunteer denied boarding compensation may be retained by the traveler but at no additional cost to the City. In these cases, no interruption of work is allowed and any additional time required to complete the trip will be personal time.

MEALS

Employees who are required to travel for official City business may receive reimbursement for meals.

Overnight Travel

Employees (excluding elected officials) on official City business travel that requires an overnight stay away from their home may claim a per diem allowance for meals. The City's full day meal and incidental expenses rate shall be equal to the maximum federal per diem meal and incidental expenses (M&IE) rate in the area of travel

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established and adjusted by the General Services Administration (GSA) and may be found at www.gsa.gov/mie Maximums include taxes and gratuities.

Meals on the first and last day of travel shall be reimbursed at the GSA meal rate for the corresponding meal. Meals may be claimed on partial days of travel if the employee is traveling during the times outlined under Day Travel. For meals included in a registration fee, or other City travel expense, the per diem meal payment shall be reduced by the fixed allowance for the respective meal.

Exceptions to Per Diem Meal Rates: Elected officials are not allowed to claim a per diem allowance for meals. They are required to submit all receipts with Final Travel Expense Detail Report as requested under California Government Code 53232.3. The meal expenses claimed for reimbursement for elected officials should not exceed the per diem rate.

City employees may not claim a per diem pre-pay allowance or reimbursement for any meal, which is provided, or otherwise available to the employee by the lodging or function, whether or not there is an actual charge for the meal. For example, if lunch is provided at the function or breakfast is included in the cost of lodging, the traveler may not claim a per diem pre-pay allowance or request reimbursement for eating elsewhere. For purposes of this section, continental breakfast and meals provided during airline or other commercial carrier travel do not constitute provided meals and do not need to be deducted from the per diem allowance.

Day Travel

GSA rate will also apply to day travel. Meals may be claimed if the employee is in day travel status at the following times:

Breakfast may be claimed if employee must reasonably be away from home because of travel for City business at or before 7:00 a.m.;

Lunch may be claimed if travel must commence before 11:00 a.m. and ending after 2:00 p.m.;

Dinner may be claimed if travel must commence travel before 5:00 p.m. and ending after 7:30 p.m.

Most meal reimbursements for attendance at an all day, single day training course or seminar are taxable; however, meals purchased for purpose of meetings and/or extension of work are considered a business expense and are not taxable.

Employees on local travel are not eligible for reimbursement of meals within the City of Tehachapi unless provided for in other City policies.

Guidelines for Claiming Meals

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Gratuities and taxes for meals are included in the GSA per diem M&IE allowance, therefore, they may not be claimed separately. Gratuities and taxes associated with meals of elected officials may be claimed for reimbursement as long as the total does not exceed the GSA per diem allowance. In addition, gratuities are limited to 15% of the service costs unless billed by a provider's standard policy at a higher rate

Snacks between meals and alcoholic beverage expenses may not be claimed.

Employees will not be paid for meal times while traveling unless working through lunch is necessary.

LODGING

City employees and officials required to travel overnight for City business will be reimbursed for actual lodging costs incurred.

Lodging expenses shall be claimed at either the actual cost of the lodging (limited to the single occupancy rate for a single room) or the maximum of the federal lodging limits for the host city (Federal Per Diem Rate), whichever is less. Receipts are required. Maximum rates may be found at www.gsa.gov/portal/category/21287. If the maximum GSA rate changes between the time which the lodging is reserved, and the time during which the travel occurs, the higher maximum GSA rate will be used. Taxes are in addition to the Federal Per Diem Rate.

Lodging costs may exceed the City's maximum lodging rate when:

A conference, meeting or convention is being sponsored by an organization of which the City, the department or employee is a member, the lodging may be claimed at the actual cost if seminars or meetings are to be held at the particular hotel and/or events are scheduled for evening hours, and the employee has received advance written authorization.

If an employee is unable to obtain lodging within a reasonable distance from the location of the event which they are attending that falls below the GSA rate, the City Manager may authorize additional lodging expense at his/her discretion.

City employees are not eligible to claim for lodging for local functions unless provided for in other City policies.

Employees are eligible to claim for lodging for the evening prior to an out-of-area function if they would reasonably need to commence travel prior to 6:00 a.m. in order to arrive at the destination at the designated time. For example, if a workshop begins at 8:00 a.m., and there will be three (3) hours of travel time from the authorized departure point, the employee would be eligible to claim for overnight lodging for the evening prior to the workshop. However, if the workshop begins at 9:00 a.m., the traveler would not be eligible.

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Employees are eligible to claim for the last evening of an out-of-area function if the employee would otherwise arrive home after 8:00 p.m., if s/he left at the conclusion of the function. Any exceptions due to special circumstances require City Manager pre-approval.

Employees are not eligible to claim lodging expenses if staying overnight as a guest of friends or relatives.

Employees should inquire when making lodging arrangements whether the City is exempt from Transient Occupancy Taxes (TOT) in the locale where they are staying and should provide the necessary form to the lodging facility, if required to do so to obtain the waiver.

Except when registering for lodging at a pre-arranged group rate in conjunction with a conference or meeting, employees shall request the government rate or lowest available eligible rate when making lodging arrangements.

Employees are responsible for canceling hotel rooms before the cancellation period ends and should record the cancellation number in case of disputes. Employees will not be reimbursed for "no-show" hotel charges unless there are unavoidable reasons for not canceling the room.

OTHER TRAVEL EXPENSES/INCIDENTALS

Employees are eligible to claim a per diem incidental allowance, limited to the maximum federal per diem incidental rate for each day of travel requiring an overnight stay away from the traveler's home. These rates may be found at www.gsa.gov/mie.

Incidentals (e.g. laundry, cleaning and pressing of clothing, luggage handling services fees/tips to porters/baggage carriers etc.) are included in the daily per diem rate and do not require receipts.

Business meetings, dinners, luncheons and entertainment expenses shall be reimbursed only when such expense is clearly identifiable as relevant to City business.

Employees are eligible to claim the following additional expenses at actual cost; even if they also qualify for a per diem incidental allowance, however, receipts are required for reimbursement:

City business calls (traveler must annotate purpose of call on the bill);

Fax machine charges incurred to send or receive documents for City use
Copy machine charges incurred to copy documents for City use;

Effective Date:
Resolution No.

Internet access connection and/or usage fees away from home, if internet access is necessary for City related business;

Other business related expenses determined to be reasonable and necessary by the department head and the Director of Finance.

NON-REIMBURSABLE EXPENSES

Miscellaneous travel expenses not directly related to conduct official City business and excessive or unnecessary expenses are not reimbursable. Certain expenses are considered personal and therefore do not qualify for advance payment or reimbursement under this policy including, but not limited to:

Excess mileage for travel made for non-business and/or personal matters;

Political or charitable contributions or events;

Purchases made while traveling that are not made on behalf of and become the property of the City;

Gratuities;

Private automotive repairs, traffic citations or fines;

Personal automobile insurance, gasoline or oil changes;

Funds expended for companions and/or family members while traveling including partner's expenses when accompanying employees on agency-related business, as well as children or pet-related expenses;

In-room movies or movie theater expenses, fitness/health facilities costs, barber/beauty shop charges, or costs for massages or other personal services;

Entertainment expenses including arts, sports, or other cultural events;

Golf green fees or other personal sporting expenditures;

Alcoholic beverages or tobacco products;

Personal losses incurred while on City business; (questions should be resolved by the City Manager prior to the expense being incurred);

Laundry, except as covered by the incidental per diem rate;

Room service costs that exceed the fixed rate established for the meal;

Incurred and valet service, except when necessitated by physical limitations.

These guidelines are not intended to address every issue, exception or contingency that may arise in the course of City travel or attendance at meetings. Accordingly, City Manager's discretion will be used for special circumstances. The basic standard that should always prevail is to exercise good judgment in the use and stewardship of the City's resources.



APPROVED
DEPARTMENT HEAD: 
CITY MANAGER: 

COUNCIL REPORTS

MEETING DATE: MARCH 7, 2016 AGENDA SECTION: ASST. CITY MANAGER

TO: HONORABLE MAYOR WIGGINS AND COUNCIL MEMBERS

FROM: CHRISTOPHER KIRK, ASST. CITY MANAGER

DATE: MARCH 2, 2016

SUBJECT: EMPLOYEE PERSONNEL MANUAL AMENDMENT

In order to eliminate discrepancies between the Employee Personnel Manual and the City Travel Policy regarding business related travel, the Employee Personnel Manual needs to be amended as follows:

- Section 3 Classification & Compensation Plans
 - J. City Business Travel: Refer to Travel Policy
 - K. Travel/Work Hours: Refer to Travel Policy

The proposed amendments to the Employee Personnel Manual will be in effect immediately, except to the extent that the implementation of these proposed amendments will affect any represented employees where the City has not yet satisfied any meet and confer obligations as required under the Meyers-Milias-Brown Act, Cal. Gov't Code §§ 3500, *et. seq.* ("MMBA"). In any instance where the City has not yet satisfied the meet and confer obligations under the MMBA to implement the proposed amendments to the Employee Personnel Manual, the City will revert back to the current Employee Personnel Manual as listed above.

RECOMMENDATION

APPROVE AMENDMENT OF EMPLOYEE PERSONNEL MANUAL AS PRESENTED BY THE STAFF AND ADOPT RESOLUTION AS CONSISTENT WITH THE LANGUAGE IN THE RESOLUTION AND AS OUTLINED IN THIS COUNCIL REPORT

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
TEHACHAPI APPROVING AMENDED EMPLOYEE
PERSONNEL MANUAL AND REPEALING RESOLUTION
NO. 11-14**

WHEREAS, the City adopted Employee Personnel Manual in 2014 (the "2014 Personnel Manual") by Resolution No. 11-14 ("RES11-14"); and

WHEREAS, the City Council wishes to replace the 2014 Personnel Manual with Employee Personnel Manual attached hereto as Exhibit "A" and by this reference made a part hereof (the "2016 Personnel Manual") and repeal RES 11-14 to the extent the implementation of the 2016 Personnel Manual has satisfied any meet and confer obligations as required for represented employees under the Meyers-Milias-Brown Act, Cal. Gov't Code §§ 3500, *et. seq.* ("MMBA").

WHEREAS, the City Council finds that to the extent that the implementation of any of the 2016 Personnel Manual has not yet satisfied the meet and confer obligations as required for covered employees under the MMBA, the existing 2014 Personnel Manual as adopted in Resolution No 11-14 will prevail and remain in effect until such time as the 2016 Personnel Manual has been properly implemented for such represented employees in accordance with the MMBA.

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

1. That the foregoing recitals are true and correct.
2. That the City Council hereby repeals RES 11-14 and adopts the 2016 Personnel Manual to replace the 2014 Personnel Manual, except where the implementation of the 2016 Personnel Manual has not yet satisfied the meet and confer obligations as required for represented employees under the MMBA.

PASSED AND ADOPTED by the City Council of the City of Tehachapi at a regular meeting on the 7th day of March, 2016.

AYES: COUNCIL MEMBERS: _____

NOES: COUNCIL MEMBERS: _____

ABSTAIN: COUNCIL MEMBERS: _____

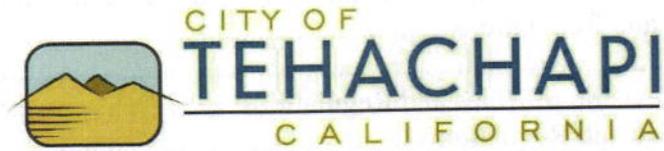
ABSENT: COUNCIL MEMBERS: _____

SUSAN WIGGINS, Mayor of the City of
Tehachapi, California

ATTEST:

TORI MARSH, City Clerk of the City
of Tehachapi, California

EXHIBIT A



Employee Personnel Manual

Adopted Res. _____ (Repeal Res. 11-14) March 7, 2016

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Section 1 – Introduction and Purpose

The City Council is authorized and directed under the provisions of Title 2, Chapter 40.050 (adopted as Ord. No. 393) to adopt rules and regulations for the administration of the personnel system created in said chapter

These rules and regulations are designed to facilitate efficient and economical service to the public and provide a fair and equitable system of personnel management in the municipal government. These rules and regulations set forth policies and procedures to ensure similar treatment for those who compete for original and promotional employment and define certain obligations, rights, privileges, benefits and prohibitions which are placed upon all City employees.

A. Equal Employment Opportunity

No person applying for employment with the city or employed by the City shall be discriminated against by reason of his/her actual or perceived age, ancestry, citizenship status, color, creed, disability (mental or physical), exercise of rights relating to Family Care and Medical Leave, gender identity, marital status, medical condition, national origin, political affiliation (political beliefs), pregnancy, race, religion, sex, sexual identity, sexual orientation (heterosexuality, homosexuality, or bisexuality), veteran status, or any other classification protected by law.

B. Violation of Rules and Regulations

Violation of provision(s) of these rules shall constitute grounds for disciplinary action including, but not limited to, dismissal, rejection, demotion, reduction in salary, suspension, or written reprimand. A violation shall not make disciplinary action mandatory, but shall be considered as appropriate in view of all circumstances.

C. City Manager

The Personnel Officer of the City is the City Manager. The City Manager may delegate any personnel powers or duties to another employee of the City, or may recommend to the City Council that certain personnel powers be performed under contract by a qualified individual or firm. The City Manager shall:

1. Prepare and recommend to the City Council, personnel rules and revisions thereto.
2. Administer the provisions of the rules.
3. Appoint all department heads and employees, provided the City Manager may delegate to any other department head or employee the authority to hire or discharge any employees.

D. Amendment and Revision of Rules and Regulations

The City council may amend these rules and regulations by resolution with not less than five (5) days notice to employees. Employees at the Council meeting shall be given an opportunity to present their support or objection to the proposed amendment or revision

E. Administrative Rules and Regulations

These rules and regulations do not preclude the City Manager or individual City departments from developing and administering supplemental personnel rules as long as they do not conflict with these rules and regulation, other Council resolutions and ordinance, or existing laws.

F. Application of Rules and Regulations

If a provision of these guidelines conflicts with a provision of an applicable collective bargaining agreement entered into by the City of Tehachapi and a recognized employee organization, to the extent of such conflict, the provision of the collective bargaining agreement shall be deemed controlling unless the provisions of these guidelines have been negotiated for and implemented more recently.

G. Employment of Relatives

These rules shall not prohibit the employment or assignment of relatives in the same or different department except as outlined below. For the purpose of this section, a "relative" shall be defined as any person who is related by blood, marriage, or domestic partnership within the third degree. Specifically, a relative is a spouse, domestic partner, parent, grandparent, great grandparent, child, grandchild, great grandchild, sibling, niece, nephew, aunt, or uncle (including step, adoptive and in-law relatives).

1. No person who is a relative of any City Council member, the City Manager, any department head or any other individual having appointive power shall be appointed to a paid position with the City service while their relative is serving in one of the aforementioned capacity.
2. No relatives shall be employed in positions where one has supervisory responsibility over the other or where both would report to the same supervisor. Upon recommendation of the department head(s), exceptions to this rule may be granted by the City Manager
3. No relatives shall be employed in positions where one would have access to confidential and privileged information concerning the other. Upon recommendation of the department head(s), exceptions to this rule may be granted by the City Manager, where, in the judgment of the City Manager, the access to confidential and privileged information would not be detrimental to City operations.

4. In the case of a violation of this rule, remedy may be sought through transfer or demotion within the City service or termination of one party, as recommended by the department head. All actions intended to remedy violations of this section are subject to the review and approval of the City Manager.

H. **Conflicting Rules**

1. **Memorandum of Understanding**

Where a conflict exists between items stated in a provision of these rules and regulation and an applicable adopted memorandum of understanding (MOU) with a recognized majority representative, to the extent of such conflict, the memorandum of understanding shall prevail, unless the provisions of these guidelines has been negotiated for and implemented more recently.

2. **State Law**

Where a conflict exists between items stated in these rules and regulations and existing California state law, the state statutes shall prevail.

- I. **Not a Contract**

These rules and regulations do not create any contract of employment, either expressed or implied, or any rights in the nature of a contract.

Section 2 – Selection and Appointment

A. **Announcement of Vacancies**

Notices of employment opportunities in the City will be first announced in house, via electronic mail or posting on employee bulletin boards, allowing current employees the opportunity to apply for the position. However, the City Manager has the discretion to begin open recruitment outside of City employ at any time. All announcements will be posted in the City offices and publicized in any other ways necessary to attract the best qualified candidates.

The City Manager or designee shall, at least 10 calendar days prior to the final filing date, issue an appropriate notice regarding the position. The content of the notice shall include a minimum of the title and pay for the position, the nature of the work to be performed, minimum qualifications, the method of applying and the closing date for the application.

B. **Applications**

Job applications must be made on an official City application form. All applications must be completed in full and signed by the person applying. The Personnel Officer or designee will not process any application which is not fully completed and signed. The City will not accept faxed or emailed applications.

The City Manager or designee may reject an application, if the applicant:

1. Has made false statements of any material fact, or practiced any deception or fraud on the application or declarations;
2. Is found to lack any of the requirements, certifications, or qualifications for the position involved;
3. Is physically or mentally unable to perform the essential functions of the job, with or without reasonable accommodation, if disabled;
4. Is a current user of illegal drugs;
5. Is a relative of an employee, and is subject to the Employment of Relatives Policy in Section 1-G;
6. Has been convicted of a crime, either a misdemeanor or felony, that relates to the position duties that the applicant would perform;
7. Used or attempted to use political pressure or bribery to secure an advantage in the process;
8. Directly or indirectly obtained information regarding examinations;
9. Failed to submit the employment application correctly or within the prescribed time limits;
10. Has had his or her privilege to operate a motor vehicle in the State of California suspended or revoked, if driving is job related;
11. For any material cause which in the judgment of the City Manager or designee would render the applicant unsuitable for the position, including a prior resignation from the City, termination from the City, or a significant disciplinary action.

C. **Selection Process**

The method used to select employees shall be impartial and shall relate to those subjects which fairly measure the abilities to execute the duties and responsibilities of the classification in which the vacancy exists. Selection procedures consist of one or more of the methods listed below.

1. **Application**

Information the applicant supplies on the City's application, and any attachments thereto will be reviewed under the supervision of the City Manager or designee and the applicable department supervisor. The same criteria and point system is utilized for all applicants for the same position. The City Manager or designee will determine

the total number of applicants who meet the minimum qualifications for the position. The chosen applicants will then be given further examination.

2. Examinations

The selection techniques used in the examination process will be impartial, practical, and related to those subjects that fairly measure the relative capabilities of the applicant examined to execute the duties and responsibilities of the class to which they seek to be appointed. Examinations may consist of, but are not limited to, such techniques as written tests, personal interviews, skills and performance tests, review of performance evaluations, evaluation of daily work performance, evaluation of work samples. Failure in one part of the examination, or the failure to meet established standards described in the job announcement, may be grounds for declaring such applicant as failing in the entire examination or as disqualified for subsequent parts of the examination.

3. Interview

The City Manager may assemble and appoint interview boards. These boards may be comprised of private citizens, experts in the field, members of another agency, City officers and City employees. Interviewers mark on forms provided the degree to which, in their judgment, each candidate possesses the desired qualifications. The interviewer's remarks will be translated into a numerical score. Scoring sheet and interviewer's remarks are confidential.

4. Retention of Applications

Applications will be retained for one year and will be considered if the position applied for becomes available.

5. Removal of Application

Applications may be removed by the City Manager or designee for any of the following reasons:

- a) appointment to the position for which the application was originally established;
- b) request by the applicant for removal;
- c) failure to continue to meet any of the minimum standards established for the position;
- d) failure to contact the City Manager or designee within five (5) working days from the date of notice of an interview or offer of appointment.

D. Appointment Process

All appointments to position vacancies will be made in accordance with these rules and regulations. The power to appoint and dismiss City employees are vested in the City Manager.

1. **Vacancy**

The vacancy will be filled by appointment of an eligible candidate from an appropriate selection process except as provided in 2 below.

2. **Emergency**

In an emergency which threatens life, property, or the operation of necessary municipal services, the City Manager may employ an individual without an appropriate selection process for not more than thirty (30) calendar days.

E. **Conditional Offer of Employment**

An offer of employment is contingent upon the results of the following:

1. **Reference checks**

Prior to conducting reference inquiries a prospective employee will be required to sign a release allowing the City to acquire information about the applicant from former employers.

2. **Fitness for Duty Examination/drug screen**

Applicants who have been offered a position with the City are required to participate in a fitness for duty examination and drug screen. Each job classification has specific physical standards that are reasonably related to job requirements. The City is notified only that the prospective employee is medically qualified, conditionally qualified or disqualified; no other medical information will be released.

3. **Fingerprints and criminal background check**

All persons employed by the City will be fingerprinted and law enforcement records checked for past criminal activities. Information thus obtained will be confidential. Employment of, and continuation of service of employees with a criminal conviction must have the approval of the City Manager. Convictions (including pleas of guilty and nolo-contendere) may disqualify an applicant from employment with the City. In determining whether an individual with a conviction is disqualified, the City Manager will consider the following factors:

- a) the employment classification to which the person is applying, including its sensitivity,
- b) nature and seriousness of the conduct
- c) the length of time since the conduct,
- d) the age of the individual at the time of conduct,
- e) circumstances surrounding the conduct,
- f) contributing social or environmental conditions, and
- g) the presence or absence of rehabilitation or efforts at rehabilitation.

4. **Eligibility to Work**

Federal law requires the City to verify that all new employees are citizens or otherwise legally eligible to work in the United States of America. You'll need to provide

documents verifying your eligibility to work. Please call the Finance Department for a full list of acceptable documents.

5. Pay

A new appointee shall receive the minimum salary for the class to which the position is allocated, except that in hiring exceptionally qualified personnel, the City Manager may approve appointments at a salary above the minimum for the class.

6. Orientation

Each new employee shall be scheduled for an orientation session with the City Manager or designee(s). This orientation session shall be conducted so that the new employee can receive an introduction to the City, its history, its operations, its personnel policies, and a review of employee benefits. During this period, employees are also asked to complete new-hire paper work.

F. Probation Period

The purpose of probation is to permit the employer to observe the employee on the job and to evaluate performance. Probation is a part of the promotional, training, testing and selection process. The probation period begins on the date of appointment. It is the responsibility of the supervisor to communicate with the employee in regards to his/her progress.

1. Duration of period

The probationary period is not less than twelve (12) months. Employees who receive promotional appointments must serve another probationary period of at least twelve (12) months. The probationary period is automatically extended by the length of any authorized leave(s) of absence of one work week or more.

2. Separation Without Cause

At any time during the probationary period, the employment relationship may be terminated without cause and without right of appeal, grievance or hearing. The probationary employee will be notified prior to the expiration of the probationary period that he or she has been rejected from regular appointment.

3. Regular Appointment Requires Recommendation

No probationary employee will receive a regular appointment without a written recommendation from the department director. If the recommendation is not filed, the probationary employee will be notified prior to the expiration of the probationary period that he or she has been rejected for regular appointment.

4. Promoted Employees

A promoted employee who does not successfully complete the probationary period will be reinstated to his or her former position or to a comparable position if one is available. If, however, the employee is discharged for cause, the employee has no right to reinstatement.

G. **Regular Employment**

1. **Regular Full-Time (non exempt)**

An employee who successfully completes the probationary period and who regularly works forty (40) hours per week, or the maximum number of hours scheduled by a department or division.

2. **Regular Part-Time (non exempt)**

An employee who successfully completes the probationary period and who works less than 1,000 hours per fiscal year. Regular Part-Time employees do not earn, accrue or participate in any City employee benefit plans, or paid or unpaid leave, except as required by law.

3. **Temporary, Provisional or Seasonal (non exempt)**

An employee who is assigned to work on a particular project or on a job of limited or definite duration is a temporary, provisional or seasonal employee. A temporary, provisional or seasonal employee:

- does not hold regular status
- does not serve a probationary period
- can be dismissed from City employment at any time without cause, right of appeal, grievance or hearing, and
- is not entitled to earn, accrue or participate in any City employee benefit plans, or paid or unpaid leaves, except as required by law.

4. **FLSA-Exempt - "At Will"**

An employee who meets one or more of the duties test exemptions from overtime under FLSA (e.g. executive, administrative, professional, computer employee) and who is paid on a salary basis, meaning that he or she is compensated in a predetermined amount that is not reduced, regardless of the quality of work actually performed, except as required by the City's principles of public accountability for partial-day absences, is FLSA exempt. An FLSA-exempt employee is not entitled to overtime compensation. Employees in this category are expected to maintain similar hours of work as their City office maintains. Exempt employees are considered "at will". "At will" refers to any City employee who: (1) does not hold regular status, (2) serves at the pleasure of the Council, City Manager or appointing authority, and (3) can be terminated at any time without cause and without the opportunity to appeal.

Section 3 – Classification & Compensation Plans

A. **Classification Plan**

1. **Creation of classifications**

The City Council, upon recommendation by the City Manager, shall create a classification plan for City employees. Each position shall be allocated to a class

identified by class title. Positions shall have the same class title when they conform to the same specification or when the positions' descriptions are sufficiently similar as to qualifications, educational requirements, responsibilities, level of supervision, and other characteristics.

2. Specification of classes

A class may include more than one position. Each class will have a specification, which includes: a concise, descriptive title, a brief definition, a description of the essential job duties and responsibilities, a statement of special requirements, and a statement of desirable qualifications.

3. Reclassification

The City Manager is responsible for reviewing the duties and responsibilities of positions and recommending to the City Council the creation of new classes and the abolition of existing classes. The City Manager shall review classifications and make determinations in the following situations:

- a) Upon the recommendation of the Supervisor or upon the request of an employee, the City Manager has the right to reallocate a position to a different class whenever its duties change materially, provided the reclassification can be accomplished within budget limitations. The City Manager has the discretion to determine when the duties have materially changed which warrant a reclassification. To process reclassifications in a timely manner, the following process will be followed:
 - i. Supervisor or employee submits a request of reclassification to the Finance Department
 - ii. Within fifteen (15) working days, the Finance Department makes an initial determination whether the employee's ongoing job duties and responsibilities warrant a position reclassification. Once completed, the Finance Department forwards its recommendations to the City Manager.
 - iii. Within fifteen (15) working days the City Manager affirms or modifies the Finance Department's recommendations. As a general guideline, the City Manager will provide the following conclusions to the employee and his or her supervisor: re-assign work duties so the employee is no longer working outside of classification, appoint employee to existing classification with greater responsibility, or create a new classification that more accurately reflects the employee's ongoing job duties and responsibilities.
- b) When the duties of a position so change that no appropriate class for it exists, the City Manager must prepare an appropriate class specification for it and submit it to the City Council for approval.
- c) Reclassification of a position may not be used to circumvent the rules and regulations concerning demotion, promotion or compensation.

B. Salary Ranges, Plans and Compensation

1. **Meet and confer**

The City will meet and confer regarding changes to salary rates or salary ranges affecting existing employees represented by a recognized employee organization. After meeting and conferring, the City Manager will prepare the pay plan, which establishes a flat rate or salary range for each class.

2. **Changes to salary ranges**

When the City Council changes a salary range for a class, all employees' salaries in the class will be adjusted to the corresponding step in the new range.

3. **Transfer/Promotion to another class**

An employee whose position is moved from one class to another class that has the same salary range does not receive a change in salary. When an employee is moved from one class to a class with a higher maximum salary, the employee's salary in the higher class will be the minimum for that class, unless that minimum is lower than, or the same as, the employee's salary at the time of the move. In that event, the employee will receive the next high step within the pay range of the higher class. In this event the employee's anniversary date will be the same as the effective date of transfer/promotion for purposes of conducting performance reviews and making corresponding salary adjustments.

4. **Demotions**

When an employee is demoted (moved from one class to a class with a lower maximum salary), the City Manager will set the employee's salary within the range of the class to which the employee has been demoted. In this event, the employee's anniversary date will be the same as the effective date of demotion for purposes of conducting performance reviews and making corresponding salary adjustments. The employee's original hire date will continue to determine his or her eligibility for other types of benefits and leave accruals.

5. **Reclassification**

An employee whose position is reclassified from one class to a class with a lower maximum salary retains his/her original anniversary date. A reclassified employee retains the salary of the higher class if the employee's salary at the time of reclassification does not exceed the maximum salary for positions of the lower class. If the salary does exceed that maximum, the employee will continue to receive his/her present salary until such time as the maximum salary for the class exceeds his/her rate of pay. COLA increases are made to the position not the individual; therefore, if the COLA does not increase the maximum salary in his/her current class above his/her present salary the employee will continue to receive his/her present salary.

6. Special Compensation

a. Special Assignment Pay

The Chief of Police shall have full authority and discretion to assign members to the below listed assignments. The City agrees to pay an additional (5%) above base pay to non-probationary Police Officers and Senior Officers working in the following capacities:

1. School Resource Officer
2. Kern Narcotics Task Force
3. Field Training Officer when a trainee is assigned
4. Detective

b. Peace Officer Standard Training (POST) Certificate Pay

Upon verification of having earned the following POST Certificates, an employee shall be paid as follows:

5% of base pay for a POST Intermediate Certificate

5% of base pay for a POST Advanced Certificate, in addition to Intermediate pay

5% of base pay for a POST Supervisory Certificate, in addition to Intermediate and Advanced pay. Only available to Sergeants and above

c. Canine Premium Pay

Employees that are regularly assigned responsibility for canine handling and care shall receive four (4) hours per pay period paid at the premium rate equal to time and one half (1½) of the employees rate.

C. Employee Performance Review and/or Evaluation

The performance evaluation process is intended to improve productivity and foster communication between supervisors and employees. Evaluations should be conducted annually and should be based upon position-specific performance elements and work standards. The evaluation must indicate clearly whether overall performance is superior, satisfactory or substandard. The review process must provide for employee feedback and face-to-face communication. Results of the performance review will be utilized to determine employee's training and development needs.

1. Salary adjustments

Results of the employee's current performance review will be used to determine salary adjustments. Employees whose work performance is satisfactory will be eligible, but not guaranteed, for advancement to the next higher step (not to exceed the maximum) of the salary range. Employees who receive a less than satisfactory rating will not be eligible for salary advancement.

2. Employee review and response

Employee will be provided with a copy of his/her performance at the evaluation interview. Employees have the right to respond in writing to the evaluation report should they so desire. Said responses should be submitted to the review not later than thirty (30) days after the evaluation interview. Contents of an employee's performance evaluation are not subject to the grievance procedure.

3. Copies kept in personnel file

The employee's complete, original, and signed performance evaluation – including any written comments provided by the employee – is filed in the employee's official personnel file kept in the Finance Department

D. Pay Period

The pay period for all employees is semi-monthly on the 15th and the last day of the month. When the 15th or the last day of the month falls on a weekend or holiday, paychecks will be available the prior workday. All paychecks are to be distributed to the departments and delivered to the employee by noon the 15th or the last day of the month. The time period to be reported for the semi-monthly paycheck paid on the 15th shall be for time worked from the 26th of the month through the 10th of the month and the time period to be reported for the semi-monthly paycheck paid on the last day of the month shall be for time worked from 11th of the month through the 25th of the month.

1. Workweek

The workweek begins at 12:01 a.m. on Sunday and ends at 12:00 p.m. on Saturday, and is forty (40) hours.

2. Hours of Work

Many City offices are closed every Friday. Employees in these offices are on a 4/10 schedule. Under this schedule an employee works Monday through Thursday 7:00 a.m. to 5:30 p.m.

Some City services are provided 24 hours a day, seven days a week, or on other non-standard schedules, so there is considerable variation in working days and hours depending on individual assignments and public service needs. Employees in some operations work weekends and may be assigned to different shifts. These hours of work are defined in Department Policies.

3. Time sheets

All employees are required to keep a time sheet and accurately record hours worked and report any sick, vacation or special time taken off during each pay period. Time worked should be recorded down to one quarter of an hour increments. If you have worked more than half of one quarter of an hour round up as one quarter of an hour and if less than half round down. Time sheets must be signed by the employee and their supervisor.

4. Mandatory and Voluntary Deductions

Certain deductions will be taken from your paycheck. Mandatory deductions include things like taxes (based on the last W-4 form you submitted), Social Security and Medicare contributions, State Disability Insurance, court-ordered wage garnishments, and your required PERS retirement contributions. Voluntary deductions may be taken for insurance benefits, deferred compensation contributions, and medical/dependent care reimbursement accounts.

5. Direct deposit

All paychecks are directly deposited to the employee's bank account on file.

6. Discrepancy

Every effort is made to ensure that paychecks are accurate, but discrepancies may occur. Please review your pay stub each payday to make sure it is correct. If you believe it is not, please inform the payroll office so that it can be reviewed and if necessary corrected.

E. Overtime

Overtime hours must be approved in advance by the employee's direct supervisor or Department Head. The supervisor will authorize such overtime work and will notify the City Manager upon such authorization. Overtime is to be kept to a minimum, consistent with maintenance of essential City services. All non-exempt employees will be paid overtime as required by applicable law and in accordance with any provisions in applicable memoranda of agreement. Working overtime without advance approval is grounds for discipline. Overtime is to begin when an eligible employee has actual hours worked that exceed his/her workweek as defined in Section 3, D-1. Holidays observed by closing City offices shall be credited as actual hours worked. Sick, vacation, compensatory and banked holiday hours taken off during the workweek will not be credited as actual hours worked.

F. Compensatory Time Off

Subject to applicable memorandum(s) of agreement or the outline of certain employment conditions for non-exempt employees, compensatory time off (CTO) may be granted in lieu of overtime pay for overtime work performed by eligible employees at the rate of 1.5 hours for each hour of overtime as defined in Section 3, E. Compensatory time off is subject to an accrual cap of eighty (80) hours.

1. Approval of overtime

Employees must obtain pre-approval before working any overtime. The Supervisor will authorize such overtime work and will notify the City Manager upon such authorization. The Supervisor is responsible for arranging his/her department so that compensatory time off can be taken.

2. City reserves the right to pay overtime in lieu of accruing CTO

At the discretion of the City, certain personnel may be paid for all or a portion of overtime worked in lieu of accruing CTO. The City can elect to pay employees for overtime worked if it is determined that an employee cannot reasonably take the CTO without hindering the performance of essential City functions.

3. Pay-out of accrued CTO

The City retains the right to pay out unused CTO at all times selected by the City. The employee may request payout of accrued CTO with approval of his/her Department Head. Employees separating from City service shall be compensated for all accrued, unused compensatory hours at the employee's current rate of pay.

4. Use of CTO

Employees who wish to use CTO must obtain prior authorization of their Supervisor or Department Head. The City's policy is to permit the use of CTO within a reasonable period after the request for use is made. Use of CTO on the specific dates requested by an employee will be permitted as much as reasonably practicable taking into account the operational needs of the department. To facilitate scheduling, employees are encouraged to provide as much advance notice as possible of the dates they desire to use CTO.

G. Compensation for Call Back, Court Stand-by, Court Appearance, DMV Hearings or Firearms Qualification Time

1. Call Back Pay

Call Back pay is paid for an employee who is called in for unscheduled or emergency work after the employee has returned home or on an employee's day off. Call back is not paid when the work is scheduled at least 24 hours in advance, or when the work is contiguous with regularly scheduled hours. Travel time to and from the work location will not be compensable.

When an employee is called back to work, he/she shall be paid a minimum one-half of an hour (.5) at one and one-half (1.5) times the employee's hourly rate of pay upon arriving at the work location. Any time worked in excess of one-half an hour shall be paid at one and one-half (1.5) times the employee's hourly rate of pay in fifteen (15) minute increments.

Employees called back on a City holiday shall be paid a minimum of two (2) hours at one and one-half (1.5) times the employee's hourly rate of pay.

2. Court Stand-by

Any Police Officer, Senior Officer or Sergeant required to remain at his/her residence and/or promptly available by phone while in an off-duty status because he/she is put "on-call" for court appearance, shall be paid for two (2) hours at the employee's regular rate of pay. In the event that a morning on-call status continues beyond the court's noon recess, the employee shall be paid an additional two (2) hours at the employee's

regular rate of pay. If the employee is not placed off-call forty-eight (48) hours prior to 0900 the morning of the subpoena appearance date, the employee shall be paid for two (2) hours at the employee's regular rate of pay.

3. Court Appearance

Any Police Officer, Senior Officer or Sergeant who is off-duty and is required to appear in court after he/she is placed "on-call", shall be paid for actual hours required for court appearance at one and one-half (1.5) times the employee's hourly rate of pay, or for two (2) hours if the actual hours required are two (2) hours or less at one and one-half (1.5) times the employee's hourly rate of pay. When such court appearance requires the employee to be in attendance before and after the court lunch recess, such lunchtime will be included in determining the employee's court appearance time. Any Police Officer, Senior Officer or Sergeant required to respond to court while in an off-duty status and not previously having been placed "on-call" will be paid a minimum of two (2) hours at one and one-half (1.5) times the employee's hourly rate of pay.

4. DMV Hearings

Any Police Officer, Senior Officer or Sergeant who participate in a DMV hearing while off-duty shall be paid for actual hours required for DMV hearing attendance at one and one-half (1.5) times the employee's hourly rate of pay, or for two (2) hours if the actual hours required are two (2) hours or less at one and one-half (1.5) times the employee's hourly rate of pay. If the hearing scheduled during the employee's off-duty time is cancelled and the employee is not notified forty-eight (48) hours prior to the scheduled time, the employee will receive the minimum two (2) hours at one and one-half (1.5) times the employee's hourly rate of pay.

5. Firearms Qualifications

Police Officers, Senior Officers and Sergeants not assigned to shifts that overlap normal shooting range hours shall be paid for actual hours spent qualifying at the range at one and one-half time (1.5) times the employee's hourly rate of pay. It is expressly understood that Police Officers, Senior Officers and Sergeants will be required to qualify at the discretion of the City, but that such requirement will be no less than every other month.

H. Meal Period

A thirty (30) minute non-compensated meal period shall be provided to all regular full-time employees. This meal period should be taken at the approximate mid-point of the shift, unless department rules indicate otherwise. The meal period may not be used to shorten the workday.

I. Rest Period

A fifteen minute compensated rest period will be provided to all employees for each five (5) hour period of service. The rest period shall be taken at a time designated by the employee's supervisor. The rest periods may not be combined nor may they shorten the workday or

extend the meal period. If the employee works through their rest period, he/she is not entitled to overtime.

J. **City Business Travel**

Refer to Travel Policy

K. **Travel/Work Hours**

Refer to Travel Policy

L. **Training/Work Hours**

An employee is not required to be compensated for attendance at a training program if all of the following four requirements are met:

- attendance is voluntary;
- the training program occurs outside of normal working hours;
- the employee does not perform productive work; and
- the training is not directly related to the employee's current job.

Attendance is considered voluntary only if the employee's working conditions are not adversely affected if he or she does not attend the training. If a supervisor suggests that an employee's future advancement or performance evaluation will be affected if the employee does not attend the training, attendance would not be voluntary. See Exhibit "B" regarding compensability of training time.

1. Classes Offered at a School or College

If an employee voluntarily enrolls in a class outside of work hours that is offered at a school, college or vocational institute, the training is not considered hours worked as long as the employee does not perform any productive work. Additionally, if the City offers such a class to its employees outside of the normal work hours, or pays for the employees to attend such a class, it will not be hours worked.

2. State Mandated Certifications

If state law requires that an employee obtain a certification for his or her job, and the employee voluntarily attends the necessary training to obtain such certification outside of normal work hours, the time spent at that training is not counted as hours worked.

3. Coming Back to Work After Training Day

All employees who attend training are required to return to their regular work location if, at the end of the training day, after traveling back to their regular City work location, there would be at least one half hour left in their work day.

Section 4 – Attendance and Leaves

A. Absence Control

Arriving late to work or leaving early in connection with scheduled work times, breaks, or meal periods is prohibited. An employee is required to seek advance permission from his/her supervisor for any foreseeable absence or deviation from regular working hours.

1. Employee's Duty to Notify of Late Arrival or Absence

An employee who is unexpectedly unable to report for work as scheduled must notify his/her immediate supervisor no later than the scheduled work time and report the expected time of arrival or absence. If the employee's immediate supervisor is not available, the employee must notify the department head. An employee who fails to timely notify the supervisor of absences, or who is not present and ready to work during all scheduled work times will be deemed to have an unauthorized tardy or absence and will not receive compensation for the period of absence.

2. Excessive Tardiness/Absenteeism

Excessive tardiness occurs when an employee is late to work or returning from breaks more than three (3) times during any 30-day period. Excessive absenteeism occurs when the number of absences exceeds three (3) days in any three-month period. Excessive tardiness or absenteeism may be grounds for discipline, up to and including termination. Abuse of, or misrepresentation of any form of accrued or unpaid leave time will be grounds for discipline, up to and including termination.

B. Holidays

The City recognizes certain days each year as City Holidays. The purpose of this policy is to designate the holidays and define the guidelines for employees regarding these holidays.

1. Designated Holidays

The City allows eight (8) hours of time off with pay for each of the following designated holidays to regular full-time and FLSA Exempt employees. Beginning January 1, 2015, the City will allow ten (10) hours of time off, with pay for each of the following designated holiday to regular full-time and FLSA Exempt employees:

- a) New Year's Day – January 1
- b) Martin Luther King Day – 3rd Monday in January
- c) President's Birthday – 3rd Monday in February
- d) Memorial Day – Last Monday in May
- e) Independence Day – July 4
- f) Labor Day – 1st Monday in September
- g) Veterans' Day – November 11
- h) Thanksgiving Day – Designated Thursday in November
- i) The Friday after Thanksgiving in November
- j) Christmas Eve Day – December 24
- k) Christmas Day – December 25

The City allows four (4) hours of time off, with pay for the following designated holiday to regular full-time and FLSA Exempt employees. Beginning January 1, 2015, the City will allow five (5) hours of time off, with pay for the following designated holiday to regular full-time and FLSA Exempt employees.

- a) ½ of New Year's Eve Day – December 31

Two (2), eight (8) hour floating holidays to be taken at the convenience of the City as determined by each Department Head. These hours are posted to the employee's holiday bank on the first pay period of January and prorated for employees employed thereafter. Beginning January 1, 2015, there will no longer be floating holidays.

2. **Eligibility**

Regular full-time and FLSA Exempt employees are eligible for holiday pay immediately upon hire. Holiday pay eligibility shall further depend upon the employee working the workday preceding, and the workday following the holidays.

3. **Required work on holiday**

An employee who works on a holiday shall be paid for actual hours worked at one and one-half time (1 ½) and shall be compensated for the holiday hours listed above.

4. **Holiday falls on scheduled day off**

Any miscellaneous employee whose regularly scheduled day off falls on a day designated as a holiday above shall bank holiday hours equal to the number of holiday hours normally paid. Safety employees will be paid of regular pay as designated above.

5. **Banked Holidays**

An employee may take his/her banked holidays at any time during the year, subject to the advance approval of the employee's supervisor. Banked holiday hours are not considered actual hours worked for overtime purposes. At no time may an employee have a total banked holiday accrual balance in excess of 120 hours.

C. **Vacation**

Vacation time is a benefit for regular full-time and FLSA Exempt employees. Vacations are granted to employees as a way of recognizing their work throughout the year. Vacations are meant to give the employee an opportunity to relax with family and friends and to return to the job refreshed and ready to take on new challenges. The purpose of this policy is to define actual rates and procedures relating to vacation (annual leave).

1. **Vacation Accrual**

Regular full-time and FLSA Exempt employees accrue vacation based on their years of continuous service with the City at the following rates:

Years of Continuous Service	Hours Accrued Per Pay Period
0-5	3.34
5-10	5.00
10+	5.34
11+	5.67
12+	6.00
13+	6.34
14+	6.67

2. Accrual of Vacation for Reinstated Employees

Former City of Tehachapi employees who are reinstated within six (6) months shall receive years-of-service credit for their prior years with the City.

3. Scheduling

The times during the calendar year at which an employee shall take his vacation shall be determined by each department head respectively with due regard for the wishes of the employee and particular regard for the needs of his/her department.

4. Illness while on Vacation

If an employee is sick while on vacation, he/she may use sick leave time instead of vacation time if he/she furnishes his/her supervisor with a health care provider's statement.

5. Holiday while on Vacation

If a paid City holiday (as defined in this section) occurs during an employee's vacation, it shall not be charged against the employee's vacation hours.

6. Pay in lieu of Vacation Time

An employee may request to be paid for his/her vacation hours in lieu of accruing the time during his/her employment with the City. The employee's request for compensation in lieu of vacation will be granted in the case of hardship as determined by the City Manager. For the purpose of this provision, "hardship" shall include, without limitation, family illness or death, acute financial hardship, or payment of necessary medical expenses.

7. Payment at Termination

Upon termination of employment, an employee who has successfully completed his/her probationary period will be paid for all accrued but unused vacation at the employee's rate of pay at termination.

8. Maximum Accrual

At no time may an employee have a total vacation accrual balance in excess of 1.5 times his/her current annual accrual rate. When the employee reaches the maximum accrual he/she shall cease earning vacation leave until the balance falls below the maximum accrual.

Years of Continuous Service	Maximum Accrual
0-5	120 hours
5-10	180 hours
10+	192 hours
11+	204 hours
12+	216 hours
13+	228 hours
14+	240 hours

D. Sick Leave

Sick leave is defined as absence because of illness, injury, care of a sick member of the employee's immediate family, or doctor and dental appointments when it is not feasible to schedule them on the employee's own time. An employee's immediate family member for the purpose of sick leave includes the following:

- current spouse
- registered domestic partner
- children, including child under guardianship, adopted and stepchildren
- parents and step parents
- parents and step parents of his/her current spouse
- grandparents
- grandchildren
- siblings

Sick leave can also be used to obtain any relief or services to being a victim of domestic violence, sexual assault or stalking with appropriate certification of the need for such services.

The City Manager has discretionary authority to extend sick leave coverage because of the illness, injury or care of a person other than the immediate family members of the employee listed above, when he/she determines the relationship of such person to the employee warrants use of sick leave.

1. Regular Full-time and FLSA Exempt Employees

a) Accrual

Regular full-time and FLSA Exempt employees receive up to 96 hours of sick leave annually at the rate of four (4) hours per pay period. Employees may take up to half of their annual accrual (48 hours) of sick leave in any year for the care of a sick family member. (California Kin Care law)

b) No Future Draws

An employee may not draw on future unearned sick leave benefits.

c) Reinstated Employees

Former City of Tehachapi employees who are reinstated to full-time employment within

six (6) months of separation will have their unused sick leave balance restored. Employees who are reinstated to full-time employment between six (6) months and twelve (12) months of separation will have up to 6 days or 48 hours of their unused sick leave balance reinstated.

d) Notification

An employee who is ill or injured and unable to report to work must notify his/her supervisor prior to the beginning of his/her work shift. If this is not possible, the employee must contact the supervisor at the beginning of the work shift. If conditions make it impossible for the employee to call the supervisor personally, the employee must make arrangements for someone to call for him/her. Employees using any sick leave beyond the first 3 days or 24 hours in a 12-month period may be asked to furnish a doctor's statement to their supervisor. Employees' using more than forty (40) hours consecutive sick leave must furnish a statement from their doctor.

e) Recording Sick Time

Employees will not be permitted to use vacation, floating holiday or comp time in lieu of sick leave unless approved by their Department Head.

f) Illness while on Vacation

Employees who become sick while on vacation may use sick leave time instead of vacation time if he/she furnishes his/her supervisor with a doctor's statement.

g) Forfeiture of Unused Sick Leave at Termination

Except as otherwise provided herein, employees leaving the City's employ shall forfeit all unused sick leave benefits as of the termination date.

h) Compensation at Retirement

An employee retiring from the City of Tehachapi, and having been accepted by the Public Employee's Retirement System (PERS) for service or disability retirement benefits, may be compensated for unused accrued sick leave at 50% of its value on his/her retirement date.

2. Part-Time, Temporary, Provisional and Seasonal Employees

a) Accrual

Current Part-Time, Temporary, Provisional or Seasonal employees will be provided upfront thirty (30) hours of paid sick leave on July 1, 2015 and each subsequent 12-month period thereafter. New Part-Time, Temporary, Provisional or Seasonal employees hired after July 1, 2015 will be provided thirty (30) hours of sick leave at the date of hire and each subsequent 12-month period thereafter. Thirty (30) hours shall be the maximum amount of paid sick leave provided per 12-month employment period. No unused sick leave accrual shall be carried over to the following fiscal year.

b) Eligibility to Use Sick Leave

Part-Time, Temporary, Provisional or Seasonal Employees will not be allowed to use any paid sick leave until the 90th day of employment with the City.

c) **Minimum Increment**

A Part-Time, Temporary, Provisional or Seasonal employee who uses paid sick leave must do so with a minimum increment of two hours of sick leave.

d) **No Future Draws**

A Part-Time, Temporary, Provisional or Seasonal employees may not draw on future unearned sick leave benefits.

e) **Reinstated Employees**

A Part-Time, Temporary, Provisional or Seasonal employee who separates from City employment and is re-hired by the City within twelve (12) months of the date of separation will have previously accrued and unused paid sick leave hours reinstated to the extent required by law. However, if a re-hired employee had not yet worked the requisite 90 days of employment to use paid sick leave at the time of separation, the employee must still satisfy the 90 days of employment requirement collectively over the periods of employment with the City before any sick leave can be used.

f) **Notification**

Part-Time, Temporary, Provisional or Seasonal employee shall provide reasonable advance notification of their need to use accrued paid sick leave to their supervisor if the need for paid sick leave use is foreseeable (e.g., doctor's appointment scheduled in advance). An employee who is ill or injured and unable to report to work must notify his/her supervisor prior to the beginning of his/her work shift. If this is not possible, the employee must contact the supervisor at the beginning of the work shift. If conditions make it impossible for the employee to call the supervisor personal, the employee must make arrangements for someone to call for him/her.

g) **Forfeiture of Unused Sick Leave at Termination**

Part-Time, Temporary, Provisional or Seasonal employee leaving the City's employ shall forfeit all unused sick leave benefits as of the termination date.

E. Family Medical Leave Act and California Family Rights Act

1. Employee Eligibility

State and Federal family and medical leave laws (CFRA/FMLA respectively) provide up to twelve (12) workweeks (twenty-six (26) workweeks to care for an injured service member) of unpaid family/medical leave within a 12-month period, under the following conditions:

- The employee has more than 12 months of service with the City that need not be consecutive. If the leave only qualifies under FMLA, the 12 months of nonconsecutive service must have accumulated within the previous seven years. There is no such time limitation under CFRA.
- The employee has worked at least 1,250 hours during the previous 12-month period before the need for leave; and

- The employee is employed at a work site where there are 50 or more employees within a 75-mile radius.

2. **Reasons for FMLA/CFRA Leave**

FMLA/CFRA leave may be taken for one or more of the following reasons:

- The birth of the employee's child, or placement of a child with the employee for adoption or foster care (FMLA/CFRA);
- To care for the employee's spouse, child, or parent who has a serious health condition (FMLA/CFRA);
- To care for the employee's registered domestic partner with a serious health condition (CFRA only);
- For a serious health condition that makes the employee unable to perform his/her job (FMLA/CFRA);
- Any period of incapacity or treatment due to pregnancy or prenatal care (FMLA only);
- For any "qualifying exigency" (as defined by FMLA regulation) because an employee's spouse, son, daughter, or parent is on active military duty or has been notified of an impending call or order to active duty in a foreign country or in support of a contingency operation involving the United States Armed Forces (FMLA only); or
- To care for a spouse, son, daughter, parent, or "next of kin" service member or veteran in the preceding five years of the United States Armed Forces who has a serious injury or illness incurred in the line of duty while on active military duty (this leave can run up to 26 weeks of unpaid leave during a 12-month period that begins on the first date of such leave) (FMLA only).

3. **Duration of FMLA/CFRA Leave**

a) **General**

Eligible employees may receive up to a total of twelve (12) workweeks (twenty-six (26) workweeks to care for an injured service member) of unpaid leave during a 12-month period

b) **Calculation of Leave Period**

For the purposes of calculating the 12-month period during which twelve (12) weeks of leave may be taken, the City uses a "rolling" 12-month period measured backward from the date an employee uses any FMLA and /or CFRA leave. Under the "rolling" 12-month period, each time an employee takes FMLA and/or CFRA leave the remaining leave entitlement would be any balance of the twelve (12) weeks which has not been used during the immediately preceding 12 months.

For example, if an employee has taken eight (8) weeks of leave during the past 12 months, an additional four (4) weeks of leave could be taken. If an employee used four (4) weeks beginning February 1, 2013, four (4) weeks beginning June 1, 2013, and four (4) weeks beginning December 1, 2013, the employee would not be entitled to any additional leave until February 1, 2014. However, beginning on February 1, 2014, the employee would be entitled to four (4)

weeks of leave, on June 1, 2014 the employee would be entitled to an additional four (4) weeks, etc.

c) When Leave runs concurrently

Under most circumstances, leave under FMLA and CFRA will run at the same time and the eligible employee will be entitled to a total of twelve (12) weeks of family and medical leave in the designated 12-month period. Some exceptions to this general rule are identified below:

i. Leave to Care for a Covered Service Member – FMLA Only

When leave taken to care for a covered service member, the single 12-month period begins on the first day of the leave, regardless of how the 12-month period is calculated for other leaves. Leave to care for a covered service member is for a maximum of twenty-six (26) workweeks of FMLA/CFRA leave for any qualifying reason once the single 12-month period begins following the first day of covered service member leave.

ii. Leave for Pregnancy/Childbirth/Medical Related Condition – FMLA Only

Leave taken because of the employee's disability for pregnancy, childbirth or related medical condition is not counted as time used under the CFRA but does count under the FMLA. Employees who take Pregnancy Disability Leave (PDL) off for pregnancy/childbirth related conditions and are also eligible for FMLA leave shall be placed on FMLA leave which will run concurrently with PDL. Once the pregnant employee is no longer disabled, however, she may apply for CFRA leave for purposes of baby bonding.

iii. Leave for Birth/Adoption/Foster Care Placement – CFRA/FMLA

Any leave taken for the birth, adoption, or foster care placement of a child does not have to be taken in one continuous period of time. CFRA leave taken for the birth or placement of a child will be granted in minimum amounts of two weeks. However, the City will grant a request for a CFRA leave for the birth/placement of a child of less than two weeks' duration on any two occasions requested by an employee. Any leave taken must be concluded within one (1) year of the birth or placement of the child with the employee.

4. Required Procedures for Requesting FMLA/CFRA Leave

The following procedures shall apply when an employee requests family leave:

- Please contact the Personnel Officer or his/her designee as soon as you realize the need for family/medical leave.
- If the leave is based on the expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or a family member, the employee must notify the City at least 30 days before leave is to begin. The employee must consult with his/her supervisor regarding scheduling of any planned medical treatment or supervision in order to minimize disruption to City operations. Any such scheduling is subject to the approval of the health care provider of the employee or the health care provider of the employee's child, parent or spouse.
- If the employee cannot provide 30 days' notice, the City must be informed as soon as is practical
- If the FMLA/CFRA request is made because of the employee's own serious health

condition, the City may require, at its expense, a second opinion from a health care provider that the City chooses. The health care provider designated to give a second opinion will not be one who is employed on a regular basis by the City.

- If the second opinion differs from the first opinion, the City may require, at its expense, the employee to obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee. The opinion of the third health care provider shall be considered final and binding on City and the employee.
- The City requires the employee to provide certification within fifteen (15) days of any request for family and medical leave under state and federal law, unless it is not practicable to do so. The City may require recertification from the health care provider if additional leave is required.

a) Additional requirements when an employee requests family/medical leave to care for a sick child, spouse or parent

If the leave is needed to care for a sick child, spouse, or parent, the employee must provide a certification from the health care provider stating:

- Date of commencement of the serious health condition;
- Probable duration of the condition;
- Estimated amount of time for care by the health care provider; and
- Confirmation that the serious health condition warrants the participation of the employee.

b) Additional requirements when an employee requests family/medical leave to care for an injured service member who is a child, spouse, parent, or "next of kin"

Employees who request a leave to care for an injured service member who is a child, spouse, parent, or "next of kin" of the employee must provide written certification from a health care provider regarding the injured service member's serious injury or illness.

c) Additional requirements when an employee requests family/medical leave for a "qualifying exigency" related to military

Employees who request leave due to a "qualifying exigency" related to military service must be supported by a certification of its necessity.

d) Family/medical leave is limited when both parents are employed by the City

When both parents are employed by the City, and request simultaneous leave for the birth or placement for adoption or foster care of a child or to care for a child who is an injured service member, the City will not grant more than a total of twelve (12) workweeks (twenty-six (26) workweeks to care for an injured service member) of family/medical leave for this reason.

e) Additional requirements when an employee requests family/medical leave for his/her own serious health condition

If an employee cites his/her own serious health condition as a reason for leave, the employee must provide a certification from the health care provider stating:

- Date of commencement of the serious health condition;
- Probable duration of the condition; and

- Inability of the employee to work at all or perform any one or more of the essential functions of his/her position because of the serious health condition.

The City will require certification by the employee's health care provider that the employee is fit to return to his/her job. Failure to provide certification by the health care provider of the employee's fitness to return to work will result in denial of reinstatement for the employee until the certificate is obtained.

5. Benefits during FMLA/CFRA Leave

An employee taking FMLA/CFRA leave will be allowed to continue participating in any health and welfare benefit plans in which he/she was enrolled before the first day of the leave for a maximum of 12 workweeks (26 workweeks for injured service member leave) at the level and under the conditions of coverage as if the employee had continued in employment of the duration of such leave. The City will continue to make the same premium contributions as if the employee had continued working. The continued participation in health benefits begins on the date leave first begins under the FMLA (for pregnancy disability leaves) or under the FMLA/CFRA (for all other family care and medical leaves). In some instances, the City may recover from an employee premiums paid to maintain health coverage if the employee fails to return to work following family/medical leave.

Length of service, as it affects various employee benefits such as vacation time, shall continue to accrue for the duration of any leave of absence. However, vacation and sick leave credits will not accrue during the period the employee is on leave regardless if they are being compensated using accruals. While on an extended leave, an employee must have at least one actual hour worked in a pay period to accrue vacation and sick credits.

An employee shall not be paid or allowed to bank time for holidays occurring during his/her extended leave of absence.

PERS contributions and service credits will not continue during the period the employee is on unpaid leave. Application can be made to PERS at the time of return for evaluation of service credit based on the reason of the leave of absence. Any unpaid leave over two months in a fiscal year will affect service credit computations.

The City will allow an employee to continue participation in the health insurance program while utilizing earned compensation, sick leave, vacation, or banked holidays at the regular employee/employer contributions. The City will allow an employee to continue participation in the health insurance program when on an unpaid leave of absence at the employee's expense. The employee will need to submit a check for the premium to the Finance Department by the first of each month in order to continue participation in the health insurance program. The health insurance program includes the medical, dental, vision and life insurance coverage normally afforded to employees. This coverage is limited to a maximum of six (6) months total regardless if leave is paid or unpaid, except as otherwise required by law. At this time the employee would be subject to COBRA.

6. **Compensation during FMLA/CFRA Leave**

Paid leave will be substituted for unpaid leave in the following circumstances;

Accrued sick leave is required to be used during FMLA/CFRA leave for the employee's own serious health condition, or, up to a limit of that which is accrued over six months of the work year, to attend to the illness of a child, parent, or spouse of the employee.

Accrued vacation, compensatory time or banked holidays are required to be used when accrued sick leave is exhausted under the FMLA/CFRA leaves above, and for any other FMLA/CFRA qualifying event, except leave that is also pregnancy disability leave.

7. **Job reinstatement following FMLA/CFRA Leave**

a) **In general**

Under most circumstances, upon return from family/medical leave, an employee will be reinstated to his/her original job or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions. However, an employee has no greater right to reinstatement than if he/she had been continuously employed rather than on leave. For example, if an employee on family/medical leave would have been laid off had he/she not gone on leave, or if the employee's job is eliminated during the leave and no equivalent or comparable job is available, then the employee would not be entitled to reinstatement. In addition, an employee's use of family/medical leave will not result in the loss of any employment benefit that the employee earned before using family/medical leave.

b) **Key employees**

Reinstatement after family/medical leave may be denied to certain salaried "key" employees under the following conditions:

- an employee requesting reinstatement was among the highest-paid 10 percent of salaried employees employed within 75 miles of the work site at which the employee worked at the time of the leave request;
- The refusal to reinstate is necessary because reinstatement would cause substantial and grievous economic injury to the City's operations;
- The employee is notified of the City's intent to refuse reinstatement at the time the City determines the refusal is necessary; and
- If leave has already begun, the City gives the employee a reasonable opportunity to return to work following the notice described previously.

8. **Intermittent Leave**

Employees may take FMLA/CFRA leave intermittently in blocks of time, or by reducing their normal weekly schedule if the leave is for the serious health condition of the employee's child, parent, spouse, "next of kin" (injured service member leave only), or of the employee, and the reduced leave schedule is medically necessary as determined by the health care provider of the person with the serious health condition.

F. **Pregnancy Disability Leave (PDL)**

Any employee with appropriate doctor certification may request accommodations, including

but not limited to an unpaid leave of absence due to conditions related to pregnancy, childbirth, or related medical conditions. The City will provide such accommodations unless the requested accommodations would constitute an undue hardship. Possible accommodations that may be considered include without limitation:

Upon the request of an employee and recommendation of the employee's physician, the employee's work assignment may be changed if necessary to protect the health and safety of the employee and her child. Requests for transfers of job duties will be reasonably accommodated if the job and security rights of others are not breached. Temporary transfers due to health considerations will be granted when possible. However, the transferred employee will receive the pay that accompanies the job she is performing, as is the case with any other temporary transfer due to temporary health reasons.

The duration of the pregnancy disability leave will be determined by the advice of the employee's physician, but employees disabled by pregnancy may take up to four (4) months of unpaid leave. Part time employees are entitled to leave on a pro-rata basis. The four (4) months of leave includes any period of time for actual disability caused by the employee's pregnancy, childbirth, or related medical condition. This includes leave for severe morning sickness and for prenatal care.

Leave taken due to conditions related to pregnancy, childbirth or related medical conditions does not need to be taken in one continuous period of time and may be taken intermittently, as needed.

1. Procedures for requesting PDL Leave

a) Notification

Any female employee planning to take pregnancy disability leave should advise the Personnel Officer or his/her designee as early as possible. The individual should make an appointment with the Personnel Officer or his/her designee to discuss the following conditions:

- Employees who need to take pregnancy disability leave must inform the City when a leave is expected to begin and how long it will likely last. If the need for a leave or transfer is foreseeable, employees must provide notification at least 30 days before the pregnancy disability leave or transfer is to begin. Employees must consult with the Personnel Officer or his/her designee regarding the scheduling of any planned medical treatment or supervision in order to minimize disruption to the operations of the City. Any such scheduling is subject to the approval of the employee's health care provider;
- If 30 days' advance notice is not possible, notice must be given as soon as practical

b) Medical Certification

Pregnancy disability leave usually begins when ordered by the employee's physician. The employee must provide the City with a certification from a health care provider. The certification indicating disability should contain:

- The date on which the employee became disabled due to pregnancy;
- The probable duration of the period or periods of disability; and
- A statement that, due to the disability, the employee is unable to perform one or more of the essential functions of her position without undue risk to herself, the successful completion of her pregnancy, or to other persons.

2. **Compensation during PDL Leave**

PDL leave provided by the City is an unpaid leave of absence. A pregnant employee may also be entitled to disability insurance payments through the California Employment Development Department (EDD) depending on its evaluation of her medical condition. Any pregnant employee taking PDL should contact the local EDD office for more information on eligibility for pregnancy disability insurance.

An employee will be required to use accrued sick time during an eligible pregnancy disability leave unless the employee is receiving disability benefits from a third party at the same time (such as EDD, therefore allowing the employee the option of using accrued sick time benefits concurrently. An employee will be allowed to use accrued vacation or personal time (separate from the use of any sick leave) during an eligible pregnancy disability leave.

3. **Health Benefits during PDL Leave**

If an employee takes pregnancy disability leave the City will maintain group health insurance coverage for up to a maximum of four months if such insurance was

provided before the leave was taken on the same terms as if the employee had continued to work. In some instances, the City may recover premiums it paid to maintain health coverage for the employee if she fails to return to work following pregnancy disability leave.

4. **Leave accruals while on PDL**

Length of service, as it affects various employee benefits such as vacation time, shall continue to accrue for the duration of any leave of absence. However, vacation and sick leave credits will not accrue during the period the employee is on leave regardless if they are being compensated using accruals. While on an extended leave, an employee must have at least one actual hour worked in a pay period to accrue vacation and sick credits

An employee shall not be paid or allowed to bank time for holidays occurring during his/her extended leave of absence.

PERS contributions and service credits will not continue during the period the employee is on unpaid leave. Application can be made to PERS at the time of return for evaluation of service credit based on the reason of the leave of absence. Any unpaid leave over two months in a fiscal year will affect service credit computations.

5. **Job Reinstatement following PDL Leave** - Under most circumstances, upon submission of a medical certification that an employee is able to return to work from a

pregnancy disability leave, an employee will be reinstated to her same position held at the time the leave began or to an equivalent position, if available. An employee returning from a pregnancy disability leave has no greater right to reinstatement than if the employee had been continuously employed. An employee may only return to work following PDL when her physician provides a release allowing the employee to return to work.

G. Workers' Compensation/Workers' Compensation Leave

The California Workers' Compensation Law requires every employer to provide its employees with Workers' Compensation coverage. This coverage guarantees automatic benefits to employees injured on the job or who incur a job-related illness. Potential benefits include medical treatment, temporary and permanent disability payments and job displacement benefits. Immediate benefits are in the form of medical care.

The City of Tehachapi is permissively self-insured through participation in the Central San Joaquin Valley Risk Management Authority (CSJVRMA). CSJVRMA contracts with Acclamation Insurance Management Services (AIMS) to administer the Worker's Compensation benefits.

1. **Who is covered**

All City employees have protection under the Workers' Compensation Law, including part-time, temporary workers, police VIP's and reserve officers, volunteers and Council members.

2. **When it begins**

Workers' Compensation coverage begins the first minute you are on the job and continues any time you are working. You do not have to be employed for a certain length of time, nor do you have to earn a certain amount of wages before you are protected.

3. **What to do if you are injured**

In case of Life-or-Limb threatening injuries always call 911, otherwise you should immediately report all injuries to your supervisor. If medical care is needed and your supervisor is not available or the injury is before or after normal business hours, call the injury hotline Company Nurse at 1-888-770-0926. The Company nurse will gather information over the phone and will help you access appropriate medical treatment. If treatment is required, the employee will be referred to a local medical facility that will treat Workers' Compensation injuries. The doctor's office/hospital will receive a fax alerting them the employee is being sent for treatment; this fax will include the employee's personal and injury information as well as employer details and Workers' Compensation insurance information.

If you receive treatment prior to reporting the information to your supervisor or Company Nurse (such as in the case of an emergency) notify the Personnel Officer or his/her designee as soon as possible.

You may go to your own doctor, but only if you have pre-designated your doctor to treat

you for a work related injury. This is done by obtaining a pre-designation form from the Personnel Officer or his/her designee. The form must be completed and turned into the Personnel Officer or his/her designee prior to a work related injury. The doctor you pre-designate must have previously directed your medical treatment, must have your medical history on file and must agree to be pre-designated by signing the pre-designation form. Please note that not all doctors are willing to provide treatment for workers' compensation injuries. Please be sure that your doctor handles workers' compensation claims. If you did not pre-designate your regular doctor before the injury, you will receive medical care from one of the doctors/hospitals designated by the City.

All injuries, regardless of severity, are covered if they are caused by your job. All job injuries are to be reported to your supervisor, even if they are minor and do not require medical treatment by a doctor.

The doctor or hospital will bill the City through AIMS. This includes the cost of the doctor, hospital, x-ray, crutches, lab work and other services and supplies the doctor prescribes to treat your injury.

4. What happens if your injury leads to time off work

If your claim is accepted as compensable Workers' Compensation and Law provides for lost wages in the form of temporary disability – these payments may be provided as long as the doctor says you are unable to work, and you are off work for more than three (3) days. There may be further payments provided after you return to work if the doctor indicates you have permanent restrictions.

For miscellaneous employees, temporary disability payments begin after the first three (3) days you are off work due to a work related injury. The City will continue full salary during this three-day period. After the first three-day period, the City will continue salary payments in an amount which, added to temporary disability payments, will provide you with full salary for a period not to exceed another nineteen (17) working days. In no event shall City payments for a job-related injury leave exceed a combined total of twenty-two (19) working days. If workers' compensation leave continues beyond the twenty-two (19) day period, you may apply sick leave, banked holidays, compensatory time and/or accrued vacation to continue your full salary until you exhaust your leave benefits. This process is called 'integration'. If you choose not to utilize integration to supplement your income, you must notify the Personnel Officer or his/her designee in writing and submit for a leave of absence without pay. Once this decision is made you may not rescind your choice.

Sworn Police Officers eligible under Section 4850 of the Labor Code will continue full salary for payments not to exceed one (1) year. If workers' compensation leave continues beyond Section 4850, you will be eligible for temporary disability payments for an additional year and may apply sick leave, compensatory time and/or accrued vacation to continue your full salary until you exhaust your leave benefits. This process is called 'integration'. If you choose not to utilize integration to supplement your income, you must notify the Personnel Officer or his/her designee in writing and submit for a leave of absence without pay. Once this decision is made you may not rescind your choice.

Temporary disability benefit checks will be issued by AIMS. If you utilize integration, the check from AIMS will be sent to the City. You must sign the temporary disability checks over to the City. Payroll will use the temporary disability checks, along with your leaves to issue your regular pay. This process helps to keep your benefits as a City employee in force. You may not use leaves and retain the temporary disability checks at the same time.

If you have no leaves, or you use all your leaves, your temporary disability checks will be sent directly to you by AIMS and you may keep your temporary disability checks.

Workers' Compensation Leave will run concurrently with Family Medical Leave of Absence (FMLA/CFRA) to the extent permitted by law.

5. Benefits while on Workers' Compensation

Length of service, as it affects various employee benefits such as vacation time, shall continue to accrue for the duration of any leave of absence. However, vacation and sick leave credits will not accrue during the period the employee is on leave regardless if they are being compensated using accruals. While on an extended leave, an employee must have at least one actual hour worked in a pay period to accrue vacation and sick credits

An employee shall not be paid or allowed to bank time for holidays occurring during his/her extended leave of absence.

PERS contributions and service credits will not continue during the period the employee is on unpaid leave. Application can be made to PERS at the time of return for evaluation of service credit based on the reason of the leave of absence. Any unpaid leave over two months in a fiscal year will affect service credit computations.

The City will allow an employee to continue participation in the health insurance program while utilizing earned compensation, sick leave, vacation, or floating holidays at the regular employee/employer contributions. The City will allow an employee to continue participation in the health insurance program when on an unpaid leave of absence at the employee's expense. The employee will need to submit a check for the premium to the Finance Department by the first of each month in order to continue participation in the health insurance program. The health insurance program includes the medical, dental, vision and life insurance coverage normally afforded to employees. This coverage is limited to a maximum of six (6) months total regardless if leave is paid or unpaid, except as otherwise required by law. At this time the employee would be subject to COBRA.

Sworn Police Officers eligible under Section 4850 of the Labor code will continue full benefits not to exceed one (1) year.

H. Extended Medical Leave of Absence for non-work related injuries/illness

The City of Tehachapi at the City Manager's discretion may grant extended medical leave for a period of up to six (6) months, or as required as reasonable accommodation under state

and federal law, for regular full-time and FLSA Exempt employees who are temporarily disabled and unable to perform the duties of the job due to non-work related temporary disabilities (other than pregnancy, childbirth, and related medical conditions). Any employee who is granted an extended medical leave of absence must concurrently utilize any available earned compensation, sick leave, vacation, or floating holidays. If the employee is eligible for FMLA/CFRA leave his/her extended medical leave of absence for a non-work related injury/illness will run concurrently with his/her available FMLA/CFRA leave.

1. Required procedures for requesting Extended Medical Leave of Absence for non-work related injuries/illness

An employee requesting an extended medical leave of absence for a non-work related temporary disability should submit, to the Personnel Officer or his/her designee, a doctor's written certificate of the employee's inability to work that includes an estimated length of time that the employee may remain disabled. The Personnel Officer or his/her designee will provide him/her with a form for his/her doctor to complete, showing the date that the employee was disabled and the estimated date he/she will be able to return to work.

Leave up to six (6) months may be granted, however, the actual length of the leave and specific time(s) which it begins and ends will be based upon the employee's individual medical condition and ability to perform the job, or as required as a reasonable accommodation under state and federal law. An extended medical leave for a non-work related temporary disability begins on the first day that his/her doctor certifies he/she is unable to work, and ends when his/her doctor certifies that he/she is able to return to work per the terms of this policy. An employee returning to work from an extended medical leave of absence due to a non-work related temporary disability must present a doctor's certificate declaring the employee's fitness to return to work.

2. Returning to Work

The employee shall return to work immediately upon completion of the leave. If the employee does not return to work on the expiration date of his/her extended medical leave of absence due to a non-work related temporary disability, his/her employment shall be terminated, unless an extension has been requested in writing, accompanied by the required doctor's certification set forth above, and granted prior to the expiration date of the leave of absence. If applicable, the City will abide by any and all PERS Disability Retirement procedural obligations prior to separation of employment based on the inability to reasonably accommodate a continued extended medical leave of absence.

If returning from an extended medical personal leave of absence, you will be offered the same position you held at the time your leave began, if available. If your former position is not available, a comparable position will be offered. If neither the same nor a comparable position is available, your return to work will depend on job openings existing at the time of your scheduled return. The City makes no guarantees of reinstatement, and your return to work will depend on your qualifications for existing openings.

3. Benefits while on extended leave

Length of service, as it affects various employee benefits such as vacation time, shall continue to accrue for the duration of any leave of absence. However, vacation and sick

leave credits will not accrue during the period the employee is on leave regardless if they are being compensated using accruals. While on an extended leave, an employee must have at least one actual hour worked in a pay period to accrue vacation and sick credits

An employee shall not be paid or allowed to bank time for holidays occurring during his/her extended leave of absence.

PERS contributions and service credits will not continue during the period the employee is on unpaid leave. Application can be made to PERS at the time of return for evaluation of service credit based on the reason of the leave of absence. Any unpaid leave over two months in a fiscal year will affect service credit computations.

The City will allow an employee to continue participation in the health insurance program while utilizing earned compensation, sick leave, vacation, or floating holidays at the regular employee/employer contributions. The City will allow an employee to continue participation in the health insurance program when on an unpaid leave of absence at the employee's expense. The employee will need to submit a check for the premium to the Finance Department by the first of each month in order to continue participation in the health insurance program. The health insurance program includes the medical, dental, vision and life insurance coverage normally afforded to employees. This coverage is limited to a maximum of six (6) months total regardless if leave is paid or unpaid, except as otherwise required by law. At this time the employee would be subject to COBRA.

I. **Fitness for Duty Policy**

1. **Conditional Offer of Employment Examination**

After a conditional offer of employment has been extended to an applicant, the City may, in compliance with all applicable laws, require the applicant to submit to a fitness for duty examination prior to conferring appointment.

2. **Current Employee Examinations**

The Personnel Officer or his/her designee may require an employee to submit to a fitness for duty examination to determine if the employee is able to perform the essential functions of his or her job when: 1) the employee appears to be unable to perform or has difficulty performing one or more essential functions of his or her job; and 2) there is reason to question the employee's ability to safely or efficiently complete work duties.

3. **Role of Health Care Provider**

A City-selected health care provider will examine the employee at City expense. The City will provide the health care provider with a letter requesting a fitness for duty examination and a written description of the essential functions of the employee's job. The health care provider will examine the employee and provide the City with non-confidential information regarding whether: 1) the employee is fit to perform essential job functions; 2) there are any reasonable accommodations that would enable the employee to perform essential job functions; and 3) the employee's continued employment poses a threat to the health and safety of him or herself or others. Should

the health care provider exceed the scope of the City's request and provide confidential health information, the City will return the report to the health care provider and request another report that includes only the non-confidential fitness for duty information that the City has requested.

4. Medical Information

During the course of a fitness for duty examination, the City will not seek or use information regarding the employee's medical history, diagnoses, or course of treatment without an employee's written authorization.

5. Medical Information from the Employee's Health Care Provider

An employee may submit confidential medical information to the City from his or her personal health care provider. If the employee provides written authorization, the Personnel Officer or his/her designee will submit the information that the employee provides to the City-paid health care provider who conducted the examination. The Personnel Officer will request the City-paid health care provider to determine whether the information alters the original fitness for duty assessment.

6. Interactive Process Discussion

After receipt of both the health care provider's fitness for duty report, and the analysis of the employee's personal health care information (if any) the Personnel Officer or his/her designee will arrange for a discussion or discussions, in person or via conference telephone call, with the employee and his or her representatives, (if any). The purpose of the discussions will be in good faith to fully discuss all feasible potential reasonable accommodations. During the discussions, the Personnel Officer or his/her designee will also discuss, if relevant, alternate available jobs for which the employee is qualified, or whether the employee qualifies for disability retirement or family and medical leave.

7. Determination

After the discussions, the Personnel Officer or his/her designee will review the information received, and determine if there is a reasonable accommodation that would enable the employee to perform essential job functions, or if the accommodations would pose an undue hardship on City finances or operations. The Personnel Officer or his/her designee will inform the employee of his or her determination. The Personnel Officer or his/her designee will use his or her discretion based upon the particular facts of each case.

J. Reasonable Accommodation Policy

The City provides employment –related accommodations to qualified individuals with disabilities within the meaning of the California Fair Employment and Housing Act and the Americans with Disabilities Act.

1. Procedure

a) Request for Accommodation

An employee who desires a reasonable accommodation in order to perform essential job functions should make such a request in writing to the Personnel Officer or his/her designee. The request must identify: a) the job-related functions at issue; and the desired accommodation(s).

b) Reasonable Documentation of Disability

Following receipt of the request, the Personnel Officer or his/her designee may require additional information, such as reasonable documentation of the existence of a disability.

c) Fitness for Duty Examination

The City may require an employee to undergo a fitness for duty examination at the City's expense to determine whether the employee can perform the essential functions of the job with or without reasonable accommodation. The City may also require that a City-approved physician conduct the examination.

d) Interactive Process Discussion

After receipt of reasonable documentation of disability and/or a fitness for duty report, the city will arrange for a discussion, in person or via telephone conference call, with the applicant or employee, and his or her representative(s), if any. The purpose of the discussion is to work in good faith to fully consider all feasible potential reasonable accommodations.

e) Case-by-Case Determination

The City determines, in its sole discretion, whether reasonable accommodations(s) can be made, and the types of accommodation(s) to provide. The City will not provide accommodation(s) that would pose an undue hardship upon City finances or operations, or that would endanger the health or safety of the employee or others. The City will inform the employee of its decision as to reasonable accommodation(s) in writing.

K. Personal Leave of Absence

The City recognizes that employees may need to take a leave of absence for reasons unrelated to their personal health or that of their family members. Accordingly, under certain conditions, an employee may be able to take a personal leave of absence.

1. Required procedures for requesting Personal Leave of Absence

Any regular employee may request a non-medical personal leave of absence for up to thirty (30) days by submitting a written request setting forth the reason for the leave to the Department Head. Requests will be reviewed by the Department Head, Finance Director and the City Manager for final approval. Any employee who is granted a personal leave of absence must concurrently utilize any available earned compensation, vacation, or floating holidays. Sick leave may not be used for personal leave of absence.

Extensions of a non-medical personal leave of absence beyond the allotted thirty (30) days shall be granted only under extraordinary circumstances, approved by the City

Manger, and then only if the employee requests such extension prior to the termination of the original leave of absence. Under no circumstances shall a non-medical personal leave of absence exceed six months.

2. Reasons for Leave

An employee can request a personal leave of absence for reasons such as: education, retraining, or death in the family for leave in excess of the employee's three (3) days of bereavement leave. These are only examples of possible reasons for a non-medical personal leave of absence, but all reasons for requesting such a leave of absence will be taken under consideration and all circumstances evaluated.

3. Returning to Work

The employee shall return to work immediately upon completion of his/her non-medical personal leave of absence. If the employee does not return to work on the expiration date of the leave of absence, the employee will assume to have voluntarily resigned his/her employment and shall be terminated, unless the employee has been granted an extension as set forth in subsection A above.

If returning from a non-medical personal leave of absence, you will be offered the same position you held at the time your leave began, if available. If your former position is not available, a comparable position will be offered. If neither the same nor a comparable position is available, your return to work will depend on job openings existing at the time of your scheduled return. The City makes no guarantees of reinstatement, and your return will depend on your qualifications for existing openings.

4. Benefits While on Leave

Length of service, as it affects various employee benefits such as vacation time, shall continue to accrue for the duration of any leave of absence. However, vacation and sick leave credits will not accrue during the period the employee is on leave regardless if they are being compensated using accruals. While on an extended leave, an employee must have at least one actual hour worked in a pay period to accrue vacation and sick credits

An employee shall not be paid or allowed to bank time for holidays occurring during his/her extended leave of absence.

PERS contributions and service credits will not continue during the period the employee is on unpaid leave. Application can be made to PERS at the time of return for evaluation of service credit based on the reason of the leave of absence. Any unpaid leave over two months in a fiscal year will affect service credit computations.

The City will allow an employee to continue participation in the health insurance program while utilizing earned compensation, sick leave, vacation, or floating holidays at the regular employee/employer contributions. The City will allow an employee to continue participation in the health insurance program when on an unpaid leave of absence at the employee's expense. The employee will need to submit a check for

the premium to the Finance Department by the first of each month in order to continue participation in the health insurance program. The health insurance program includes the medical, dental, vision and life insurance coverage normally afforded to employees. This coverage is limited to a maximum of six (6) months total regardless if leave is paid or unpaid, except as otherwise required by law. At this time the employee would be subject to COBRA.

L. Military Leave of Absence

It is the policy of the City of Tehachapi to grant employees military leave of absence as required by law and to provide certain benefits to employees granted such leave. Employees who wish to serve in the military and take military leave, either for training or active duty purposes, should contact the Finance Department for information about their rights before and after such leave. An employee is entitled to reinstatement upon the completion of his/her military service, provided he/she returns or applies for reinstatement within the time allowed by law.

M. Bereavement Leave

The City provides bereavement leave to regular full-time and FLSA Exempt employees in the event of the death of an employee's current spouse, registered domestic partner, child, parent, legal guardian, brother, sister, grandparent, or grandchild; or mother-, father-, sister-, brother-, son-, or daughter-in-law. An employee who has such a death in the family and would like to utilize bereavement leave shall contact his/her supervisor prior to the beginning of his/her work shift for approval.

An employee with such a death in the family may take up to three (3) consecutively scheduled workdays off with pay with the approval of his/her supervisor.

N. Jury Duty Leave

It is the civic responsibility of every citizen to serve as a juror when called upon to do so. It is the City's philosophy that a regular employee should not suffer a major loss of income in the performance of this civic responsibility.

The employee will receive his/her base pay for up to twenty (20) days of jury duty service per calendar year.

1. Required procedure for requesting Jury Duty Leave

Any employee requesting leave for jury duty must do the following:

- a) The employee shall present to his/her supervisor, the subpoena or other document which gives instructions to report for jury empanelment upon receipt and shall attach a copy to his/her time card.
- b) Upon selection for jury duty, the employee shall notify his/her supervisor verbally, and advise him/her of the estimated length of the trial.

- c) The employee shall report for jury duty each day as instructed by the court. At times the employees may be released from jury service during normal working hours; when this is the case, the employee shall be required to be at work, when practical.
- d) The employee's supervisor shall require an attendance slip verifying his/her actual days of service. The required attendance slip should be attached to the employee's time card to complete that record.

O. **Court Duty Leave**

The purpose of the court leave policy is to define responsibility of the City and the employee with regard to when an employee is subpoenaed to appear in court as a witness.

If an employee is subpoenaed to appear in court as a witness for the Federal, State, County or City government, his/her court duty and travel to and from court from the workplace, will be considered regular work hours.

If an employee is subpoenaed to appear in court as a witness in a private matter, he/she must take vacation, banked holiday, compensatory time off, or leave without pay. The employee shall notify his/her supervisor upon receipt of the subpoena.

If an employee is subpoenaed in an official capacity, the employee shall demand fees at the time the subpoenaed is accepted. In this case the employee will receive regular salary and will endorse the fees over to the City.

1. **Required procedure for requesting Court Duty Leave**

The employee shall notify his/her supervisor upon receipt of the subpoena and shall provide his/her supervisor with a copy of the subpoena. The supervisor shall notify the City Manager regarding subpoena.

P. **Leave to Vote**

The purpose of the voting policy is to define the responsibilities of the City and the employee with regards to voting. The City encourages employees to exercise their prerogative by voting in all federal, state, local, school district and special district elections. The City will provide employees who are unable to vote on their normal time off due to scheduling an opportunity to leave the work site to vote.

1. **Required procedure for requesting Leave to Vote**

An employee who is unable to vote outside his/her scheduled working hours shall give his/her supervisor reasonable advance notice – generally, at least two working days' notice – of the need to take time off work to vote. The employee's supervisor shall provide the employee with the opportunity to leave the work site to vote during the employee's scheduled work time. The employee shall be paid for up to two hours of leave time for voting purposes.

Q. School Visitation Leave

According to State law, an employee who is a parent or guardian of a child in preschool through grade 12 may take up to forty (40) hours of unpaid leave, each school year, to attend school activities of his or her child. This type of leave is limited to eight (8) hours per month, during the school year.

An employee wishing school visitation leave must utilize any earned and available personal time-off -vacation, compensation time or banked holiday. If personal time-off is not available, the employee may take the time off as unpaid leave. Employees shall also note the City may require written documentation as proof the employee did attend a school activity.

1. Required procedure for requesting School Visitation Leave

An employee wishing school visitation leave must notify their supervisor in writing, of the desire for such leave as soon as possible, and must obtain permission from their supervisor, in writing before utilizing the requested leave.

R. Time Off for Victims of Violent Crimes or Domestic Abuse

An employee who has been a victim of a violent crime or domestic abuse may take time off to: appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding; seek medical or psychological assistance; or participate in safety planning to protect against further assaults

1. Required procedure for requesting Time Off for Victims of Violent Crimes or Domestic Abuse

An affected employee must give the City reasonable notice that he or she is required to be absent for a purpose stated above. In cases of unscheduled or emergency court appearances or other emergency circumstances, the affected employee must, within a reasonable time after the appearance, provide the City with written proof that the absence was required for any of the above reasons. Leave under this section is unpaid unless the employee uses vacation or accrued time off.

S. Administrative Leave

Exempt employees designated by the City Manager receive eighty (80) hours of Administrative Leave which is posted to the employee's administrative leave bank on the first pay period of January and prorated for employees employed thereafter. Beginning January 1, 2015, employees designated by the City Manager shall accrue 3.34 hours of Administrative Leave per pay period beginning on the first pay period of January 2015. Administrative Leave shall be recorded on time sheets as it is used. Any unused Administrative Leave at the end of each year or upon employee's termination of employment shall be paid at the employee's rate of pay.

Section 5 – Separation and Reinstatement

An employee may be separated from employment by resignation, dismissal, retirement, or layoff on account of lack of work or lack of funds. Other separation procedures and reinstatement procedures are set forth below.

A. Separation and/or Resignation

An employee wishing to resign is required to notify his/her supervisor in writing at least two (2) weeks prior to their intended leave from City Employment. A resignation becomes final when accepted by the appointing authority (City Manager). Once a resignation has been accepted by the City Manager, it cannot be withdrawn.

B. Reinstatement

Upon application of a former regular employee, who has properly resigned, the City Manager may, at his/her sole discretion, approve reinstatement of the former employee as provided below:

1. An employee separated from the City's employ for six (6) months or less may be reinstated without competitive examination to the position held at date of separation, or to any other position within the same classification for which the employee would have been eligible at the time of separation. Former regular full-time City employees returning to City service within the six (6) month period will be granted the full benefits they were receiving at time of separation as if there was no break in service.
2. An employee separated from the City's employ for over six (6) months who is reinstated shall be treated as a new employee.
3. The City will reinstate into the position from which he/she has been promoted any employee who fails during a promotion to which he/she has been promoted.
4. Any employee who resigns without proper notice or resigns during an investigation or disciplinary action will not be eligible for reinstatement.

C. Layoff

Whenever it becomes necessary to reduce the number of employees due to lack of work, economic considerations, changes in mission, technological changes, or as determined by the City Manager based on other factors or when a position in the classified services is to be temporarily or permanently abolished, the City Manager will notify the Finance Director the number of employees to be laid off or the names and number of positions to be abolished. The purpose of the procedures set forth below is to establish equitable standards to regulate such layoffs. The City's decision to reduce its work force is a management right, thus no due process or grievance procedures apply, and the decision is not subject to "meet and confer"

requirements. These procedures apply only to regular employees (full or part time) and probationary employees (initial or promotional/transfer).

1. Identification

The City Manager on the basis of the administrative needs of the City determines the departments and positions subject to layoff.

2. Order of Layoff

- a) Within a classification, those employees who are probationary employees in their initial probationary period will be laid off first, followed by employees in a promotional or transfer probationary period.
- b) The order of layoff for regular employees within a department will be determined considering business necessity, each employee's job performance and competence, and seniority.
 - i. "Seniority" for purposes of this Section shall be determined by adding together all time spent in City service, in whatever capacity, expressed in terms of years, months, and days. The seniority calculation shall not include disciplinary time off without pay or time spent on unpaid leave (unless federal or state law requires it to be included in the seniority calculation)
 - ii. Once seniority determinations have been made, layoffs are made in reverse seniority order (i.e. the most junior employees are laid off first).
 - iii. Ties in seniority shall be resolved by the City Manager, taking into account the past performance, disciplinary actions (if any), supervisor recommendations, and such other facts as will result in the City retaining the most qualified and efficient employees.

3. Notice

Employees shall be given at least ten (10) business days' written notice prior to the effective date of the pending layoff. A copy of the notice shall be retained in the employee's personnel file.

4. Exclusions

In certain instances, there may be exceptions made in the order of the layoff outlined above. These exclusions would be made when:

- a) specialty position when qualifications for the position could not be easily obtained through a short orientation or familiarization period.\
- b) transfer in lieu of layoff. Within the affected department or departments, a regular employee who is scheduled for layoff may be offered a voluntary reduction in classification to a lower level job classification provided he/she meets the minimum qualifications, and/or obtain proficiency through a short orientation period.
- c) a voluntary reduction by taking early retirement.

5. Retreat rights/voluntary demotion in lieu of layoff

- a) An employee who would otherwise be laid off has the right to retreat to a vacant position which he or she previously held, provided the employee meets the current minimum qualifications for the position.
- b) An employee who would otherwise be laid off has the right to retreat to another position in the same classification series or to any position the employee has previously held and for which the employee is qualified that is occupied by an employee of lesser seniority. The result is that the more senior employee "bumps" the junior employee, who then is entitled to the retreat/demotion rights set forth herein.
- c) An employee who would otherwise be laid off may request to be temporarily demoted to any vacant position for which the employee is qualified.
- d) An employee who wishes to exercise any of the rights set forth in this subsection 5 must so notify the City Manager in writing within five (5) business days of receiving the notification of pending layoff.
- e) An employee who retreats or is demoted to a position as provided herein must serve the probationary period applicable to the new position unless the employee previously completed the probationary period in that position.

6. Reinstatement lists

The names of regular employees who have been laid off, including those who have accepted a demotion or retreated to another position are to be placed on a layoff reinstatement list by seniority within the classification from which the employees were laid off. An employee's name remains on this list for a period of one (1) year from date of layoff; an employee's name may be removed for any of the following reasons:

- a) Reappointment of the employee to his/her former classification.
- b) Notification from employee that he/she is no longer interested in returning to the City.
- c) Inability to contact the employee by mail or phone at the employee's last known address in the employee's official personnel file.
- d) Rejection by the employee of an offer of employment within the same job classification. Failure to respond within five (5) business days of the offer shall be deemed a rejection.

7. Offer of reinstatement

If the position previously held by a laid off employee becomes vacant, or if another position within the same classification series becomes vacant, then the employee with the most seniority on applicable reinstatement list shall be offered the vacant position.

8. Restoration of benefits upon reinstatement

When an employee is reinstated to employment after layoff, all his or her prior service shall be counted toward the calculation of leave accruals and seniority. Any unused sick leave which the employee had accrued at the time of layoff shall be restored. If an employee is reinstated to a position in which he or she was serving a probationary

period at the time of layoff, all time on probation previously completed prior to layoff shall be counted toward determining when the probationary period ends.

Section 6 – Discipline and Grievance

A. Discipline Policy

Unless otherwise specified by a memorandum of understanding, the following constitutes the City's policy regarding disciplinary actions.

1. Policy Coverage

The following categories of persons can be terminated at-will and have no rights to any of the pre- or post-disciplinary processes or procedures in this policy:

- temporary employees,
- provisional or seasonal employees,
- probationary employees,
- any person who serves pursuant to a contract, and
- any person who is designated "at-will" in the City policy, document, acknowledgement, resolution or ordinance.

In addition, any regular employee who is exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) is not subject to any disciplinary penalty which is inconsistent with his or her FLSA overtime-exempt status.

2. Causes for Discipline

Regular employees may be counseled, admonished, reprimanded, suspended, demoted, discharged or incur a reduction in pay for, including but not limited to, any of the following causes of discipline:

- a) Violation of any department rules, City policy or City regulation, ordinance or resolution;
- b) Absence without authorized leave;
- c) Excessive absenteeism and/or tardiness as defined by the employee's department director, these Policies, or Memorandum of Understanding;
- d) Use of disability leave in a manner not authorized or provided for pursuant to the disability leave policy or other policies of the City;
- e) Making any false statement, omission or misrepresentation of a material fact;
- f) Providing wrong or misleading information or other fraud in securing appointment, promotion or maintaining employment;
- g) Unsatisfactory job performance;
- h) Inefficiency;
- i) Malfeasance or misconduct, which shall be deemed to include, but shall not be limited to the following act or omissions:

- I. Conviction of a felony. "Conviction" shall be construed to be a determination of guilt of the accused by a court, including a plea of guilty or nolo contendere, regardless of sentence, grant of probation, or otherwise.
- II. The damaging of City property, equipment, or vehicles, or the waste of City supplies through negligence or misconduct
 - j) Insubordination; or insulting or demeaning the authority of a supervisor or manager;
 - k) Dishonesty;
 - l) Theft;
 - m) Violation of the City's or a departments confidentiality policies, or disclosure of confidential City information to any unauthorized person or entity;
 - n) Misuse or unauthorized use of any City property, including, but not limited to: physical property, tools, equipment, City communication systems, City vehicles or Intellectual Property;
 - o) Mishandling of public funds;
 - p) Falsifying any City record;
 - q) Discourteous treatment of the public or other employees;
 - r) Failure to cooperate with employee's supervisor or fellow employees;
 - s) Violation of the City's Drug-Free Workplace Policy;
 - t) Violation of the City's Policy Against Harassment, Discrimination and Retaliation;
 - u) Violation of the City's Workplace Security Policy
 - v) Unapproved outside employment or activity that violates the City's policy, or other enterprise that constitutes a conflict of interest with service to the City;
 - w) Any conduct that impairs, disrupts or causes discredit to the City, the employee's City employment, to the public service, or other employee's employment;
 - x) Failure to comply with OSHA Safety Standards and City safety policies;
 - y) Altering, falsifying, and tampering with time records, or recording time on another employee's time record; or
 - z) Working overtime without prior authorization or refusing to work assigned overtime;
 - aa) Carrying firearms or other dangerous weapons on City premises at any time, unless authorized to do so.

3. **Administrative Leave**

A department director may place an employee on an administrative leave with pay pending a potential disciplinary action. Administrative leave with pay is authorized: (1) when the department director believes that the employee's continued presence at the work site could have detrimental consequences for the City operations, or (2) pending investigation into charges of misconduct. If the charges against the employee are substantiated by the investigation, appropriate disciplinary action may be taken in accordance with these procedures.

4. **Types of Discipline**

The types of personnel actions and/or discipline are:

- a) **Counseling Memo**
A counseling memo shall be retained in the supervisor's file, and may not be appealed under this policy.
- b) **Oral Admonishment or Reprimand**
An oral admonishment or reprimand will be memorialized in writing and retained in the supervisor's file. An oral reprimand may not be appealed under this policy.
- c) **Written Admonishment or Reprimand**
A department director may reprimand an employee by furnishing him/her with written statement of the specific reasons for reprimand. A copy of the reprimand will be retained in the employee's personnel file, and may not be appealed. The employee has the right to have a written rebuttal attached to the reprimand in the employee's personnel file if the rebuttal is submitted to the Finance Department within 10 working days of the date the reprimand was received.
- d) **Suspension**
A department director may suspend an employee from his or her position for cause. Documents related to a suspension shall become part of the employee's personnel files when the discipline is final. An employee subject to suspension will receive prior written notice and appeal as provided herein.
- e) **Demotion**
A department director may demote an employee from his or her position for cause. Documents related to a demotion shall become part of the employee's personnel file when the discipline is final. An employee subject to demotion will be entitled to prior written notice and appeal as provided herein.
- f) **Reduction in Pay**
A department director may reduce an employee's pay for cause. A reduction in pay for disciplinary purposes may take one of two forms: (1) a decrease in salary to a lower step within the salary range, or (2) a decrease in salary paid to an employee for a fixed period of time. Documents related to a reduction in pay shall become part of the employee's personnel file when the discipline becomes final. An employee subject to a reduction in pay is entitled to prior written notice and appeal as provided herein.
- g) **Dismiss**
A department director may dismiss an employee from his or her position for cause. Documents related to discharge shall become a part of an employee's personnel file when the discipline becomes final. A dismissed employee is entitled to prior written notice and appeal as provided herein.

5. Skelly Process – Pre-Disciplinary Procedure for Suspension, Demotion, Reduction in Pay, or Discharge

Only regular, for-cause employees have the right to the conference and appeal processes outlined in the section.

a) Notice of Intent to Discipline

The employee will be provided a written notice of intent to discipline that contains the following in the event of a proposed suspension, demotion, reduction in pay or discharge:

- i. The level of discipline intended to be imposed;
- ii. The specific charges upon which the intended discipline is based
- iii. A summary of the facts upon which the charges are based;
- iv. A copy of all written materials, reports, or documents upon which the intended disciplines is based;
- v. Notice of the employee's rights to respond to the department director regarding the charges within 5 calendar days from the date of the Notice, either by requesting a conference, or by providing written response, or both;
- vi. Notice of the employee's right to have a representative of his or her choice at the conference, should he or she choose to respond orally; and
- vii. Notice that the failure to respond at the time specified shall constitute a waiver of the right to respond prior to the imposition of discipline.

b) Employee's Response and the Skelly Conference

- i. If the employee requests a conference to respond orally to the charge(s), the conference must be scheduled at least 7 calendar days after the date of the Notice. The conference will be an informal meeting with the department director, at which the employee has an opportunity to rebut the charges against him or here and present any mitigating circumstances. The department director will consider the employee's presentation before any final disciplinary action.
- ii. The employee's failure to make an oral response at the arranged conference time, or the employee's failure to cause his or her written response to be delivered by the date and time specified on the notice, constitutes a waiver of the employee's right to respond prior to the imposition of the discipline. In that case, the proposed disciplinary action will be imposed on the date specified.

c) Final Notice of Discipline

- i. Within 5 calendar days of receipt of the employee's timely written response or within 5 calendar days of the informal conference, the department director will (1) dismiss the notice of intent and take no disciplinary action against the employee, (2) modify the intended disciplinary action, or (3) impose the intended disciplinary action. In any event, the department director will prepare and provide the employee with a notice that contains the following:

- The level of discipline, if any, to be imposed and the effective date of the discipline;
- The specific charges upon which the discipline is based;
- A summary of the facts upon which the charges are based;
- A copy of all written materials, reports, or documents upon which the discipline is based; and
- A statement of the nature of the employee's right to appeal.

6. Evidentiary Appeal to the Council

a) Request for Appeal Hearing

A regular, for-cause employee may appeal from a final notice of discipline in the form of suspension, demotion, reduction in pay, or termination by delivering a written answer to the charges and a request for appeal to the City Manager or designee, who will forward the appeal to the Council. The written answer and request for appeal must be received no later than 10 calendar days from the date of the department director's decision. The employee should indicate whether he/she is requesting closed or open hearing.

b) Date and Time of the Appeal Hearing

The Council will set a date for an appeal hearing within a reasonable time after receipt of a timely written answer and request for appeal. An employee who, having filed a timely written answer and request for appeal, has been notified of the time and place of the appeal hearing, and who fails to appear personally at the hearing, may be deemed to have abandoned his or her appeal. In such a case, the Council may dismiss the appeal.

c) Identification of Issues, Witnesses and Evidence

No later than 10 days prior to the appeal hearing, each party will provide the other and the Council a statement of the issues to be decided, a list of all witnesses to be called (except rebuttal witnesses), a brief summary of the subject matter of the testimony of each witness, and a copy of all evidence (except rebuttal evidence) to be submitted at the hearing. The city will use numbers to identify its evidence; the employee shall use alphabet letters. Neither party will be permitted to call any witness during the hearing that has not been identified pursuant to this section, nor use any exhibit not provided pursuant to this section, unless that party can show that they could not have reasonably anticipated the need for the witness or exhibit. The Council will state at the beginning of the hearing the decision as to the precise issue(s) to be decided.

7. Conduction of the Appeal Hearing

a) Subpoenas

The City Manager has authority to issue subpoenas in the name of the City prior to the commencement of the hearing. Each party is responsible for

serving his/her/its own subpoenas. City employees who are subpoenaed to testify during working hours will be released with pay to appear at the hearing. City employees who are subpoenaed to testify during non-working hours will be compensated for the time they actually testify unless the City agrees to a different arrangement.

b) **Continuances**

The Council may continue a scheduled hearing only upon good cause shown.

c) **Record of Proceeding**

All disciplinary hearings may, at the discretion of the parties, be either recorded by a court reporter or tape recorder. Any party who requests a transcript of the proceedings must pay for his/her/its own copy of a transcript.

d) **The Personnel Board's Authority During the Hearing**

The Council has the authority to control the conduct of the hearing and to affirm, modify, or revoke the discipline.

e) **Conduct of Hearing**

- i. the hearing need not be conducted in accordance with technical rules relating to evidence and witnesses, but hearings shall be conducted in a manner the Council, as presented by the Mayor, decides is the most conducive to determining the truth.
- ii. Any relevant evidence may be admitted if it is the type of evidence upon which responsible persons are accustomed to rely upon in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions.
- iii. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but over timely objection shall not be sufficient in itself to support a finding, unless such evidence would be admissible over objection in civil actions. An objection is timely if made before submission of the case.
- iv. The rules dealing with privileges shall be effective to the same extent that they are not or hereafter may be recognized in civil actions.
- v. Irrelevant and unduly repetitious evidence may be excluded.
- vi. The Council, as presented by the Mayor, shall determine relevancy, weight and credibility of testimony and evidence.
- vii. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon request of either party.
- viii. All witnesses shall be sworn in for the record prior to testifying at the hearing. The Council or the court reporter shall request each witness to raise or her right hand and respond to the following: "Do you swear that the testimony that you are about to give at this hearing is the truth, the whole truth, and nothing but the truth?"

f) **Burden of Proof at the Hearing**

The City has the burden of proof by a preponderance of the evidence.

g) **Right to Due Process**

The employee shall have the following due process rights during the hearing:

- i. the right to be represented by legal counsel or another chosen representative, at his or her own expense;
 - ii. The right to call and examine witnesses on his or her behalf;
 - iii. The right to introduce evidence;
 - iv. The right to cross-examine opposing witnesses on any matter relevant to the issues;
 - v. The right to impeach any witness regardless of which party first called him or her to testify; and
 - vi. The right to rebut evidence against him or her.
- h) **Hearing to be closed to the Public**
The hearing will be closed to the public unless the employee requests that it be open.
- i) **Presentation of the Case**
The parties will address their remarks, evidence, and objections, to the Council. The Council may terminate argument at any time and issue a ruling regarding an objection on any other matter. The Council may alter the order of witnesses, limit redundant or irrelevant testimony, or directly question the witness. The hearing shall proceed in the following order unless the Council directs otherwise:
- i. The Department shall be permitted to make an opening statement.
 - ii. The employee shall be permitted to make an opening statement.
 - iii. The Department shall produce its evidence.
 - iv. The employee shall produce his or her evidence.
 - v. The Department, followed by the employee, may offer rebuttal evidence.
 - vi. Closing arguments of no more than 20 minutes shall be permitted at the discretion of the Council. The Department shall have the right to argue first, the employee may argue second, and the City may reserve a portion of its argument time for rebuttal.
- j) **Hearing Demeanor and Behavior**
All parties and their attorneys or representatives shall not, by written submission or oral presentation, disparage the intelligence, ethics, morals, integrity or personal behavior of their adversaries or members of the Board.
- k) **Written Briefs by the Parties**
The Council or the parties may request the submission of written briefs. The Personnel Board will determine whether to allow written briefs, the deadline for submitting briefs, and the page limit for briefs.

8. **Written Findings and Decision**

The Council shall render a statement of written findings and decision within 14 days after the hearing has been completed and the briefs, if any, have been submitted. The Council's decision is final.

9. Proof of Service of the Written Findings and Decision

The Personnel Board shall send its final statement of written findings and decision, along with a proof of service of mailing, to each of the parties and to each of the parties' representatives. Copies shall also be distributed to the City Manager and the Finance Department.

10. Statute of Limitation

The Council's written findings and decision is final. There is no process for reconsideration. Pursuant to Code of Civil Procedure section 1094.6, the parties have 90 days from the date of the proof of service of mailing or the written findings and decision to appeal the decision to the Superior Court in and for the County of Kern.

B. Grievance Procedure

Unless otherwise specified in a memorandum of understanding, the following is the City's grievance procedure for City Employees:

1. Policy

The goal of this grievance procedure is to make every reasonable effort to resolve applicable complaints as near as possible to the point of origin.

2. Eligibility to File a Grievance

A grievant is a regular employee who is personally affected by an act or omission that occurred no more than 14 calendar days prior to the initiation of the grievance, provided that the act or omission comes within the definition of "grievance" as described herein.

3. Definition of "Grievance"

Subject to the exclusions listed in this Policy, a grievance is defined as any dispute that : (1) is job-related, (2) is wholly or partially within the province of the City to rectify or remedy, (3) concerns terms and conditions of employment, (4) involves the interpretation, application, or alleged violation of these Policies or a current Memorandum of Understanding (MOU) between the City and a recognized employee organization representing City employees, and (5) is not subject to any other City dispute resolution process or procedure that is provided by state, ordinance, resolution or agreement.

4. Exclusions from the Grievance Procedure

The following matters are excluded from the definition of "grievance":

- a) Requests for changes in wages, hours, or working conditions, including any impasse or dispute in the meet and confer process or matter within the scope of representation.
- b) Requests for changes in the content of employee evaluations or performance reviews, oral or written warnings, reprimands or counseling memos;

- c) Challenges to the decision to reclassify, layoff, transfer, deny reinstatement, or deny a step or merit increase.
- d) Challenges to any disciplinary action; and
- e) Challenges to examinations or the appointment to positions.

5. Grievance Procedure:

The grievance procedure has the following four steps:

Step 1: Informal Discussion

Within 14 calendar days of the occurrence of the act(s) that constitute the grievance, an employee shall discuss the grievance with his/her immediate supervisor, who will investigate and attempt to resolve the matter. The supervisor will give the employee an oral reply within 10 calendar days after the discussion. If the employee is not satisfied with the reply, he or she may proceed to Step 2.

Step 2: Formal Discussion

- a) Any grievance not resolved by Step 1 may be submitted in writing to the immediate supervisor no later than 10 calendar days after the date of the supervisor's oral reply. The written grievance must identify the following.
 - i. Fully describe how the grievant is/was adversely affected by a specific act or omission which gave rise to the alleged violation, misinterpretation, or misapplication;
 - ii. Identify the specific provision of these Policies or an applicable MOU was allegedly violated, misinterpreted, or misapplied;
 - iii. The date or dates on which the violation, misinterpretation, or misapplication allegedly occurred;
 - iv. The documents, witnesses or other evidence that support the grievance;
 - v. The desired solution or remedy;
 - vi. The signature and identification of the grievant; and
 - vii. The person, if any, the grievant has chosen to be his or her representative.
- b) No grievance will be accepted for processing until all of the information listed above is provided. Within 10 calendar days after the grievant provides all of the information listed above, the immediate supervisor may, in his or her discretion, schedule a meeting with the grievant for the parties to work at resolving the grievance. The immediate supervisor shall give the grievant a written reply within 10 calendar days after receipt of the written grievance, or the meeting, whichever occurs later, and will file a copy in the grievance files. If the grievant is not satisfied with the response, he/she may proceed to Step 3.

Step 3: Department Director

Any grievance not resolved at Step 2 may be submitted in writing to the department director no later than 10 calendar days after the date of the immediate supervisor's written reply. The grievant shall provide the department director with copies of the Step 2 response. Within 10 calendar days thereafter, the department director, may in his or her discretion, schedule a meeting with the grievant for the purpose of giving the parties the opportunity to resolve the grievance. The department director will give the grievant a written reply within 14 calendar days after receipt of the written grievance, or the meeting, whichever occurs later, and will file a copy in the grievance file. If the grievant is not satisfied with the response, he/she may proceed to Step 4.

Step 4: City Manager

Any grievance not resolved at Step 3 may be submitted in writing no later than 10 days after the date of the department director's written reply. The grievant shall provide the City Manager with copies of the Step 2 and 3 responses. Within 10 calendar days thereafter, the City Manager may, at his or her discretion, schedule a meeting with the grievant to discuss the matter. After consideration of the facts and an investigation, if the City Manager deems one necessary, he or she will give his or her written decision to grievant.

City Manager's Decision on Grievance:

The decision of the City Manager will be final and binding. The City Manager's decision will be limited as follows:

- a) The decision shall neither add to, detract from, nor modify the language of these Policies or any applicable MOU.
- b) The decision shall be confined to the precise issue(s) the grievance has raised and that the grievant has submitted.
- c) Any monetary award in favor of the grievant may not exceed wages or benefits that the grievant has actually lost as a result of the matters alleged in the grievance. In no event shall any grievance award include any compensatory damages or attorney's fees.

6. Settlement of Grievance

Any grievance will be deemed settled when it is not appealed to the next step within the specified time limit, unless an extension of time to a definite date has been mutually agreed upon in writing. Any grievance that the grievant fails to timely move to the next step shall be deemed resolved on the basis of the last disposition.

7. Representation

An employee may have a representative of his or her choice present at all stages of the grievance procedure, except that no one may be represented by an employee he or she supervises, and no employee may be represented by his or her supervisor or department director. If the employee's representative is a fellow employee, that

employee will receive time off from his or her work assignment for the time of the grievance meeting or hearing plus reasonable travel time. Forty-eight hours prior to the grievance meeting, the employee shall inform the immediate supervisor, department director or City Manager whether he or she shall be represented at the grievance meeting and shall identify the representative.

8. No Retribution

An employee shall not be penalized for using this procedure.

9. Withdrawal

A grievant may withdraw any grievance at any time, without prejudice, by giving written notice to the City representative who last took action on the grievance, and by providing a copy of the notice to the Finance Department.

10. Resubmission

Upon consent of the person hearing the grievance and the grievant, a grievance may be resubmitted to a lower step in the grievance procedure for reconsideration.

11. Miscellaneous

If an employee is given an order that he or she wishes to grieve, the employee must first comply with the order and file a grievance later, unless the employee reasonably believes that the assignment endangers the health and safety of the employee or other or if the employee reasonably believes that the requested assignment violates the employee's constitutional rights.

12. Delegation

The City Manager may delegate non-involved department directors of other management-level employees to act on his or her behalf in this process. The findings and recommendation they render will be advisory to the City Manager, whose ultimate decision will be final and binding.

Section 7 – Training and Education Reimbursement

A. Training

The City may provide employees with training and continuing education opportunities as appropriate. Such opportunities may include lecture courses, demonstrations, conferences, seminars, assignment of reading matter or such other devices as may be available for the purpose of improving the effectiveness and broadening the knowledge of municipal employees in the performance of their respective duties.

Participation in and successful completion of special training courses may be considered in employee advancements and promotions. Evidence of such activity shall be filed by the employee with the Finance Department for inclusion in the employee's personnel file.

B. Textbook and Tuition Reimbursement

1. Policy

Employees shall be encouraged to further their academic education and training in those areas of benefit to both the employee and to the City. All regular employees will be eligible for reimbursement by the City of tuition and specific related textbooks and fees for professional and/or technical courses subject to the following section and conditions or limits prescribed in an MOU.

2. Procedure

Reimbursement may be provided for tuition fees, textbooks, lab fees, parking or other required supplies. An employee is required to have completed his/her original probationary period to be eligible for textbook and tuition reimbursement.

The employee must obtain advance approval from his/her department head and the City Manager before enrolling in a course. To request approval, an employee must complete the application portion of the Class Authorization and Reimbursement Request form and send it to the City Manager for review. The City Manager will approve or deny the request at his/her sole discretion and return the form to the employee.

Reimbursement can be requested by completing the application portion of the pre-approved Class Authorization and Reimbursement Request Form, attaching supporting documentation and submitting the form and documentation to the Finance Department. The employee must provide proof of successful completion of the course(s) with a satisfactory grade (C or better) and proof that payment of fees has been made. The employee may be required to provide detailed class or per unit fees. Reimbursement shall not be provided if the employee is drawing veteran's education benefits or is eligible to receive any other reimbursement for the same course.

Employees are eligible for reimbursement up to a \$1,000 maximum amount per calendar year.

Section 8 – Personnel Records

A. Personnel Records

1. General

The City maintains a personnel file on each employee. An employee's personnel files will contain only material that is necessary and relevant to the administration of the City's personnel program. Personnel files are the property of the City, and access to the information they contain is restricted.

2. **Notifying City of Changes in Personal Information**

Each employee is responsible to promptly notify the Finance Department of any changes in relevant personal information, including:

- Mailing address
- Telephone number
- Persons to contact in emergency
- Number and names of dependents

3. **Location of Personnel Files**

Personnel Files are kept in the Finance Department at City Hall.

4. **Medical Information**

- a) Separate Confidential Files. All medical information about an employee or applicant is kept separately and is treated as confidential, in accordance with applicable state or federal law.
- b) Information in Medical Files. The City will not obtain medical information about an employee or applicant except in compliance with the California Confidentiality of Medical Information Act. To enable the City to obtain certain medical information, the employee or applicant may need to sign an **AUTHORIZATION FOR RELEASE OF EMPLOYEE MEDICAL INFORMATION**.
- c) Access to Medical Information. Access to employee or applicant medical information shall be strictly limited to only those with a legitimate need to have such information for City business reasons, or if access is required by law, subpoena or court order. In the case of an employee with a disability, managers and supervisors may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.

The City will not provide employee or applicant medical information to a third party (except as permitted under the California Confidentiality of Medical Information Act) unless the employee signs an **AUTHORIZATION FOR RELEASE OF EMPLOYEE MEDICAL INFORMATION** in the form attached to this rule. The city will release only the medical information that is identified in the employee's authorization. If the employee's authorization indicates any limitations regarding the use of the medical information, the City will communicate those limitations to the person or entity to which it discloses the medical information.

5. **References and Release of Information in Personnel Files**

- a) Public Information. Upon request, the City will release to the public information about its employees as required by the Public Records Act. The City will not disclose personnel information if it believes doing so would constitute an unwarranted invasion of personal privacy.

- b) Reference Checks. All requests from outside the City for reference checks or verification of employment concerning any current or former employee must be referred to the Finance Department. Information will be released only if the employee signs an AUTHORIZATION FOR RELEASE OF EMPLOYMENT INFORMATION in the form attached to this rule, except that without such authorization, the following limited information will be provided: dates of employment, and salary upon departure. Department heads and supervisors should not provide information in response to requests for reference checks or verification of employment, unless specifically approved by the Finance Department on a case-by-case basis.
- c) Medical Information. Medical information will be released only in accordance with subsection 4 above.

6. Employee Access to Personnel File

- a) Inspection of File. An employee may inspect his or her own personnel file, at reasonable times and at reasonable intervals. An employee who wishes to review his or her file should contact the Finance Department to arrange an appointment. The review must be done in the presence of an employee of the Finance Department.
- b) Copies. On request, an employee is entitled to receive a copy of any employment-related document he or she has signed. An employee who wishes to receive such a copy should contact the Finance Department.
- c) In the event the employee wishes to have another person/representative inspect his or her personnel file, the employee must provide the person/representative with written date, time and place of the inspection in writing. It is the employee's responsibility to notify the person to whom the employee has given written authorization of the date, time and place of the inspection.
- d) Under no circumstances are the employee and/or the employee's designee permitted to add or remove any document or other item from the employee's personnel file during the inspection.

Section 9 – Additional Benefits

A. Insurance Coverage

The City provides certain insurance coverage to regular full-time and FLSA Exempt employees and their dependents. Additional information regarding coverage waiting periods, fees, etc. may be obtained from the Finance Department. This coverage may be continued under Federal COBRA upon certain qualifying events, *at your expense*, if certain conditions are met.

B. Retirement Coverage

The City provides certain retirement coverage to regular full-time and FLSA Exempt employees. Additional information regarding retirement coverage may be obtained from the Finance Department.

Section 10 – Standards of Conduct

This section applies to all officials and employees of the City. This includes contractors, emergency, temporary and provisional employees.

A. Code of Ethics

1. Each official and employee has an obligation to the citizens, to the people's elected representatives and to fellow employees to meet the highest ethical and professional standards and to enhance the public's respect and trust for the City and its operations.
2. Employees of the City have responsibilities unique from their counterparts in private industry. Employment with the City carries an obligation of personal integrity and conduct that serves to establish public respect, confidence, and trust.
3. Employees represent the City and the quality of City service is judged through their performance and conduct. The citizens of the City of Tehachapi have the right to expect that City employees will provide services in an efficient, thorough and courteous manner. It is intended that the rules and procedures which follow will assist employees in maintaining high ethical standards and proper job performance, and in avoiding potential conflicts of interest both in fact and appearance.
4. The City, as condition of employment, expects to receive from the employee:
 - a) Initiative and a conscientious effort to perform productive work.
 - b) Cooperative, positive, responsive, and courteous relations with fellow employees, supervisors, subordinates, and the public.
 - c) A continuous effort to strive for greater knowledge and skill on the job in order to maintain performance at a high level.
 - d) Compliance with all policies, regulations, rules of conduct and ordinances establish by the City.
 - e) Responsible work habits demonstrated by:
 - i. Dependability, promptness, reliable
 - ii. Keeping informed of developments and matters affecting job performance.
 - iii. Being flexible and adaptable to change.
 - iv. Accepting constructive suggestions and criticism.

- v. Neat and clean grooming and attire appropriate to the job assignment. Prescribed uniforms and safety equipment must be worn when applicable.
- vi. Effectively implementing the official policies of the City when serving in their official capacity with customers, clients, and the public and/or when identifying themselves as City employees in the course of their work.

B. Gifts and Gratuities

No official or employee shall accept a fee, compensation, gift, payment of expenses or any other thing of monetary value in any circumstances in which acceptance may result in or create the appearance of any one or more of the following:

1. Use of public office and/or employment for personal or private gain.
2. Preferential treatment of any person.
3. Loss of complete independence or impartiality.
4. Make a City decision outside of official channels.
5. Reduction of public confidence in the integrity of City government and/or its employees.
6. Impeding government efficiency or economy.

Employees who are designated in the City's conflict of interest code shall follow all guidelines in accordance with applicable state law.

C. Employee Political Activities Policy

1. Policy

The City prohibits:

- a) Employees and officers from engaging in political activities during work hours;
- b) Political campaigning in City buildings or on premises adjacent to City buildings; and
- c) An employee or officer from using his or her office to coerce or intimidate public employees to promote, propose, oppose, or contribute to any political cause or candidate.

2. Examples of Prohibited Conduct

- a) Participate in political activities of any kind while in uniform;
- b) Participate in political activities during working hours;
- c) Participate in political activities on City worksites;
- d) Place or distribute political communications on City property;
- e) Use equipment to make political communications;
- f) Solicit a political contribution from an officer or employee of the City, or from person on a City employment list, with knowledge that the person from whom the contribution is solicited is a City officer or employee;

- g) Favor or discriminate against any employee because of political opinions or affiliations;
- h) Interfere with any elections; or
- i) Attempt to trade job benefits for votes.

3. **Examples of Permitted Conduct**

- a) Express opinions on all political subjects or candidates;
- b) Become a candidate for any local, state, or national election;
- c) Contribute to political campaigns;
- d) Join and participate in the activities of political organizations;
- e) Request, during off-duty time, political contributions, through the mail or other means, from City officers or employees if the solicitation is part of a solicitation made to a significant segment of the public which may include City officers or employees;
- f) solicit or receive, during off-duty time, political contributions from a City employee organizations if the funds, when collected, were not earmarked for a clearly identifiable candidate for a federal, state or local office; or
- g) Solicit or receive, during off-duty time, political funds or contributions to promote the passage or defeat of a ballot measure which would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of City officers or employees.

D. **Outside Employment**

No employee shall engage in outside employment which is inconsistent, incompatible, in conflict with or which will lessen his/her effectiveness as a City employee.

1. **Approval Process**

To gain approval for outside employment, an employee must first file an Outside Employment Authorization Request form with his/her department head. Outside employment is not permitted until the employee received authorization from the department head and the City Manager.

2. **Restrictions**

No City-owned equipment, vehicles, tools or supplies shall be used by any employee while the employee is engaged in any outside employment or activity. No work related to outside employment shall be performed while an employee is being compensated by the City for performing work.

Employees shall not use the influence of City employment for personal gain nor perform work subject to City inspection.

An employee will not engage in outside employment while on Industrial Disability Leave (workers' compensation leave) status with the City. Under special

circumstances of undue hardship, the City Manager may consider authorizing outside employment upon request.

3. **Revocation**

Approval may be rescinded at any time if, in the judgment of the department head, the outside employment is inconsistent with, incompatible with, in conflict with, or harmful or unfavorable to the employee's duties as a City employee.

E. **Drug and Alcohol-Free Workplace Policy**

The City of Tehachapi is concerned about employees being under the influence of alcohol, drugs and/or controlled substances at work. The purpose of this policy is to promote a drug and alcohol-free workplace and to eliminate substance abuse and its effects in the workplace.

1. **Policy**

- a) The manufacture, distribution, dispensation, possession, or use of alcohol or any controlled substance is prohibited in both City workplaces and wherever City business is performed.
- b) A City employee is prohibited from working or being subject to call in if impaired by alcohol or any controlled substance.
- c) An employee must notify his/her supervisor before beginning work when taking medications or drugs which could interfere with the safe and effective performance of duties or operation of City equipment. If there is a question regarding an employee's ability to perform assigned duties safely and effectively while using prescribed medications, the City may require medical clearance.
- d) Compliance with this policy is a condition of City employment. Disciplinary action will be taken against those who violate this policy.
- e) Employees who are required to participate in the City's "Federally Mandated Commercial Drivers License Holders Drug/Alcohol Testing Education Program" are subject to requirements contained in this policy as well as the mandated policy.

2. **Scope of Policy**

This policy applies to all City employees when they are on City property or when performing City-related business elsewhere.

3. **Searches**

In order to promote a safe, productive and efficient workplace, the City has the right to search and inspect all City property, including but not limited to lockers, storage areas, furniture, City vehicles, and other places under the common control of the City, or joint control of the City, and employees. No employee has any expectation of privacy in any City building, property, or communications system.

4. Drug and Alcohol Testing

Except as provided otherwise in a memorandum of understanding, or as modified for employees who are required to participate in the City's "Federally Mandated Commercial Drivers License Holders/Alcohol Testing Education Program," the City has discretion to test a current employee for alcohol or drugs in the following instances:

a) Reasonable Suspicion Testing

The City may require a blood test, urinalysis, or other drug and/or alcohol screening of those persons reasonably suspected of using or being under the influence of a drug or alcohol at work. Testing must be approved by the City Manager, the department director, or a designee.

"Reasonable suspicion" is based on objective factors, such as behavior, speech, body odor, appearance, or other evidence of recent drug or alcohol use which would lead a reasonable person to believe that the employee is under the influence of drugs or alcohol at work. In order to receive authority to test, the supervisor must record the factors that support reasonable suspicion and discuss the matter with the City Manager or department director. If there is a reasonable suspicion of drug or alcohol abuse at work, the employee will be relieved from duty and placed on sick leave until the test results are received.

b) Post-Accident Testing

The City may require alcohol or drug screening following any work-related accident or any violation of safety precautions or standards, whether or not an injury resulted from the accident or violation, provided that the "reasonable suspicion" factors described above are present.

5. Employee's Responsibilities

A City employee must:

- a) Not report to work or be on standby or on-call status while his or her ability to perform job duties is impaired due to on or off duty alcohol or drug use;
- b) Not possess or use controlled substances (illegal drugs or prescription drugs without a prescription) at any time, or use alcohol at any time while on City property or while on duty for the City at any location.
- c) Not directly or indirectly through a third party manufacture, sell, distribute, dispense, or provide controlled substances to any person, including any employee, at any time; or manufacture, sell, distribute, dispense or provide alcohol to any employee while either or both are on duty;
- d) Notify his or her supervisor, before beginning work, when taking any medications or drugs, prescription or nonprescription, which may interfere with the safe and effective performance of duties or operation of City equipment.
- e) Notify the department director of any criminal conviction for a drug violation that occurred in the workplace within no more than five days after such conviction;

- f) Notify the supervisor immediately of facts or reasonable suspicion when he or she observes behavior or other evidence that a fellow employee poses a risk to the health and safety of the employee or others;
- g) Consent to drug or alcohol testing and searches pursuant to this policy; and
- h) Follow the City's drug and alcohol-free workplace policy.

6. Management Employee Responsibilities

City management employees must:

- a) Notify the state or federal granting agency which has funded the work or program, if any, of any criminal drug statute convictions for a violation that occurred at a site where work is/was being done with a specific grant or contract;
- b) Record factors supporting "reasonable suspicion" as defined above and consult with other management staff in order to determine whether there is reasonable suspicion to test an employee as described by this policy;
- c) Take appropriate disciplinary action up to and including termination for any criminal drug statute conviction that has a nexus to the employee's employment, or require that the convicted employee participate satisfactorily in a drug abuse assistance or rehabilitation program as a condition for returning to duty;
- d) Take appropriate disciplinary action for any violation of this policy consistent with existing discipline procedures;
- e) Enforce this policy;
- f) Report any suspected violation of this policy to the City Manager; and
- g) Any manager or supervisor who knowingly permits a violation of this policy by any employee shall be subject to disciplinary action.

7. Drug-free Awareness Program

The following is the City's drug-free awareness program:

- a) Distribution of brochures on the dangers of drug abuse to each City employee and volunteer; and
- b) Notification to each City employee and volunteer of the availability of counseling and treatment of drug-related problems through the City's Employee Assistance Program provider.

F. Harassment/Discrimination/Retaliation Prevention Policy

It is the City's intent and the purpose of this Policy to provide all employees, applicants, and contractors with an environment that is free from any form of discriminatory harassment, discrimination or retaliation as defined in this Policy. This Policy prohibits harassment or discrimination on the basis of any of the following classifications: an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, citizenship status, uniformed service member status, marital status, pregnancy, age, medical condition, genetic information, and physical or

mental disability (whether perceived or actual) or any other category protected by law. It is also the policy of the City to provide a procedure for investigating alleged harassment, discrimination and retaliation in violation of this Policy. The protection from discrimination includes protection from retaliation for having taken action either as a complainant, or for assisting a complainant in taking action, or for acting as a witness or advocate on behalf of an employee in a legal or other proceeding to obtain a remedy for a breach of this policy.

1. Policy

The City has zero tolerance for any conduct that violates this Policy. Conduct need not rise to the level of a violation of law in order to violate this Policy. Instead, a single act can violate this Policy and provide grounds for discipline or other appropriate sanctions. If you are in doubt as to whether or not any particular conduct may violate this Policy, do not engage in the conduct, and seek guidance from a supervisor or the City Manager.

2. Definitions

a) Protected Classifications:

This Policy prohibits harassment or discrimination because of an individual's protected classification(s). "Protected Classification" includes race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, citizen status, uniformed service member status, marital status, pregnancy, age, medical condition, genetic information, and physical or mental disability (whether perceived or actual).

b) Policy Coverage:

This Policy prohibits elected officials, officers, employees and contractors from harassing or discriminating against applicants, officers, officials, employees and contractors because: (1) an individual's protected classification, (2) of the perception of an individual's protected classification, or (3) the individual associates with a person who has or is perceived to have a protected classification.

c) Discrimination:

This Policy prohibits treating individuals differently because of the individual's protected classification as defined by this Policy.

d) Harassment:

Harassment means unsolicited words or conduct which subjectively and objectively offend another person. Harassment includes, but is not limited to, the following examples or behavior undertaken because of an individual's protected classification:

- i. **Verbal harassment**, such as epithets (nicknames and slang terms) derogatory or suggestive comments, propositioning, jokes or slurs, or graphic verbal commentaries about an individual's body on the basis of his or her protected classification. Verbal harassment includes comments on appearance and stories that tend to disparage those of a protected classification.

- ii. **Visual forms of harassment**, such as derogatory posters, notices, bulletins, cartoons, drawings, sexually suggestive object, or e-mails on the basis of a protected classification. Visual harassment includes mimicking the way someone walks or talks because of their protected classification.
- iii. **Physical harassment**, such as assault, touching, impeding or blocking movement, grabbing, patting, leering, making express or implied job-related threats in return for submission to physical acts, taunting, or any physical interference with normal work or movement based on an individual's protected classification.
- iv. **Sexual harassment**, such as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature or any of the above described conduct when;
 - a. Submission to such conduct is either an expressed or implied term or condition of an individual's employment, or
 - b. Submission to or rejection of such conduct is used as the basis for employment decisions affecting such individual, or
 - c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating a hostile, intimidating or offensive work environment.
 - d. By definition, sexual harassment is not within the course and scope of an individual's employment with the City of Tehachapi.

3. Romantic and Sexual Relationships between supervisors and subordinates

Romantic or sexual relationships between supervisors and subordinate employees are prohibited. There is an inherent imbalance of power and potential for exploitation in such relationships. The relationship may create an appearance of impropriety and lead to charges of favoritism by other employees. A welcome sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing.

4. Retaliation

Retaliation against a person (or his or her associates) who reports or provides information about harassment or discrimination is strictly prohibited. Any act of reprisal violates this Policy and will result in appropriate disciplinary action. Examples of actions that might be retaliation against a complainant, witness or other participant in the complaint process include: (1) singling a person out for harsher treatment; (2) lowering performance evaluation; (3) failing to hire, failing to promote, withholding pay increases, assigning more onerous work, abolishing a position, demotion or discharge; or (4) real or implied threats of intimidation to prevent an individual from reporting harassment or discrimination.

Any act of retaliation will be treated as a separate and distinct incident, regardless of the outcome of the harassment or discrimination complaint.

5. Reporting Harassment, Discrimination or Retaliation

An applicant, employee, officer or contractor who feels he or she has been harassed, discriminated against or retaliated against in violation of this policy should report the conduct immediately as outlined below so that the complain can be resolved quickly and fairly.

All employees involved in the complaint process may be represented by a person of their choosing and at their own expense.

a) Object to the Conduct

Sometimes an individual is unaware that his/her conduct is offensive. The offensive behavior may be eliminated by simply informing the offender that the conduct or language in question is unwelcome and offensive and request that it be discontinued immediately. A person who believes he/she is being harassed is encouraged to use this process.

When the conduct in question continues after the offending person has been informed it is offensive, or if a person does not feel comfortable talking to the offending person directly, the employee should make a report in accordance with subsection 2 below or go directly to the formal reporting process.

b) Oral Report

If a person who believes that this Policy has been violated does not want to confront the offending person, he/she should report the conduct to a supervisor, department head or any City management employee. The individual may also seek the advice, assistance or consultation of supervisor, department head, or any City management employee. Any supervisory or management employee who receives such a report must in turn direct it to the City Manager. The City Manager will determine what level of investigation and response is necessary.

c) Written Process

An individual who believes this Policy has been violated may provide a written complaint to a supervisor, department head or any management employee who in turn must direct the complaint to the City Manager. Individuals are encouraged to use the Confidential Complaint Form for this purpose.

d) Option to Report to Outside Administrative Agencies

Applicants, employees, officers and contractors have the option to report harassment, discrimination, or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH).

7. City Response to Complaint of Harassment, Discrimination or Retaliation

a) Investigation

Upon receipt of a complaint or alleged harassment, discrimination or retaliation, the City Manager will be responsible for coordinating a thorough investigation

(unless he/she is named in the complaint). The City Manager may coordinate the investigation with the complainant's department head and may hire an outside investigator if the city deems it appropriate. The type of investigation undertaken, and the party chosen to conduct the investigation will depend on the nature of the complaint made and will be determined by the City Manager. The City Manager will report the status of investigations as appropriate.

The City Manager may take interim action to diffuse volatile circumstances.

The investigator will review the complaint allegations. The investigation will normally include interviews with the reporting individual, the accused, and any other person who is believed to have relevant knowledge concerning the allegations. The investigator will remind all witnesses to maintain the confidentiality of the interview and that retaliation against those who report alleged harassment or discrimination or who participate in the investigation is prohibited.

The City takes a proactive approach to potential Policy violations and will conduct an investigation if its officers, supervisors, or managers become aware that harassment, discrimination or retaliation may be occurring, regardless of whether or not the recipient of the alleged action or a third party reports a potential violation.

b) Remedial and Disciplinary Action

If the investigation determines that the alleged conduct occurred and that the conduct violated this Policy, the City will notify the complainant and perpetrator of the general conclusion(s) of the investigation and take effective remedial action that is designed to end the violation(s). Any employee or officer determined to have violated this Policy will be subject to disciplinary action, up to and including termination. Disciplinary action may also be taken against any supervisor or manager who condones or ignores potential violations of this Policy. Any official or contractor found to have violated this Policy will be subject to appropriate sanctions.

c) Closure

At the conclusion of the investigation, the City Manager will notify the complainant in general terms of the outcome of the investigation.

d) Confidentiality

Every possible effort will be made to assure the confidentiality of complaints made under this Policy. Complete confidentiality cannot occur, however, due to the need to fully investigate potential Policy violations and take effective remedial action. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor or the City Manager. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction. The city will not disclose a completed investigation report except as it deems necessary to support a

disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or a court order.

8. Responsibilities of Employees, Management and Supervisory Employees

a) Employees

In order to establish and maintain a professional working environment, while at the same time preventing harassment, discrimination, and retaliation, employees are expected to:

- Set an example of acceptable conduct by not participating in or provoking behavior that violates this Policy. Try not to be angry or insulted if an individual tells you that your behavior is offensive. People have different ethical values and standards and may be offended by behavior you think is proper. Tell the individual you did not realize your behavior was offensive and immediately cease the conduct.
- Let fellow employees know when you consider behavior offensive. The City hires people from a wide variety of cultural and ethnic backgrounds and an individual may not realize behavior he or she thinks is proper could be seen by others as offensive.
- Report harassment, discrimination or retaliation as quickly as possible, whether the employee is the target of the conduct or a witness.
- If an employee witnesses harassment, he or she should tell the individual being harassed that the City has a policy prohibiting such behavior, and that he or she can demand that the harasser cease the behavior.
- Maintain confidentiality as required by this Policy.
- Fully cooperate with the City's investigation of complaints made under the Policy.

b) Managers and Supervisors

In addition to the responsibilities listed above, managers and supervisors are responsible for the following:

- Implementing this Policy by taking all complaints seriously and modeling behavior that is consistent with this Policy. Direct all complaints to the City Manager.
- Taking positive steps to eliminate any form of harassment, discrimination or retaliation observed or brought to his/her attention.
- Making sure no department director, supervisor or other employee retaliates through any action of intimidation, restraint, coercion or discrimination.
- Monitoring the work environment and taking appropriate action to stop potential Policy violations.
- Following up with those who have complained to ensure the behavior complained of has ceased.
- Informing complainants of their option to contact the EEOC or DFEH regarding a potential Policy violation.

9. **Mandatory Training**

As part of its commitment to ensuring a work environment free from harassment and discrimination, the City requires that all of management and supervisory employees receive training on this Policy at least once every two years. The Finance Department will schedule training sessions each year to ensure that employees are able to complete the mandatory training. Attendance at the training will be documented.

G. **Policy Against Retaliation**

It is the policy of the City to prohibit the taking of any adverse employment action against those who in good faith report, oppose, or participate (as witnesses or accused) in investigations into complaints of alleged violations of City policy or state or federal law in retaliation for that reporting, opposition, or participation. Disciplinary action, up to and including termination, will be taken against an employee or officer who is found to have violated this Policy. Any elected official or contractor who violates this Policy Against Retaliation will be subject to appropriate sanctions.

1. **Policy Coverage**

This Policy Against Retaliation prohibits city officials, officers, employees, or contractors from retaliating against applicants, officers, officials, employees, or contractors because of any of the protected activity as defined herein.

2. **Definitions**

a) "Protected activity" includes any of the following:

- Filing a complaint with a federal or state enforcement or administrative agency
- Participating in or cooperating with a federal or state enforcement agency that is conducting an investigation of the City regarding unlawful activity
- Testifying as a party, witness, or accused regarding alleged unlawful activity
- Associating with another employee who is engaged in any of the protected activities enumerated here
- Making or filing an internal complaint with the City regarding unlawful activity
- Providing informal notice to the City regarding alleged unlawful activity
- Calling a governmental agency's "Whistleblower hotline"
- Filing a written complaint under penalty of perjury that the agency has engaged in "gross mismanagement, a significant waste of public funds, or a substantial and specific danger to public health or safety"

b) "Adverse action" may include, but is not limited to, any of the following:

- Real or implied threats of intimidation to attempt or prevent an individual from reporting alleged wrongdoing or because of protected activity
- Refusing to hire an individual because of a protected activity

- Denying promotion to an individual because of protected activity
- Taking any form of disciplinary action because of protected activity
- Extending a probationary period because of protected activity
- Altering work schedules or work assignments because of protected activity
- Condoning hostility and criticism of co-workers and third parties because of protected activity

3. **Complaint Procedure**

An applicant, employee, officer, official, or contractor who feels he or she has been retaliated against in violation of this Policy should immediately report the conduct according to the City's Harassment Complaint procedure so that the complaint can be resolved fairly and quickly.

H. **Dress Code**

Employees of the City are required to dress appropriately for the jobs they are performing. Therefore, failure to follow the dress regulations contained in this section shall be grounds for discipline.

1. All clothing must be neat, clean and in good repair.
2. Prescribed uniform and safety equipment must be worn when required.
3. Footwear must be appropriate for the work environment and functions being performed.
4. Hair must be neat, clean and well groomed.
5. Beards, mustaches and sideburns must be maintained in a neat and well-groomed fashion.
6. Jewelry is acceptable except in areas where it constitutes a health or safety hazard.
7. Good personal hygiene is required.
8. Dress must be appropriate to the work setting, particularly if the employee deals with the public.

I. **Uniform, Official Badge or Insignia**

No official or employee who wears a uniform, badge or other official insignia as evidence of his/her authority and identity shall permit such uniform or insignia to be used or worn by any other person without approval by the employee's Department Head. The Department Head shall not grant such approval except to persons regularly and formally appointed to the position designated by the badge or insignia.

J. **Uniform/Uniform Allowance Policy**

Uniform or Uniform Allowance will be provided to each eligible employee as provided in their department policy.

K. Tattoo Policy

1. No tattoos are allowed anywhere on the head, face, or neck.
2. Any visible tattoos cannot be obscene, sexually explicit, discriminatory as to sex, sexual orientation, race, religion, or national origin, extremist, and/or gang-related.
3. No visible tattoos shall be larger than 4 by 6 inches.
4. Any non-conforming tattoos must be covered with clothing or a bandage while at work or removed.
5. If an employee has a question about how the tattoo policy applies to them, the matter should be immediately raised with their supervisor for consideration and determination.

L. Piercing Policy

1. No objects, articles, jewelry or ornamentation of any kind shall be attached to or through the skin if visible on any body part including the tongue or any part of the mouth except that an employee may wear one set of reasonably-sized earrings in the ear lobes.
2. Any non-conforming piercing shall be removed, covered with a bandage, or replaced with a clear, plastic spacer.
3. If any employee has a question about how the piercing policy is applicable to them, the matter should be immediately raised with their supervisor for consideration and determination.

M. Workplace Security Policy

1. Policy

The City is committed to providing a safe and secure workplace for employees and the public. The City will not tolerate acts or threats of violence in the workplace. The workplace includes any location where City business is conducted, including vehicles and parking lots. Any violation of this policy may lead to criminal prosecution, and/or disciplinary action, up to and including termination.

2. Prohibited Behavior

- a) Employees are prohibited from engaging in or promoting acts of intimidation, violence, threats, coercion, assault and/or abusive behavior toward any person while in the course of City employment. The City has zero tolerance for any conduct that references workplace violence, even if it was intended to be harmless, humorous, a prank, blowing off steam, or venting.
- b) Employees engaged in City business are prohibited from carrying weapons in violation of any law or this policy unless weapons are required for performance of the job. Employees who have legal authority to carry a weapon shall notify the department director in writing of what type of weapon is being carried. Employees who have legal authority to carry weapons violate this policy if they: accidentally discharge or lose their weapon; use, threaten to use, or display the

weapon for a job related reason; or violate any law related to carrying a legal weapon while engaged in City business.

3. Definitions

- a) "Workplace Violence" is any conduct that causes an individual to reasonably fear for his or her personal safety or the safety of his or her family, friends, and/or property. Specific examples of workplace violence include, but are not limited to, the following:
- b) Threats or acts of physical harm directed toward an individual or his/her family, friends, associates, or property.
- c) The destruction of, or threat of destruction of City property or another employee's property.
- d) Harassing or threatening phone calls.
- e) Surveillance.
- f) Stalking.
- g) Possession of offensive or defensive weapons (firearms, illegal knives, clubs, mace, pepper spray, tear gas, etc.) unless specifically required or authorized and approved by the City Manager. Weapons are defined as firearms, chemical sprays, clubs or batons, and knives, and any other device, tool, chemical agent or implement that can cause bodily harm if used as a weapon or displayed in such a manner to cause harm or threaten a person with harm.

4. Incident Reporting Procedures

- a) Employees must immediately report workplace violence to their supervisor or department director. The supervisor or department director will report the matter to the City Manager.
- b) The City Manager will document the incident, including the employee names(s), date/time, location, incident description, witness names and statements, descriptions of unidentified parties, description of the act(s) and/or behavior arising from the incident, action taken, and provide any other relevant information regarding the incident.
- c) The City Manager will take appropriate steps to provide security, such as:
 - i. Placing the employee alleged to have engaged in workplace violence on administrative leave, pending investigation;
 - ii. Asking any threatening or potentially violent person to leave the site; or
 - iii. Immediately contacting an appropriate law enforcement agency.

5. Investigation

The City Manager will see that reported violations of this policy are investigated as necessary.

6. Management Responsibility

Each department director has authority to enforce this policy by:

- a) Training supervisors and subordinates about their responsibilities under this policy;
- b) Assuring that reports of workplace violence are documented accurately and timely
- c) Notifying the City Manager and/or law enforcement authorities of any incidents;
- d) Making all reasonable efforts to maintain a safe and secure workplace; and
- e) Maintaining records and follow up actions as to workplace violence reports.

7. Follow-Up and Disciplinary Procedures

An employee found in violation of this policy will be subject to disciplinary action, up to and including termination of employment. The City may also direct that an employee submit to a fitness for duty examination. In addition, employees found in violation of this policy may be subject to criminal prosecution.

N. Use of City Property and Equipment

1. Policy

- a) City property is to be used only for conducting City business unless otherwise authorized. City property includes, but is not limited to: telephones, cell phones, desks, computers (including hardware and software), file cabinets, lockers, communications stored or transmitted on City property (such as e- and voice-mails), vehicles and any other City property used by City employees in their work. Employees do not have a reasonable expectation of privacy in City property or equipment.
- b) City property may be monitored and searched at any time and for any reason. Messages sent or received on City equipment including cell phones may be saved and reviewed by others. As a result, City employees have no expectation of privacy in the messages sent or received on City property or equipment.
- c) Every City employee is required to adhere to all City rules and policies while on City property or using City property or equipment.

2. Use of Communications Equipment

a) Minimal Personal Use of Communications Equipment Permitted

City employees may use City telephones and e-mail for personal use provided that the use:

- i. is kept to a minimum and limited to break times or non work hours;
- ii. does not have any impact upon other City employees or operations;
- iii. allows the employee to more efficiently perform City work; and
- iv. is not abusive, illegal, or inappropriate.

b) Inappropriate Use of Communications Equipment Prohibited

The following are examples of inappropriate and prohibited uses of the City's communications systems:

- i. Exposing others, either intentionally or unintentionally, to material which is offensive, obscene or in poor taste;
- ii. Any use that would be offensive to a reasonable person because it involves an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, medical condition (cancer or HIV/AIDS related, genetic characteristics, and physical or mental disability (whether perceived or actual);
- iii. Communication of confidential City information to unauthorized individuals within or outside the City;
- iv. Sending messages with content that conflicts with any City policies, rules or other applicable laws;
- v. Unauthorized attempts to access City data or systems;
- vi. Theft or unauthorized copying of electronic files or data;
- vii. Initiating or sustaining chain letters, and
- viii. Intentionally misrepresenting one's identity for improper or illegal acts.

3. Use of City-owned Vehicles

All City-owned vehicles are to be treated with care and consideration. It is the policy of the City to prohibit defacing such vehicles in any way, including the placement of decals or bumper stickers anywhere on the vehicle, with the exception of decals or bumper stickers required for disabled employees.

City-owned vehicles, assigned to individual employees, shall be driven from the employee's home to work site and work site to home only or de minimis personal use (such as a stop for personal errand).

Employees who take home a City-owned vehicle must account on their time card for days vehicle is taken home and will be taxed for use per IRS Publication 15-B.

Those employees operating these vehicles on a daily basis are responsible for maintaining a clean vehicle and checking basic maintenance daily. Maintenance will be provided by the City.

All City-owned vehicles are to be driven by authorized employees only; no other individuals are permitted to drive City vehicles. Also note that under limited circumstances are individuals other than City employees to be present in City vehicles. Employees driving City-owned vehicles or riding in City-owned vehicles should not be under the influence of alcoholic beverages or any other controlled substance while in City-owned vehicles. If an employee has questions regarding this policy, the City Manager is to be contacted.

All employees who drive City-owned vehicles or personal vehicles for City purposes must notify the City Manager immediately if their driver license expires, is suspended or revoked

All employees who operate City-owned vehicles or a personal vehicle for City business must possess a valid driver's license and a driving record acceptable to both the City and the City's insurance carrier. Individuals driving a personal vehicle for City business must maintain appropriate automobile insurance.

4. Hands-Free Phone Use While Driving

All employees who drive either a City vehicle or personal vehicle during working hours must comply with the State of California's hands-free driving law. The City expects employees to use their cell phone/smart-phone hands-free while driving or after they have pulled off the road and parked their vehicle. Failure to comply with this law will result in disciplinary action.

5. Membership, Credit and Gasoline Cards

Membership, credit and gasoline cards will be issued to specific employees who either travel on a regular basis or have the need to frequently purchase supplies or services. These cards should be used only as specified in the City of Tehachapi Credit Card Policy. Misuse of these cards in any way is cause for disciplinary action, including termination.

6. Damage, Theft or Loss of City-issued Equipment

Employees are responsible for maintaining adequate physical protection of both the equipment issued to them by the City. Employees shall immediately notify their department head if any city owned equipment is damaged, lost or stolen.

The department head and possibly the City Manager will review the circumstances surrounding the damage or loss of City equipment and will determine if any repair/replacement cost will be charged to the employee. Employee negligence, carelessness or recklessness will result in the employee being held responsible for repair/replacement of damaged, lost or stolen equipment.

5. Return of Property

Upon termination of employment, all City equipment and property must be immediately returned to the employee's department head.

O. Smoking in the Work Place

Smoking is prohibited inside and within twenty feet of a main exit, entrance or operable window of all City facilities. Smoking is also prohibited in City vehicles and while working on any job site.