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Process

We know that, as an organization, we can accomplish nearly any project; however, we cannot do everything. As the City Council sets clear priorities and provides appropriate resources, the organization can then move their top priorities forward.

The City Council held a Special Meeting on January 25th & 26th, 2019 to develop their current list of goals and discuss actions. Then, utilizing the Council's newly established Decision Criteria and list of Strategic Priorities, the next step in the process was for staff to identify general action plans or steps and to develop a series of actions for the organization that would implement the Council's identified goals over the next two year budget cycle.

This document is intended to set forth that action plan or work plan for the next two years. By Council formerly adopting the Action Plan, it forces the organization to focus on those agreed upon actions that move the community and organization forward on the identified strategic priorities, keeping in mind the City Mission, 10-Year Vision and Decision Criteria.

Mission:

The City of Atascadero is committed to building community by fostering an outstanding quality of life with excellent public service, stewardship of the environment, preservation of our heritage and promotion of economic prosperity.

Atascadero Ten-Year Vision:

Atascadero is a beautiful and authentic city of outdoor recreation, culinary adventures, and welcoming hospitality. It's a safe place where the arts & history thrive, and the diversity of experience, generosity of spirit, and small-town ambiance are here to be enjoyed by visitors and residents alike.

Decision Criteria:

The City Council and Staff Leadership identified two decision criteria that will be used to filter the priorities of the City and will serve as guidance to staff as they make operational decisions about the priorities.

1. Enhance the qualities of community expressed in our vision, for all segments of our community
2. Efficiently steward resources for the greatest strategic impact over the long term and address true needs

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Strategic Priorities:

The City Council identified the following three priorities for the next two years:

1. Leverage Place-Making in the Commercial Areas for Long-Term Economic Development
2. Ensure Comprehensive Safety Readiness and Risk Mitigation
3. Foster Financial Sustainability

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Leverage Place-Making in the Commercial Areas for Long-Term Economic Development

Complete the El Camino Corridor Study which shall be used as a basis to guide future policies, updates and development along the corridor. At minimum the plan should include:

- An analysis that identifies strengths, weaknesses, opportunities and threats for commercial development.
- Identification of underutilized land along the El Camino Corridor.
- Identification of community wants/needs for the development of the El Camino Corridor.
- Concepts for development of the El Camino Real Corridor.
- A market analysis that identifies market gap and opportunities for commercial growth and/or commercial saturation.
- A traffic analysis and recommendations to improve corridor for all transportation modes.
- A final corridor plan that includes community design concepts, market recommendations and a potential land use plan.

Ongoing. Staff has received an initial draft of the final El Camino Plan and is working on reviewing the document and providing comments to the consultant team to get the draft ready for City Council and Public review. The grant funded, consultant led, portion of the project will need to be completed by February 2020, however staff will continue refining details of the document through a public hearing process that will extend throughout the year. Instead of adopting and closing the document, staff has chosen to utilize the work as a living document that can inform the General Plan Update and can be refined as needed.

Facilitate Downtown Infrastructure Enhancement

- Complete and implement Downtown Infrastructure Enhancement Plan (Formerly known as Traffic Calming Plan) including:
 - Continue to explore opportunities for increased on-street parking in the downtown (El Camino Real, West Mall, and East Mall).
 - Continue to look for ways to slow traffic in the downtown.
 - Continue to look for ways to increase pedestrian safety, bicycle safety, and the “walkability” of the downtown.

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- Increase aesthetic enhancements along El Camino in the downtown (including landscaping, signage, pavement types and lighting).
- Continue to explore potential reduction of lanes along El Camino Real between Highway 41 and Rosario Avenue as a means to achieve these ends.
- Adopt a final design plan for the enhancement improvements along El Camino in the downtown.
- Look for funding, grants and opportunities to complete the desired downtown infrastructure improvements

In Process. Staff has continued to work with a traffic consultant and a planning consultant to refine the site plan and details for the downtown enhancement plan on El Camino. The draft plan continues to focus on additional parking, slowing traffic, increased pedestrian safety and improved aesthetics. A revised working draft of that plan will be available prior to January 31. Following strategic planning discussion, staff is planning another series of public outreach events during February and March prior to returning to City Council for final plan approval.

- Look for ways to improve traffic circulation at Traffic Way and El Camino Real. ***Ongoing.*** Plans to add a dedicated eastbound lane to Traffic Way between El Camino and Highway 101 will allow for a dedicated northbound turn lane, dedicated through lane and dedicated southbound lane. This work includes frontage improvements, including ADA compliant sidewalks on both sides of the street. Work will occur later this year.
- Consider downtown watershed improvements and potential available funding as a way to facilitate all desired infrastructure improvements. ***Ongoing.*** Staff is evaluating options towards incorporating watershed improvements within EL Camino and the new plaza area adjacent to La Plaza. Old highway construction of El Camino Real may make this more challenging than originally thought.
- Install and implement wayfinding/parking signs. ***In Process.*** Staff created a map and design for parking wayfinding signs to be located around downtown. The parking “P” signs can be purchased and installed in 2020.
- Consider creation of new parking spaces. ***Ongoing.*** Several options exist to incorporate additional parking downtown. These include the El Camino Enhancement Plan, expansion of the City Hall parking lot, or the addition of angled parking along other downtown streets.
- Adopt a Street Trees Program that indicates tree replacement and tree care responsibility, tree varieties and planting specifications. ***In Process.*** City staff

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has completed a draft program for City Council review and will be bringing this to City Council soon. The plan will identify a work program, discuss tree responsibility, include planting specifications and tree varieties and include an outreach program.

- Implement the Sunken Gardens tree replanting plan as approved by City Council. **In Process.** *Staff is in the process of working with a landscape installer to order and plant trees during the winter and spring season of 2020.*
- Consider the incorporation of an Atascadero Entry/Identification sign as part of any downtown infrastructure improvements. **In Process.** *Staff is working on revised plans for the improvements. There are locations where entry signs could be installed in the center median/parking area.*
- Encourage development of a community led murals and electrical box art program. **Not started.** *Staff will evaluate options to commence this program in summer 2020 along with the Downtown Association and other business/property owners.*

Facilitate Commercial Development near Del Rio

- Facilitate the submittal of a General Plan Amendment and development concept for the West Side (church) property north of Del Rio adjacent to Highway 101. The plan should include commercial development adjacent to Highway 101 transitioning to residential development closer to San Ramon.
 - Principal use of property being commercial and residential a secondary use. **Ongoing.** *The Barrel Creek applicant team has formally submitted an application for a request to amend the General Plan for the west side property. Staff is working with the applicant team to get the project ready for an initial review by City Council. It is anticipated that the request will be forwarded to City Council in February. If the applicant is authorized to proceed, staff will work with the applicant team on developing a complete application for City review. The project will necessitate an amendment to the Del Rio Specific Plan and will require environmental review.*
- Facilitate the issuance of construction permits and site development of the Armet site fuel station and electric vehicle charging station. **Ongoing.** *The applicant has developed site improvement plans for public improvements and is actively working on construction drawings for the remainder of the site. It is anticipated that the project will start construction summer 2020.*
- Complete a revised traffic analysis for anticipated development at the Del Rio,

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Hwy 101 and El Camino Real intersections. **In Process.** *A traffic consultant is completing the final round of land use assumptions and traffic assumptions for Del Rio and El Camino. It is anticipated that this work will be complete in January 2020 so that amendments to the Specific Plan can be contemplated by the City Council shortly thereafter. However, alternative scenarios to the approved roundabout improvements will need to be evaluated with Cal Trans and those options will not be able to be vetted for several months.*

- Amend the Del Rio Specific Plan to facilitate development of the corner of Del Rio and El Camino with a proposed business park prior to completion of improvements to the Del Rio overpass. **In Process.** *Awaiting the completion of traffic analysis as noted above, staff has received an application for a business park concept. The concept includes an additional property north of the Specific Plan that will enlarge the potential development area up to 220,000 square feet. Staff anticipates bringing this amendment to City Council in Spring of 2020. The amendment will include an opportunity to amend the Specific Plan EIR to acknowledge a reduced level of vehicle trips and greater flexibility in allowing site development with reduced cost in infrastructure improvements.*
- Continue to move forward with plans for street improvements at the Del Rio/Highway 101 Interchange off-ramps and adjacent areas along Del Rio and El Camino Real.
 - Continue to work with Caltrans on required steps for ultimate construction of the Del Rio Road / US 101 interchange. **On Hold.** *A traffic study is in process to determine what improvements are needed at various buildout scenarios. Once a better understanding of likely traffic counts are understood, along with an understanding of the worst-case scenario, staff will bring a plan forward to Council.*
 - Continue to advocate and apply for funding for the portion of the Del Rio /US101 Interchange project, which is attributable to general City traffic. **Ongoing.** *The needs in the County far exceed the amount of available funding. The City continues to advocate for the Project and it is listed as an unfunded project on the County's RTP.*
 - Continue to look for ways to reduce potential costs for the Del Rio/US101 Interchange Project. **In Process.** *The traffic study should determine whether less complex/costly improvements will serve the area for the foreseeable future.*
- Continue to facilitate and prioritize construction of the new Hilton Home 2 Suites Hotel. **Ongoing.** *The hotel is scheduled to be ready to occupy in April*

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of 2020 and construction is nearing completion.

- Continue to work with property owner at west side of Hwy 101 to develop the modular unit motel lodging facility. **Ongoing.** *This project is approved but is awaiting a determination of whether land is needed for a future roundabout project. The roundabout project would reduce a portion of the development site for the modular hotel facility. The applicant does not want to construct the development until the City makes a final determination on the area needed for road improvements.*
- Continue to facilitate and prioritize construction of the new restaurant spaces at the North West corner of Del Rio and El Camino Real. **Ongoing.** *Commercial retail and restaurant spaces on the northwest corner of Del Rio and EL Camino, including a drive-through location for a Taco Bell is approved and moving forward with construction documents. The applicant intends to build the entire project even though all pads do not yet have tenants. Staff is working with the applicant to ensure that all of the restaurant pads are occupied.*
- Help market and attract tenants to the potential business park at the NE corner of Del Rio and El Camino Real. **Ongoing.** *Staff is continuing to work with the project applicant, EVC, the Chamber, and many other regional business owners to spread the word about the future opportunities in north Atascadero with the proposed 200,000 square foot business park.*
- Help market and attract tenants to the proposed Barrel Creek development. **Ongoing.** *Staff is continuing to work with the project applicant, EVC, the Chamber, and many other regional business owners to spread the word about the future opportunities in north Atascadero with Barrel Creek. As the plans are still being refined, additional outreach will occur once the project has received authorization from City Council to proceed.*

Examine Future Uses of City-Owned Lots to Best Facilitate Vibrancy in the Downtown

- Remove existing structure from the East Mall lot and prepare the site for future development. **In Process.** *The City is still in the process of removing the Federal lien from this site. Staff expects to meet with an interested party who would like to move the building sometime in the next month.*
- Consider options for the use of the two East Mall lots including:
 - Parking expansion

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- Commercial development that includes restaurant space and outdoor dining

Not Started. *A preliminary discussion of the use of East Mall is scheduled for this planning session.*

Support and Adopt Legislation that Maintains Quality Public Spaces, and a Vibrant Environment in the Downtown

- Consider adopting an updated smoking ordinance. **Complete.** *A comprehensive smoking ordinance was adopted in August 2019 and is working well.*
- Consider adopting an ordinance restricting the consumption of alcohol in public spaces. **On Hold.**
- Support state legislation that assists with chronic homelessness, mental health support and addiction support. **Ongoing.** *The City continues to monitor legislation both through the League of California Cities and through the City lobbyist.*
- Oppose state legislation providing unrestricted use of public land. **Ongoing.** *The City continues to monitor proposed bills in Sacramento and remains active on this topic.*
- Actively drive legislation to insure that ABC licenses in the downtown area do not contain provisions and limitations that conflict with the community's vision for a vibrant downtown. **On Hold.** *This was pursued through the City's representative, but there was push back from ABC. ABC asserts that the problem is fixed and that we should not have additional limitations placed on our businesses. We have not heard of any instances where noise or hours of operations were unreasonably limited. And have not heard of any new instances where outdoor serving of alcohol has been limited. Staff will continue to monitor the situation and will meet with the head of ABC if future problems arise.*

Explore and Investigate Potential Code Options / Changes to the Code that Would Promote Creative Solutions to Perceived Barriers to Redevelopment.

- Continue to inform potential tenants and landlords about available tax credits for ADA improvements. **Ongoing.** *Staff continues to educate future tenants and property owners about incentives for development of accessibility improvements.*

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- Look for opportunities for shared restrooms and shared accessible paths. **Ongoing.** *Staff is continuing to look for these opportunities with every new project. The recent Jamba/Auntie Anne's/AT&T is one example of shared restrooms and accessibility, La Plaza will also incorporate shared access and restrooms for commercial pads.*
- Continue to seek creativity in design ideas. **Ongoing.** *Staff is continuing to look for these opportunities with every new project. Staff typically provides early feedback to help reduce construction cost, increase quality and efficiency, and to balance applicant and City needs.*

In Coordination with the El Camino Corridor Plan, Focus on Other Opportunity Areas for Community Place-making

- La Plaza
 - Continue to facilitate the construction and completion of the La Plaza project.
 - Fast-track City construction of the Plaza to assure timely completion of the required public space in order to complement the La Plaza Project and overall downtown improvements.
 - Continue to facilitate the recordation of the map and road abandonment.
 - Work with the La Plaza broker to assist with marketing and finding appropriate tenants for the commercial spaces.
 - Assist tenants with any necessary tenant improvements, permits and ABC licenses.
 - Work to insure that La Plaza continues to move forward given the needs/constraints of the wireless communications facility (cell tower).

Ongoing. *Great strides have been accomplished with La Plaza through the past year. Cell tower easements have been resolved, maps have been recorded, construction permits have been issued and work is commencing on constructing foundations. Staff is continuing to assist in acquiring tenants and working on other downtown refinements to support the project such as the plaza and street improvements.*

- Continue to work with the owner of KLEMS fuel station and the auto mechanic spaces adjacent to the plaza to encourage redevelopment of the property and a transition to conforming businesses that support downtown revitalization. **Ongoing.** *Staff is continuing to work with the property owner to seek ways to encourage site redevelopment. At this time, the property owner is in a sale contract with KLEMS that extends until 2022. That contract includes the entire site, along with the mechanic space. The former mechanic*

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space that faces Tent City brewery has vacated the site and that space is now being occupied by Tent City for expansion of the brewery.

- Colony Square
 - Continue to facilitate construction permit review for the hotel development.
 - Look for potential City solutions to assist with downtown/Colony Square parking (including wayfinding signs, parking directories and creation of new parking spaces).
 - Continue to strongly encourage development of the vacant parcels in Colony Square.
 - Be flexible and look for creative interim uses of vacant areas if development will not occur in the near future.
 - Be creative in stimulating development of Colony Square.
 - Look for opportunities to increase foot traffic in Colony Square.
 - Look for opportunities to improve communications with owner of vacant parcels.
 - Work with the developer of Colony Square to remove barriers to development.
 - Look for development incentives such as fee deferments, density bonus, or other options to allow the development to proceed.

Ongoing. *Staff is continuing to actively work with the property owners to seek ways to encourage site redevelopment. Staff met with the owner of the center parcel and easterly parcel this year to determine barriers to moving forward. The owner of the two parcels (Peter Hilf) has no current plans to move forward with development, is not interested in interim development, and is not interested in actively selling or marketing the vacant sites. The owner of the hotel parcel is actively pursuing development plans for the boutique hotel with Marriot as an operator, however he has stated that he needs the center parcel to develop to provide synergy or plaza area for the hotel. Additional incentives or options may be needed to occur to spur an interim use of center parcels if they are not to be developed in the near future.*

Few options exist for development incentives unless the City wants to offer flexible land use options, reduced parking, or increased site density. Options involving reducing development fees are likely to trigger prevailing wage construction. Additionally, staff is evaluating options that require owners of vacant sites in prime commercial areas to actively work with the City on the sale, development or interim use of such sites. This could be accomplished through a vacant property registration program that requires annual fees and maintenance criteria for sites that are voluntarily vacant.

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- Home Depot/Marriott Springhill Center
 - Facilitate the development of the proposed new hotel by assisting with attracting an operator.
 - Streamline and prioritize necessary permits and approvals for the proposed new hotel.
 - Continue to guide appropriate quality development on vacant sites.
 - Work with Tesla on facilitating the location of a Tesla charging facility or other Tesla support facility.
 - Continue to promote lodging stays in Atascadero through the City TBID and Countywide TMD.
 - Promote Atascadero businesses through marketing, special events and infrastructure investment.
 - Provide front counter handout on available pads and other undeveloped retail opportunities.
 - Steer potential developers / broker on-site based on needs and accommodations.

Ongoing. *Staff is continuing to work with the property owners to seek ways to encourage site redevelopment. A flyer has been developed to illustrate available properties and is available at the front counter. The property owner is still working on acquiring a tenant for the hotel, however a fuel station is considering plans to occupy the adjacent parcel to Staples. Tesla is evaluating the site for a potential charging station and staff has been working with Tesla on attracting a service center or additional level 3 chargers at these sites.*

- Dove Creek Commercial Parcel
 - Continue to work with property owner on any potential site design or leads for new commercial tenants at this property.
 - Provide a handout at the counter outlining potential uses and site information for perspective developers.
 - Work to preserve this piece of property as a future small commercial opportunity for the Dove Creek, Las Lomas, Eagle Ranch and other south Atascadero neighborhoods.

Ongoing. *Staff is continuing to work with the property owners and potential developers to seek ways to encourage site redevelopment. Recent plans to develop the site with commercial and mixed-use development were cancelled due to the fear of potential challenges from the Dove Creek homeowners Association and due to lack of escrow flexibility on behalf of the property owner. The Dove Creek homeowners association has sent a letter to staff stating that*

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they do not believe that the vacant site has access rights to Dove Creek roads, However staff has evaluated the map and approved project plans and verified that the corner property is part of Dove Creek and shares same access rights as homes. Staff is continuing to work to attract another potential buyer for the site.

Continue to Encourage and Expect Quality Development

- Continue to refine our property development standards towards quality. **Ongoing.** *Staff continues to evaluate policies, development standards and other portions of the Municipal code to ensure the General Plan is appropriately implemented and that quality is prioritized.*
- Encourage sit down restaurants and discourage drive-thrus to embrace place-making concepts. **Complete.** *Recent policy adoption regarding the calculation of traffic impact fees for drive through restaurants and the inability to make findings for drive through uses in the north portion of the City has been completed.*
- Continue to expect and encourage quality through the building permit review process. **Ongoing.** *Staff continues to balance the need for quality while maintaining efficiency and project affordability in every construction project.*
- Continue to support code enforcement actions to maintain compliance with community expectations on neighborhood/area preservation and appearance. **Ongoing.** *Staff is continuing to work together on a daily/weekly basis to share knowledge and expectations. Code enforcement staff is now part of the weekly Project Review Team meeting where updates are provided and input is exchanged.*
- Continue to facilitate the removal of illegal storage within important industrial zone sites near Via Avenue to help facilitate redevelopment and new investment. **Ongoing.** *Staff is continuing to work on the properties along Via along with code enforcement. Clean up is beginning to move slowly forward as removal of some storage containers has occurred and the former auto wrecking site has been cleaned and made available for new land uses.*
- Continue to facilitate compliance of new businesses within the Commercial Park zone to preserve valuable land for uses that are consistent with the General Plan. **Ongoing.** *Recent code updates are designed to encourage quality development within the commercial park zones and to limit outdoor storage uses. Staff is working with the City attorney to help bring properties into compliance.*
- Continue to strongly enforce the City's Sign Program. **Ongoing.** *Staff*

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continues to remind business owners of the City's sign regulations and the need for quality appearance of the commercial district while offering alternative advertising information.

- Consider implementing a receivership program for long-term violations. **Not Started.** *Additional discussion needs to occur on this topic. There are some costs and risks associated with this process. This, however, may be a solution for buildings and/or sites that remain out of compliance for many years and are significant health/safety violations. One building in the downtown and one site on Via Avenue fit this definition and have been difficult to achieve compliance.*
- Consider revisions to the Municipal Code to enhance the abilities of the code enforcement officer to ensure compliance. **In Process.** *Staff has evaluated options to amending the code and creating one enforcement section that has provisions for all titles in the code. Additional work needs to be completed before bringing suggested code amendments forward.*
- Annually review the City's Zoning Code to improve transparency and clarity of City expectations. **Ongoing.** *Staff continues to amend the zoning annually to reflect changing trends, implement General Plan and clarify code.*

Work to Reduce the Number of Vacant Store Fronts

- Continue to improve Atascadero's commercial district appearance working to make it appear attractive and professional. **Ongoing.** *Staff continues to actively discuss business options and seek input from all commercial property owners and tenants. Staff visits local businesses regularly to keep an open conversation and exchange of ideas towards this goal.*
- Continue to actively spread the word about the City's economic development strategies, successes and potential tools. **Ongoing.** *Staff Continues to engage regional economic development professionals such as EVC, the Chamber and the Hourglass project to exchange ideas and spread the word about Atascadero. Such discussions and strategies are currently active and are focused on North County success.*
- Continue to actively promote the City's business potential. **Ongoing.** *Staff continues to actively promote the City, working with business leaders, other City teams, social media and area developers to connect the dots.*
- Continue to improve customer service image. **Ongoing.** *Staff is actively working to maintain a positive customer service image which includes quick responsiveness, positive attitudes and a can-do attitude. Our team is dedicated to quick turn-around times, open and transparent conversation and*

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a solution driven mindset. The City focuses on and celebrates the positive customer service attitude that we have here in Atascadero when discussing potential investment with those interested in developing here in Atascadero.

- Continue to foster an entrepreneurial / can do attitude with staff. **Ongoing.** *This attitude has been built into the culture of the Community Development Department and is continually reinforced with staff.*
- Encourage creative ideas to get things done. **Ongoing.** *This attitude has been built into the culture of the Community Development Department and is continually reinforced with staff.*
- Encourage reasonableness in our regulatory positions. **Ongoing.** *This attitude has been built into the culture of the Community Development Department and is continually reinforced with staff.*
- Continue our successful streamlined permitting program for businesses:
 - Continue to prioritize business development permits over residential.
 - Provide intake meeting opportunities for business developers.
 - Purchase and implement a new permitting issuance and tracking system.
 - Actively communicate with owners and consultants if there is the same plan check comment through multiple submittals.
 - Provide training and professional opportunities for our employees.
 - Work to retain professional, friendly employees.
 - Maintain capacity in staff to support projects and permit streamlining.
 - Review all plan check resubmittals prior to sending them to outside plan check for a second review.
 - Allow correction comments to be a condition of approval on the permit card when possible.
 - Continue to work with plan check consultants to reduce boilerplate/repetitive comments.

Ongoing. *All of these actions have been integrated into the typical work routine of the Community Development Department.*

- Advocate legislation that provides communities with new economic tools. **Ongoing.** *The City works through the League of California Cities, the City lobbyist and planning associations to promote economic development tools.*
- Work with businesses to develop programs that will encourage downtown businesses to remain open more. **Ongoing.** *Staff continues to remind business owners of the desire for synergy and vibrancy in the downtown. This*

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objective needs additional work. This strategy has been largely unsuccessful. Staff recommends looking at potential code updates to address the issue.

- Continue to engage owners of vacant buildings to facilitate building upgrades and marketing options that will attract new tenants. **Ongoing.** *Staff is proactive in this arena and speaks with property owners on a regular basis. However additional policy incentives or other options should be considered to enhance this effort.*
- Encourage absent property owners to actively market their property for sale at appropriate market rates. **Ongoing.** *Staff is proactive in this arena and speaks with property owners on a regular basis. However additional, firmer policy incentives or other options should be considered to enhance this effort for critical properties such as downtown vacant lots or downtown vacant buildings.*
- Engage property owners that are maintaining important downtown storefronts as storage uses to help facilitate a change to conforming business that can contribute to the downtown vibrancy. **Ongoing.** *Staff is proactive in this arena and speaks with property owners on a regular basis. However additional policy incentives or other options should be considered to enhance this effort.*
- Continue to enforce building and zoning code to ensure timely completion of seismic retrofits and removal of land use violations. **In Process.** *Only one building remains as un-retrofitted at this time and plans are being formulated to repair this building on Traffic Way. The other buildings have been either demolished or reinforced as of last year.*

Build Partnerships and Alliances with Local Business Interests

- Support, encourage and help grow the Downtown Business Improvement District by:
 - Continue to actively increase traffic to downtown businesses through a promotions and events program. **Ongoing.** *The City:*
 - *Promotes, book entertainments and drives awareness for the new First Fridays program;*
 - *Is working to introduce a new Spring Block Party event*
 - *Promotes growth of Farmers Market with programs such as the Summer Siesta series. It is hoped that the farmers market will expand to Palma Ave by next summer.*
 - *Provides support to grow Taco Day on Traffic Way and support all areas of the downtown.*

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- *Support the Downtown by digitally promoting the Brews & Burgers trail, highlight downtown businesses in social media through continuous posts*
- *Continue to expand our City's signature events and co-sponsored events (Winter Wonderland, Tamale Festival, Light up the Downtown, Dancing in the Streets, Central Coast Craft Beer Festival, Winespeak, etc...)*
- *Participate in downtown business district meetings and events. **Ongoing.** City staff attends and participates in all bi-weekly and event meetings.*
- *Support the downtown business district through assessment of "BIA" Fees or other programs intended to raise funds for downtown business promotions or improvements. **Ongoing.** The City has adopted BIA fees and continues to work through the Chamber of Commerce and downtown business owners to keep this program moving forward in a positive direction.*
- *Look for potential solutions to help reduce the pigeon population in the downtown. **In Process.** The City hired Air Strike Bird Control to reduce the Downtown Pigeon population. To date the effort has resulted in 250-300 birds removed. The City is working with Air Strike on Phase II of the project targeting the birds under the Traffic Way Overpass.*
- *Meet regularly with Chamber of Commerce leadership. **Ongoing.** The Community Development Director and City Manager meet monthly with Chamber of Commerce leadership. The Deputy City Manager is on the Chamber of Commerce Board of Directors. The City Manager meets routinely with the Chamber President/CEO.*
 - *Look for opportunities for common goal partnerships.*
 - *Share information about what is going well and what is not going well.*
 - *Provide accurate information to dispel rumors.*
- *Remain actively involved with the EVC and Hourglass, promoting Atascadero as a sound business investment opportunity. **Ongoing.** The City Manager, Community Development Director and Mayor meet monthly with the EVC. Under the leadership of the EVC, a North County Economic Development Task Force is being formed. As Hourglass continues to move forward, City representatives are actively involved with Hourglass.*
- *Work with informal communicators in town to learn of business problems or opportunities where City could help. **Ongoing.** Staff meets regularly with community members to hear issues regarding, business, permitting, and development. These discussions help exchange ideas and fix hidden problems.*

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- Look for opportunities to meet regularly with commercial brokers. ***Ongoing.*** *Staff meets regularly with brokers to help find tenants, exchange zoning information and hear about opportunity. These meetings are very helpful to keep in touch and exchange knowledge.*

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Ensure Comprehensive Safety Readiness and Risk Mitigation

Develop and Implement a Comprehensive Evacuation and Communications Plan

- Consider hiring an outside consultant to assist the City in preparing a comprehensive evacuation and communication plan that addresses lessons learned in recent catastrophic fire events. At minimum the study should consider: ***In Process.*** *In addition to the Evacuation Plan contemplated below, the County is working in coordination with each jurisdiction to develop standardized evacuation protocols and routes. The City will be divided into approximately 10 different zones with identified evacuation routes, identified safety zones, a related communication plan and an evacuation route implementation plan including estimated total times to evacuate each zone..*
- Evacuation Notification:
 - Effectiveness of cell phone towers and cell phone notifications in the event of loss of power. ***In Process.*** *Staff is working through the known cell towers and documenting which sites have backup generation and types of power supply*
 - Effectiveness / feasibility of implementing a siren system. ***Not Started.***
 - Development of a strong social media platform for constant communication during an emergency. ***Ongoing.*** *In coordination with City platforms, Atascadero Fire now has social media presence for better communication. Opportunities for enhanced communication, particularly during an emergency will be explored as part of the City study.*
 - Effectiveness of “weather radio” system. ***Not started.***
 - Effectiveness of landline notifications. ***Not started.***
 - Educating the community on evacuation notifications. ***Ongoing.*** *The current evacuation plan was distributed by mail, is on the City web-site and has been featured in various community forums. The new City plan will need to be continuously re-enforced to promote community readiness in an emergency.*
 - Activating evacuation and evacuation routes. ***In Process.***
- **Evacuation Implementation:**
 - Developing clear evacuation route scenarios based on the event.
 - Pre-identified routes for evacuation of residents vs. bringing resources and

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equipment in.

- Identifying areas and streets to close to facilitate one-way traffic moving people out of the affected area.
- Identify choke areas where traffic control personnel will be need to be stationed to move people through quickly.
- Identifying those neighborhoods with one way in / out and look for ways to mitigate through easements, neighborhood discussions and paper roads.
- Identify and train City staff members in implementing an evacuation.
- Train neighborhood volunteers to assist with knowing evacuation plans and helping others learn about the plans.
- Train neighborhood volunteers to gather information on those that may have special needs in an evacuation (elderly, homebound, etc.) and to assist those with special needs in an evacuation.
- Develop a program that allows those that may not be able to self-evacuate to identify themselves in advance to police/fire.
- Identify potential safe refuge areas in the event that full evacuation is not possible.

In Process. Comprehensive evacuation, communication and traffic emergency evacuation plans are a new and evolving area of expertise. Cities like ours are beginning to request an inclusive plans like the one envisioned here. Vendors and teams are just starting to form. Staff is looking to both local expertise (Cal Poly) and large vendors to insure that the broad knowledge base is available for developing the City's plan.

- Look for grants and funding for implementation. **Ongoing.** The City constantly looks for funding opportunities for this and other public safety related areas. Funding for the Evacuation and Communication plan was included in the 2019/2021 Budget.

Target High Hazard Areas for Additional Education and Resources

- Use mapping solutions to identify high-risk areas. ***In Process.*** A potential consultant has been identified but a contract has not yet been awarded.
- Prioritize preparedness/evacuation education of those residents in the identified high-risk areas. **Not Started.**

2019 – 2021 City of Atascadero Action Plan **UPDATE**

Prioritize high-risk areas for programs such as chipping and fuel modification programs. **Ongoing.** *Chipping and fuel modification is conducted in high-risk areas. In the future the City looks to refine which areas are high-risk through the study of fuels, topography and road capacities.*

Reduce the Risk and Severity of Wildland Fire by Identifying Methods of Mitigating High Hazard Fuels

- Consider hiring a fuels consultant/specialist:
 - To study and understand areas of wildland fire risk.
 - To make recommendations regarding potential brush removal weighing factors such as wildland fire risk, erosion risk and environmental factors.
 - To make recommendations on other wildland fire risk mitigation actions such as shaded fuel breaks, roadside fuel treatment and other fuel removal projects.

In Process. *A potential consultant has been identified to prepare the study and make the needed recommendations above, but a contract has not yet been awarded. The County prepared a County-wide Community Wildfire Protection Plan (CWPP). In 2019, the City updated the City's CWPP in conjunction with this County effort. The City's CWPP will be brought before the City Council for adoption in Spring 2020.*

- Partner with Fire Safe Council and others to identify and pursue available funding for fire mitigation activities. **Ongoing.** *Fire Safe Council has funded several fuels mitigation projects in addition to the chipping program. The Del Rio drainage and roadside treatment from San Gregorio to Alturas was completed in July, 2019 (\$60,000). Fire Safe Council has granted \$64,000 in fuel mitigation for Spring and Summer of 2020. We are currently evaluating which roads to address.*

Implement a Strong Public Education and Outreach Program Regarding Public Safety

- Implement a “Defend Atascadero” campaign to:
 - Increase public awareness of wildland fire risk.
 - Call community members to take action / personal responsibility:
 - What to do in an emergency.

2019 – 2021 City of Atascadero Action Plan **UPDATE**

- Where to get information.
- Register for emergency notifications / special needs.
- How to help your neighbors.
- Educate on defensible space principles.
- Educate on “Ready, Set, Go”.
- Educate people on “hardening” their home to increase fire resistance.

Ongoing. *“Defend Atascadero” Video and wildfire preparedness day completed. Ongoing public education. Plan to host another wildfire preparedness day or Fire Department Open House*

- Continue all hazard education programs for earthquakes, floods, riots, structure fires and other natural disasters. **Ongoing.** *Staff has made multiple presentations to service clubs, neighborhoods, special groups (Pastors), Business community, etc.*
- Work with PG&E to educate the public on PG&E’s new power shut-off program. **Ongoing.** *Staff has made multiple presentations to service clubs, neighborhoods, special groups (Pastors), Business community, etc.*
- Hold neighborhood meetings and/or consultations. **In Process.** *Talk on the Block meetings included discussions of public safety messages. Fire has also met with several neighborhoods and conducted multiple consultations for wildland fire and emergency preparedness*
- Set realistic expectations about available public safety resources and capabilities. **Ongoing.** *Talk on the Block meetings have started this process and staff continues to look for additional opportunities to set realistic expectations.*

Look for Ways to Increase Public Safety Resources to Better Address Public Safety Concerns.

- Consider a potential tax measure to address both staffing and infrastructure needs. **In Process.** *A polling consultant has been hired and this will be measured as part of the polling process.*
- Look for potential grants and other opportunities to retro-fit, rehabilitate and upgrade Station #1. **Ongoing.** *A current grant/funding source has not yet been identified.*

2019 – 2021 City of Atascadero Action Plan **UPDATE**

- Take next steps to move forward with construction of a new EOC facility at Fire Station #1, freeing up space at both the Police Station and current Station #1. ***In Process.*** *We have building sketches, preliminary designs and cost estimates to construct a 3600 ft2 metal building at the Fire Station 1 property. This building would house the new EOC and all fire administration.*
- Participate in the joint dispatch study to determine if service levels can be increased during high-volume events by partnering with other agencies ***Abandoned.*** *The initial study was conducted by Citygate Associates. A preliminary analysis was presented to the participating agencies in November and it appears that due to higher overall costs, consolidated dispatch does not make sense at this time.*
- Evaluate the long-term uses of the two City parcels that were originally purchased with fire impacts fees to determine if selling the parcels would be a sound financial strategy in the long-run. ***Not Started.***
- Update impact fees to reflect current understanding of future infrastructure needs of public safety. ***In Process.*** *A preliminary draft of the impact fee study is currently being reviewed by staff.*
- Update impact fees to maximize flexibility of use to address critical infrastructure needs necessary to serve future development. ***In Process.***
- Look for funding opportunities to provide additional police staffing to reduce days/hours at minimum staffing. ***Not Started.*** *Funding is the largest barrier to additional staff. The City has conducted polling to determine if placing a sales tax measure on the November ballot is feasible. If additional City funding becomes available, grant funding with City matching funds and required commitments to retain the staffing may be available.*
- Look for funding opportunities to provide “overhead” coverage for incident management at fires and other large emergency events. ***Completed.*** *Battalion Chief – Operations position was added as part of the 2019-2021 Budget and Fire Captain/Fire Marshal position was reclassified to Battalion Chief – Community Risk Reduction.*
- Look for opportunities to fund replacement of unfunded public safety equipment. ***Ongoing.*** *Most recently SLESF funds were used to replace damaged radio repeaters and enhance emergency communications for the police department.*
- Look for opportunities to enhance public safety communications by partnering with allied agencies for repeater sites within the North Atascadero area. ***In***

2019 – 2021 City of Atascadero Action Plan **UPDATE**

Process. *An initial bid was presented to the department. City staff has met with Templeton CSD personnel to obtain approval. Funding is being used from SLESF to facilitate this enhancement.*

Develop Personnel to take on Future Leadership Roles/Next Steps Within the Organization.

- Hold second leadership class for line level personnel. **In Process.** *A leadership class conducted by Chief Haley has started and session 2 will take place in early January. Final session Oct. 2020.*
- Continue mentoring mid-level managers within the organization for future advancement. **Ongoing.** *The lieutenants are being mentored and should be strong candidates for future advancement.*
- Delegate responsibilities throughout the organization in order to provide learning opportunities. **Ongoing.** *The police department has fully incorporated Strengths Based Leadership models in the organization to better provide opportunities for learning, and mentoring to continue throughout the organization.*
- Continue to focus on culture of the organization to reduce staff turnover. **Ongoing.** *As above. Strengths based leadership model is being used to further strengthen the culture of the department.*

Increase Solution Based Response to Homeless Transient Issues.

- Provide office space for Mental Health Community Action Team (CAT) at the Police Station in order to better partner with their organization. **Ongoing.** *The desk space has been provided and the partnership is working to great effect.*
- Dedicate street crimes detective to working with CAT. **Ongoing.** *The street crimes detective has worked with CAT on several difficult cases with great results.*
- Work with the District Attorney's office to enhance prosecution of repeat/significant offenders. **Abandoned.** *This did not go as expected or desired.*
- Continue to seek modification to Municipal Code as appropriate to deal with community concerns/problem behaviors. **Completed.** *Council has worked*

2019 – 2021 City of Atascadero Action Plan **UPDATE**

well with the PD to make changes to the Muni Code as requested. The PD has enforcement tools as a result that are used effectively.

- Consider purchase of surveillance cameras for problem areas. **Completed.** *The camera system has been purchased and is installed. The system will be up and running in the first part of January.*

2019 – 2021 City of Atascadero Action Plan **UPDATE**

Foster Financial Sustainability

Consider Putting a Tax Measure on the November 2020 Ballot

- Conduct a public outreach campaign to hear about priorities from the community and to educate community members about fiscal realities.
- Talk on the Block. **Ongoing.** *Completed first round of Talk on the Block public meetings in Summer of 2019. Second Round is scheduled in February 2020.*
- Presentations to Community Clubs. **Ongoing.** *Presentations have been made to some community clubs, with others planned to follow next Talk on the Block meetings.*
- Employee Education. **Ongoing.** *Finances and a potential sales tax measure are included as discussion items at the City Manager/Employee roundtable meetings.*
- Conduct scientific polling to learn community thoughts on priorities, fiscal choices and receptiveness to additional taxes to fund priorities. **In Process.** *A polling consultant has been hired and polling is expected to take place in January 2020.*
- Explore different types and levels of tax measures to determine which would best be suited for the ballot measure. **In Process.** *This will be measured as part of the polling process.*
- Hold public hearings and prepare tax measure language. **Not Started.** *Council will determine whether to move forward with this step after review of the polling results at a public meeting.*

Set Fees at Rates Necessary to Provide Services at the Service-Level Expected by the Public

- Update the Service Cost Study to ensure that fees and any resulting tax payer subsidies are being set at levels consistent with Council policies. **In Process.** *The consultant who has prepared the study in previous cycles has been contacted to perform an update, but the contract has not been awarded.*
- Adopt significant increases to wastewater fees to fund current and future wastewater needs in accordance with a Wastewater Rate Review Study. **In**

2019 – 2021 City of Atascadero Action Plan **UPDATE**

Process. *The first steps in updating the Wastewater Fees were adopted by the Council last summer. Staff expects to bring changes to the Wastewater fee structure and long-term fee updates to the Council in Spring of 2020.*

- Consider increasing Business Tax. **Not Started.**
- Consider pro-active enforcement of Business Tax Ordinance. **Not Started.**
- Complete impact fee study and adopt updated impact fees needed to fund infrastructure for future development. **In Process.** *A preliminary draft of the impact fee study is currently being reviewed by staff.*
- Continue to annually update all service fees. **Ongoing.** *The Council adopted updated fees in May of 2019.*

Reduce Tax Subsidies to City Services

- Consider eliminating or reducing hours that Planning staff is available at the front counter and move toward appointment only assistance. **Ongoing.** *Staff has implemented part time hours at the counter for planning staff; however planning staff still tries to be available at most times of the day, depending on level of workload. This adjustment will continue as workloads remain high and the City continues to work with a record level of permit activity.*
- Reduce the types of calls that the Police Department responds to and move toward community self-reporting via the website or filing a form at the Police Station for certain types of calls. **In Process.** *This change has not been implemented to date and will likely take time to facilitate based on the expectations of the community. The PD is currently investigating alternative response to suicidal subjects and other similar calls.*
- Investigate what services other similarly funded cities provide and don't provide. **Not Started.** *This can be reviewed as part of the Update to the Service Fee Study.*
- Consider ways to reduce the tax subsidy to the Zoo. **Ongoing.** *The City adopted a significant fee increase for the Zoo in Spring of 2019. Staff continues to look for both increased revenue sources and operational savings opportunities.*
- Consider expanding fundraising for operations at the Zoo. **In Process.** *The Friends of the Charles Paddock Zoo has stepped up fundraising efforts with the help of City staff. The Friends raised over \$18,000 at the Mayors' Wine*

2019 – 2021 City of Atascadero Action Plan **UPDATE**

Festival Dinner and is participating in Dancing with our Stars in 2020.

- Consider increasing admission fees and annual pass membership costs. **Completed.** *Zoo admission fees were increased by almost 50% effective July 2019. The Friends of the Charles Paddock Zoo increased membership fees on October 1, 2019.*
- Work with the Friends of the Zoo on a strong community capital campaign for new exhibits/exhibit renovation in accordance with modern zoological practices. **In Process.** *Staff continues to work with the Friends of the Charles Paddock Zoo on fundraising campaigns.*
- Work with the Friends of the Zoo to increase funding for operational support. **In Process.** *The Friends of the Charles Paddock Zoo stepped up in fiscal year 2019, providing funding for not only capital improvements, but also covered costs to ship and receive animals to other zoos.*
- Consider a countywide tax measure just for the Zoo (operations and capital). **Not Started.** *Polling results for the Atascadero sales tax measure will be analyzed to determine local support for a dedicated tax to fund the Zoo.*
- Consider reducing operational costs by changing mission. **Not Started.** *The Zoo received accreditation in April of 2019.*
- Consider privatizing the Zoo. **Not Started.** *While preliminary discussions and education has occurred, there has not been much forward progress.*
- If all else fails, consider closing the Zoo. **Not Started.**
- Examine possibilities for reducing tax subsidies for other City amenity programs such as parks, Pavilion on the Lake, and recreation programming. **In Process.** *City staff continues to look for ways to help fund these programs, such as Prop 68 grant funds, and will continue to apply for grant funding when available.*
- Look for solutions to reduce the cost of providing animal services to the community by implementing changes aimed at reducing the community's feral cat population. **In Process.** *Council directed City staff to establish a Community Cat Program. Utilizing a combination of policy and regulation, City staff is drafting a Program, and amendments to the Municipal Code, to address the care, feeding, and management of feral cat populations, as well as responsible trap, neuter, return/adopt methods. Partnerships between Animal Services, non-profits/cat rescue groups, and volunteers are being forged and strengthened to assist in the implementation and success of the*

2019 – 2021 City of Atascadero Action Plan **UPDATE**

Program once approved by Council.

Consider Allowing Commercial Cannabis Activities to Increase the City's Tax Base

- Consider allowing non-store front retail sales (delivery facilities) of cannabis within the City. **Not Started.** *A discussion before the Council is slated for early Spring.*

Embrace “Essentialism” and the Decision Criteria set by Council

- Actively look for and implement investments needed to remove impediments to getting things done. **Ongoing.** *Investments in one-time costs that will save time were prioritized as part of the budget process and are evaluated as opportunities arise.*
- Consider bringing in outside subject matter experts to review each department's processes, procedures and service levels to look for opportunities to streamline work processes and look for areas to reduce services. **Not started.** *An active campaign to review process is slated for Spring/Summer 2020.*
- Continue to look for opportunities for streamlining. **Ongoing.**
- Change organizational culture to embrace essentialism at all areas of the organization. **In Process.** *While efforts have been made in this area, progress has been limited as strong desires of segments of the community sidetrack staff focus.*
- Look for ways to reduce time and resources on those items that do not solidly meet the priorities outlined in the Decision Criteria. **Ongoing.** *Staff has taken first steps in building a culture of essentialism, but there continues to be work that needs to be done in this area.*

1 Atascadero Chamber Community Promotion Agreement

2 Atascadero C of C events and programs_what they do

AG_South County Chambers of Commerce

Grover_South County Chambers of Commerce a

Grover_South County Chambers of Commerce Ex A

Morro Bay Chamber of Commerce Economic Development Services for FY 2019-20

Morro Bay Chamber of Commerce Visitor Center Agreement 2020

Morro Bay Chamber of Commerce Lease Agreement 2020

Paso Robles 2019-11-23 - Chamber of Commerce Visitor Center Services Agreement FY 2019-20

SLO 1 2019-21_Visitor_Service_Agreement_FINAL_DRAFT

SLO 2018-19_Chamber_Guest_Services_Agreement

SLO 2019-20_GIA_Support_Agreement_FINAL_DRAFT_

AGREEMENT FOR COMMUNITY PROMOTION SERVICES

THIS AGREEMENT, effective August 11, 1992, is entered into by and between the City of Atascadero, a municipal corporation (hereinafter referred to as "City"), and the Atascadero Chamber of Commerce, a non-profit corporation (hereinafter referred to as "Chamber").

WITNESSETH:

WHEREAS, City desires to promote its advantages as a business, retail, commercial, recreational, and residential center, disseminating information relative; thereto, and properly follow up and give consideration to inquiries made from time to time relative to the various activities of City and its possibilities; and

WHEREAS, City desires Chamber to perform certain promotional and other services for City, which City believes will be of great advantage and benefit to City, and to the citizens, residents, property owners, and taxpayers thereof, and will promote the general welfare: and

WHEREAS, Chamber is organized for such promotional activities on behalf of City, and is in a position to accomplish such aims and purposes of City in an efficient and economical manner; and

WHEREAS, Section 37110 of the Government Code of the State of California authorizes the expenditure of public funds by a municipal corporation for advertising or publicity as therein and herein provided;

NOW, THEREFORE, in consideration of the premises and covenants and promises hereinafter set forth, the parties hereto hereby agree as follows:

1. That the foregoing recitals are true and correct and constitute statements of fact herein.

2. Chamber shall carry on promotional activities as follows:

a. Maintain a public office to be identified by suitable sign that will be readily identifiable by members of the public, and provide information to visitors, tourists, businesses, commercial interests, professional people, and residents. A staff member or members of Chamber will be available daily during regular office hours, Monday through Friday. If additional office hours are required, City agrees to

pay separately for those hours, and for the reasonable cost for such hours.

b. Employ competent personnel to carry on promotional activities herein enumerated.

c. Answer promptly all correspondence relative to the business, industrial, residential, educational, cultural, and recreational advantages and opportunities in City, and disseminate information by correspondence, newspaper publicity, and personal contacts, favorably advertising such advantages and opportunities.

d. Prepare articles and news stories, compile data, gather and assemble news items, photographs, literature, and demographic and historical articles descriptive of City's resources, and develop proper surveys whereby outside interests and individuals may be induced to locate in City, pursuant to City's General Plan or specific Council direction.

e. Supply maps and promotional literature about City and maintain files on economic conditions, commercial and industrial sites, tourist information, and general business information about the community. Chamber will be responsible for updating published information included in Chamber literature, although City agrees to cooperate with Chamber in sharing information. These materials will be available to visitors, tourists, and potential commercial interest who are seeking information.

f. Aid in promoting the development and use of unoccupied and vacant commercial and/or industrial properties.

g. Interview business and industrial executives with the view of urging the establishment of their business activities in City, pursuant to City's General Plan or specific Council direction.

h. Promote and invite trade and business meetings, celebrations, and conferences whereby outside interests and individuals may become acquainted with the advantages and opportunities in City.

i. Carry on such other duties as may be requested by City to promote the business, industrial, and residential development of City.

3. Chamber shall furnish semi-annual reports of its promotional activities to City, which shall consist of the activities scheduled for the next six succeeding months and a review of the activities accomplished during the preceding six months. Said reports shall include a detailed breakdown of all

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c. Answer promptly all correspondence relative to the business, industrial, residential, educational, cultural, and recreational advantages and opportunities in City, and disseminate information by correspondence, newspaper publicity, and personal contacts, favorably advertising such advantages and opportunities.

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i. Carry on such other duties as may be requested by City to promote the business, industrial, and residential development of City.

3. Chamber shall furnish semi-annual reports of its promotional activities to City, which shall consist of the activities scheduled for the next six succeeding months and a review of the activities accomplished during the preceding six months. Said reports shall include a detailed breakdown of all amounts expended and expected to be expended by Chamber for said activities.

} not included on prior page.

2 - from Agenda packet of 3/11/92

4. Chamber will submit to City a budget request and program for each fiscal year (July 1 to June 30) in the manner, at the time, and in the form requested by the City Manager. The amount of the budget request shall be based upon a formula approved by the City Council, attached to this agreement as Exhibit A, and as may be amended by Resolution of the Council from time to time. The amount shall be allocated as follows: one-half shall be paid in advance in July (or immediately after the City's annual budget is adopted, whichever is later) and the balance due in January of the same fiscal year.

5. This Agreement shall become effective on the date of execution hereof by both parties, and shall continue in effect until June 30, 1993; provided, however, that this Agreement shall be automatically renewed each year hereafter, for periods of one year, commencing July 1 through June 30 of the succeeding year, by action of the City Council budgeting funds as provided in Paragraph 4 hereof, and Chamber's acceptance thereof of said budget allocation.

6. City reserves the right to award separate bids for more specific advertising and promotional projects approved by the City Council during the term of this Agreement.

7. In the event, in the opinion of the majority of the City Council, Chamber is not functioning effectively, then City may give Chamber notice of this fact, specifying in detail the alleged default or defaults, and Chamber must forthwith correct said default or defaults, or the provisions in this Agreement for financial sponsorship of Chamber may be terminated by action of the majority of the City Council.

8. This agreement may be amended or modified only by written agreement signed by both parties, with the exception of the procedure outlined in Paragraph 4. Failure on the part of either party to enforce any provision of this Agreement shall be construed as a waiver of the right to compel enforcement of such provision or provisions.

9. It is understood that the contractual relationship of Chamber to City is that of independent contractor.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate on the date indicated below.

Dated: Aug 11 , 1992

ATASCADERO CHAMBER OF COMMERCE

* James R. Potayson
President

William R. Mazzacani
Secretary

CITY OF ATASCADERO

Robert P. Nimmo
ROBERT P. NIMMO, Mayor

ATTEST:

Lee Raboin
LEE RABOIN, City Clerk

APPROVED AS TO FORM:

Art Montandon
ART MONTANDON, City Attorney



CITY OF ATASCADERO

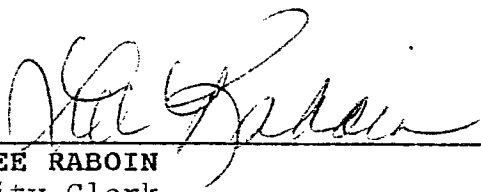
OFFICE of the CITY CLERK

Bill Mazzacane
Executive Director
Atascadero Chamber of Commerce

CERTIFICATION

I, LEE RABOIN, City Clerk of the City of Atascadero, hereby certify that the foregoing is a true and correct copy of Resolution No. 75-92 adopted by the Atascadero City Council at a regular meeting thereof held on August 11, 1992.

DATED: August 21, 1992



LEE RABOIN
City Clerk
City of Atascadero, California

c: Mark Joseph, Administrative Services Director

RESOLUTION NO. 75-92

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF ATASCADERO, CALIFORNIA
AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH
THE ATASCADERO CHAMBER OF COMMERCE
TO
PROVIDE COMMUNITY PROMOTION SERVICES

The City Council of the City of Atascadero, California,
hereby resolves as follows:

1. The City Manager is hereby authorized to execute an agreement with: the Atascadero Chamber of Commerce to provide Community Promotion Services, and all other agreements or documents required to effectuate the terms of agreement.
2. The City Manager is hereby authorized to make minor corrections or modifications of a mathematical or clerical nature.
3. The Finance Director is hereby authorized to: appropriate funds, if necessary; release and expend funds; and issue warrants to comply with the terms of this agreement.

PASSED AND ADOPTED at a regular meeting of the City Council
of the City of Atascadero held on the 11th day of August, 1992.

CITY OF ATASCADERO, CALIFORNIA

By: Robert P. Nimmo
ROBERT P. NIMMO, Mayor

ATTEST:

Lee Raboin
LEE RABOIN, City Clerk

PERFORMANCE BASED FORMULA FOR
CALCULATING ANNUAL CHAMBER OF COMMERCE FEE

1. A weighted average shall be used to calculate the annual fee. The fee will be calculated as follows:
 - a. Ten Percent (10.0%) of the prior year's Business License fee receipts; plus :
 - b. Six and one-half percent (6.5%) of the prior year's Transient Occupancy Tax (Bed Tax) receipts; plus :
 - c. One-quarter percent (0.25%) of the prior year's Sales Tax Receipts.
2. The first semi-annual installment due in July will be based upon the City's latest estimates for the above three revenues; the second installment due in January will reflect the audited figures and may be more or less than the first installment, due to any variance between estimated and actual figures.
3. The annual fee will be rounded to the nearest hundred.
4. The above formula may be amended by Resolution of the Atascadero City Council.



Atascadero

CHAMBER OF COMMERCE

In 2020 the Atascadero Chamber of Commerce strives to be a 3C chamber; a **Catalysts** for business growth, **Convener** for leaders and influencers and a **Champion** for a stronger community. In an effort to do so and in keeping with the traditions of the Atascadero community, we look to keep our current programs and events while enhancing our economic development focus listening to the needs to our members and the business community.

The Atascadero Chamber is open Monday through Friday from 9 am to 5 pm and closed on major holidays. The current staff of 4 greets over 300 visitors to the Chamber office monthly and fields over 400 phone calls. Inquiries range from visitors to the area needing tourism information, start up business inquiries, people relocating to the area, members needing to schedule a ribbon cutting, members wanting Chamber information, community members needing to purchase tickets to Chamber or community events, new Chamber members signing up, people wanting to schedule our conference room, people inquiring about our co-working space, senior services and a wide variety of other inquiries including complaints. The Chamber office is viewed by many as the customer relations department for the community.

In addition to the above our office tirelessly produces the following events and programs with plans to add additional services to our business community:

EVENTS:

Art, Wine & Brew Tours – 4 per year working with the downtown business community.

Good Morning Atascadero – Scheduled quarterly, educating our members of happenings, business openings, development and community service projects in the area

Candidates' Forum – 5th District Supervisor Candidates share their answers to questions well thought out by the Chamber's Legislative and Economic Development Council

*****Business Walks** – Happening this Spring bringing the Chamber staff, volunteers and Atascadero City staff and supporters into the business community to hear about needs and concerns and (hopefully) positive feedback.

State of the North County – Collaborating with the Templeton and Paso Chambers of Commerce we will bring the North County an economic forecast and educate on workforce challenges or other current concerns.

Atascadero Marketplace (Business Expo) – Plans are underway to work with the Templeton Chamber of Commerce to bring a more robust expo to the North County.

Mixers – Scheduled monthly focusses on business to business networking and highlighting a Chamber member business.

Talk on the Block – The Chamber hosts the Talk on the Block series bringing City Staff and council into the community to listen to resident's concerns and educate the community on the City's programs and work.

Central Coast RESERVE (Atascadero Lakeside Wine Festival) – 2020 will mark the 25th year of the Atascadero Lakeside Wine Festival. Now produced by the Chamber, the wine festival includes surrounding City and Community events throughout the week.

Tuesdays in the Park – A long time Atascadero tradition benefiting a non-profit for 8 weeks in the summer. Working with the Elks lodge, the Chamber takes care of logistical, financial reconciliation, ticket sales and marketing support.

COUNCILS

Women Building Business – A Women's Network dedicated to helping women achieve, succeed and prosper by connecting and promoting women and their business. The WBB Council awards scholarships to women furthering their education, opening or enhancing their business. The Council is open to all genders.

Ambassadors Council – Our Ambassadors are the official greeters for the City of Atascadero. They provide an enthusiastic welcome and offer assistance to all new business in the City.

Legislative and Economic Development Council – To represent the interests of the business community in local, state and federal legislative issues and to communicate those interests to members, the community and elected officials.

Diversity Council – Formed to raise awareness and work as local ambassadors for Diversity in business and the community.

PROGRAMS

*****Business Development Series** – Plans to add more workshops on marketing, finance and other business enhancement tools for our members.

BridgeWorks Co-Working Space – The co-working space has experienced great popularity filling the desks to 80% capacity. Reserved desks and private offices are occupied. Unreserved desks are still available. The co-working space gives workers the opportunity to start their own business or work remotely for companies outside of the area allowing Atascadero residents to work where they live.

BridgeWorks conference room facilities – Our conference rooms are available to our BridgeWorks members, Chamber members and for a nominal rental fee to the public. Non-profit organizations are given conference room access gratis.

SCORE workshops – SCORE holds monthly workshops in the Chamber conference rooms and weekly one on one mentoring meetings.

Downtown BID – The Chamber continues to provide marketing support for our downtown businesses.

*****Business Directory and Relocation guide** – Working with Colony Media, the Chamber plans to produce a business directory and relocation guide in the Spring 2020.

OTHER:

North County Economic Foundation – Atascadero Chamber CEO acts as foundation CEO

Leadership North County – Funded by the North County Economic Foundation and supported by the Atascadero Chamber of Commerce.

CEO participation in SLO Partners

CEO participation in North County EVC partners

***** Newly proposed in 2018**

AGREEMENT FOR CONSULTANT SERVICES

AMENDMENT NO. 2

This **SECOND AMENDMENT** ("Second Amendment") to Agreement for Consultant Services ("Agreement") by and between the **CITY OF ARROYO GRANDE** ("City") and **SOUTH COUNTY CHAMBERS OF COMMERCE**, successor in interest to **ARROYO GRANDE & GROVER BEACH ("AGGB") CHAMBER OF COMMERCE** ("Chamber") is made and entered into this 8th day of August, 2019.

WHEREAS, the City and AGGB Chamber of Commerce entered into an Agreement dated July 1, 2013, for administration of the Arroyo Grande Tourism Business Improvement District (AGTBID); and

WHEREAS, the City and AGGB Chamber of Commerce entered into a First Amendment to Agreement dated June 12, 2018 to include additional services with increased compensation; and

WHEREAS, AGGB Chamber of Commerce, a California Nonprofit, merged with a neighboring chamber of commerce and changed their name to South County Chambers of Commerce on September 19, 2018; and

WHEREAS, Section 18 of the Agreement requires the Chamber to get the written consent of the City to assign the performance of the Agreement; and

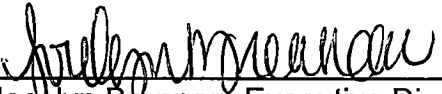
WHEREAS, the parties desire to modify the Agreement as set forth herein.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:


1. AGGB Chamber of Commerce hereby assigns all rights and obligations under the Agreement to South County Chambers of Commerce. South County Chambers of Commerce accepts the assignment. South County Chambers of Commerce shall replace AGGB Chamber of Commerce as Chamber under the Agreement, and will assume all responsibility for execution and completion of all the obligations of the Chamber under the Agreement, including all of Chamber's prior acts.
2. This Second Amendment shall constitute consent to the assignment by the City pursuant to Section 18 of the Agreement.
3. Except as modified herein, all other terms and conditions of the Agreement, as amended, shall remain in full force and effect.

IN WITNESS WHEREOF, City and Chamber have executed this Second Amendment on the day and year first set forth above.

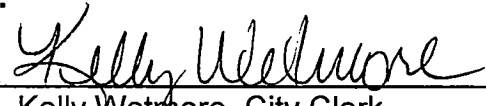
**SOUTH COUNTY CHAMBERS OF
COMMERCE:**

By: 
Jocelyn Brennan, Executive Director

CITY OF ARROYO GRANDE:

By: 
Caren Ray Russom, Mayor

ATTEST:

By: 
Kelly Wetmore, City Clerk



AGREEMENT FOR CONSULTANT SERVICES

AMENDMENT NO. 1

This First Amendment ("First Amendment") to Agreement for Consultant Services ("Agreement") by and between the **CITY OF ARROYO GRANDE** and the **ARROYO GRANDE & GROVER BEACH ("AGGB") CHAMBER OF COMMERCE** ("Consultant") is made and entered into this 12th day of June 2018.

WHEREAS, the parties entered into an Agreement dated July 1, 2013 for administration of the Arroyo Grande Tourism Business Improvement District ("AGTBID"); and

WHEREAS, the parties desire to modify the Agreement as set forth herein, in order to include additional services with increased compensation.

NOW THEREFORE, for valuable consideration the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Section 17 ("NOTICES") of the Agreement, shall be modified in its entirety to read as follows:

NOTICES

Any notice which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

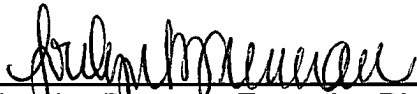
To City:	City of Arroyo Grande James A. Bergman, City Manager 300 E. Branch Street Arroyo Grande CA 93420
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To Consultant:	AGGB Chamber of Commerce Jocelyn Brennan, Executive Director 800 W. Branch Street Arroyo Grande CA 93420
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2. To approve a revised Exhibit A and Exhibit B attached hereto and incorporated herein by this reference, which set forth the scope of work and payment schedule.
3. Except as modified herein, all other terms and conditions set forth in the CSA, as amended, shall remain unchanged.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this First Amendment the day and year first above written.

AGGB CHAMBER OF COMMERCE

By: 
Jocelyn Brennan, Executive Director

CITY OF ARROYO GRANDE

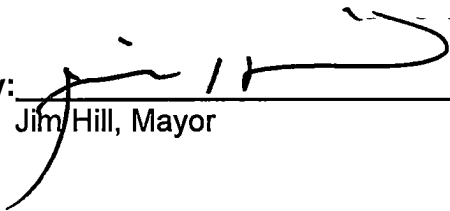
By: 
Jim Hill, Mayor

EXHIBIT A

SCOPE OF WORK

The Chamber will:

1. Attend AGTBID monthly meetings
2. Communicate upcoming agenda items with AGTBID Board Members and Marketing Firm
3. Ensure AGTBID Board quorum for future meetings
4. Provide draft agenda and supporting documents for AGTBID meetings to City Clerk
5. Draft minutes of AGTBID meetings to City Clerk
6. Provide copies of the agenda for the AGTBID Board members
7. Ensure compliance with Brown Act
8. Ensure compliance of the Public Records Act
9. Host AGTBID meetings and post agenda for public at meeting location 72 hours in advance
10. Ensure TBID Board Members 700 Forms are current
11. Ensure AGTBID Board is compliant with the city's conflict of interest policy
12. Attend all subcommittee meetings
13. Schedule and attend all Special AGTBID meetings
14. Provide draft agenda and minutes related to any AGTBID Special Meetings
15. Outreach to lodging owners in the AGTBID District
16. Schedule annual election of Chair and Vice Chair
17. Work to fill any board vacancies
18. Attend monthly Visit SLO Cal Tourism Marketing meetings
19. Attend Central Coast Tourism Council meetings
20. Communicate with TBID Board on ongoing tourism training and educational opportunities
21. Communicate with TBID Board and Marketing Firm on event sponsorship opportunities
22. Oversee/supervise monthly financials
23. Process monthly TBID invoices for TBID fund expenditures
24. Provide community calendar events to Marketing Firm for tourism marketing purposes
25. Provide photos and other content to Marketing Firm for website and social media purposes
26. Attend travel tradeshow and events as directed by the AGTBID and in collaboration with the Marketing Firm
27. Ensure quarterly reporting by Marketing Firm to lodging owners and City Council
28. Attend City Council meetings to answer questions when AGTBID items are included on the agenda
29. Oversee generation of the AGTBID Annual Report pursuant to the Arroyo Grande Municipal Code

EXHIBIT B

PAYMENT SCHEDULE

City shall pay AGGB Chamber a total annual sum of thirty thousand dollars (\$30,000.00) for services set forth in Exhibit A, Scope of Work. AGGB Chamber shall invoice City on a monthly basis in the amount of two thousand five hundred dollars (\$2,500.00).

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT, is made and effective as of July 1 2013, between the Arroyo Grande & Grover Beach Chamber of Commerce ("Chamber"), and the **CITY OF ARROYO GRANDE**, a Municipal Corporation ("City"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on July 1, 2013 and shall remain and continue in effect until terminated pursuant to the provisions of this Agreement.

2. SERVICES

Chamber shall perform the tasks described and comply with all terms and provisions set forth in Exhibit "A", attached hereto and incorporated herein by this reference.

3. PERFORMANCE

Chamber shall at all times faithfully, competently and to the best of his/her ability, experience and talent, perform all tasks described herein. Chamber shall employ, at a minimum generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Chamber hereunder in meeting its obligations under this Agreement.

4. AGREEMENT ADMINISTRATION

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement. Chamber's Executive Director shall represent Chamber in all matters pertaining to the administration of this Agreement.

5. PAYMENT

The City agrees to pay the Chamber in accordance with the payment rates and terms set forth in Exhibit "B", attached hereto and incorporated herein by this reference.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Chamber at least ten (10) days prior written notice. Upon receipt of said notice, the Chamber shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Chamber the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Chamber will submit an invoice to the City pursuant to Section 5.

7. TERMINATION ON OCCURRENCE OF STATED EVENTS

This Agreement shall terminate automatically on the occurrence of any of the following events:

- (a) Bankruptcy or insolvency of any party;
- (b) Sale of Chamber's business; or
- (c) Assignment of this Agreement by Chamber without the consent of City.
- (d) End of the Agreement term specified in Section 1.

8. DEFAULT OF CONSULTANT

(a) The Chamber's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Chamber is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Chamber for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Chamber. If such failure by the Chamber to make progress in the performance of work hereunder arises out of causes beyond the Chamber's control, and without fault or negligence of the Chamber, it shall not be considered a default.

(b) If the City Manager or his/her delegate determines that the Chamber is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Chamber a written notice of the default. The Chamber shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Chamber fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

9. LAWS TO BE OBSERVED. Chamber shall:

(a) Procure all permits and licenses, pay all charges and fees, and give all notices which may be necessary and incidental to the due and lawful prosecution of the services to be performed by Chamber under this Agreement;

(b) Keep itself fully informed of all existing and proposed federal, state and local laws, ordinances, regulations, orders, and decrees which may affect those engaged or employed under this Agreement, any materials used in Chamber's

performance under this Agreement, or the conduct of the services under this Agreement;

(c) At all times observe and comply with, and cause all of its employees to observe and comply with all of said laws, ordinances, regulations, orders, and decrees mentioned above;

(d) Immediately report to the City's Contract Manager in writing any discrepancy or inconsistency it discovers in said laws, ordinances, regulations, orders, and decrees mentioned above in relation to any plans, drawings, specifications, or provisions of this Agreement.

(e) The City, and its officers, agents and employees, shall not be liable at law or in equity occasioned by failure of the Chamber to comply with this Section.

10. OWNERSHIP OF DOCUMENTS

(a) Chamber shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Chamber shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Chamber shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Chamber. With respect to computer files, Chamber shall make available to the City, at the Chamber's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

11. INDEMNIFICATION FOR PROFESSIONAL LIABILITY. Notwithstanding anything herein to the contrary, to the fullest extent permitted by law for all design professional services arising under this Agreement, Chamber shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs and expenses, including

attorney's fees and costs which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Chamber.

12. **INSURANCE**

Chamber shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit "C" attached hereto and incorporated herein as though set forth in full.

13. **INDEPENDENT CONSULTANT**

(a) Chamber is and shall at all times remain as to the City a wholly independent Chamber. The personnel performing the services under this Agreement on behalf of Chamber shall at all times be under Chamber's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Chamber or any of Chamber's officers, employees, or agents, except as set forth in this Agreement. Chamber shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Chamber shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

(b) No employee benefits shall be available to Chamber in connection with performance of this Agreement. Except for the fees paid to Chamber as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Chamber for performing services hereunder for City. City shall not be liable for compensation or indemnification to Chamber for injury or sickness arising out of performing services hereunder.

14. **UNDUE INFLUENCE**

Chamber declares and warrants that no undue influence or pressure was or is used against or in concert with any officer or employee of the City of Arroyo Grande in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City of Arroyo Grande will receive compensation, directly or indirectly, from Chamber, or from any officer, employee or agent of Chamber, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

15. **NO BENEFIT TO ARISE TO LOCAL EMPLOYEES**

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect,

in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the project performed under this Agreement.

16. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Chamber in performance of this Agreement shall be considered confidential and shall not be released by Chamber without City's prior written authorization. Chamber, its officers, employees, agents, or subContractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Chamber gives City notice of such court order or subpoena.

(b) Chamber shall promptly notify City should Chamber, its officers, employees, agents, or subContractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Chamber and/or be present at any deposition, hearing, or similar proceeding. Chamber agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Chamber. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

(c) Chamber covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Chamber further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an office, employee, agent, or subContractor. Chamber further covenants that Chamber has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that Chamber and/or its subContractors shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement.

17. NOTICES

Any notice which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal

Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: City of Arroyo Grande
Steven Adams
City Manager
300 E. Branch Street
Arroyo Grande, CA 93420

To Chamber: Arroyo Grande & Grover Beach Chamber of
Commerce
Judith Bean
Executive Director
800 W. Branch Street
Arroyo Grande, CA 93420

18. **ASSIGNMENT**

The Chamber shall not assign the performance of this Agreement, nor any part thereof, without the prior written consent of the City.

19. **GOVERNING LAW**

The City and Chamber understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the superior or federal district court with jurisdiction over the City of Arroyo Grande.

20. **ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. **TIME**

City and Chamber agree that time is of the essence in this Agreement.

22. CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL

Chamber is bound by the contents of the City's Request for Proposal, Exhibit "D", attached hereto and incorporated herein by this reference, and the contents of the proposal submitted by the Chamber, Exhibit "E", attached hereto and incorporated herein by this reference. In the event of conflict, the requirements of City's Request for Proposals and this Agreement shall take precedence over those contained in the Chamber's proposals.

23. CONSTRUCTION

The parties agree that each has had an opportunity to have their counsel review this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto. The captions of the sections are for convenience and reference only, and are not intended to be construed to define or limit the provisions to which they relate.

24. AMENDMENTS

Amendments to this Agreement shall be in writing and shall be made only with the mutual written consent of all of the parties to this Agreement.

25. AUTHORITY TO EXECUTE THIS AGREEMENT


The person or persons executing this Agreement on behalf of Chamber warrants and represents that he/she has the authority to execute this Agreement on behalf of the Chamber and has the authority to bind Chamber to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

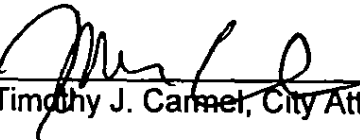
CITY OF ARROYO GRANDE

By: 
Steven Adams, City Manager

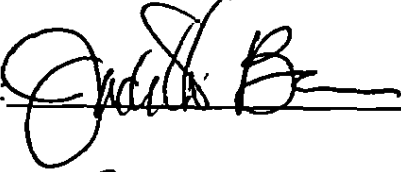
Attest:


for Kelly Wetmore, City Clerk

Approved As To Form:


Timothy J. Carmel, City Attorney

CHAMBER OF COMMERCE

By: 

Its: President / CEO
(Title)

EXHIBIT A

SCOPE OF WORK

The Chamber will:

1. Coordinate Arroyo Grande Tourism Business Improvement District (AGTBID) Advisory Board and Tourism and Marketing Committee meetings, as well as requests from other organizations;
2. Develop a specific marketing plan for TBID Advisory Board approval and make changes to add new components as directed by the TBID Advisory Board;
3. Provide written recommendations to the TBID Advisory Board and coordinate outside presentations;
4. Manage marketing consultants and contractors to ensure timelines and deliverables are met;
5. Manage social media postings and website updates;
6. Monitor and provide data gathered through digital marketing to the TBID Advisory Board;
7. Handle all tourism inquiries, including website, phone and walk-in;
8. Manage fulfillment of any contracts funded by the TBID;
9. Coordinate payments for services;
10. Participate in tourism industry specific meetings as Arroyo Grande's representative, including, but not limited to, CCTC, VCB, tradeshow, and seminars;
11. Provide and edit submitted content for social media and website and coordinate webinars for training other contributors; and
12. Provide "vistarroyogrande" urls for use by the TBID.

EXHIBIT B

PAYMENT SCHEDULE

City shall pay Chamber a total annual sum of thirteen thousand dollars (\$13,000.00) for services set forth in Exhibit B, Scope of Work. Chamber shall invoice City on a quarterly basis for a total of four equal payments of three thousand, two hundred and fifty dollars (\$3,250.00).

total annual

payment

total annual

payment

total annual

payment

EXHIBIT C

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Work, Chamber will maintain insurance in conformance with the requirements set forth below. Chamber will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Chamber agrees to amend, supplement or endorse the existing coverage to do so. Chamber acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to City in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to City.

Chamber shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy from CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Chamber owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Chamber or Chamber's employees will use personal autos in any way on this project, Chamber shall provide evidence of personal auto liability coverage for each such person.

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

Insurance procured pursuant to these requirements shall be written by insurer that are admitted carriers in the state California and with an A.M. Best's rating of A- or better and a minimum financial size VII.

General conditions pertaining to provision of insurance coverage by Chamber. Chamber and City agree to the following with respect to insurance provided by Chamber:

1. Chamber agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials employees

and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Chamber also agrees to require all Chambers, and subContractors to do likewise.

2. No liability insurance coverage provided to comply with this Agreement shall prohibit Chamber, or Chamber's employees, or agents, from waiving the right of subrogation prior to a loss. Chamber agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all Chambers and subContractors to do likewise.

3. All insurance coverage and limits provided by Chamber and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any Chamber or subcontractor.

6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Chamber shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Chamber's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Chamber or deducted from sums due Chamber, at City option.

8. Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Chamber agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

9. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Chamber or any subContractor, is intended to

apply first and on a primary, noncontributing basis in relation to any other insurance or self insurance available to City.

10. Chamber agrees to ensure that subContractors, and any other party involved with the project who is brought onto or involved in the project by Chamber, provide the same minimum insurance coverage required of Chamber. Chamber agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Chamber agrees that upon request, all agreements with subContractors and others engaged in the project will be submitted to City for review.

11. Chamber agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any Chamber, subContractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Chamber's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At the time the City shall review options with the Chamber, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

12. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Chamber ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Chamber, the City will negotiate additional compensation proportional to the increase benefit to City.

13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

14. Chamber acknowledges and agrees that any actual or alleged failure on the part of City to inform Chamber of non-compliance with any insurance requirements in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

15. Chamber will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.

16. Chamber shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from

Chamber's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.

17. The provisions of any workers' compensation or similar act will not limit the obligations of Chamber under this agreement. Chamber expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.

18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

19. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.

20. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

21. Chamber agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Chamber for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

22. Chamber agrees to provide immediate notice to City of any claim or loss against Chamber arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

**AGREEMENT BETWEEN THE CITY OF GROVER BEACH
AND THE SOUTH COUNTY CHAMBERS OF COMMERCE
FOR ECONOMIC DEVELOPMENT SERVICES**

This AGREEMENT is made and entered into by and between the City of Grover Beach, a municipal corporation (hereinafter called "City"), and the South County Chambers of Commerce, a California non-profit corporation (hereinafter called "Chamber").

WHEREAS, City and Chamber will benefit from business attraction, incubation, and retention within Grover Beach;

WHEREAS, Chamber and City have a record of working together to achieve a viable and vibrant business community; and

WHEREAS, Chamber and City desire to continue and enhance those efforts through focused economic development efforts funded by the City.

NOW, THEREFORE, the parties agree as follows:

Section 1. Intent

City and Chamber recognize the strength and successes of collaboration and cooperation. It is the intent of this Agreement to reflect a formalized cooperative agreement between the two parties to further the business climate in Grover Beach in an effective and efficient manner. This Agreement describes the scope of services Chamber will provide with funding provided by City during the term of this Agreement. This Agreement is not intended to be all-inclusive of all efforts between the parties regarding economic development but does set forth the parties' understanding of the use of the Funding.

Section 2. Term

This Agreement shall remain in full force and effect from January 1, 2020 until June 30, 2021, unless terminated earlier as provided in Section 11 of this Agreement.

Section 3. Funding and Scope of Work

During the term of this Agreement, the City shall provide \$120,000 to Chamber for services and activities shown in Exhibit A along with the estimated timeframe for completion. For Task 1 under Objective 1, the City will provide a monthly payment of \$3,333 over the term of this Agreement. All other tasks are one-time tasks for which the City will pay the Chamber upon completion of the respective task. These payment provisions are outlined in Section 5 of this Agreement.

Section 4. Other Activities

A. Chamber shall also do the following:

1. Ensure no funding provided by City shall be used to support activities that generally serve and benefit only Chamber membership or programs not directly related to the economic

development program described in this Agreement;

2. Operate the program hereunder for the general public good for the promotion of business, industry, and trade within City;
3. Make its books and financial records, concerning the funds expended under this Agreement, available to City for inspections, review and audit; and
4. Establish and maintain an accounting system in accordance with generally accepted accounting principles and standards. The system shall detail all costs chargeable to City under this Agreement and shall substantiate all such costs and comply with any applicable State and Federal standards.

B. Chamber shall not use City funding for any of the following:

1. Attempting to influence legislation;
2. Organizing or engaging in protests, petitions, boycotts, or strikes;
3. Assisting, promoting or deterring union organizing;
4. Impairing existing contracts for services or collective bargaining agreements;
5. Engaging in partisan political activities or other activities designed to influence the outcome of an election to any public office;
6. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;
7. Engaging in religious instruction; conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
8. Any other activity prohibited by any law, rule or regulation or City cannot legally perform or participate in.

Section 5. Payments

Chamber shall submit an invoice for each monthly payment and completion of one-time tasks to be used for expenditures consistent with this Agreement. City shall provide payment to Chamber upon approval of the invoice by the City Manager within 14 days after receipt of a request.

Section 6. Reporting

A. Chamber, through its Executive Director, and City, through its City Manager, shall meet regularly

to collaborate and coordinate economic development strategies.

- B. Chamber shall present quarterly reports to the City Manager and bi-annual reports to the City Council at a regularly scheduled City Council meeting on the status of the Chamber's efforts. The reports shall include:
1. Key activities in implementing the tasks listed in Section 3 of this Agreement;
 2. Quantitative and qualitative data that measure Chamber's success reflective of key deliverables;
 3. Number of City businesses that received direct assistance from Chamber for business retention or expansion;
 4. Number of prospective businesses Chamber talked with about relocating to or opening in City; and
 5. Chamber staff involved to support the work of this Agreement.
- C. Chamber shall provide City Manager with the first quarterly report by April 15, 2020 and provide the first bi-annual report to the City Council by July 15, 2020. The Chamber shall also provide a report reviewed by a Certified Public Accountant, itemizing how Chamber expended City's payment specified in Section 3. Such report shall provide separately detailed accounts for each program funded by City and be due no later than 6 months after the end of the term. This provision shall survive the termination of this Agreement.

Section 7. Ownership of Work Product

- A. Unless otherwise agreed upon in writing, all reports, documents, or other written or visual material or any other material in any media, including any images, taglines, logos, or other media created or developed by Chamber or any third party contracted by Chamber, in the performance of this Agreement, if paid in whole by the funding provided by this Agreement ("Work Product") shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. All Work Product shall be considered to be "works made for hire," and all such Work Product and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of City without restriction or limitation upon their use, duplication or dissemination by City. Chamber shall not obtain or attempt to obtain copyright protection as to any of the Work Products.
- B. It is understood and agreed Chamber currently owns exclusively intellectual property rights to its name, committee and event titles, and logos, which will be utilized in the performance of this Agreement, ("Chamber Property"). Chamber reserves all rights, title and interest in Chamber Property, and hereby grants City a revocable, nonexclusive, license to the use of Chamber Property to the extent it becomes incorporated into, and inseparable from, the Work Product.
- C. This section shall survive termination of this Agreement.

Section 8. Assignment

This Agreement shall not be assigned by Chamber without the written consent of City.

Section 9. Independent Contractor

At all times during the term of this Agreement, Chamber shall be independent contractors and Chamber, their officers, employees and agents shall not be employees of City.

Section 10. Personnel

Chamber represents it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. Chamber shall be solely responsible for the work performed by third party contractors, including timely performance and payment.

Section 11. Termination of Agreement

City or Chamber may terminate this Agreement at any time, with or without cause, upon thirty-days written notice to the other party. In the event of such termination, City shall pay Chamber for all costs and obligations reasonably incurred by Chamber in satisfactorily performing its services under this Agreement prior to the date of termination, and such payment shall be in full satisfaction of City's obligations hereunder. City shall not be obligated to pay additional funds after issuance or receipt of such notice.

Section 12. Insurance

- A. Chamber shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive General Liability Insurance written on a per occurrence basis with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by Chamber.
- B. Chamber agrees to maintain in force at all times during the performance of work under this Agreement workers' compensation and employer's liability insurance as required by law.
- C. Chamber agrees to maintain Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Chamber owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Chamber or Chamber's employees will use personal autos in any way to perform the Scope of Services, then Chamber shall provide evidence of personal auto liability coverage for each such person.
- D. Chamber shall require each of its sub-consultants or sub-contractors to maintain insurance coverage, which meets all of the requirements of this Agreement unless otherwise determined by the City's Risk Manager.
- E. The policy or policies required by this Agreement shall be issued by an insurer admitted in the

State of California and with a rating of at least a B+; VII in the latest edition of Best's Insurance Guide.

- F. If Chamber fails to keep the aforesaid insurance in full force and effect, then City shall notify Chamber it is a breach of this Agreement and Chamber has three days to cure such breach. If such breach is not cured by Chamber as required in this paragraph, then City may terminate this Agreement or, if insurance is available at a reasonable cost, then City may take out the necessary insurance and pay, at Chamber's expense, the premium thereon. Chamber is under a continuing obligation to maintain the aforesaid insurance irrespective of whether City provides such notification to Chamber.
- G. At all times during the term of this Agreement, Chamber shall maintain on file with City's Risk Manager a certificate or certificates of insurance on the form required by City, showing the aforesaid policies are in effect in the required amounts. Chamber shall, prior to commencement of work under this Agreement, file with the Risk Manager such certificate or certificates. The policies of insurance required by this Agreement shall contain an endorsement naming City, its officers, employees and agents as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty-days' prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.
- H. The insurance provided by Chamber shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.
- I. Any deductibles or self-insured retentions must be declared to and approved by City prior to commencing work under this Agreement.

Section 13. Indemnification

Chamber shall defend, indemnify, and hold harmless City, its officials, officers, employees, volunteers and agents serving as independent contractors in the role of City officials (collectively "Indemnitees") from any and all claims, demands, causes of action, costs, including reasonable attorney's fees and court costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, ("Damages") in any manner arising out of or incident to any act or omission of Chamber or any of its employees or its agents in connection with the performance of this Agreement, including without limitation the payment of all consequential damages and reasonable attorney's fees and other related costs and expenses, except for such loss or damage arising from the sole negligence or willful misconduct of any of the Indemnitees; provided, that the obligation to indemnify and hold harmless is only to the extent Chamber or its officers, employees or agents cause the Damages. All duties of Chamber under this Section shall survive termination of this Agreement.

Section 14. Extent of Agreement

This Agreement represents the entire and integrated Agreement between the parties on the matters included herein and supersedes any and all prior negotiations, representations or agreements,

instrument signed by all parties to this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

Section 15. Severability

Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

Section 16. Waiver

No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

Section 17. Interpretation

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

Section 18. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

Section 19. Attorneys' Fees

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which any be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

Section 20. Non-liability of City Officers and Employees

No officer or employee of the City shall be personally liable to the Chamber, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to the Chamber or to its successor, or for breach of any obligation of the terms of this Agreement.

Section 21. California Law

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior

Court of the County of San Luis Obispo, State of California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of San Luis Obispo, State of California.

Section 22. Notice

Whenever it shall be necessary for any party to serve notice on another respecting this Agreement, such notice shall be served by certified mail, postage prepaid, to the addresses below, unless and until a different address may be furnished in writing by any party:

To City: City Manager
City of Grover Beach
154 S. 8th Street
Grover Beach, CA 93433

To Chamber: President/CEO
South County Chambers of Commerce
800 A West Branch Street
Arroyo Grande, CA 93420

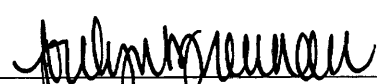
Such notices shall be deemed to have been served within seventy-two hours after the same has been deposited in the United States Post Office by certified mail. This shall be valid and sufficient service of notice for all purposes.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the 2nd day of December 2019, at Grover Beach, California.

CITY OF GROVER BEACH

By: 
MATTHEW BRONSON
City Manager

SOUTH COUNTY CHAMBERS OF COMMERCE

By: 
JOCELYN BRENNAN
President/CEO

By: 
ANTON GOETZ
Chairperson





Attest:

WENDI SIMS
City Clerk
Approved As To Form:

DAVID HALE
City Attorney

Exhibit A

OBJECTIVE	FUNDING	TIMELINE
1. Business Attraction Aggregate and interpret Grover Beach business data and survey results to develop key business attraction strategy and business engagement liaison for lead generation, business tours and consultation. Partner with Workforce Development Board, trade unions, SLO Partners in Education, Hourglass Project and Economic Vitality Corporation, and others on business expansion opportunities.	\$60,000	1/1/2020-6/30/2021
2. Business Retention Conduct comprehensive survey of current businesses and corresponding follow-up with analysis for business retention.	\$10,000	1/1/2020-6/30/2020
3. Economic Asset Website Develop and complete website		
Website Build	\$6,000	1/1/2020-6/30/2020
Manage Website	\$9,000	Manage website until 6/30/2021
Promotional videos and photography	\$10,000	1/1/2020-6/30/2020
Digital ads	\$5,000	1/1/2020-6/30/2020
Total	\$30,000	
4. Cowork Space Grover Beach Build out and operate cowork space. Implement marketing campaign and develop cowork space website.	\$10,000	Timing to be determined based on location.
5. Incubation Program Develop incubation program with SLO Hothouse and/or others for incubation programing.	\$10,000	Timing to be determined based on location.

**AGREEMENT
BY AND BETWEEN THE CITY OF MORRO BAY
AND THE MORRO BAY CHAMBER OF COMMERCE FOR
ECONOMIC DEVELOPMENT SERVICES FOR FISCAL YEAR 2019-2020**

This AGREEMENT is made and entered into by and between the City of Morro Bay, a municipal corporation (hereinafter called "City"), and the Morro Bay Chamber of Commerce, a California non-profit corporation (hereinafter called "Chamber").

WHEREAS, City and Chamber will benefit from viable and vibrant business retention, expansion and development within City's jurisdictional boundaries;

WHEREAS, Chamber and City have worked together for several years to attempt to achieve that viable and vibrant business community; and

WHEREAS, Chamber and City desire to continue and enhance those efforts through renewed focused efforts and City funding.

NOW, THEREFORE, the parties agree as follows:

Section 1. Intent

City and Chamber recognize the strength and successes of collaboration and cooperation. It is the intent of this Agreement to reflect a formalized cooperative agreement between the two parties to further the business climate in City's jurisdiction in an effective and efficient manner. This Agreement describes the scope of services Chamber will provide with funding provided by City during City's 2019/2020 Fiscal Year (FY). This Agreement is not intended to be all-inclusive of all efforts between the parties regarding economic development but does set forth the parties' understanding of the use of the Funding.

Section 2. Funding and Use of Funding.

A. For City's FY 2019-2020 (the "Period"), City shall provide Sixty Two Thousand Dollars (\$62,000.00) (the "Funding") to Chamber from City's General Fund with a monthly payment of Five Thousand One Hundred and Sixty Seven Dollars (\$5,167.00) for expenditures for the services and activities listed below to be completed within the period. Time is of the essence in the performance of this Agreement.

1. Chamber, through its Executive Director, and City, through its City Manager (or his designee) shall meet regularly, at mutually convenient times, to collaborate and coordinate economic development strategies.
2. Chamber shall agree to notify the City as soon as possible regarding any business success or needs or other relevant updates.

3. Chamber shall use best efforts to meet all key deliverables set forth in this agreement.
4. Chamber shall provide business support, the goal of this service is to continue efforts launched with the 4MB program. Key Deliverables for business support:
 - a. The Chamber will provide monthly business and entrepreneurship trainings in partnership with Women's Business Center, SCORE and the Cal Poly Center for Innovation and Entrepreneurship / Small Business Development Center.
 - b. Monthly business walks – focus on developing working groups in economic centers to address branding, revitalization, and economic center-specific needs.
 - c. City Page on Chamber website plus trainings on “talking to the City” and “starting your business.”
 - d. “Roadmap to Success” – assisting new businesses in their launch, so that they are aware of and plan for key challenges that new businesses experience.
5. Chamber will lead effort to rebrand Morro Bay as a place to conduct business with the slogan “New Day in the Bay.” This effort is about marketing Morro Bay to the region and beyond as a place to do business. The Chamber representative will connect with opportunity site owners, establish connections with commercial brokers in the region, and engage appropriate City representatives in those discussions. Key Deliverables for the “New Day in the Bay”:
 - a. Develop a video spot
 - b. Produce and distribute a relocation guide
 - c. Conduct and facilitate developer roundtables
 - d. Conduct and facilitate investment roundtables
 - e. Help launch and update new economic development microsite
6. Chamber will support a development permit process review. There are two components to this proposed service. The first is for the Chamber representative to assist businesses with pre-planning and the other is to assist the City in reviewing and making improvements to the permitting process for commercial/business development. Key Deliverables for Development Review Process:
 - a. Pre-planning/Concept project review for interested businesses, at no cost.
 - b. Review of permit process for commercial development.

Section 3. Other Activities

A. Chamber shall also do the following:

1. Ensure no funding provided by City shall be used to support activities that generally serve and benefit only Chamber membership or programs not directly related to the

economic development program described in this Agreement;

2. Operate the program hereunder for the general public good for the promotion of business, industry, and trade within City;
3. Make its books and financial records, concerning the funds expended under this Agreement, available to City for inspections, review and audit; and
4. Establish and maintain an accounting system in accordance with generally accepted accounting principles and standards. The system shall detail all costs chargeable to City under this Agreement and shall substantiate all such costs, and comply with any applicable State and Federal standards.

B. Chamber shall not use City funding for any of the following:

1. Attempting to influence legislation;
2. Organizing or engaging in protests, petitions, boycotts, or strikes;
3. Assisting, promoting or deterring union organizing;
4. Impairing existing contracts for services or collective bargaining agreements;
5. Engaging in partisan political activities or other activities designed to influence the outcome of an election to any public office;
6. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;
7. Engaging in religious instruction; conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization; or
8. Any other activity prohibited by any law, rule or regulation or City cannot legally perform or participate in.

Section 4. Payments.

Chamber shall submit written requests for each monthly payment to be used for expenditures based on Chamber's adopted budgets. City shall provide payment to Chamber, upon approval of the request by the City's Finance Director. City shall use its best efforts to make payment to Chamber within 25 days after receipt of a request.

Section 5. Reports.

A. Chamber shall present quarterly updates (September/December/March/June) to the City Council at a regularly scheduled City Council meeting on the status of its efforts to include:

1. Quantitative and qualitative data that measure Chamber's success reflective of key deliverables;
2. Number of City businesses that received direct assistance from Chamber for business retention or expansion;
3. Number of Prospective businesses Chamber talked with about relocating to or opening in City; and
4. The persons relied on to support the work of this Agreement.

B. Chamber shall provide City with an annual report reviewed by a Certified Public Accountant, itemizing how Chamber expended City's payment specified in Section 2. Such report shall provide separately detailed accounts for each program funded by City, and be due no later than 6 months after the end of the Period. This provision shall survive the termination of this Agreement.

Section 6. Ownership of Work Product.

A. Unless otherwise agreed upon in writing, all reports, documents, or other written or visual material or any other material in any media, including any images, taglines, logos, or other media created or developed by Chamber or any third party contracted by Chamber, in the performance of this Agreement, if paid in whole by the funding provided by this Agreement ("Work Product") shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. All Work Product shall be considered to be "works made for hire," and all such Work Product and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of City without restriction or limitation upon their use, duplication or dissemination by City. Chamber shall not obtain or attempt to obtain copyright protection as to any of the Work Products.

B. It is understood and agreed Chamber currently owns exclusively intellectual property rights to its name, committee and event titles, and logos, which will be utilized in the performance of this Agreement, ("Chamber Property"). Chamber reserves all rights, title and interest in Chamber Property, and hereby grants City a revocable, nonexclusive, license to the use of Chamber Property to the extent it becomes incorporated into, and inseparable from, the Work Product.

C. This section 6 shall survive termination of this Agreement.

Section 7. Assignment. This Agreement shall not be assigned by Chamber without the written consent of City.

Section 8. Independent Contractor.

At all times during the term of this Agreement, Chamber shall be independent contractors and Chamber, their officers, employees and agents shall not be employees of City.

Section 9. Personnel.

Chamber represents it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. Chamber shall be solely responsible for the work performed by third party contractors, including timely performance and payment.

Section 10. Term.

This Agreement shall remain in full force and effect from July 1, 2019 until June 30, 2020, unless terminated earlier as provided in Section 11 of this Agreement.

Section 11. Termination of Agreement.

City or Chamber may terminate this Agreement at any time, with or without cause, upon thirty-days written notice to the other party. In the event of such termination, City shall pay Chamber for all costs and obligations reasonably incurred by Chamber in satisfactorily performing its services under this Agreement prior to the date of termination, and such payment shall be in full satisfaction of City's obligations hereunder. City shall not be obligated to pay additional funds after issuance or receipt of such notice.

Section 12. Notice.

Whenever it shall be necessary for any party to serve notice on another respecting this Agreement, such notice shall be served by certified mail, postage prepaid, to the addresses below, unless and until a different address may be furnished in writing by any party:

To City: City Clerk
City of Morro Bay
595 Harbor Street
Morro Bay, CA 93442

To Chamber: Morro Bay Chamber of Commerce
695 Harbor Street
Morro Bay, CA 93442

Such notices shall be deemed to have been served within seventy-two hours after the same has been deposited in the United States Post Office by certified mail. This shall be valid and

sufficient service of notice for all purposes.

Section 13. Insurance.

A. Chamber shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive General Liability Insurance written on a per occurrence basis with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by Chamber.

B. Chamber agrees to maintain in force at all times during the performance of work under this Agreement workers' compensation and employer's liability insurance as required by law.

C. Chamber agrees to maintain Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Chamber owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Chamber or Chamber's employees will use personal autos in any way to perform the Scope of Services, then Chamber shall provide evidence of personal auto liability coverage for each such person.

D. Chamber shall require each of its sub-consultants or sub-contractors to maintain insurance coverage, which meets all of the requirements of this Agreement unless otherwise determined by the City's Risk Manager.

E. The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+; VII in the latest edition of Best's Insurance Guide.

F. If Chamber fails to keep the aforesaid insurance in full force and effect, then City shall notify Chamber it is a breach of this Agreement and Chamber has three days to cure such breach. If such breach is not cured by Chamber as required in this paragraph, then City may terminate this Agreement or, if insurance is available at a reasonable cost, then City may take out the necessary insurance and pay, at Chamber's expense, the premium thereon. Chamber is under a continuing obligation to maintain the aforesaid insurance irrespective of whether City provides such notification to Chamber.

G. At all times during the term of this Agreement, Chamber shall maintain on file with City's Risk Manager a certificate or certificates of insurance on the form required by City, showing the aforesaid policies are in effect in the required amounts. Chamber shall, prior to commencement of work under this Agreement, file with the Risk Manager such certificate or certificates. The policies of insurance required by this Agreement shall contain an endorsement naming City, its officers, employees and agents as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or

reduced except on thirty-days' prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

H. The insurance provided by Chamber shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

I. Any deductibles or self-insured retentions must be declared to and approved by City prior to commencing work under this Agreement.

Section 14. Indemnification.

Chamber shall defend, indemnify, and hold harmless City, its officials, officers, employees, volunteers and agents serving as independent contractors in the role of City officials (collectively "Indemnitees") from any and all claims, demands, causes of action, costs, including reasonable attorney's fees and court costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, ("Damages") in any manner arising out of or incident to any act or omission of Chamber or any of its employees or its agents in connection with the performance of this Agreement, including without limitation the payment of all consequential damages and reasonable attorney's fees and other related costs and expenses, except for such loss or damage arising from the sole negligence or willful misconduct of any of the Indemnitees; provided, that the obligation to indemnify and hold harmless is only to the extent Chamber or its officers, employees or agents cause the Damages. All duties of Chamber under this Section shall survive termination of this Agreement.

Section 15. Extent of Agreement.

This Agreement represents the entire and integrated Agreement between the parties on the matters included herein and supersedes any and all prior negotiations, representations or agreements, instrument signed by all parties to this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

Section 16. Severability.

Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

Section 17. Waiver.

No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be

deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

Section 18. Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

Section 19. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

Section 20. Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

Section 21. Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Chamber, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to the Chamber or to its successor, or for breach of any obligation of the terms of this Agreement.

Section 22. California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Luis Obispo, State of California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of San Luis Obispo, State of California.

[Signatures on the following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the 10th day of July 2019, at Morro Bay, California.

CITY OF MORRO BAY

By: _____

SCOTT COLLINS
City Manager

Attest:

Dana Swanson

DANA SWANSON,
City Clerk

Approved As To Form:

Chris F. Neumeyer

CHRIS F. NEUMEYER,
City Attorney

MORRO BAY CHAMBER OF COMMERCE

By: _____

Michael Samantecio
Its Board Chairman

By: _____

Erica D. Crawford
Its President / CED

Morro Bay Visitor Center Agreement

This Agreement is made and entered into this 12th day of June, 2019 by and between the City of Morro Bay, a California municipal corporation, hereinafter referred to as "the City" and the Morro Bay Chamber of Commerce, a California non-profit corporation, hereinafter referred to as "the Chamber."

WHEREAS, the City recognizes continued development of the community is vital, and therefore, wishes to provide for a coordinated effort to encourage, promote, and foster the economic advantages as a vibrant tourist and recreational center; and

WHEREAS, a Morro Bay Visitor Center (the "Center" and/or the "Visitor Center") is the welcoming face to Morro Bay visitors, and it is crucial the Center be the cheerleader for the entire destination that is Morro Bay; and

WHEREAS, the Chamber has experience, together with available facilities, to provide Visitor Center services, necessary to enhance the economic development and vitality for the City; and

WHEREAS, it is in the interest of the community for the Chamber to provide and perform services to facilitate the welcoming and hospitality of visitors to the City, in a manner designed to promote the unique character, heritage and special attributes of the community and enhance the economic vitality of the City; and

WHEREAS, the City and the Chamber agree those goals can best be accomplished through the operation of a Visitor Center by the Chamber, under the terms and conditions outlined hereinafter, making use of funds provided, pursuant to this Agreement, by the City for operations of the Visitor Center.

Now, therefore, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits that will accrue to each of the parties hereto, as well as to the public good of all the citizens of Morro Bay, the parties have agreed, and do hereby agree, as follows:

- 1) The foregoing recitals are true and correct, and constitute accurate statements of the facts herein.
- 2) The term of this Agreement shall commence on July 1, 2019 and terminate on June 30, 2020 (the "Term"). The City and the Chamber may, by mutual written agreement no later than 60 days prior to expiration of the Term, extend this Agreement for one additional year beyond the Term.
- 3) The maximum amount due and payable during the Term is \$50,000. The City shall pay said amounts to the Chamber in monthly increments, in advance, for each contract month. Such funds are to be expended only under the terms, conditions and restrictions, and for the purposes specifically set forth in this Agreement. If this Agreement is extended pursuant to Section 2, above, then the City shall pay an additional \$50,000, for that additional year and incrementally as stated herein.
- 4) The Chamber shall provide qualified and competent staff, for the successful implementation of this Agreement.

- 5) The Chamber shall maintain a Visitor Center at 695 Harbor Street suitable for the conduct of visitor information services. The Center must:
 - a. Be open to the public every day with the exception of Thanksgiving Day, Christmas Day, and New Year's Day, or those times when the City faces an emergency or disaster warranting closure of the Center,
 - b. Be open to the public at least 7 hours every day specifically for Visitor Center services, normally 10am to 5pm, yet also for the extended hours provided in Section 6 below, and will also host visitors during times outside of Visitor Center hours when the Chamber is open to the public,
 - c. Include at least one ADA-accessible unisex restroom facility for public use or one must be available for public use within 150 feet of the Visitor Center,
 - d. Be within walking distance of the Morro Bay Transit Center,
 - e. Include one phone line dedicated to Visitor Center purposes,
 - f. Have only City-approved signage posted onsite. Main signage on the facility will be City-approved and be at the expense of the City. Any other on-site signage will be City-approved and at the expense of the Chamber. The City shall be responsible for all offsite signage directing the public to the location of the Visitor Center,
 - g. Include on-site wireless Internet access for visitors at all times the Visitor Center is open to the public,
 - h. Include an Internet-enabled computer terminal accessible to visitors at all times the Visitor Center is open to the public,
 - i. Have some form of limited visitor information on the exterior of the Visitor Center available to the public who may not want to enter the Visitor Center, or when the Visitor Center is otherwise closed to the public, and
 - j. Upon reasonable request of the City, promptly facilitate contact with news media representatives, and promptly disseminate news releases and promotions information, in a professional manner, for various media, general public, and visitor information needs, based on information provided by the City and/or the Morro Bay Tourism Business Improvement District, with City approval
- 6) The Chamber shall provide extended hours for tourist peak season from May to September with the Visitor Center being open to the public from 9 am to 5 pm during tourist peak season; and, during this tourist peak season, the Chamber shall provide "street team" services to businesses in each economic center in the City both distributing Visitor Center materials and notices about upcoming events, as well as engaging with visitors and helping answer questions. The Chamber shall evaluate and upgrade technology as needed at the Visitor Center and continue to regularly improve the mobile functions of the Chamber website sufficient to provide visitors with quick access to pertinent information.
- 7) The Chamber shall respond promptly to all requests, including during high volume periods, of information requests including telephone calls and E-mails. The Chamber shall maintain a voicemail system during closed office hours to receive messages for visitor information requests.
- 8) The Chamber shall coordinate services for prospective visitor groups, to include referrals to motels, rental facilities, caterers, entertainment and other services. Said referrals will be tracked and recorded. The Chamber shall provide promotional publication materials for visitors that specify recreational opportunities, campgrounds, art galleries and other services. The visitor's guide produced by the Morro Bay Tourism Bureau will be provided at the Visitor Center.

- 9) The Chamber shall ensure no funds provided by the City will be used to support activities not directly related to the Visitor Center. Nothing in this contract, however, shall prevent the City from specifically funding new projects as proposed by the Chamber.
- 10) The Chamber shall submit written and oral quarterly reports to the City Manager or his/her designee regarding visitor information and promotional activities, and quarterly reports of the same to the City Council, excluding monthly expenditures and invoice information, which will be managed by administrative staff. Those reports need not be lengthy, but should be specific as to the following to the full satisfaction of the City:
 - a. Number of visitors to the Visitor Center.
 - b. The type and quantity of materials dispensed from the Visitor Center.
 - c. Summary of telephone and email information requests received.
 - d. The type and quantity of any special materials distributed to groups.
 - e. The number of visitor site referrals made.
 - f. Detailed report of Visitor Center monthly expenditures.
 - g. Copies of invoices to support charges.
- 11) Failure to provide such quarterly reports expressly constitutes sufficient grounds for termination by the City of this Agreement, at the discretion of the City.
- 12) The Chamber agrees to make all Visitor Center books and financial records, or any other books and financial records concerning the funds expended under this Agreement, available to the City for inspection, review and audit. The Chamber will, at no expense to the City, provide an annual report and accounting of expenditures of the funds covered by this Agreement. The Finance Director shall work with the Chamber to perform a detailed financial review at the end of each City-Fiscal Year, which will be presented to the City Manager.
- 13) The Chamber agrees all persons working for the Chamber under this Agreement shall in no way be considered employees of the City; and any liability, which might arise under the Worker's Compensation Law of the State of California due to any injury of any employee of the Chamber, shall be the sole liability of the Chamber. The Chamber shall, throughout the period of this Agreement, maintain in full force and effect, a policy of worker's compensation insurance meeting statutory limits of Labor Code covering all its employees and volunteers. Said policy shall include a waiver of subrogation against City, its officers, agents, employees and volunteers.
- 14) The Chamber shall not use any monies received under this Agreement for the endorsement, opposition or participation in any political or lobbying activity involved in the support or opposition to any candidate for public office or proposed ballot measure.
- 15) The Chamber agrees to indemnify, defend and hold harmless City, and its officers, employees, and agents, from any and all claims, suits, demands and causes of action and costs, including reasonable attorney's fees and court costs ("Damages"), resulting from this Agreement; provided, that the obligation to indemnify and hold harmless shall only be to the extent Damages are caused by the Chamber or any of its officers, employees, agents or contractors.

- 16) The Chamber shall obtain and maintain, in full force and effect during the term of the Agreement, a \$1,000,000 general liability insurance policy written on a per occurrence basis specifically naming City as primary additional insured against claims and demands resulting from any act or omission by the Chamber or any of its officers, employees, agents or contractors related to this Agreement. Said insurance policy shall provide for thirty-days' notice of cancellation to the City. Within ten days after the date of execution of this Agreement by both parties, the Chamber shall submit to the City evidence of such insurance.
- 17) Notwithstanding any other representation, oral or written, between the parties, including any and all agents or representatives thereof, the Chamber is at all times during the term of this Agreement acting as a free and independent contractor, and shall not be an employee or an agent of the City.
- 18) Except as the City may authorize in writing, the Chamber shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent. The Chamber shall have no authority, express or implied, pursuant to this Agreement, to bind City to any obligations whatsoever.
- 19) The Chamber shall not enter into any contract or agreement that will create a conflict of interest with its duties to the City under this Agreement. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his/her personal interests or the interests of any corporation, partnership, or association in which he is directly or indirectly interested. The Chamber warrants it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.
- 20) The Chamber represents and warrants to City the Chamber has, and shall maintain at all time during the term of this Agreement, at its sole cost and expense, all business licenses, permits, qualifications and approvals of whatsoever nature which are legally required for the Chamber to provide the service hereunder.
- 21) The Chamber shall perform all services required pursuant to this Agreement in a manner and according to the standards observed by a competent practitioner of the profession in which the Chamber is engaged. All products and services of any nature which the Chamber provides to the City and to visitors to the Visitor Center shall conform to the standards of a quality normally observed by licensed, competent organizations practicing in the Chamber's profession.
- 22) The Chamber shall devote such time to the performance of services as may be reasonably necessary for the satisfactory performance of the Chamber's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performances are prevented or delayed by any cause, present or future, which is beyond the reasonable control of the non-performing party. The Chamber agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services pursuant to this Agreement.
- 23) During the term of this Agreement if the Chamber is dissolved, disbanded, or otherwise ceases to function in a manner described in this Agreement, then all funds attributable to the City

and equipment purchased out of funds provided by the City shall revert to ownership of the City. For the purpose of this provision, the Chamber shall maintain a written record of, and include as part of each annual report, a listing of capital equipment that has been purchased with the funds provided by the City.

- 24) No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligations pursuant to this Agreement shall be void and of no effect.
- 25) The Chamber agrees to comply with all fair employment practice laws of the State and Federal government. The Chamber covenants and agrees for itself, its successors, its assigns and every successor in interest, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, medical condition, disability, marital status, ancestry or national origin in the provision of any services to be provided by the Chamber hereunder, nor shall the Chamber of any person claiming under or through the Chamber establish or permit any such practice or practices of discrimination of segregation in the provision of any services to be provided by the Chamber hereunder.
- 26) The failure of either party to abide by any term of this Agreement shall constitute a default under this Agreement. If either party fails to cure any such default within five (5) days after receiving notice from the other party of such default, then this Agreement may be terminated by giving ten-days' written notice of such termination. Upon any such termination, the final monthly payment to be paid under Section 3, above, shall be adjusted on a pro rata basis, based on a 30-day month, to the date of such termination, and if applicable, the Chamber shall immediately return to the City any amounts previously paid by the City for any period subsequent to the date of such termination.
- 27) In addition to termination pursuant to Section 29, above, this Agreement may be terminated in whole or in part at any time by either party hereto upon thirty-days' written notice to the other as identified below. In the event of any termination of this Agreement, all rights and obligations of both parties hereto, except for Sections 9, 12, 14, 15, 18, 30 and 31, and including without limitation the monthly payment from City to the Chamber hereunder, shall terminate as of the date of such termination (and the final monthly payment shall be adjusted on a pro rata basis to the date of such termination).
- 28) This document represents the entire understanding between the parties and supersedes all prior negotiations, representations or agreements, either written or oral regarding the subject matter hereof. This Agreement may only be amended in writing signed by both parties.
- 29) If any provision of this Agreement is deemed to be legally void or unenforceable, then all remaining provisions shall survive and be enforceable. This Agreement shall in all respects be governed by the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Luis Obispo, State of California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of San Luis Obispo, State of California.
- 30) If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or

proceeding, in addition to any other relief which any be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

- 31) No officer or employee of the City shall be personally liable to the Chamber, or any successor in interest, in the event of any default or breach by the Chamber or for any amount, which may become due to the Chamber or to its successor, or for breach of any obligation of the terms of this Agreement.
- 32) The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.
- 33) This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

In Witness Whereof, the parties hereto have caused this Agreement to be executed as of the day and year first above written.


CITY OF MORRO BAY

By: _____


Scott Collins
City Manager

MORRO BAY CHAMBER OF COMMERCE

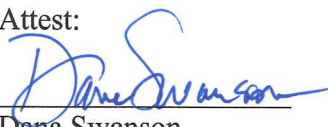
By: _____


Erica Crawford
Director of Operations


By: _____


Michael Samaniego
Chamber Board President

Attest:


Dana Swanson
City Clerk

Approved As To Form:


Chris F. Neumeyer
City Attorney

Lease Agreement

AGREEMENT

This lease agreement ("Lease") is made and entered by and between the CITY OF MORRO BAY, a California municipal corporation, and hereinafter referred to as "LESSOR" and/or "City," and THE MORRO BAY CHAMBER OF COMMERCE, a California non-profit corporation, hereinafter referred to as "LESSEE" and/or "Chamber."

RECITALS

WHEREAS, LESSOR is the owner of certain real property located at 695 Harbor Street, Morro Bay, CA (the "Leased Premises"); and

WHEREAS, LESSEE is organized to encourage a strong local economy and quality of life by promoting commerce, sound government, and an informed membership and community; and

WHEREAS, comprised of local business leaders, LESSEE has special knowledge and experience to promote economic and business development, including business attraction and retention programs, for the benefit of LESSOR; and

WHEREAS, LESSOR and LESSEE have mutual interests in enhancing the economic growth and vitality of the community; and

WHEREAS, LESSOR and LESSEE previously entered into a lease agreement for LESSEE to lease the Leased Premises from LESSOR, and that prior lease agreement by its terms will terminate on June 30, 2019; and

WHEREAS, LESSOR and LESSEE desire to enter into a new lease agreement for a portion of the Leased Premises.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS;

1. LEASE: LESSOR hereby leases to LESSEE and LESSEE agrees to accept from LESSOR the lease of the portions of the Leased Premises as described in Section 4, below.
2. RENT: During the term on this Lease, LESSEE agrees to pay on or before January 1, 2020 the sum of \$1.00, payable in advance per fiscal year as rent for the use of the Leased Premises.
3. TERM: The term of this Lease shall commence on July 1, 2019 and terminate without notice on June 30, 2020, unless sooner terminated as a herein provided term (the "Term"). Any holdover of possession of the Leased Premises by LESSEE beyond the Term shall constitute a month-to-month tenancy on the same terms and conditions of

this Lease and LESSEE agrees to vacate the Leased Premises upon thirty-days' (30-days') prior written notice from LESSOR.

4. LEASED PREMISES: The Leased Premises for purpose of this Lease shall include only those portions of Leased Premises that include the office used (as known and understood by LESSOR), as of the effective date of this Lease, by LESSOR'S director, the office used (as known and understood by LESSOR), as of the effective date of this Lease, by the Chamber's accountant and administrative assistant, and the front foyer space. In addition, LESSEE shall have access to and use of, but not control of, common areas including both bathrooms, the conference room, hallways, entranceways and the kitchen.
5. USE OF LEASED PREMISES: LESSEE shall use the Leased Premises solely for the purpose of operation of Chamber-business, including, but not limited to, (i) promoting all businesses and services in the City on behalf of the community, regardless if said business is a member of the Chamber and (ii) providing qualified and competent staff, for the successful implementation of this Agreement. In addition, LESSEE shall operate the City of Morro Bay Visitor Center (the "Visitor Center"), as outlined in that separate Visitor Center agreement.
6. FIXTURES AND ALTERATIONS: LESSEE shall not make, or cause to be made, any alterations, additions or improvements, of a substantial nature, or make any structural changes in the building (the "Improvements") without first notifying LESSOR and obtaining prior written approval from LESSOR for the Improvements. In the event the Improvements include any structural change, LESSEE shall supply to LESSOR plans and specifications for such work, and obtain prior written approval. LESSEE shall be responsible for all costs associated with any of the Improvements. All permits necessary for the Improvements, excluding improvements related to Visitor Center services, shall be at LESSEE'S expense and obtained prior to any work on any of the Improvements.
7. ITEMS INSTALLED BY LESSEE: All decorations and additions and any of the Improvements in the Lease Premises, except for structural changes, made by LESSEE shall remain the property of LESSEE for the term of this Lease or any extension or renewal thereof. Upon expiration of this Lease, or any renewal term thereof, LESSEE shall remove all decorations and additions and those portions of the Improvements that are LESSEE property, and restore the Leased Premises, ordinary wear and tear excepted, to its condition at the time of original occupancy, unless written approval is obtained by LESSOR to allow such decorations, additions or the Improvements to remain.
8. SECURITY: LESSOR agrees to provide locks on doors of the Leased Premises to be used exclusively by LESSEE for its use and for Visitor Center services, and to provide keys for access to Leased Premises. LESSOR shall also provide new access to the Leased Premises at the rear entrance for others to access the Leased Premises without access to Leased Premises.

9. MAINTENANCE: LESSOR shall be responsible for the overall interior and exterior maintenance of the Leased Premises, except that LESSOR shall have no duty, obligation, or liability whatever to care for or maintain or rebuild the Leased Premises or surrounding grounds except at its sole discretion. LESSEE shall be responsible for routine janitorial and maintenance of the Leased Premises.
10. SURRENDER OF LEASED PREMISES: At the expiration of the tenancy hereby created, LESSEE shall surrender the Leased Premises in the same condition as the Leased Premises were upon delivery of possession thereto under this Lease, reasonable wear and tear excepted, and damage by unavoidable casualty not within the reasonable control of LESSEE excepted, and shall surrender all keys for the Leased Premises to LESSOR. LESSEE shall thereupon remove all its fixtures, and any alterations or improvements as provided above before surrendering the Leased Premises and shall repair any damage to the Leased Premises caused thereby. LESSEE's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease.
11. INSURANCE: LESSEE shall, during the full term of this Lease, keep in full force and effect an appropriate policy of liability and property damage insurance with respect to the Leased Premises in the minimum amounts of \$1,000,000 each. The policies shall name LESSOR and its officers, employees and representatives as additional insureds and shall contain a clause the insurer will not cancel or change the insurance without first giving LESSOR 10-days' prior written notice. LESSEE shall exhibit to LESSOR, at any time upon demand, a certificate of insurance, or other evidence of insurance, and shall keep such policies in effect during the full term of this Lease or any extensions thereof.
12. FIRE, EXTENDED COVERAGE: LESSEE agrees to purchase and maintain, during the full term of this Lease or any extensions thereof, a policy of fire, extended coverage, insurance, which policy shall not be less than 100% of the replacement value of the Leased Premises. The cost of such insurance shall be at the sole cost of LESSEE.
13. INDEMNIFICATION: LESSEE agrees to indemnify, defend and hold harmless LESSOR, its officers, directors and agents, from and against any and all claims, actions, damages, liability, expenses, costs and reasonable attorney's fees resulting or related to any loss of life, personal injury or damage to property, or any other liability, arising out of any occurrence related to the Leased Premises or the occupancy or use by LESSEE of the Leased Premises or any part thereof, occasioned wholly or in part by any act or omission of LESSEE, its agents, contractors, employees, servants, lessees or concessionaires, or for any act or omission by LESSOR in furtherance of the interests of LESSEE for any reason in connection with this Lease.
14. UTILITIES & TAXES: LESSEE shall be responsible for and promptly pay 30 percent of all charges for heat, water, gas, electricity or any other utility used or consumed on the Leased Premises, including any deposits demanded by any utility, based on the previous Fiscal Year average monthly cost for all identified utilities. LESSEE shall pay the

aforementioned rate plus an annual Cost of Living Adjustment based on the July CPI-U from the Los Angeles-Riverside-Orange County area beginning with the City's FY 19-20 Budget Year. LESSEE agrees to pay, at its sole cost and expense, any possessory interest tax that may be assessed as a result of this Lease.

15. ASSIGNMENT AND SUB-LETTING: LESSEE will not assign this Lease, in whole or in part, nor sub-let all or any part of the Leased Premises.
16. GOVERNMENTAL REGULATIONS: LESSEE shall at LESSEE's sole cost and expense, comply with all of the requirements of all county, municipal, state, federal and other applicable government authorities, now in force, or which may hereafter be in force, pertaining to the Leased Premises, and shall faithfully observe in the use of the Leased Premises all municipal and county ordinances, and all state and federal statutes now, or which may hereafter be, in force.
17. DESTRUCTION OF LEASED PREMISES: If the Leased Premises shall be damaged or destroyed by fire, the elements, unavoidable accidents or other casualty, then all insurance proceeds payable by reason thereof shall be applied to the repair, reconstruction and renovation of Leased Premises.
18. CONDEMNATION: In the event any or all of the Leased Premises are taken, in whole or in part, through the exercise of any power of eminent domain exercised by any state, federal or local municipality (including LESSOR) having the power thereof, any sums paid by such condemning authority shall be paid to LESSOR.
19. DEFAULT: In the event of any failure of LESSEE to perform any of the terms, conditions or covenants of this Lease to be observed or performed by LESSEE for more than 30 days after written notice of such default shall have been give to LESSEE, or if LESSEE shall abandon the Leased Premises, then LESSOR, besides other rights or remedies it may have, shall have the immediate right of reentry and may remove all persons and properties from the Leased Premises without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby.
20. ENTIRE AGREEMENT: This Lease, and any exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understanding between the parties concerning the Leased Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them, other than or herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon either party unless reduced to writing and signed by both.
21. NOTICE: Any notice, demand, request or other instrument which may be required to be given under this Lease shall be deemed delivered when sent by ordinary United States

Mail, postage prepaid, addressed to LESSOR care of its City Manager, or LESSEE care of its then acting President.

22. **PARTIAL INVALIDITY:** If any term, covenant or condition of this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those to which it is held invalid, or unenforceable, shall not be affected thereby; and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law. If the length, term or duration of this Lease, in any way is in violation of any statute, law or Constitution or is invalid for any reason whatsoever, then this Lease shall be deemed a Lease from year to year, and all other provisions hereunder shall remain the same.
23. **CALIFORNIA LAW:** This Lease shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Lease shall be instituted in the Superior Court of the County of San Luis Obispo, State of California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of San Luis Obispo, State of California.
24. **ATTORNEYS' FEES:** If either party to this Lease is required to initiate or defend or made a party to any action or proceeding in any way connected with this Lease, the prevailing party in such action or proceeding, in addition to any other relief which any be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.
25. **NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES:** No officer or employee of the City shall be personally liable to the LESSEE, or any successor in interest, in the event of any default or breach by the LESSOR or for any amount, which may become due to the LESSEE or to its successor, or for breach of any obligation of the terms of this Lease.
26. **INTERPRETATION:** The terms of this Lease shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Lease or any other rule of construction which might otherwise apply.
27. **COUNTERPARTS:** This Lease may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

[Signatures on the following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 12 day of June 2019, at Morro Bay, California

CITY OF MORRO BAY

By: 
Scott Collins
City Manager

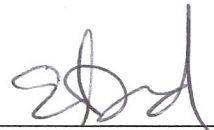
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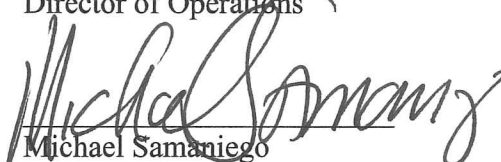

DANA SWANSON
City Clerk

Approved As To Form:


CHRIS F. NEUMEYER
City Attorney

MORRO BAY CHAMBER OF COMMERCE

By: 
Erica Crawford
Director of Operations

By: 
Michael Samaniego
Chamber Board President

**AGREEMENT BETWEEN THE CITY OF EL PASO DE ROBLES AND
THE PASO ROBLES CHAMBER OF COMMERCE INC.
FOR VISITOR CENTER SERVICES - FY 2019 TO FY 2020**

THIS AGREEMENT ("Agreement"), effective July 1, 2019, is made and entered into this 23 day of November 2019, by and between the City of El Paso de Robles, hereafter referred to as the "CITY", and the Paso Robles Chamber of Commerce, Inc., hereinafter referred to as "CHAMBER".

WHEREAS, CHAMBER has experience together with available facilities to provide visitor center services necessary to enhance the economic vitality of Paso Robles; and

WHEREAS, the CITY desires to have CHAMBER provide these services in order to facilitate economic development throughout the City; and

WHEREAS, CHAMBER is willing to provide services hereinafter set forth on behalf of the CITY in the manner and for the purpose hereinafter provided.

CITY and CHAMBER hereby enter into this Agreement to set forth the terms and conditions relating to certain visitor center services to be provided by the CHAMBER.

1. CHAMBER RESPONSIBILITIES. The CHAMBER shall provide and perform services to facilitate the welcoming and hospitality of visitors to Paso Robles, in a manner designed to promote the unique character, heritage and special attributes of the community and enhance the economic vitality of the CITY. Such services shall include, but are not limited to:
 - A. Maintaining a public office in a central location in Downtown Paso Robles to provide information to visitors and interested citizens (the "Visitors Center"), which Visitors Center shall be opened during the CHAMBER'S regular hours. CHAMBER agrees to conduct Visitor Center hours in a manner which serves to complement visitor patterns to Paso Robles, including Friday and weekend travelers.
 - The Visitors Center is presently located at 1225 Park Street. CITY acknowledges that the present location of the Visitors Center may be relocated to another suitable downtown location, subject to City's reasonable consent, during the term of this Agreement. CHAMBER agrees to provide 30 days advance written notice to CITY of any proposed relocation of the Visitors Center.
 - Visitors Center hours vary seasonally and with holidays but are generally as follows:

- Mon – Fri: 9am-5pm
 - Saturday 10am-4pm
 - Sunday 10am-2pm
- Visibility of Visitor Center. CHAMBER agrees to maintain the Visitor Center’s visibility (recognizable to travelers as “The Visitor Center”) within the parameters of the City’s zoning and sign design standards.
- B. Providing visitor information that suits the needs of visitors to the Paso Robles area and promotes the unique character, heritage and special attributes of the community, including but not limited to:
- Providing a high level of personal customer service to visitors to the Visitors Center, including Concierge services and personal itinerary building and retaining an adequate number of trained employees to handle the fluctuations and seasonal flow of such visitors.
 - Responding promptly (same business day) to high volumes of information requests including telephone calls and emails.
 - Serving as a contact for information requests from potential visitors, as well as a referral agency to local area lodging and other resources.
 - Maintaining an electronic annual events calendar on the CHAMBER website.
 - In the Visitors Center dispensing and displaying supplies of, hotel/motel directories, visitor’s guides, brochures, pamphlets, and general statistics, information about the community, and tourism partner generated collateral (including but not limited to materials from Travel Paso, Paso Robles Event Center, Paso Robles Wine Country Alliance, and Downtown Main Street).
 - In the Visitors Center, providing a digital kiosk and digital signage to increase visitation to local area attractions and encourage an increase in the length of visitors’ stays.
 - Distributing Visitor Center marketing collateral to local hotels to encourage tourist to use the services of the Visitor Center.
- C. Continuing operation of CHAMBER’S website with electronic links to/from all other Paso Robles area visitor serving websites including, but not limited to, CITY, Travel Paso, Wine Country Alliance, Events Center, and Downtown Main Street.
- D. Increasing the CHAMBER’S involvement in tourism by addressing each of the following:
- a. Communication Campaign

- b. Tracking Mechanisms
- c. Staff Development
- d. Retail Items
- e. Facility Upgrades
- f. Tourism/Hospitality Promotions
- g. Economic Development
- h. DMO Partnership

E. Providing quarterly activity reports (written) to the City Manager's Office, each quarterly report to be due within 10 days following the end of each calendar quarter. Each quarterly report shall include:

- Summary of website visits & information provided during the quarter.
- Number of visitors to the Visitors Center during the quarter.
- Type and quantity of materials dispensed from the Visitors Center and Train Station Center during the quarter.
- Summary of telephone and email information requests received.
- Type and quantity of any special materials distributed to groups.
- Number of Destination Guides mailed and visitor site referrals made.
- Summary of expenditures incurred by the CHAMBER during the quarter for the services provided under this Agreement, including a listing of any capital equipment purchased with the funds provided by the CITY.

2. COMPENSATION. In consideration of the services performed by CHAMBER pursuant to this Agreement, and so long as CHAMBER is not in default under any of the provisions of this Agreement, CITY will make payments to the CHAMBER as follows:

- A. Commencing on July 1, 2019, CITY shall disburse by the 15th day of the month to CHAMBER monthly payments equal to 1/12th of \$75,000.00 for Fiscal Year 2019-2020.
- B. In the event that the City Council is compelled to reduce General Fund budget expenditures at any time during the term of this Agreement, the amount of the annual payment under this Agreement for such year shall be reduced by the same percentage as the overall General Fund budget reduction, as determined by the City. City shall notify Chamber of any such reduction as early as is reasonably feasible and understands that any reduction in the City's payment shall result in a proportionate reduction in Chamber services provided under this Agreement and/or a modification to the Chamber's budget.

3. VISITOR CENTER ANNUAL BUDGET. CHAMBER shall, by **April 1 of each year**, submit to the CITY for review by the City Council, a budget and plan for Visitors Center services to be provided by the CHAMBER during the next following fiscal year covered by this Agreement. The budget shall include all funds to be received from CITY during such fiscal year and how those funds are proposed to be spent.

CHAMBER will provide quarterly and an annual report of the Visitors Center services plan implementation.

4. CHAMBER'S FINANCIAL RECORDKEEPING AND REPORTING. Upon 15 days' notice to the CHAMBER, CITY shall have the right to examine the books, records, and accounts of the CHAMBER at any reasonable time in the CHAMBER'S offices.
5. POLITICAL ACTIVITY. CHAMBER shall not use any monies received under this Agreement for the endorsement, opposition or participation in any political or lobbying activity, including but not limited to, involved in the support or opposition to any candidate for public office or proposed ballot measure.
6. INDEMNIFICATION, HOLD HARMLESS. CHAMBER shall indemnify, defend and hold CITY, its members, officers, directors, agents and employees free and harmless from any and all claims, damages, losses and expenses including attorney fees arising out of the performance by CHAMBER of the services provided for hereunder, caused in whole or in part by any act of CHAMBER, its officers, employees or agents in carrying out the terms of this Agreement.
7. INSURANCE. CHAMBER agrees to maintain in full force and effect, at its sole cost and expense, during the term of this Agreement the following insurance:

- a. Workers' Compensation in accordance with State law, for all of its employees engaged in the work and services to be provided under this Agreement.

- b. General Liability in an amount not less than One Million Dollars (\$1,000,000) combined single limit liability per occurrence with a Two Million Dollars (\$2,000,000) aggregate.

All such insurance policies shall be carried with insurance companies satisfactory to the CITY and shall name the CITY, its officers, agents, and employees as additional insured with respect to the work and services being performed under this Agreement. CHAMBER shall cause to be furnished to the CITY certificates of insurance stating that such insurance is in full force and effect; that the premiums thereon have been paid; and that the

insurance carrier will give the CITY at least thirty (30) days prior written notice of cancellation, termination or modification.

It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by the CHAMBER or indemnifying party, is intended to apply first and on a primary non-contributing basis in relation to any other insurance or self-insurance available to the City.

8. **EVENTS.** CHAMBER agrees to comply with the City's Facilities Use Agreement standards and protocols when the CHAMBER organizes events on City property, including the downtown city park. Event insurance coverage shall be provided independently for each event and be subject to the City's Facilities Use Agreement standards. The CHAMBER shall be independently responsible for the contract/business relationship with vendors at their events, including assurance that they have appropriate insurance coverage and that the vendor has an appropriate City business license in place to participate in the event.

9. **INDEPENDENT CONTRACTOR; NOT AGENT.** Notwithstanding any other representation, oral or written, between the parties, including any and all agents or representatives thereof, the CHAMBER is at all times during the term of this Agreement acting as a free and independent contractor, and shall not be an employee or an agent of the CITY.

Except as CITY may authorize in writing, CHAMBER shall have no authority, express or implied to act on behalf of CITY in any capacity whatsoever as an agent. CHAMBER shall have no authority, express or implied, pursuant to this Agreement, to bind CITY to any obligations whatsoever.

10. **CONFLICT OF INTEREST.** CHAMBER shall not enter into any contract or agreement that will create a conflict of interest with its duties to CITY under this Agreement.

No member, official or employee of CITY shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is directly or indirectly interested. The CHAMBER warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

11. **LICENSES, PERMITS.** CHAMBER represents and warrants to CITY that it has, and shall maintain at all times during the term of this Agreement, at its sole cost and expense, all business licenses, permits, qualifications and approvals of whatsoever nature which are legally required for CHAMBER to provide the services hereunder.

12. **STANDARD OF PERFORMANCE.** CHAMBER shall perform all services required pursuant to this Agreement in a manner and according to the standards observed by a competent practitioner of the profession in which CHAMBER is engaged. All products and services of any nature which CHAMBER provides to CITY and to visitors to the Visitors Center shall conform to the standards of quality normally observed by licensed, competent organizations practicing in CHAMBER's profession.

CHAMBER shall devote such time to the performance of services as may be reasonably necessary for the satisfactory performance of CHAMBER's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performances are prevented or delayed by any cause, present or future, which is beyond the reasonable control of the parties.

CHAMBER agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services pursuant to this Agreement.

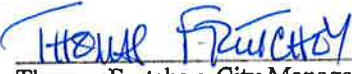

13. **REVERSION OF FUNDS AND PROPERTY.** During the term of this Agreement should the CHAMBER be dissolved, disbanded, or otherwise cease to function in a manner described in this Agreement, all funds attributable to the CITY, and equipment purchased out of funds provided by the CITY, shall revert to ownership of the CITY. For the purpose of this provision, the CHAMBER shall maintain a written record of, and include as part of each annual report, a listing of capital equipment that has been purchased with the funds provided by the CITY.
14. **TERM.** The term of this Agreement shall be for a twelve (12) month period beginning July 1, 2019 and expiring June 30, 2020, unless terminated earlier in accordance with Section 17 below.
15. **ASSIGNMENT PROHIBITED.** No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligations pursuant to this Agreement shall be void and of no effect.
16. **NON-DISCRIMINATION.** CHAMBER agrees to comply with all fair employment practice laws of the state and federal government. CHAMBER covenants and agrees for itself, its successors, its assigns and every successor in interest, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, medical condition, disability, marital status, ancestry or national origin in the provision of any services to be provided by CHAMBER hereunder, nor shall CHAMBER or any person claiming under or through CHAMBER

establish or permit any such practice or practices of discrimination of segregation in the provision of any services to be provided by CHAMBER hereunder.


17. **DEFAULT.** The failure of the Parties to abide by any of the terms of this Agreement shall constitute a default under this Agreement. If either party fails to cure any such default within five (5) days of receiving notice from the other party of such default, then this Agreement may be terminated by giving ten (10) days written notice of such termination. Upon any such termination, the final monthly payment to be paid under Section 2, above, shall be adjusted on a pro rata basis, based on a 30-day month, to the date of such termination, and if applicable, CHAMBER shall immediately return to CITY any amounts previously paid by CITY for any period subsequent to the date of such termination.
18. **NOTICES.** All notices pursuant to this Agreement shall be in writing and mailed, postage prepaid, first class, or personally delivered, to the addresses set forth below, or such other address as a party may designate in writing.
19. **FULL AGREEMENT AND AMENDMENT.** This document represents the entire understanding between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may only be amended by a writing signed by both parties.
20. **SEVERABILITY.** Should any provision of this Agreement be deemed to be legally void or unenforceable, all remaining provisions shall survive and be enforceable. This Agreement shall in all respects be governed by the laws of the State of California.
21. **ATTORNEY'S FEES.** In the event suit is brought for the enforcement, or interpretation, of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees.

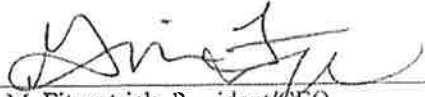
IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first hereinabove written.

THE CITY OF EL PASO DE ROBLES
1000 Spring Street
Paso Robles, CA 93446

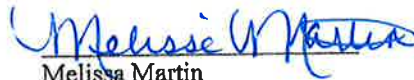
By: 
Thomas Frutchey, City Manager
 11-23

PASO ROBLES CHAMBER OF COMMERCE
1225 Park Street
Paso Robles, CA 93446


By: 
Sarah Hinds, Chairman of the Board

By: 
Gina M. Fitzpatrick, President/CEO

ATTEST:

By: 
Melissa Martin
Deputy, City Clerk

CITY ATTORNEY APPROVAL:

By: 
Kimberly Hood
Interim City Attorney

**ADDENDUM
TO THE AGREEMENT BETWEEN THE CITY OF EL PASO DE ROBLES AND
THE PASO ROBLES CHAMBER OF COMMERCE INC.
FOR ECONOMIC DEVELOPMENT SERVICES - FY 2016 TO FY 2020**

THIS ADDENDUM ("Addendum") to the AGREEMENT BETWEEN THE CITY OF EL PASO DE ROBLES AND THE PASO ROBLES CHAMBER OF COMMERCE INC ("Agreement"), effective July 1, 2019, is made and entered into this ____ day of November 2019, by and between the City of El Paso de Robles, hereafter referred to as the "CITY", and the Paso Robles Chamber of Commerce, Inc., hereinafter referred to as "CHAMBER".

WHEREAS, CITY desires to continue to contract with CHAMBER to provide economic development services outlined in the AGREEMENT; and

WHEREAS, on June 19, 2018, the City Council adopted the Two-Year Budget for FY 2018-20 and on June 18, 2019 adopted final budget adjustments for FY 2019-20; and

WHEREAS, on September 17, 2019, the City Council approved the CHAMBER'S budget submittal and request for FY 2019-20 in the amount of \$185,000,

CITY and CHAMBER hereby amend section 2. COMPENSATION of the AGREEMENT to reflect a FY 2019-2020 contract amount of \$185,000, and hereby add section 21, as follows:

License; Proprietary Rights. CITY hereby grants CHAMBER a non-exclusive, non-transferable license to use CITY's name, likeness, image, logo, copyrights and trademarks, if any ("City Proprietary Rights"), as needed to fulfill the CHAMBER's obligations to City pursuant to this Agreement. City hereby represents and warrants that City owns all right to City Proprietary Rights and that it has the necessary authority to grant CHAMBER the right to use City Proprietary Rights; or, in the alternative, City hereby warrants and represents that City is authorized to and otherwise possesses all rights necessary to grant CHAMBER the right to use City Proprietary Rights. All right, title and interest in the City Proprietary Rights remain with City and CHAMBER is granted only the right to use the City Proprietary Rights solely in connection with its obligations under this Agreement.

All other terms remain unchanged.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR ADDENDUME TO THE PROFESSIONAL SERVICES
AGREEMENT
BETWEEN THE CITY OF EL PASO DE ROBLES
AND THE PASO ROBLES CHAMBER OF COMMERCE**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

THE CITY OF EL PASO DE ROBLES
1000 Spring Street
Paso Robles, CA 93446

By



Thomas Frutchey, City Manager

PASO ROBLES CHAMBER OF COMMERCE
1225 Park Street
Paso Robles, CA 93446

By



Sarah Hinds, Chairman of the Board

By



Gina M. Fitzpatrick, President/CEO

ATTEST:

By:



Melissa Martin
Deputy, City Clerk

CITY ATTORNEY APPROVAL:

By:



Kimberly Hood
Interim City Attorney

REVIEWED:

By:



City Project Manager

AGREEMENT TO PROVIDE VISITORS INFORMATION SERVICES

THIS AGREEMENT is made and entered into in the City of San Luis Obispo on this _____ day of _____, 2019 by and between the CITY OF SAN LUIS OBISPO, a municipal corporation, hereinafter referred to as City, and; the SAN LUIS OBISPO CHAMBER OF COMMERCE, INC., a nonprofit corporation, hereinafter referred to as Contractor.

WITNESSETH:

WHEREAS, the City desires to contract with Contractor to promote its advantages as a travel destination for tourists, disseminate visitor information and properly respond to inquiries about lodging availability, events, and activities taking place in and around the City; and

WHEREAS, Contractor is qualified and its visitors center is equipped to carry out such activities on behalf of the City, and it is in a position to accomplish such aims and purposes of the City in an efficient and economical manner; and

WHEREAS, in its April 10, 2019, meeting the Promotional Coordinating Committee recommended that the longstanding contract with Contractor for said services be continued for a two-year term of 2019-21; and

WHEREAS, the City Council approved the expenditure in its July 2, 2019 meeting when it considered the Community Promotions funding as recommended by the Promotional Coordinating Committee.

NOW THEREFORE, in consideration of their mutual promises, obligations, and covenants hereinafter contained, the parties hereto agree as follows:

1. TERM. The term of this Agreement shall be from July 1, 2019 until June 30, 2021.

2. INCORPORATION BY REFERENCE. The Contractor's Scope of Work for Visitors Information Services, is hereby incorporated in and made a part of this Agreement as Exhibit A. The City's Terms and Conditions are hereby incorporated in and made a part of this Agreement as Exhibit B. The City's Insurance Requirement is hereby incorporated in and made a part of this Agreement as Exhibit C. To the extent that there are any conflicts between this Agreement, the Contractor's Scope of Work for Visitors Information Services and the City's Terms and Conditions, the City's Terms and Conditions shall prevail, unless specifically agreed otherwise in writing signed by both parties.

3. REPRESENTATION FOR PROGRAM COORDINATION.

3.1 City. The City Manager or his designated representative shall be the Project Manager representing the City for all purposes under this agreement. Molly Cano, Tourism Manager for the City is hereby designated as the City Project Manager.

3.2 Contractor. Contractor shall assign a single Contractor Project Manager to have overall responsibility for the progress and execution of this agreement for the Contractor at the commencement of the term of this agreement. Dusty Colyer-Worth is designated as the Contractor Project Manager. Should circumstances or conditions subsequent to the execution of this document require a substitute Contractor Project Manager for any reason, the Contractor Project Manager designee shall be subject to the prior written approval by the City Project Manager.

4. CITY'S OBLIGATIONS.

4.1. Ongoing Services. For providing services as specified in Exhibit A to this Agreement, and upon receipt of Contractor's monthly contractor report, City agrees to pay to Contractor upon receipt of an invoice, the following:

4.1.1. Eleven (11) monthly installment payments, in the amount of Nine Thousand Nine Hundred Sixty Six Dollars (\$9,966), and one (1) installment of Nine Thousand Nine Hundred Seventy Four Dollars (\$9,974) for a **total of One Hundred Nineteen Thousand Six Hundred Dollars (\$119,600) during FY 2019-20;** and

4.1.2. Eleven (11) monthly installment payments, in the amount of Nine Thousand Nine Hundred Sixty Six Dollars (\$9,966), and one (1) installment of Nine Thousand Nine Hundred Seventy Four Dollars (\$9,974) for a **total of One Hundred Nineteen Thousand Six Hundred Dollars (\$119,600) during FY 2020-21.**

5. CONTRACTOR'S OBLIGATIONS.

5. 1. Scope of Work. For and in consideration of City's promises and the payment obligations, Contractor shall provide services as described in Exhibit A.

5.2. Coordination of Efforts with other Contractors. Contractor acknowledges the potential for duplication of efforts and costs as a result of the City's agreements with other contractors under its Community Promotions program. To coordinate efforts, Contractor shall participate in monthly meetings of the Promotional Coordinating Committee and shall provide reports for or at the meeting as requested by the committee or through Exhibit A to this contract. In performing its services under this agreement, the Contractor agrees to make every reasonable effort to coordinate activities and to identify and avoid duplication of costs associated with the Promotional Services.

5.3 Ownership of Materials. All original drawings, plan documents and other materials prepared by or in possession of Contractor as part of the work or services under these specifications shall become the permanent property of the City and shall be delivered to the City upon demand.

5.4 Release of Reports and Information. Any reports, information, data, or other material given to, prepared by or assembled by Contractor as part of the work or services under these specifications shall be the property of City, and shall not be made available to any individual or organization by Contractor without the prior written approval of the City.

5.5 Copies of Reports and Information. If the City requests additional copies of reports, drawings, specifications, or any other material in addition to what Contractor is required to furnish in limited quantities as part of the work or services under these specifications, Contractor shall provide such additional copies as are requested, and City shall compensate Contractor for the costs of duplicating of such copies at the Contractor's direct expense.

5.6 Attendance at Meetings and Hearings. As part of the workscope and included in the contract price is attendance by the Contractor to public meetings to present and discuss its findings and recommendations. Contractor shall attend as many "working" meetings with staff as necessary in performing workscope tasks.

5.7 Promotion of City Properties. Contractor agrees that during its promotion of City and fulfillment of the terms of this contract that it shall promote all City of San Luis Obispo lodging properties, whether or not they are member of the San Luis Obispo Chamber of Commerce. Contractor specifically acknowledges that this promotional effort could require the production of separate materials to include non-member lodging properties on an information list and a link on the visitslo.com website to a list of non-member properties.

6. GENERAL TERMS AND CONDITIONS. Contractor shall meet all general terms and conditions as specified in Exhibit B.

7. INSURANCE. The Contractor shall procure and maintain for the duration of the contract insurance which meets the requirements of Exhibit C. As evidence of this insurance, the Contractor shall provide the City with both, a Certificate of Insurance and an Endorsement naming the City as an "Additional Insured".

8. AMENDMENTS. Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by the City Council, or the City Manager for amounts up to the authority granted to the City Manager by the City Council.

9. INDEPENDENT CONTRACTOR. Notwithstanding any representations, oral or written, between the parties, including any and all agents or representatives thereof, Contractor at all times covered by the terms of this agreement is acting as a free and independent contractor, not as an agent of the City. Any and all supervision and direction by any City official, department or body shall be only that necessary to provide broad general outlines, and Contractor will use its own initiative and discretion in performing the details of work herein.

10. COMPLETE AGREEMENT. This written Agreement, including all writings specifically incorporated herein by reference, shall constitute the complete agreement between the parties hereto. No oral agreement, understanding, or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral agreement, understanding, or representation be binding upon the parties hereto.


11. NOTICE. All written notices to the parties hereto shall be sent by United States mail, postage prepaid by registered or certified mail addressed as follows:

City	City of San Luis Obispo Administration 990 Palm Street San Luis Obispo, CA 93401
Contractor	San Luis Obispo Chamber of Commerce 895 Monterey Street San Luis Obispo, CA 93401 Attn: Jim Dantona

12. AUTHORITY TO EXECUTE AGREEMENT. Both City and Contractor do covenant that each individual executing this agreement on behalf of each party is a person duly authorized and empowered to execute Agreements for such party.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

ATTEST:

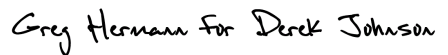
DocuSigned by:

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Teresa Purrington, City Clerk

CITY OF SAN LUIS OBISPO,

A Municipal Corporation

By

DocuSigned by:

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Derek Johnson, City Manager


APPROVED AS TO FORM:

DocuSigned by:

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Christine Dietrick, City Attorney

CONTRACTOR

DocuSigned by:

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Jim Dantona, President/CEO

San Luis Obispo Chamber of Commerce

EXHIBIT A
SCOPE OF WORK FOR VISITORS INFORMATION SERVICES

The San Luis Obispo Chamber of Commerce shall provide and perform services to facilitate the welcoming and hospitality of visitors to San Luis Obispo, in a manner designed to promote the unique character, heritage and special attributes of the community and enhance the economic vitality of the City of San Luis Obispo. Such services shall include, but are not limited to:

1. Maintain a public office in a central location in Downtown San Luis Obispo for visitor information (the “Visitors Center”) that has regular hours that suits the needs of visitors.
2. Assist in implementing the City’s Tourism efforts, goals, and objectives.
 - 2.1. Continue to maintain and improve upon strategic alliances including supporting partnership opportunities with Cal Poly, the Arts Community on special events, the City’s Parks and Recreation Department through special events and marketing opportunities.
 - 2.2. Provide Visitor Center on-the-road services to reach guests where they are.
 - 2.2.1. Maintain booth presence in at least two key Cal Poly events including Mustang Family Weekend (Fall) and Open House (Spring).
 - 2.2.2. Participate in the Downtown SLO Farmers’ Market seasonally from Memorial Day to Labor Day.
 - 2.2.3. Identify and participate in two additional local Visitor Center on-the-road activations.
3. Use the City of San Luis Obispo’s tourism logo and tourism URL (VisitSLO.com) in visitor information materials commissioned and paid for by the City of San Luis Obispo.
4. Provide visitor information that suits the needs of visitors to San Luis Obispo.
 - 4.1. Provide high level of personal customer service to visitors with an adequate number of trained employees to handle the seasonal flow of visitors to the Visitors Center.
 - 4.2. Respond to high volumes of information requests including telephone calls and emails.
 - 4.3. Serve as a contact for information requests from potential visitors as well as an activity resources and a referral agency to the City’s lodging members.
 - 4.4. Utilize and refer to the tourism URL (VisitSLO.com) as the go-to resource for visitor information in the City of San Luis Obispo.
 - 4.5. Maintain and contribute to the digital annual events calendar by supplying
 - 4.5.1. Direct entry of 10-12 key/featured San Luis Obispo events onto the ShareSLO platform per month.
 - 4.5.2. Provide the display of PCC/TBID sponsored events in an “upcoming events” slide on Visitor Center 24hr. kiosk monitor.
 - 4.6. In the Visitors Center dispense City maps, hotel/motel directories, visitors’ guides, brochures, pamphlets, and general statistics about San Luis Obispo.
5. Assist in fulfilling the City’s placemaking efforts, goals, and objectives.

- 5.1. Serve as an informational, physical location to tell the story of the PCC's work to enhance San Luis Obispo for all
6. Collect demographic data through the Visitor Center to inform the City of trends and other relevant information.
7. Provide written reports on activities monthly (*by noon on the first Wednesday of the month*) to the City of San Luis Obispo's Administration Department to be included in the Promotional Coordinating Committee's monthly meeting packets. At a minimum the reports shall include:
 - 7.1. Summary of activities & achievements relating to work scope as outlined in Exhibit A.
 - 7.2. Number of visitors to the center for the month in comparison to historical data.
 - 7.3. Demographic findings from the visitor center tracking.
 - 7.4. Number of events and activities promoted for the month and aggregated total.
 - 7.5. Number and list of events submitted to the SLO Happenings calendar.
 - 7.6. Summary of monthly telephone and email information requests in comparison to historical data.
 - 7.7. Type and quantity of any special materials distributed to groups.
 - 7.8. Summary of partnerships with event organizations in the Visitors Center
8. Once a quarter, present the PCC with a detailed oral report highlighting achievements as compared to the work scope and elaborate on upcoming plans and events.
9. Once a year, upon request, provide a cost summary for the Visitors Center that details operational line-item expenditure for the previous calendar year.

EXHIBIT B
GENERAL TERMS AND CONDITIONS

1. Insurance Requirements. The Contractor shall provide proof of insurance in the form, coverages and amounts specified in Exhibit C, unless changes are otherwise approved by City.
2. Business License & Tax. The Contractor must have a valid City of San Luis Obispo business license & tax certificate before execution of the contract. Additional information regarding the City's business tax program may be obtained by calling (805) 781-7134.
3. Ability to Perform. The Contractor warrants that it possesses, or has arranged through subcontracts, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with all federal, state, county, city, and special district laws, ordinances, and regulations.
4. Laws to be Observed. The Contractor shall keep itself fully informed of and shall observe and comply with all applicable state and federal laws and county and City of San Luis Obispo ordinances, regulations and adopted codes during its performance of the work.
5. Payment of Taxes. The contract prices shall include full compensation for all taxes that the Contractor is required to pay.
6. Permits and Licenses. The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary.
7. Safety Provisions. The Contractor shall conform to the rules and regulations pertaining to safety established by OSHA and the California Division of Industrial Safety.
8. Public and Employee Safety. Whenever the Contractor's operations create a condition hazardous to the public or City employees, it shall, at its expense and without cost to the City, furnish, erect and maintain such fences, temporary railings, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public and employees.
9. Preservation of City Property. The Contractor shall provide and install suitable safeguards, approved by the City, to protect City property from injury or damage. If City property is injured or damaged resulting from the Contractor's operations, it shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor began work.
10. Immigration Act of 1986. The Contractor warrants on behalf of itself and all subcontractors engaged for the performance of this work that only persons authorized to work in the United State pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.
11. Contractor Non-Discrimination. In the performance of this work, the Contractor agrees that it will not engage in, nor permit such subcontractors as it may employ, to engage in discrimination in employment of persons because of age, race, color, sex, national origin or ancestry, sexual orientation, or religion of such persons.

12. Work Delays. Should the Contractor be obstructed or delayed in the work required to be done hereunder by changes in the work or by any default, act, or omission of the City, or by strikes, fire, earthquake, or any other Act of God, or by the inability to obtain materials, equipment, or labor due to federal government restrictions arising out of defense or war programs, then the time of completion may, at the City's sole option, be extended for such periods as may be agreed upon by the City and the Contractor. In the event that there is insufficient time to grant such extensions prior to the completion date of the contract, the City may, at the time of acceptance of the work, waive liquidated damages that may have accrued for failure to complete on time, due to any of the above, after hearing evidence as to the reasons for such delay, and making a finding as to the causes of same.

13. Payment Terms. The City's payment terms are 30 days from the receipt of an original invoice and acceptance by the City of the materials, supplies, equipment, or services provided by the Contractor (Net 30).

14. Inspection. The Contractor shall furnish City with every reasonable opportunity for City to ascertain that the services of the Contractor are being performed in accordance with the requirements and intentions of this contract. All work done, and all materials furnished, if any, shall be subject to the City's inspection and approval. The inspection of such work shall not relieve Contractor of any of its obligations to fulfill its contract requirements.

15. Audit. The City shall have the option of inspecting and/or auditing all records and other written materials used by Contractor in preparing its invoices to City as a condition precedent to any payment to Contractor.

16. Interests of Contractor. The Contractor covenants that it presently has no interest, and shall not acquire any interest—direct, indirect or otherwise—that would conflict in any manner or degree with the performance of the work hereunder. The Contractor further covenants that, in the performance of this work, no subcontractor or person having such an interest shall be employed. The Contractor certifies that no one who has or will have any financial interest in performing this work is an officer or employee of the City. It is hereby expressly agreed that, in the performance of the work hereunder, the Contractor shall at all times be deemed an independent contractor and not an agent or employee of the City.

17. Hold Harmless and Indemnification.

(a) Non-design, non-construction Professional Services: To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8), Consultant shall indemnify, defend, and hold harmless the City, and its elected officials, officers, employees, volunteers, and agents ("City Indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Consultant's performance or Consultant's failure to perform its obligations under this Agreement or out of the operations conducted by Consultant, including the City's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant's performance of this Agreement, the Consultant shall provide a defense to the City Indemnitees or at the City's option, reimburse the City Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims.

(b) Non-design, construction Professional Services: To the extent the Scope of Services involve a “construction contract” as that phrase is used in Civil Code Section 2783, this paragraph shall apply in place of paragraph A. To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8), Consultant shall indemnify, defend, and hold harmless the City, and its elected officials, officers, employees, volunteers, and agents (“City Indemnitees”), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels’ fees and costs of litigation (“claims”), arising out of the Consultant’s performance or Consultant’s failure to perform its obligations under this Agreement or out of the operations conducted by Consultant, except for such loss or damage arising from the active negligence, sole negligence or willful misconduct of the City. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant’s performance of this Agreement, the Consultant shall provide a defense to the City Indemnitees or at the City’s option, reimburse the City Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims.

(c) Design Professional Services: In the event Consultant is a “design professional”, and the Scope of Services require Consultant to provide “design professional services” as those phrases are used in Civil Code Section 2782.8, this paragraph shall apply in place of paragraphs A or B. To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8) Consultant shall indemnify, defend and hold harmless the City and its elected officials, officers, employees, volunteers and agents (“City Indemnitees”), from and against all claims, damages, injuries, losses, and expenses including costs, attorney fees, expert consultant and expert witness fees arising out of, pertaining to or relating to, the negligence, recklessness or willful misconduct of Consultant, except to the extent caused by the sole negligence, active negligence or willful misconduct of the City. Negligence, recklessness or willful misconduct of any subcontractor employed by Consultant shall be conclusively deemed to be the negligence, recklessness or willful misconduct of Consultant unless adequately corrected by Consultant. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant’s performance of this Agreement, the Consultant shall provide a defense to the City Indemnitees or at the City’s option, reimburse the City Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims. In no event shall the cost to defend charged to Consultant under this paragraph exceed Consultant’s proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Consultant shall meet and confer with other parties regarding unpaid defense costs.

(d) The review, acceptance or approval of the Consultant’s work or work product by any indemnified party shall not affect, relieve or reduce the Consultant’s indemnification or defense obligations. This Section survives completion of the services or the termination of this contract. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

18. Contract Assignment. The Contractor shall not assign, transfer, convey or otherwise dispose of the contract, or its right, title or interest, or its power to execute such a contract to any individual or business entity of any kind without the previous written consent of the City.

19. Termination for Convenience. The City may terminate all or part of this Agreement for any or no reason at any time by giving 30 days written notice to Contractor. Should the City terminate this Agreement for convenience, the City shall be liable as follows: (a) for standard or off-the-shelf products, a reasonable restocking charge not to exceed ten (10) percent of the total purchase price; (b) for custom products, the less of a reasonable price for the raw materials, components work in progress and any finished units on hand or the price per unit reflected on this Agreement. For termination of any services pursuant to this Agreement, the City's liability will be the lesser of a reasonable price for the services rendered prior to termination, or the price for the services reflected on this Agreement. Upon termination notice from the City, Contractor must, unless otherwise directed, cease work and follow the City's directions as to work in progress and finished goods.

20. Termination. If, during the term of the contract, the City determines that the Contractor is not faithfully abiding by any term or condition contained herein, the City may notify the Contractor in writing of such defect or failure to perform. This notice must give the Contractor a 10 (ten) calendar day notice of time thereafter in which to perform said work or cure the deficiency.

If the Contractor has not performed the work or cured the deficiency within the ten days specified in the notice, such shall constitute a breach of the contract and the City may terminate the contract immediately by written notice to the Contractor to said effect. Thereafter, neither party shall have any further duties, obligations, responsibilities, or rights under the contract except, however, any and all obligations of the Contractor's surety shall remain in full force and effect, and shall not be extinguished, reduced, or in any manner waived by the terminations thereof.

In said event, the Contractor shall be entitled to the reasonable value of its services performed from the beginning date in which the breach occurs up to the day it received the City's Notice of Termination, minus any offset from such payment representing the City's damages from such breach. "Reasonable value" includes fees or charges for goods or services as of the last milestone or task satisfactorily delivered or completed by the Contractor as may be set forth in the Agreement payment schedule; compensation for any other work, services or goods performed or provided by the Contractor shall be based solely on the City's assessment of the value of the work-in-progress in completing the overall work scope.

The City reserves the right to delay any such payment until completion or confirmed abandonment of the project, as may be determined in the City's sole discretion, so as to permit a full and complete accounting of costs. In no event, however, shall the Contractor be entitled to receive in excess of the compensation quoted in its proposal.

EXHIBIT C
INSURANCE

Insurance. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees, or sub-contractors.

- a. ***Minimum scope of insurance.*** Coverage shall be at least as broad as:
 - Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
 - Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
 - Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
 - Errors and Omissions Liability insurance as appropriate to Contractor's profession.
- b. ***Minimum limits of insurance.*** Contractor shall maintain limits no less than:
 - General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
 - Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
 - Errors and Omissions Liability: \$1,000,000 per occurrence.
- c. ***Deductibles and self-insured retentions.*** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- d. ***Other insurance provisions.*** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
 - The City, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, official, employees, agents or volunteers.
 - For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers,

officials, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

- Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
- Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

- e. ***Acceptability of insurers.*** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.
- f. ***Verification of coverage.*** Contractor shall furnish the City with a certificate of insurance showing maintenance of the required insurance coverage. Original endorsements effecting general liability and automobile liability coverage required by this clause must also be provided. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences.

**AGREEMENT WITH THE CHAMBER OF COMMERCE FOR
GUEST SERVICES TO THE TOURISM BUSINESS IMPROVEMENT DISTRICT**

THIS AGREEMENT is made and entered into in the City of San Luis Obispo dated, _____ by and between the CITY OF SAN LUIS OBISPO, a municipal corporation, hereinafter referred to as City, and; the SAN LUIS OBISPO CHAMBER OF COMMERCE, INC., a nonprofit corporation, hereinafter referred to as Contractor.

WITNESSETH:

WHEREAS, the City desires to commission Contractor to continue to provide extended lodging services for the San Luis Obispo hoteliers at the Visitors Center downtown; and

WHEREAS, the City's Tourism Improvement District (TBID) Board received a proposal from Contractor to this effect for consideration at its April regular monthly board meeting; and

WHEREAS, the TBID Board approved the recommendation to contract for the proposed services during its May regular monthly board meeting; and

WHEREAS, Contractor, as the operator of the Visitors Center, is qualified to execute the proposed services and improvements as presented to the Tourism Business Improvement District Board; and

WHEREAS, the City Council approved the Community Promotions program funding for 2018-19 at its July 10, 2018 meeting.

NOW THEREFORE, in consideration of their mutual promises, obligations, and covenants hereinafter contained, the parties hereto agree as follows:

1. **TERM.** The term of this Agreement shall be from July 1, 2018 until June 30, 2019.
2. **INCORPORATION BY REFERENCE.** The Contractor's proposal dated April 2018, is hereby incorporated in and made a part of this Agreement as Exhibit B. To the extent that there are any conflicts between this Agreement and the Contractor's proposal, the terms of this Agreement shall prevail, unless specifically agreed otherwise in writing signed by both parties.

3. REPRESENTATION FOR PROGRAM COORDINATION.

3.1 City. The City Manager or his designated representative shall be the Project Manager representing the City for all purposes under this agreement. Molly Cano, Tourism Manager for the City is hereby designated as the City Project Manager.

3.2 Contractor. Contractor shall assign a single Project Manager to have overall responsibility for the progress and execution of this agreement for the Contractor at the commencement of the term of this agreement. Dusty Colyer-Worth, is designated as the Project Manager. Should circumstances or conditions subsequent to the execution of this document require a substitute Project Manager for any reason, the Project Manager designee shall be subject to the prior written approval by the City Project Manager.

4. CITY'S OBLIGATIONS. For providing services as specified in **Exhibit A** to this Agreement, and upon receipt of the monthly report as stipulated under Exhibit A Item 3, the City agrees to pay to contractor twelve (12) monthly payments in the amount of Three Thousand Seven Hundred Fifty Dollars (\$3,750) per month for a total TBID Specific Guest Services program allocation **not to exceed Forty Five Thousand Dollars (\$45,000)** for **FY 2018-2019**.

5. CONTRACTOR'S OBLIGATIONS.

5. 1. Scope of Work - Exhibit A. For and in consideration of City's promises and the payment obligations, Contractor shall provide services as described in Exhibit A attached hereto and incorporated by reference into this Agreement.

5.2. Coordination of Efforts with other Contractors. Contractor acknowledges the potential for duplication of efforts and costs as a result of the City's agreements with other contractors. To coordinate efforts, Contractor shall participate in monthly meetings of the Tourism Business Improvement District Board. In performing its services under this agreement, the Contractor agrees to make every reasonable effort to coordinate activities and to identify and avoid duplication of costs associated with Tourism Promotion Services and all contractors involved.

6. GENERAL TERMS AND CONDITIONS. Contractor shall meet all general terms and conditions as specified in Exhibit C, attached and incorporated herein by reference.

7. INSURANCE. The Contractor shall procure and maintain for the duration of the contract insurance which meets the requirements of Exhibit D, attached and incorporated herein by reference. As evidence of this insurance, the Contractor shall provide the City with both, a Certificate of Insurance and an Endorsement naming the City as an "Additional Insured".

8. AMENDMENTS. Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by the City Manager for amounts up to the authority granted to the City Manager by the City Council.

9. INDEPENDENT CONTRACTOR. Notwithstanding any representations, oral or written between the parties including any and all agents or representatives thereof, Contractor shall be at all times covered by the terms of this Agreement and is acting as a free and independent contractor, not as an agent of the City. Any and all supervision and direction by any City official, department or body shall be only that necessary to provide broad general outlines, and Contractor will use its own initiative and discretion in performing the details of work herein.

10. COMPLETE AGREEMENT. This written Agreement, including all writings specifically incorporated herein by reference, shall constitute the complete agreement between the parties hereto. No oral agreement, understanding, or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral agreement, understanding, or representation be binding upon the parties hereto.

11. NOTICE. All written notices to the parties hereto shall be sent by United States mail, postage prepaid by registered or certified mail addressed as follows:

City

City Clerk
City of San Luis Obispo
990 Palm Street
San Luis Obispo, CA 93401

Contractor

San Luis Obispo Chamber of Commerce
895 Monterey Street
San Luis Obispo, CA 93401
Attn: Sandi Sigurdson

12. AUTHORITY TO EXECUTE AGREEMENT. Both City and Contractor do covenant that each individual executing this Agreement on behalf of each party is a person duly authorized and empowered to execute agreements for such party.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

ATTEST:

CITY OF SAN LUIS OBISPO,
A Municipal Corporation

DocuSigned by:
Greg Hernan For Derek Johnson
By 1E9343C5C69D48A...
Derek Johnson, City Manager

APPROVED AS TO FORM:

CONTRACTOR

DocuSigned by:
John Ansolabehere
E858E9655F12469...
Christine Dietrick, City Attorney



By: _____
Geri LaChance, Interim CEO
San Luis Obispo Chamber of Commerce

Exhibit A

SCOPE OF WORK FOR GUEST SERVICES

1. Defined Goals

- To provide dedicated and knowledgeable customer service for all San Luis Obispo City lodging properties and visitors at the Downtown Visitors Center.
- To provide lodging availability service to assist visitors seeking lodging in the City of San Luis Obispo.
- To assist San Luis Obispo lodging properties fill vacant rooms.

2. Program Components

- Tracking room availability Thursday – Saturday through:
 - o Weekly email and phone calls to all constituents as well as additional tracking for impacted weeks throughout the year (i.e. Cal Poly Week of Welcome, Cal Poly Family Weekend)
 - o Availability information for impacted times is provided to TBID properties in order to help keep guest in the City, even after Visitor Center hours
 - o Tracking availability for TBID Homestay properties if they opt in
 - o SLO hotel contact information included in advertising on exterior facing monitor 24 hours a day, 7 days a week
- Guest service and booking assistance for guests that call the customer service line seeking tourist information on 1-877-SLO-TOWN
- Quarterly site visits by Visitor Center staff to each hotel to build understanding of each property's unique offerings, as well as their needs, ensuring that the Visitor Center team is making informed and educated referrals
- Assisting visitors, either in person or over the phone, in booking their SLO City hotel room by booking for them or helping them to book on their own
- Up to four activations per year of the Visitor Center on-the-road to assist in tourism promotion at events such as trade shows or at in-county TBID sponsored events, that fall upon mutually agreed dates. If required, lodging expenses would be covered by the city, similar to past years.
- Up to four activations per year of Visitor Center related special promotions including:
 - o Involvement of Visitor Center manager in the planning to ensure seamless fulfillment
 - o Utilization of the Visitor Center as a fulfillment location for guest pick-up and delivery of promotion
 - o Utilization of Visitor Center staff to respond to phone and in person inquiries
- Deepen training of Visitor Center staff on the individual hotel properties, through techniques such as scheduled hotel property visits, to gain an authentic understanding of each property.

3. Reporting

- Provide written reports on contract activities monthly (*by noon on the first Wednesday of the month*) to the City of San Luis Obispo's Administration Department to be included in the TBID's monthly board packets. At a minimum the reports shall include:
 - Number of Visitors Served
 - Statistical Information on Visitors Served
 - Number of phone calls answered for San Luis Obispo Hotels
 - Hotel Rooms referred through contract components
- Once a quarter, present the TBID Board with a detailed oral report highlighting achievements as compared to the work scope.

Exhibit C
GENERAL TERMS AND CONDITIONS

1. **Business License and Tax.** Contractor must have a valid City of San Luis Obispo business license and tax certificate prior to execution of the contract. Additional information regarding the City's business tax program may be obtained by calling (805) 781-7134.
2. **Ability to Perform.** Contractor warrants that it possesses, or has arranged through subcontracts, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all federal, state, county, city, and special district laws, ordinances, and regulations.
3. **Laws to be Observed.** Contractor shall keep itself fully informed of and shall observe and comply with all applicable state and federal laws and county and City of San Luis Obispo ordinances, regulations and adopted codes during its performance of the work.
4. **Payment of Taxes.** The contract prices shall include full compensation for all taxes which Contractor is required to pay.
5. **Permits and Licenses.** Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary.
6. **Safety Provisions.** Contractor shall conform to the rules and regulations pertaining to safety established by OSHA and the California Division of Industrial Safety.
7. **Public and Employee Safety.** Whenever Contractor's operations create a condition hazardous to the public or City employees, it shall, at its expense and without cost to the City, furnish, erect and maintain such fences, temporary railings, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public and employees.
8. **Preservation of City Property.** Contractor shall provide and install suitable safeguards, approved by the City, to protect City property from injury or damage. If City property is injured or damaged as a result of Contractor's operations, it shall be replaced or restored at Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor began work.
9. **Immigration Act of 1986.** Contractor warrants on behalf of itself and all sub-contractors engaged for the performance of this work that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.
10. **Contractor Non-Discrimination.** In the performance of this work, Contractor agrees that it will not engage in, nor permit such sub-contractors as it may employ, to engage in discrimination in employment of persons because of age, race, color, sex, national origin or ancestry, sexual orientation, or religion of such persons.
11. **Work Delays.** Should Contractor be obstructed or delayed in the work required to be done hereunder by changes in the work or by any default, act, or omission of the City, or by strikes, fire, earthquake, or any other Act of God, or by the inability to obtain materials, equipment, or labor due to federal government restrictions arising out of defense or war programs, then the time of completion may, at the City's sole option, be extended for such periods as may be agreed upon by the City and the Contractor.
12. **Payment Terms.** The City's payment terms are 30 days from the receipt of an original invoice and acceptance by the City of the services provided by Contractor (Net 30).

13. **Inspection.** Contractor shall furnish City with every reasonable opportunity for City to ascertain that the services of Contractor are being performed in accordance with the requirements and intentions of this contract. All work done and all materials furnished, if any, shall be subject to the City's inspection and approval. The inspection of such work shall not relieve Contractor of any of its obligations to fulfill its contract requirements.
14. **Audit.** The City shall have the option of inspecting and/or auditing all records and other written materials used by Contractor in preparing its invoices to City as a condition precedent to any payment to Contractor.
15. **Interests of Contractor.** Contractor covenants that it presently has no interest, and shall not acquire any interest direct or indirect or otherwise, which would conflict in any manner or degree with the performance of the work hereunder. Contractor further covenants that, in the performance of this work, no sub-contractor or person having such an interest shall be employed. Contractor certifies that no one who has or will have any financial interest in performing this work is an officer or employee of the City. It is hereby expressly agreed that, in the performance of the work hereunder, Contractor shall at all times be deemed an independent contractor and not an agent or employee of the City.
16. **Hold Harmless and Indemnification.** *Contractor agrees to defend, indemnify, protect and hold the City and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Contractor's employees, agents or officers which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of Contractor, and its agents, officers or employees, in performing the work or services herein, and all expenses of investigating and defending against same; provided, however, that Contractor's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its agents, officers or employees.*
17. **Contract Assignment.** Contractor shall not assign, transfer, convey or otherwise dispose of the contract, or its right, title or interest, or its power to execute such a contract to any individual or business entity of any kind without the previous written consent of the City.
18. **Termination.** If, during the term of the contract, the City determines that Contractor is not faithfully abiding by any term or condition contained herein, the City may notify Contractor in writing of such defect or failure to perform; which notice must give Contractor a 10 (ten) calendar day notice of time thereafter in which to perform said work or cure the deficiency.
If Contractor has not performed the work or cured the deficiency within the ten days specified in the notice, such shall constitute a breach of the contract and the City may terminate the contract immediately by written notice to Contractor to said effect. Thereafter, neither party shall have any further duties, obligations, responsibilities, or rights under the contract.

In said event, Contractor shall be entitled to the reasonable value of its services performed from the beginning date in which the breach occurs up to the day it received the City's Notice of Termination, minus any offset from such payment representing the City's damages from such breach. "Reasonable value" includes fees or charges for goods or services as of the last milestone or task satisfactorily delivered or completed by Contractor as may be set forth in the Agreement payment schedule; compensation for any other work, services or goods performed or provided by Contractor shall be based solely on the City's assessment of the value of the work-in-progress in completing the overall workscope.

The City reserves the right to delay any such payment until completion or confirmed abandonment of the project, as may be determined in the City's sole discretion, so as to permit a full and complete accounting of costs. In no event, however, shall Contractor be entitled to receive in excess of the compensation quoted in its proposal.

The City reserves the right to terminate the contract for convenience at any time upon 30 days' notice to the Contractor. In the event of termination for convenience, Contractor shall be entitled to the reasonable value of its services performed up to the date of termination set forth in the notice of termination, provided that the

Contractor shall in no event be entitled to receive any amount in excess of the compensation quoted in its proposal or for work not authorized by the City from the date of notice of termination to the date for termination of services specified in said notice.

19. **Ownership of Materials.** All original drawings, plan documents and other materials prepared by or in possession of Contractor as part of the work or services under these specifications shall become the permanent property of the City, and shall be delivered to the City upon demand.
20. **Release of Reports and Information.** Any reports, information, data, or other material given to, prepared by or assembled by Contractor as part of the work or services under these specifications shall be the property of City, and shall not be made available to any individual or organization by Contractor without the prior written approval of the City.
21. **Copies of Reports and Information.** If the City requests additional copies of reports, drawings, specifications, or any other material in addition to what Contractor is required to furnish in limited quantities as part of the work or services under these specifications, Contractor shall provide such additional copies as are requested, and City shall compensate Contractor for the costs of duplicating of such copies at the Contractor's direct expense.
22. **Attendance at Meetings and Hearings.** As part of the workscope and included in the contract price is attendance by the Contractor to public meetings to present and discuss its findings and recommendations. Contractor shall attend as many "working" meetings with staff as necessary in performing workscope tasks.

Exhibit D

INSURANCE

Insurance. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees, or sub-contractors.

- a. ***Minimum scope of insurance.*** Coverage shall be at least as broad as:
 - Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
 - Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
 - Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
 - Errors and Omissions Liability insurance as appropriate to Contractor's profession.
- b. ***Minimum limits of insurance.*** Contractor shall maintain limits no less than:
 - General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
 - Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
 - Errors and Omissions Liability: \$1,000,000 per occurrence.
- c. ***Deductibles and self-insured retentions.*** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- d. ***Other insurance provisions.*** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
 - The City, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, official, employees, agents or volunteers.
 - For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

- Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
 - Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- e. ***Acceptability of insurers.*** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.
- f. ***Verification of coverage.*** Contractor shall furnish the City with a certificate of insurance showing maintenance of the required insurance coverage. Original endorsements effecting general liability and automobile liability coverage required by this clause must also be provided. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences.

AGREEMENT TO MARKETING SUPPORT SERVICES TO GIA PROGRAM

THIS AGREEMENT is made and entered into in the City of San Luis Obispo on _____ by and between the CITY OF SAN LUIS OBISPO, a municipal corporation, hereinafter referred to as City, and; the SAN LUIS OBISPO CHAMBER OF COMMERCE, INC., a nonprofit corporation, hereinafter referred to as Contractor.

WITNESSETH:

WHEREAS, the City desires to further support its investment through its Grants-in-Aid program; and

WHEREAS, Contractor has an established relationship with the City's Grants-in-Aid recipients and major cultural, social, and recreational organizations and events in San Luis Obispo; and

WHEREAS, Contractor provides event related services through the Public Relations Services and the Visitors Center in downtown San Luis Obispo; and

WHEREAS, Contractor has provided such services to the City for many years; and

WHEREAS, the Promotional Coordinating Committee recommended to City Council to continue said services and establish them as an integrated part of its Grants-in-Aid program; and

WHEREAS, the City Council considered the Community Promotions program and related expenditures during its July 2, 2019 meeting and approved them as presented.

NOW THEREFORE, in consideration of their mutual promises, obligations, and covenants hereinafter contained, the parties hereto agree as follows:

1. **TERM.** The term of this Agreement shall be from July 1, 2019 until June 30, 2020.

2. **INCORPORATION BY REFERENCE.** The Contractor's Scope of Work for Marketing Support Services to Gia Program dated April 2019, is hereby incorporated in and made a part of this Agreement as Exhibit A. The City's Terms and Conditions are hereby incorporated in and made a part of this Agreement as Exhibit B. The City's Insurance Requirement is hereby incorporated in and made a part of this Agreement as Exhibit C. To the extent that there are any conflicts between this Agreement, the Contractor's Scope of Work for Marketing Support Services to Gia

Program and the City's Terms and Conditions, the City's Terms and Conditions shall prevail, unless specifically agreed otherwise in writing signed by both parties.

3. REPRESENTATION FOR PROGRAM COORDINATION.

3.1 City. The City Manager or his designated representative shall be the Project Manager representing the City for all purposes under this agreement. Molly Cano, Tourism Manager for the City is hereby designated as the City Project Manager.

3.2 Contractor. Contractor shall assign a single Contractor Project Manager to have overall responsibility for the progress and execution of this agreement for the Contractor at the commencement of the term of this agreement. Jacqui Clark-Charlesworth is designated as the Contractor Project Manager. Should circumstances or conditions subsequent to the execution of this document require a substitute Contractor Project Manager for any reason, the Contractor Project Manager designee shall be subject to the prior written approval by the City Project Manager.

4. CITY'S OBLIGATIONS. For providing services and the monthly report as specified in Exhibit A, the City agrees to pay to contractor twelve (12) monthly payments in the amount of Two Thousand Five Hundred Dollars (\$2,500) per month for a total GIA Support allocation **not to exceed Thirty Thousand Dollars (\$30,000)**.

5. CONTRACTOR'S OBLIGATIONS.

5.1. Scope of Work. For and in consideration of City's promises and the payment obligations, Contractor shall provide services as described in Exhibit A.

5.2. Coordination of Efforts with other Contractors. Contractor acknowledges the potential for duplication of efforts and costs as a result of the City's agreements with other contractors under its Community Promotions program. To coordinate efforts, Contractor shall participate in monthly meetings of the Promotional Coordinating Committee and its GIA Subcommittee, and upon request shall provide a 60-day action plan at the meeting. In performing its services under this agreement, the Contractor agrees to make every reasonable effort to coordinate activities and to identify and avoid duplication of costs associated with the Promotional Services.

5.3 Ownership of Materials. All original drawings, plan documents and other materials prepared by or in possession of Contractor as part of the work or services under these specifications shall become the permanent property of the City and shall be delivered to the City upon demand.

5.4 Release of Reports and Information. Any reports, information, data, or other material given to, prepared by or assembled by Contractor as part of the work or services under these specifications shall be the property of City, and shall not be made available to any individual or organization by Contractor without the prior written approval of the City.

5.5 Copies of Reports and Information. If the City requests additional copies of reports, drawings, specifications, or any other material in addition to what Contractor is required to furnish in limited quantities as part of the work or services under these specifications, Contractor shall provide such additional copies as are requested, and City shall compensate Contractor for the costs of duplicating of such copies at the Contractor's direct expense.

5.6 Attendance at Meetings and Hearings. As part of the workscope and included in the contract price is attendance by the Contractor to public meetings to present and discuss its findings and recommendations. Contractor shall attend as many "working" meetings with staff as necessary in performing workscope tasks.

6. GENERAL TERMS AND CONDITIONS. Contractor shall meet all general terms and conditions as specified in Exhibit B.

7. INSURANCE The Contractor shall procure and maintain for the duration of the contract insurance which meets the requirements of Exhibit C. As evidence of this insurance, the Contractor shall provide the City with both, a Certificate of Insurance and an Endorsement naming the City as an "Additional Insured".

8. AMENDMENTS. Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by the City Manager for amounts up to the authority granted to the City Manager by the City Council.

9. INDEPENDENT CONTRACTOR. Notwithstanding any representations, oral or written, between the parties, including any and all agents or representatives thereof, Contractor at all times covered by the terms of this Agreement is acting as a free and independent contractor, not as an agent of the City. Any and all supervision and direction by any City official, department or body shall be only that necessary to provide broad general outlines, and Contractor will use its own initiative and discretion in performing the details of work herein.

10. COMPLETE AGREEMENT. This written Agreement, including all writings specifically incorporated herein by reference, shall constitute the complete agreement between the parties hereto. No oral agreement,

understanding, or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral agreement, understanding, or representation be binding upon the parties hereto.

11. NOTICE. All written notices to the parties hereto shall be sent by United States mail, postage prepaid by registered or certified mail addressed as follows:

City

City Clerk
City of San Luis Obispo
990 Palm Street
San Luis Obispo, CA 93401

Contractor

San Luis Obispo Chamber of Commerce
895 Monterey Street
San Luis Obispo, CA 93401
Attn: Jim Dantona

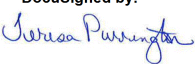
12. AUTHORITY TO EXECUTE AGREEMENT. Both City and Contractor do covenant that each individual executing this Agreement on behalf of each party is a person duly authorized and empowered to execute agreements for such party.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

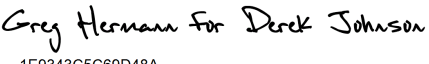
ATTEST:

CITY OF SAN LUIS OBISPO,

A Municipal Corporation

DocuSigned by:

B98BADBF9C78436...

Teresa Purrington, City Clerk

DocuSigned by:

By: 1E9343C5C69D48A...

Derek Johnson, City Manager

APPROVED AS TO FORM:

CONTRACTOR

DocuSigned by:

A82459F5915E413...

Christine Dietrick, City Attorney

DocuSigned by:

By: 0483009276F945D

Jim Dantona, President/CEO

San Luis Obispo Chamber of Commerce

Exhibit A

SCOPE OF WORK FOR MARKETING SUPPORT SERVICES TO GIA PROGRAM

Objective: Secure return of the GIA investment by assisting the organizations in utilizing the funding to increase attendance and nurture collaboration.

Goal: Increase awareness of the supported events to attract residences and visitors in order to maximize the event income to move toward self-sufficiency.

Marketing Support Services include the follow functions and deliverables:

Planning Efforts

- Develop, share and implement an effective proactive support plan and process including quarterly timelines and defined deliverables
- Coordinate and maintain a shared file system with the City on the communication efforts, documents and tools
- Establish and deliver to the City a standard operating practice manual to document the work process

Proactive Outreach & GIA Support Awareness

- Effectively communicate the offerings of the program to all GIA recipients
- Meet in-person or by phone with groups
 - Educating recipients on promotional support services
 - Identifying ways to maximize the complimentary promotional services for each event
 - Offering to assist in create a promotional strategy for GIA event
 - Achieve a 90% fulfilment rate of proactive outreach generating a response
- Participate in pre-application resource fair (February)
- Participate in GIA recipient informational workshop (August)

Comprehensive Marketing Support Program

Manage a comprehensive marketing support program available to all Grants-in-Aid recipients to enhance event visibility and increase event attendance.

- Media Outreach:
 - Research and write quarterly “round-up” press releases featuring GIA recipients and distribute to local, regional media outlets
 - Media outlets include but is not limited to: American General Media, Atascadero News, KCBX, KSBY, KVEC, Mustang News, New Times, Pacific Coast Business Times, Santa Maria Times, SLO Life Magazine, and SLO Tribune
 - Responsively connect press contacts with key event contacts
- Social Media Inclusion:

- Promote GIA events through Chamber owned social media channels
 - Post event press releases on slochamber.org and distribute them through our Facebook (@slochamber) and Twitter (@slochamber) social media channels
- Responsively provide TBID marketing agency with event information for use on ShareSLO social channels
- Inform, request and track GIA event participation in Ticket Tuesday promotion
- Regional Online Event Calendar Submission:
 - Ensure all GIA events are included on local and regional community calendars and enter events if missing
 - Calendars include: the SLO Happenings event calendar, SLO Chamber community calendar and Visit SLO CAL's countywide events calendar
- Collateral Collection & Distribution:
 - Collect and distribute GIA event promotional materials to every hotel in the city of San Luis Obispo on a quarterly basis
 - Sell tickets through the Visitor Center for GIA events (at no charge)
 - Promote events through the Visitor Center by display of event materials- brochures, posters, etc.
 - Prepare and distribute an easy-to-use, monthly local events one-pager to local hospitality partners that is consistent with the "look and feel" of the city's messaging efforts and includes relevant GIA events.

Reporting & Deliverables

- Monthly Reporting
 - Provide written reports on all support activities monthly (*by noon on the first Wednesday of the month*) to the City of San Luis Obispo's Administration Department to be included in the PCC's meeting packets.
 - At a minimum the written report shall include the matrix of services fulfilled for each organization.
- Quarterly Reporting
 - Once a quarter, present the PCC with a detailed oral report highlighting achievements as compared to the work scope.
 - At a minimum the reports shall include:
 - Summary of the matrix of services fulfilled for each organization
 - List of issues encountered and current and future opportunities
 - Copy of the monthly events calendars for the quarter
 - List of media reached out to and press releases sent
 - Summary on generated media coverage for events
 - Monitoring of ROI achieved from media outreach and reporting on, at minimum, ad value equivalency, overall impressions, and circulation figures.
- Annual Reporting
 - Annually, present an oral & written report to the PCC highlighting in detail the achievements of the year as compared to the work scope.
 - At a minimum the reports shall include:
 - Summary of fulfillment of the services provided
 - List of media reached out to and press releases sent

- Summary on generated media coverage for events
- Monitoring of ROI achieved from media outreach and reporting on, at minimum, ad value equivalency, overall impressions, and circulation figures.
- Delivery of a digital media log of articles garnered through media outreach.

Exhibit B

GENERAL TERMS AND CONDITIONS

1. Insurance Requirements. The Contractor shall provide proof of insurance in the form, coverages and amounts specified in Exhibit C, unless changes are otherwise approved by City.
2. Business License & Tax. The Contractor must have a valid City of San Luis Obispo business license & tax certificate before execution of the contract. Additional information regarding the City's business tax program may be obtained by calling (805) 781-7134.
3. Ability to Perform. The Contractor warrants that it possesses, or has arranged through subcontracts, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with all federal, state, county, city, and special district laws, ordinances, and regulations.
4. Laws to be Observed. The Contractor shall keep itself fully informed of and shall observe and comply with all applicable state and federal laws and county and City of San Luis Obispo ordinances, regulations and adopted codes during its performance of the work.
5. Payment of Taxes. The contract prices shall include full compensation for all taxes that the Contractor is required to pay.
6. Permits and Licenses. The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary.
7. Safety Provisions. The Contractor shall conform to the rules and regulations pertaining to safety established by OSHA and the California Division of Industrial Safety.
8. Public and Employee Safety. Whenever the Contractor's operations create a condition hazardous to the public or City employees, it shall, at its expense and without cost to the City, furnish, erect and maintain such fences, temporary railings, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public and employees.
9. Preservation of City Property. The Contractor shall provide and install suitable safeguards, approved by the City, to protect City property from injury or damage. If City property is injured or damaged resulting from the Contractor's operations, it shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor began work.
10. Immigration Act of 1986. The Contractor warrants on behalf of itself and all subcontractors engaged for the performance of this work that only persons authorized to work in the United State pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.
11. Contractor Non-Discrimination. In the performance of this work, the Contractor agrees that it will not engage in, nor permit such subcontractors as it may employ, to engage in discrimination in employment of persons because of age, race, color, sex, national origin or ancestry, sexual orientation, or religion of such persons.

12. Work Delays. Should the Contractor be obstructed or delayed in the work required to be done hereunder by changes in the work or by any default, act, or omission of the City, or by strikes, fire, earthquake, or any other Act of God, or by the inability to obtain materials, equipment, or labor due to federal government restrictions arising out of defense or war programs, then the time of completion may, at the City's sole option, be extended for such periods as may be agreed upon by the City and the Contractor. In the event that there is insufficient time to grant such extensions prior to the completion date of the contract, the City may, at the time of acceptance of the work, waive liquidated damages that may have accrued for failure to complete on time, due to any of the above, after hearing evidence as to the reasons for such delay, and making a finding as to the causes of same.

13. Payment Terms. The City's payment terms are 30 days from the receipt of an original invoice and acceptance by the City of the materials, supplies, equipment, or services provided by the Contractor (Net 30).

14. Inspection. The Contractor shall furnish City with every reasonable opportunity for City to ascertain that the services of the Contractor are being performed in accordance with the requirements and intentions of this contract. All work done, and all materials furnished, if any, shall be subject to the City's inspection and approval. The inspection of such work shall not relieve Contractor of any of its obligations to fulfill its contract requirements.

15. Audit. The City shall have the option of inspecting and/or auditing all records and other written materials used by Contractor in preparing its invoices to City as a condition precedent to any payment to Contractor.

16. Interests of Contractor. The Contractor covenants that it presently has no interest, and shall not acquire any interest—direct, indirect or otherwise—that would conflict in any manner or degree with the performance of the work hereunder. The Contractor further covenants that, in the performance of this work, no subcontractor or person having such an interest shall be employed. The Contractor certifies that no one who has or will have any financial interest in performing this work is an officer or employee of the City. It is hereby expressly agreed that, in the performance of the work hereunder, the Contractor shall at all times be deemed an independent contractor and not an agent or employee of the City.

17. Hold Harmless and Indemnification.

(a) Non-design, non-construction Professional Services: To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8), Consultant shall indemnify, defend, and hold harmless the City, and its elected officials, officers, employees, volunteers, and agents ("City Indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Consultant's performance or Consultant's failure to perform its obligations under this Agreement or out of the operations conducted by Consultant, including the City's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant's performance of this Agreement, the Consultant shall provide a defense to the City Indemnitees or at the City's option, reimburse the City Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims.

(b) Non-design, construction Professional Services: To the extent the Scope of Services involve a “construction contract” as that phrase is used in Civil Code Section 2783, this paragraph shall apply in place of paragraph A. To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8), Consultant shall indemnify, defend, and hold harmless the City, and its elected officials, officers, employees, volunteers, and agents (“City Indemnitees”), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels’ fees and costs of litigation (“claims”), arising out of the Consultant’s performance or Consultant’s failure to perform its obligations under this Agreement or out of the operations conducted by Consultant, except for such loss or damage arising from the active negligence, sole negligence or willful misconduct of the City. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant’s performance of this Agreement, the Consultant shall provide a defense to the City Indemnitees or at the City’s option, reimburse the City Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims.

(c) Design Professional Services: In the event Consultant is a “design professional”, and the Scope of Services require Consultant to provide “design professional services” as those phrases are used in Civil Code Section 2782.8, this paragraph shall apply in place of paragraphs A or B. To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8) Consultant shall indemnify, defend and hold harmless the City and its elected officials, officers, employees, volunteers and agents (“City Indemnitees”), from and against all claims, damages, injuries, losses, and expenses including costs, attorney fees, expert consultant and expert witness fees arising out of, pertaining to or relating to, the negligence, recklessness or willful misconduct of Consultant, except to the extent caused by the sole negligence, active negligence or willful misconduct of the City. Negligence, recklessness or willful misconduct of any subcontractor employed by Consultant shall be conclusively deemed to be the negligence, recklessness or willful misconduct of Consultant unless adequately corrected by Consultant. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant’s performance of this Agreement, the Consultant shall provide a defense to the City Indemnitees or at the City’s option, reimburse the City Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims. In no event shall the cost to defend charged to Consultant under this paragraph exceed Consultant’s proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Consultant shall meet and confer with other parties regarding unpaid defense costs.

(d) The review, acceptance or approval of the Consultant’s work or work product by any indemnified party shall not affect, relieve or reduce the Consultant’s indemnification or defense obligations. This Section survives completion of the services or the termination of this contract. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

18. Contract Assignment. The Contractor shall not assign, transfer, convey or otherwise dispose of the contract, or its right, title or interest, or its power to execute such a contract to any individual or business entity of any kind without the previous written consent of the City.

19. Termination for Convenience. The City may terminate all or part of this Agreement for any or no reason at any time by giving 30 days written notice to Contractor. Should the City terminate this Agreement for convenience, the City shall be liable as follows: (a) for standard or off-the-shelf products, a reasonable restocking charge not to exceed ten (10) percent of the total purchase price; (b) for custom products, the less of a reasonable price for the raw materials, components work in progress and any finished units on hand or the price per unit reflected on this Agreement. For termination of any services pursuant to this Agreement, the City's liability will be the lesser of a reasonable price for the services rendered prior to termination, or the price for the services reflected on this Agreement. Upon termination notice from the City, Contractor must, unless otherwise directed, cease work and follow the City's directions as to work in progress and finished goods.

20. Termination. If, during the term of the contract, the City determines that the Contractor is not faithfully abiding by any term or condition contained herein, the City may notify the Contractor in writing of such defect or failure to perform. This notice must give the Contractor a 10 (ten) calendar day notice of time thereafter in which to perform said work or cure the deficiency.

If the Contractor has not performed the work or cured the deficiency within the ten days specified in the notice, such shall constitute a breach of the contract and the City may terminate the contract immediately by written notice to the Contractor to said effect. Thereafter, neither party shall have any further duties, obligations, responsibilities, or rights under the contract except, however, any and all obligations of the Contractor's surety shall remain in full force and effect, and shall not be extinguished, reduced, or in any manner waived by the terminations thereof.

In said event, the Contractor shall be entitled to the reasonable value of its services performed from the beginning date in which the breach occurs up to the day it received the City's Notice of Termination, minus any offset from such payment representing the City's damages from such breach. "Reasonable value" includes fees or charges for goods or services as of the last milestone or task satisfactorily delivered or completed by the Contractor as may be set forth in the Agreement payment schedule; compensation for any other work, services or goods performed or provided by the Contractor shall be based solely on the City's assessment of the value of the work-in-progress in completing the overall work scope.

The City reserves the right to delay any such payment until completion or confirmed abandonment of the project, as may be determined in the City's sole discretion, so as to permit a full and complete accounting of costs. In no event, however, shall the Contractor be entitled to receive in excess of the compensation quoted in its proposal.

Exhibit C

INSURANCE

Insurance. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees, or sub-contractors.

- a. ***Minimum scope of insurance.*** Coverage shall be at least as broad as:
 - Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
 - Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
 - Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
 - Errors and Omissions Liability insurance as appropriate to Contractor's profession.
- b. ***Minimum limits of insurance.*** Contractor shall maintain limits no less than:
 - General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
 - Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
 - Errors and Omissions Liability: \$1,000,000 per occurrence.
- c. ***Deductibles and self-insured retentions.*** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- d. ***Other insurance provisions.*** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
 - The City, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, official, employees, agents or volunteers.
 - For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers,

officials, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

- Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
- Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

- e. ***Acceptability of insurers.*** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.
- f. ***Verification of coverage.*** Contractor shall furnish the City with a certificate of insurance showing maintenance of the required insurance coverage. Original endorsements effecting general liability and automobile liability coverage required by this clause must also be provided. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences.

Purpose—Declaration of nuisance.

Many retail establishments provide shopping carts for the convenience of customers while shopping on the premises of such businesses. However, shopping carts removed from the premises of such businesses and left abandoned on public or private property throughout the city constitute a public nuisance and a potential hazard to the health and safety of the public. The proliferation of lost, stolen or abandoned shopping carts on public and private property causes blighting conditions in the community, results in the obstruction of free access to public and private sidewalks, streets, parking lots and other ways, interferes with pedestrian and vehicular traffic on public and private streets, and impedes emergency services. For the aforesaid reasons, such lost, stolen or abandoned shopping carts are declared to be a public nuisance which shall be subject to abatement in the manner set forth in this chapter or in any other manner provided by law. The purpose of this chapter is to set forth regulations to ensure that reasonable measures are taken by the owners and operators of businesses which provide shopping carts for the convenience of customers to either prevent the removal of shopping carts from business premises and parking lots, or provide for the prompt retrieval of lost, stolen or abandoned shopping carts, to complement and supplement provisions of state law, and to adopt local regulations to the extent not otherwise preempted by state statute.

Definitions.

Except as otherwise expressly set forth herein, the following words and terms as used in this chapter shall have the following meanings:

“City” means the city of Atascadero, California.

“Community development director” means the community development director of the city.

“Enforcement personnel” means any police officer or code enforcement officer employed by the city.

“Laundry cart” means a basket which is mounted on wheels and used in a coin-operated laundry or dry-cleaning retail establishment by a customer or an attendant for the purpose of transporting fabrics and the supplies necessary to process them.

“Lost, stolen or abandoned shopping cart” means a shopping cart which is either (i) removed from the premises of a retail establishment by any person without the written permission or consent of the owner of the shopping cart or the retailer otherwise entitled to possession of such cart, or (ii) left unattended, discarded or abandoned upon any public or private property other than the premises of the retail establishment from which the shopping cart was removed, regardless of whether such shopping cart was removed from the premises with the permission of the owner. For purposes of this chapter, any shopping cart located on any public or private property other than the premises of the retail establishment from which such shopping cart was removed shall be presumed lost, stolen or abandoned, even if in the possession of any person, unless such person in possession thereof either (i) is the owner, or an employee or authorized agent of the owner, entitled to possession of the shopping cart, (ii) is an officer, employee or agent of a cart retrieval service hired by the owner to retrieve such carts, (iii) is an enforcement officer retrieving, storing or disposing of the cart pursuant to the provisions of this chapter.

“Owner” means any owner, manager, or operator of any retail establishment.

“Parking area” means a parking lot or other property provided by a retail establishment for the use of customers of such retail establishment for parking of customer vehicles. The parking area of a retail

establishment located in a multistore complex or shopping center shall include the entire parking area used by the multistore complex or shopping center.

“Planning commission” means the planning commission of the city.

“Premises” means any building, property or other area upon which any retail establishment business is conducted or operated in the city, including the parking area provided for customers of such retail establishment.

“Retail establishment” means any business located in the city which offers or provides shopping carts for the use of the customers of such business regardless of whether such business is advertised or operated as a retail or wholesale business, and regardless of whether such business is open to the general public, or is a private club or business, or is a membership store.

“Shopping cart” or “cart” means a basket which is mounted on wheels or a similar device generally used in a retail establishment by a customer for the purpose of transporting goods of any kind. The term shopping cart or cart includes a laundry cart.

Cart containment plan.

Except as otherwise provided in this chapter, every owner who provides shopping carts to customers for use on the premises of any retail establishment shall develop, implement and comply with the provisions of a written plan approved by the city to prevent customers from removing shopping carts from the premises of such business without authorization of the owner (the cart containment plan). The cart containment plan, at a minimum, shall include the following elements:

- A. Signs Affixed to Carts. Every shopping cart made available for use by customers shall have a sign permanently affixed to it that identifies the owner of the cart or the retailer or both; notifies the public that the unauthorized removal of the cart from the premises of the business, or the unauthorized possession of the cart, is a violation of state law, and lists a valid telephone number or address for returning the cart removed from the premises to the owner or retailer. (B&P 22435.1)

- 1. All shopping cart signs must contain the following verbiage:
 - a. California Shopping cart theft law: Unauthorized removal from premises or unauthorized possession of a shopping cart is a violation of state law. B&P Code 22435 Any removal must be by written permission of store management.

- B. Notice to Customers. Written notice shall be provided to customers, in both English and Spanish, that removal of shopping carts from the premises is prohibited by state law. Such notice may be provided in the form of flyers distributed on the premises, warnings printed on shopping bags, direct mail, website notices or any other means demonstrated to be effective. The cart containment plan shall identify the specific measures to be implemented to comply with this notice requirement. In addition, conspicuous signs shall be placed and maintained on the premises near all customer entrances and exits and throughout the premises, including the parking area, warning customers that removal of shopping carts from the premises is prohibited by state law.

- C. Physical Measures. Specific physical measures shall be implemented and maintained by the owner to prevent, deter or impede the removal of shopping carts from the premises. Such physical measures shall be specifically identified in the cart containment plan and may include, but are not limited to, the following: disabling devices installed and maintained on carts, maintaining one or more security guards assigned the responsibility to deter or stop customers from removing shopping carts from the

premises, preventing any shopping carts to be taken outside the confines of building exits unless accompanied by an employee of the business, bollards and chains in locations between the business exits and the parking area which effectively prevent transporting shopping carts into the parking area or off the premises, requiring security deposits by customers for cart use, or rental or sale of carts to customers.

D. Employee Training. The owner of the retail establishment shall implement and maintain a periodic training program for its new and existing employees designed to educate such employees concerning the requirements of the cart containment plan and the provisions of state law prohibiting the unauthorized removal of shopping carts from the premises of the retail establishment. The cart containment plan shall expressly describe the employee training program.

E. Collaboration with Other Businesses. Two or more retail establishments located within the same shopping or retail center or sharing a common parking area may collaborate and submit a single cart containment plan.

F. Exemptions. The requirements of this section shall not apply to any retail establishment which provides a total of ten or less shopping carts for use by customers of such business, or which retail establishment complies with the requirements of Section xxxx (cart retrieval plan).

Cart retrieval plan.

Except as otherwise provided in this chapter, every owner who provides shopping carts to customers for use on the premises of any retail establishment shall develop, implement and comply with the provisions of a written plan approved by the city to provide for the retrieval of lost, stolen or abandoned shopping carts which have been removed from the premises of the retail establishment (the cart retrieval plan). The cart retrieval plan, at a minimum, shall include the following elements:

- A. Signs Affixed to Carts. Every shopping cart made available for use by customers shall have a sign permanently affixed to it that identifies the owner of the cart or the retailer or both; notifies the public that the unauthorized removal of the cart from the premises of the business, or the unauthorized possession of the cart, is a violation of state law, and lists a valid telephone number or address for returning the cart removed from the premises to the owner or retailer. (B&P 22435.1)

2. All shopping cart signs must contain the following verbiage:

- a. California Shopping cart theft law: Unauthorized removal from premises or unauthorized possession of a shopping cart is a violation of state law. B&P Code 22435 Any removal must be by written permission of store management.

- B. Retrieval Personnel. The owner shall provide personnel for purposes of the retrieval of lost, stolen or abandoned shopping carts. Such personnel may be either employees of the business or one or more independent contractors hired by the owner to provide shopping cart retrieval services, or a combination of both. The cart retrieval plan shall either (i) identify the number of employees who will be assigned such cart retrieval duties, the number of total hours per week that each assigned employee will perform such services (in addition to any on-premises retrieval duties to which such employee may be assigned), and the training each of such personnel has received or will receive concerning the retrieval of lost, stolen or abandoned shopping carts, or (ii) include a copy of each contract with a cart retrieval service (other than confidential financial information which may be retracted from the contract). For purposes of this section, those persons identified in the cart retrieval plan as providing cart retrieval

services, whether employees of the business or independent contract services, shall be referred to in this section as retrieval personnel. The owner shall provide written authorization to all retrieval personnel, which authorization shall be carried by each such person while performing cart retrieval services on behalf of the owner and shall be provided to any enforcement personnel upon request. Each vehicle used by retrieval personnel shall bear conspicuous signs on the vehicle identifying either the name of the retail establishment for which such retrieval service is being performed or, if applicable, the name of the cart retrieval service with which the retail establishment has contracted for such services.

C. Prompt Retrieval of Carts. The owner shall provide retrieval personnel in sufficient number to assure that all public streets within a minimum one-mile radius of the premises of the retail establishment are patrolled not less often than every forty-eight hours, and all bus stops within a minimum one-mile radius of the retail establishment are patrolled not less often than every twenty-four hours, and each lost, stolen or abandoned shopping cart owned or provided by the retail establishment which is found as a result of such patrols is immediately retrieved and removed from any public or private property upon which the cart is found. The cart retrieval plan shall identify the perimeter streets and bus stops in which all streets within the perimeter area will be patrolled as required by this subsection; the manner, frequency and times of such patrols; and the procedures to be employed by the retail establishment to identify and retrieve any lost, stolen or abandoned shopping carts. The cart retrieval plan shall identify the number of trucks, hours of operation of the retrieval personnel, and such other information as reasonably required by the city to assure that the owner is devoting sufficient resources to cart retrieval operations to comply with the provisions of this section and the approved cart retrieval plan.

D. Exemptions. The requirements of this section shall not apply to any retail establishment which provides a total of ten or less shopping carts for use by customers of such business, or which retail establishment complies with the requirements of Section (containment) of this chapter.

Plan submission and approval.

A. New or Relocated Retail Establishments. Unless otherwise expressly exempt hereunder, each new retail establishment, and any existing retail establishment relocating to a different location with the city, shall submit a proposed plan complying with the requirements of either Section (containment) or Section (retrieval) of this chapter to the community development director, and obtain approval thereof by the city, prior to providing any shopping carts to customers of the retail establishment. Each proposed plan shall be accompanied by a processing fee in an amount as set by resolution of the city council. No proposed plan shall be accepted for filing and processing by the community development director unless accompanied by the processing fee established by the city council.

B. Existing Retail Establishments. Unless otherwise expressly exempt hereunder, each existing retail establishment shall submit a proposed plan complying with the requirements of Section (containment) or Section (retrieval) of this chapter to the community development director within one hundred twenty calendar days following the date of adoption of this chapter. No such retail establishment existing on the date the ordinance codified in this chapter is adopted shall provide or continue to provide shopping carts for the use of its customers after the one hundred eightieth calendar day following the date of adoption of said ordinance without a plan approved by the city as conforming to the requirements of either Section (containment) or Section (retrieval) of this chapter; provided, however, such date shall be extended for the period, if any, during which an appeal of the denial of such plan is pending pursuant to the provisions of this chapter. Each proposed plan shall be accompanied by a processing fee in an amount as set by resolution of the city council. No proposed plan shall be accepted for filing and processing by

the community development director unless accompanied by the processing fee as established by the city council.

C. Plan Review and Approval. Upon the filing of any proposed plan pursuant to either Section (containment) or Section (retrieval) of this chapter (collectively referred to herein as the plan), and receipt of the required processing fee, the community development director shall review the proposed plan and either approve or deny approval of the proposed plan within thirty calendar days following the receipt thereof by the community development director. If the proposed plan complies with each of the applicable requirements of this chapter, the community development director shall approve the plan, otherwise the proposed plan shall be denied. The decision of the community development director shall be made in writing and notice thereof shall be transmitted to the owner of the retail establishment by the United States Postal Service, first-class mail, postage prepaid, or by personal delivery or fax transmission. The notice of decision of the community development director shall be deemed given to the owner on the date of personal delivery or on the date of the fax transmission to the owner; notices given by the United States Postal Service, first-class mail, postage prepaid, shall be deemed given to the owner on the third day following the date of deposit in the course of transmission with the United States Postal Service, first-class mail, postage prepaid. If the proposed plan is denied, the notice of decision given to the owner shall state the grounds upon which the proposed plan was denied. The owner may appeal a decision of the community development director in the time and manner provided in Section (appeals)

D. Amendments by Owner. The owner of any retail establishment which has an approved plan conforming to the requirements of this chapter may, at any time, submit a proposed amendment to the approved plan, which amendment shall be processed in accordance with the procedure provided for a proposed plan as set forth in Section (containment) or Section (retrieval) of this chapter. Each proposed amendment shall be accompanied by a processing fee in an amount as set by resolution of the city council. No proposed amendment shall be accepted for filing and processing by the community development director unless accompanied by the processing fee as established by the city council.

E. Revocation or Amendment by City.

1. Grounds. An approved plan may be revoked by the city upon any of the following grounds:

a. The owner of any retail establishment is operating, or is permitting operation of, the retail establishment in violation of one or more of the provisions of the approved plan and has failed to correct the violation(s) for a period of at least fifteen calendar days following the date of receipt of written notice of such violation(s) from the city; or

b. The owner of any retail establishment with an approved plan is operating, or is permitting the operation of, the retail establishment in violation of one or more of the requirements of this chapter and has failed to correct the violation(s) for a period of at least fifteen calendar days following the date of receipt of written notice of such violation(s) from the city; or

c. The cart containment plan, as approved, is inadequate to prevent the removal of shopping carts from the premises of the retail establishment; or

d. The cart retrieval plan, as approved, is inadequate to ensure the prompt retrieval of lost, stolen or abandoned shopping carts removed from the retail establishment.

2. Order to Show Cause. If at any time following the approval of a plan, the community development director of the city obtains information or evidence that any of the grounds set forth in subsection (E)(1)(a) of this section may exist, the community development director shall issue a written order to show cause as to why the approved plan should not be revoked and schedule a meeting thereon,

which meeting shall not be less than fifteen calendar days nor more than thirty calendar days following the date such order to show cause is given to the owner of the retail establishment. The order shall state the grounds upon which it is proposed to revoke the approved plan and shall include the information and evidence, or a summary thereof, upon which such order was issued.

a. Notice of Meeting. Notice of the meeting on any order to show cause issued pursuant to this section shall be given in the time and manner provided in subsection (E)(2) of this section.

b. Conduct of Meeting. The community development director shall conduct a meeting and the legal rules of evidence shall not be applicable. The owner and the city shall each have the opportunity to present evidence and witnesses. The parties may each be represented by legal counsel or other representatives of their choice. The city shall bear the burden of proof to establish, by a preponderance of the evidence, that grounds exist to revoke the plan. The community development director, at his or her discretion, and as an alternative to revocation, may consider amendment of the plan if the grounds for the order to show cause are solely the inadequacy of the approved plan.

c. Decision of Community Development Director. With fifteen calendar days following conclusion of the meeting, the community development director will render his or her decision in writing either dismissing the proceedings or revoking or amending the plan. If the plan is revoked or amended, the decision shall specify the findings of fact and the reasons for such action. If the plan is amended, the decision shall also specify the amendment(s) to the plan.

d. Notice of Decision. Notice of the decision of the community development director shall be given in the time and manner specified in subsection (E)(2)(c) of this section.

e. Appeal of Decision. The decision of the community development director shall be subject to appeal by the owner within the time and manner specified in Section (appeals) In the absence of a timely appeal, the decision of the community development director shall be final and conclusive.

f. Use of Shopping Carts Following Revocation Prohibited. No owner of any retail establishment which is subject to the requirements of this chapter shall provide or make available shopping carts for the use of customers following the date any decision revoking a plan required and approved pursuant to this chapter becomes final unless and until a new proposed plan is approved by the city for such retail establishment. Notwithstanding any other provision of this chapter, an owner of a retail establishment shall not be eligible to submit a new proposed plan to the city for processing for a minimum of one hundred eighty days following the date any decision revoking the prior plan for such retail establishment becomes final. Any proposed plan submitted to the city for such retail establishment during the one-hundred-eighty-day period shall be returned to the owner of the retail establishment as untimely.

Appeals.

Appeals shall be processed in accordance with Title 9 Chapter 1 of the Atascadero Municipal Code

Unauthorized removal or possession of a shopping cart.

It is unlawful for any person to do any of the following, if a shopping cart has a permanently affixed sign pursuant to Sections (containment)A and (retrieval)A:

A. Remove a shopping cart from the premises or parking area of a business establishment.

B. Leave or abandon a shopping cart at a location other than the premises or parking area of the retail establishment.

C. Alter, convert, or tamper with a shopping cart, or to remove any part or portion thereof or to remove, obliterate or alter serial numbers on a cart.

D. Be in possession of any shopping cart while that cart is not located on the premises or parking lot of a business establishment.

Violations—Penalties.

A. Except as otherwise expressly provided in this chapter, it is unlawful for the owner of any retail establishment to provide or offer, or permit to be provided or offered, any shopping carts to customers of such retail establishment without an approved cart containment plan or cart retrieval plan as required by either Section (containment) or Section (retrieval) of this chapter; provided, however, this prohibition shall not apply to any retail establishment, or the owner thereof, which provides a total of ten or less shopping carts for the use of customers of such retail establishment.

B. It is unlawful for the owner of any retail establishment to provide or offer, or permit to be provided or offered, to customers of such retail establishment any shopping cart, which does not have a sign permanently, affixed thereto containing all of the information specified in Section 22435.1 of the Business and Professions Code of the State of California.

C. Per Section (removal), it is unlawful for any person to remove, be in possession of, leave and/or abandon a shopping cart at a location other than the premises or parking area of the retail establishment. It is also unlawful for any person to alter, convert or tamper with a shopping cart.

D. The first violation to any provisions of this chapter committed by the owner of any retail establishment or by any person or entity shall be an infraction punishable in accordance with the applicable provisions of the Atascadero Municipal Code. Any subsequent violations committed by the owner of any retail establishment or by any person or entity after having previously been convicted of violating said same section shall be a misdemeanor punishable as set forth in Section 1-3.03 of the Atascadero Municipal Code.



Atascadero City Council

Staff Report – Administrative Services Department

Consideration of Cannabis Tax Measure

RECOMMENDATION:

Council direct staff to bring back a resolution and ordinance to place a measure, imposing a tax on commercial cannabis activities, on the November 2018 ballot for citizen consideration.

REPORT-IN-BRIEF:

At Council's Strategic Planning Session in February 2018, Council discussed looking into a potential ballot measure that would place a tax on commercial cannabis activities. If directed by Council, staff will bring back a resolution for Council to consider placing on the City's November 2018 ballot.

At this time, no commercial cannabis activities are legal in the City. However, in the event that either some activities become legal at some point in the future or illegal activities are identified, the tax mechanism will already have been considered by the voters.

DISCUSSION:

On November 8, 2016, Proposition 64 was approved by California voters. Proposition 64, known as the Adult Use of Marijuana Act (AUMA), allows for the sale of recreational cannabis, and imposes state taxes on the sale and cultivation of recreational cannabis, beginning on January 2, 2018. It also allows local governments to regulate these commercial activities consistent with the land use and police powers bestowed on them by the state constitution, and the state licensing program. The state imposes a 15% excise tax on gross receipts from the sale of cannabis or any product derived therefrom, as well as a cultivation tax of \$9.25 per ounce of dried flower or \$2.75 per ounce of dried leaf – equivalent to an additional 10% tax.

Cannabis Tax Measure Process

The City has the legal authority to impose a business or excise tax upon the gross receipts of cannabis sales, services and transactions, provided the tax is approved by the voters as required by the California Constitution (Proposition 218, enacted by voters in November 1996). Under Prop. 218, the City Council does not have the authority to

establish or raise taxes, only to put a measure on the ballot for voter approval. In order to place a tax measure on the November 6, 2018 ballot, it takes a 2/3 vote of the City Council (at least 4 members). The voters must approve the establishment and rates of a commercial cannabis tax. If passed by the Council and the electorate, the tax would be effective January 1, 2019.

Proposition 218, now requires that all City tax election measures be placed on the same election when City Council Members are selected. The next Council election is scheduled for November 6, 2018. Subsequent Council elections are held every two years.

In order to add a measure to the ballot at the same time the election is called, and provide staff enough time to submit the proper paperwork to the County Clerk, related resolutions and ordinances need to be decided prior to June 18, 2018.

Advantages and Disadvantages of Cannabis Tax Measure

As with most policy actions, enacting a cannabis tax has advantages and disadvantages. Some arguments in favor include:

- If business activities become legalized at some point, the tax measure would generate additional City revenue from which all residents can benefit;
- Tax rates can be set to influence industry; high rates might discourage industry participation and low rates might encourage it;
- Businesses that are operating illegally would owe taxes, as well as those that may one day operate in the City legally;
- Cannabis taxes that are based on gross receipts are paid based on activity level;
- Cannabis taxes that are based on square footage are paid based on the size of the space that the business occupies;
- Because the tax is established by a vote of the local electorate, neither the tax nor the revenue it generates can be taken away by the State.

Some arguments against include:

- Additional taxes reduce the discretionary income of Atascadero residents;
- Tax increases are not generally perceived positively by the citizenry and may erode trust in local government.
- Taxes in an amount that the industry perceives as burdensome may drive businesses underground, rather than encourage them to operate legally in the City.

Decision points

The City hired HdL Companies as consultants to prepare information for Council on the tax measure and to prepare a resolution and ordinance, if needed. HdL Companies has extensive experience in preparation of commercial cannabis tax measures and have provided some recommendations on the decision points.

Amount of Proposed Tax

The commercial cannabis businesses that may be taxed include commercial cultivation, testing labs, retail sales (including both store front and non-store front), distribution, and manufacturing.

Rates can be set flat or can be scaled to increase over time. Council can reduce the tax rate at any time by resolution or ordinance. Commercial cannabis tax rates vary across cities. These rates can often influence industry activity in the city.

The following are suggested rates for discussions:

Commercial Cultivation

- a. Seven dollars (\$7.00) annually per square foot of canopy space in a facility that uses exclusively artificial lighting.
- b. Four dollars (\$4.00) annually per square foot of canopy space in a facility that uses a combination of natural and supplemental artificial lighting
- c. Two dollars (\$2.00) annually per square foot of canopy space in a facility that uses no artificial lighting.
- d. One dollar (\$1.00) annually per square foot of canopy space for any nursery.

Laboratory

- a. For every person who engages in the operation of a testing laboratory: one percent (1%) of gross receipts.

Retail Sales

- a. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery) or microbusiness (retail sales): Four percent (4%) of gross receipts.

Distribution

- a. For every person who engages in a cannabis distribution business: two percent (2%) of gross receipts.

Manufacturing

- a. For every person who engages in a cannabis manufacturing, processing, or microbusiness (non-retail), or any other type of cannabis business not described in Section (B) (1), (2), (3) or (4): Two and half percent (2.5%) of gross receipts.

According to industry representatives, cumulative taxes exceeding 30% across all businesses would become a barrier to businesses that wish to operate legally or otherwise drive cannabis businesses to other communities with more favorable tax policies. Under the AUMA, all cannabis businesses, whether they are medical or non-medical, are subject to a 15% state excise tax. In addition, cultivators are subject to a state tax of \$9.25 per ounce of flower or \$2.75 per ounce of leaf. The per-ounce tax on cultivation is equivalent to a 10-15% tax on gross receipts. For non-medical retail businesses, the consumer will also be subject to state and local sales taxes required to be collected by the retail business.

The state is issuing separate licenses for medical cannabis businesses and non-medical (adult use) cannabis businesses, although a business can have both. The medical cannabis businesses presumably will be developing different and more unique products needed for medicinal purposes. However, from a taxing perspective, the state's taxes apply equally to both. The only distinction from a taxing perspective is consumers that have a medical card issued by the state will be able to avoid paying state and local sales taxes, currently 7.75% in the City of Atascadero. As such, medical cannabis consumers will get some relief in price relative to recreational consumers.

Type of Tax Measure

A tax measure for a general tax requires a simple majority approval of voters. The monies from a general tax measure would be deposited into the City's General Fund and would be used to pay for general services, such as police, fire, recreation, parks, and library services.

There is a current initiative called the Tax Fairness, Transparency and Accountability Act. Its proponents are trying to get it qualified for the November 2018 ballot. If it passes, it will require, among other things, all state and local tax measures enacted after January 2018 to pass by 2/3 majority in order to be qualified. At the local level, this first requires a 2/3 vote by the City Council just to submit the tax to the voters, and a second 2/3 vote by the local electorate in order for the tax to become effective.

The City has an option to put the ballot measure on as a general tax measure that will require a simple majority, or alternatively, the City can put it on requiring a 2/3 vote (known as a super majority) that would meet the requirements in the event the Initiative passes.

Other Considerations

The sale of cannabis is not legal under federal law. Banks have generally not allowed cannabis businesses to establish bank accounts based on current federal law. Consequently, cities that have imposed a tax on cannabis have had to establish protocols and security procedures for the delivery of cash to their cashiers' office. A cash counting machine is used in most cases to facilitate and expedite the counting of the cash. Some cities have required appointments monthly for dispensaries to bring in the tax monies. In addition, assistance from the police department has been required in some cases to provide added security during the counts. Overall, the cash handling requirements have not created undue challenges or roadblocks to the imposition or collection of the taxes, but they have resulted in additional city costs.

Process

If directed by Council, staff will bring a resolution and ordinance back for consideration. If Council chooses to adopt the resolution, the measure will be placed on the November 2018 ballot for voter consideration.

FISCAL IMPACT:

None.



Atascadero City Council

Administrative Services

Cannabis Tax Ballot Measure

(The City Council must adopt resolutions to submit a ballot measure to the voters.)

RECOMMENDATIONS:

Council adopt the following Resolutions to submit to the voters a cannabis business tax ballot measure:

1. Draft Resolution A, calling and giving notice of the holding of a General Municipal Election to be held on Tuesday, November 6, 2018, for the submission to the voters of a question relating to a cannabis business tax measure.
2. Draft Resolution B, requesting the Board of Supervisors of the County of San Luis Obispo to consolidate a General Municipal Election to be held on November 6, 2018.
3. Draft Resolution C, setting priorities for filing written arguments regarding the City measure and directing the City Attorney to prepare an impartial analysis.
4. Draft Resolution D, providing for the filing of rebuttal arguments for City measures submitted at Municipal Elections.
5. Authorize the Director of Administrative Services to appropriate \$8,000 of General Fund Reserves monies to the City Clerk budget.

REPORT-IN-BRIEF:

At Council's Strategic Planning Session in February 2018 and again during the May 8, 2018 regular Council Meeting, Council discussed looking into a potential ballot measure that would place a tax on commercial cannabis activities. Attached are the resolutions that would begin the process to place such a measure on the City's November 2018 ballot.

At this time, no commercial cannabis activities are legal in the City. However, in the event that either some activities become legal at some point in the future or illegal activities are identified, the tax mechanism will already have been considered by the voters.

DISCUSSION:

On November 8, 2016, Proposition 64 was approved by California voters. Proposition 64, known as the Adult Use of Marijuana Act (AUMA), allows for the sale of recreational cannabis, and imposes state taxes on the sale and cultivation of recreational cannabis, beginning on January 2, 2018. It also allows local governments to regulate these commercial activities consistent with the land use and police powers bestowed on them by the state constitution, and the state licensing program.

Cannabis Tax Measure Process

The City has the legal authority to impose a business or excise tax upon the gross receipts of cannabis sales, services and transactions, provided the tax is approved by the voters as required by the California Constitution (Proposition 218, enacted by voters in November 1996). Under Prop. 218, the City Council does not have the authority to establish or raise taxes, only to put a measure on the ballot for voter approval. In order to place a tax measure on the November 6, 2018 ballot, it takes a 2/3 vote of the City Council (at least 4 members). The voters must approve the establishment and rates of a commercial cannabis tax. If passed by the Council and the electorate, the tax would be effective January 1, 2019.

Proposition 218, now requires that all City tax election measures be placed on the same election when City Council Members are selected. The next Council election is scheduled for November 6, 2018. Subsequent Council elections are held every two years. It is recommended that Council consider and adopt the attached resolutions by June 18, 2018, in order to allow sufficient time for the placement of the measure on the November ballot.

The proposed initial and maximum cannabis business tax rates are as follows:

	Initial Rate	Maximum Rate
Commercial Cultivation		
Indoor, exclusively artificial lighting	\$7.00 annually per sq ft of canopy space	\$10.00 annually per sq ft of canopy space + CPI Increase
Indoor, mixed lighting	\$4.00 annually per sq ft of canopy space	\$7.00 annually per sq ft of canopy space + CPI Increase
Indoor, exclusively natural lighting	\$2.00 annually per sq ft of canopy space	\$4.00 annually per sq ft of canopy space + CPI Increase
Nusery, only minimal artificial lighting	\$1.00 annually per sq ft of canopy space	\$2.00 annually per sq ft of canopy space + CPI Increase
Testing Lab	1% of gross receipts	2.5% of gross receipts
Retail sales	4% of gross receipts	6% of gross receipts
Distribution	2% of gross receipts	3% of gross receipts
Manufacturing, processing, microbusiness, or other	2.5% of gross receipts	4% of gross receipts

While cannabis business taxes are commonly based on gross receipts of commercial cannabis activities, this is not typically the case for commercial cultivation. Commercial cultivation activities are usually charged based on square footage of canopy space in order to insulate city revenues from what could be significant market volatility. There is excess cultivation capacity in California already with significantly more product anticipated to be produced in the future. Cultivation operations are expected to be a large percentage of cannabis business failures. If cannabis continues to sell for the current price (roughly) of \$1000/lb., potential revenues could be robust. But if prices should drop to \$500/lb. or lower, potential revenues will plummet. In general, gross receipts revenues will be highly responsive to declines in price and crop yield, hence a percentage of gross receipts of cultivation will be a much more volatile revenue source.

According to industry representatives, cumulative taxes exceeding 30% across all businesses would become a barrier to businesses that wish to operate legally or otherwise drive cannabis businesses to other communities with more favorable tax policies. Under the AUMA, all cannabis businesses, whether they are medical or non-medical, are subject to a 15% state excise tax. In addition, cultivators are subject to a state tax of \$9.25 per ounce of flower or \$2.75 per ounce of leaf. The per-ounce tax on cultivation is equivalent to a 10-15% tax on gross receipts. For non-medical retail businesses, the consumer will also be subject to state and local sales taxes required to be collected by the retail business.

The state is issuing separate licenses for medical cannabis businesses and non-medical (adult use) cannabis businesses, although a business can have both. The medical cannabis businesses presumably will be developing different and more unique products needed for medicinal purposes. However, from a taxing perspective, the state's taxes apply equally to both. The only distinction from a taxing perspective is consumers that have a medical card issued by the state will be able to avoid paying state and local sales taxes, currently 7.75% in the City of Atascadero. As such, medical cannabis consumers will get some relief in price relative to recreational consumers.

A tax measure for a general tax requires a simple majority approval of voters (50% + 1 vote). The monies from a general tax measure would be deposited into the City's General Fund and would be used to pay for general services, such as police, fire, park maintenance services.

If the initiative currently referred to as the Tax Fairness, Transparency and Accountability Act is qualified for the ballot and passes, the cannabis business tax measure will be required to pass by 2/3 majority.

Ballot Measure for Proposed Cannabis Business Tax

If the Council has decided to go ahead with this ballot measure, specific language needs to be included in the Election Resolutions to clarify for the San Luis Obispo County Clerk-Recorder the requested wording for the November 6, 2018 ballots (Draft Resolutions A & B).

The General Municipal Election will be held on Tuesday, November 6, 2018. The City Council must adopt a resolution to initiate the election process (Draft Resolution A). Also, to combine our election with the County, the Council must adopt a resolution requesting consolidation with the County (Draft Resolution B).

A resolution setting the priorities for the filing of written arguments and directing the City Attorney to prepare an impartial analysis will need to be adopted (Draft Resolution C). The impartial analysis shall not exceed 500 words. In Resolution C, the City Council also authorizes Council Members to write arguments in favor of the measure. Council Members are not required to write an argument in favor of the Measure, however Draft Resolution C gives them the option. Registered voters may also file with the City Clerk written arguments in favor or opposition of the ballot measure.

Arguments shall not exceed 300 words and must be signed by the author(s). The City Clerk has fixed June 26, 2018 as the last day for submitting arguments for and against the ballot measure, and the impartial analysis by the City Attorney. This will allow ample time for the 10-calendar-day public examination period, translation, typesetting, printing and submission to the County. A notice of this deadline will be posted in the kiosk in front of City Hall. If two or more arguments are submitted in favor of or against the measure, the California Elections Code sets up priorities the City Clerk must follow to choose one of each for printing and distribution to the voters.

Also, the adoption of a resolution providing for the filing of rebuttal arguments for the ballot measure is required (Draft Resolution D). The rebuttal arguments shall not exceed 250 words. The deadline for the filing of rebuttal arguments is July 6, 2018, 10 days after the deadline for the filing of the arguments in favor or opposed.

FISCAL IMPACT:

The cost to the City is determined by the number of registered voters on Election Day, and the number of Candidate Statements included in the Voter Pamphlet. Also, due to the State reduction in funding to the Counties for election costs, the County will be passing those costs along to the cities. The City Clerk's estimate for the 2018 election of officials in Atascadero is \$22,000. The City Clerk's estimate for the addition of the ballot measure is approximately \$16,000. Therefore, the total estimate for the 2018 election including ballot measures is \$38,000 in General Funds.

ATTACHMENTS:

1. Draft Resolution A
2. Draft Resolution B
3. Draft Resolution C
4. Draft Resolution D

DRAFT RESOLUTION A

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
ATASCADERO, CALIFORNIA, APPROVING BALLOT MEASURE TEXT
TO BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE CITY AT
THE GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER
6, 2018, IMPOSING A CANNABIS BUSINESS TAX AS REQUIRED BY
THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA
RELATING TO GENERAL LAW CITIES**

WHEREAS, if in the future commercial cannabis business activities are permitted in Atascadero by either a future Atascadero City Council, the voters through a future ballot measure, or the State of California then the Atascadero City Council desires that a tax be in place and imposed on any such future commercial cannabis activities; and

WHEREAS, The Atascadero City Council desires that a tax be in place and imposed on any illegal cannabis activities; and

WHEREAS, Sections 37101 and 37100.5 of the California Government Code authorize the City to levy a license tax, for revenue purposes, upon business transacted in the City; and

WHEREAS, as a result of recent voter-approved changes to state law, there has been a very strong interest by cannabis businesses to open in the City; and

WHEREAS, cannabis businesses are likely to create demands upon City services, and the City does not currently impose any taxes upon cannabis businesses, aside from generally applicable municipal taxes; and

WHEREAS, the City Council desires to seek to impose a supplemental license tax upon cannabis businesses, to be known as the “Cannabis Business Tax”; and

WHEREAS, the Cannabis Business Tax cannot be imposed without voter approval; and

WHEREAS, the City Council desires to submit a Cannabis Business Tax measure to the voters of the City at the General Municipal Election to be held on Tuesday, November 6, 2018, and to be consolidated with any other election to be held on that date; and

WHEREAS, the proposed Cannabis Business Tax is more completely described in the ordinance attached hereto as Attachment “A” and incorporated herein by reference (the “Tax Ordinance”).

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Atascadero:

SECTION 1. The City Council hereby finds and determines that the foregoing recitals are true and correct.

SECTION 2. The City Council hereby proposes the Cannabis Business Tax.

SECTION 3. This Resolution is exempt from the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq., because it can be seen with certainty that there is no possibility that the adoption of this Resolution would have a significant effect on the environment (Pub. Resources Code § 21065; CEQA Guidelines §§ 15378(b)(4), 15061(b)(3)) and because the Resolution involves the possible approval of government revenues to fund existing services (Pub. Resources Code § 21080, subd. (b)(8); CEQA Guidelines § 15273(a)(4)). It does not make any commercial activity lawful nor commit the City to fund any particular activity.

SECTION 4. The City Council hereby calls a General Municipal Election for Tuesday November 6, 2018 (the “Election”) and orders, pursuant to Section 9222 of the Elections Code, that the Tax Ordinance be submitted to the voters at that election.

SECTION 5. That the City Council, pursuant to its right and authority, does order submitted to the voters at the General Municipal Election the following question:

<u>BALLOT MEASURE #</u>	Yes
Shall the measure be adopted to tax cannabis businesses operating illegally or allowed in the future by the voters, State or City, at annual rates not to exceed \$10.00 per canopy square foot for cultivation (adjustable for inflation), 6% of gross receipts for retail cannabis businesses, and 4% of gross receipts for all other cannabis businesses, generating \$0-\$500,000 annually for unrestricted general revenue purposes, such as police, fire and parks, until ended by the voters?	No

SECTION 6. That the proposed complete text of the measure (Ordinance) submitted to the voters is attached as Exhibit A.

SECTION 7. Pursuant to Article XIII C of the Constitution, this measure requires approval by a majority of those casting ballots on the measure unless another threshold is otherwise required by law.

SECTION 8. That the ballots to be used at the election shall be in form and content as required by law.

SECTION 9. That the City Clerk is authorized, instructed and directed to coordinate with the County of San Luis Obispo Clerk-Recorder to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 10. That the polls for the election shall be open at seven o’clock a.m. of the day of the election and shall remain open continuously from that time until eight o’clock p.m. of the same day when the polls shall be closed, pursuant to Election Code § 10242, except as provided in § 14401 of the Elections Code of the State of California.

SECTION 11. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 12. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 13. The City Council authorizes the City Clerk to administer said election and all reasonable and actual election expenses shall be paid by the City upon presentation of a properly submitted bill.

SECTION 14. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED AND ADOPTED at a regular meeting of the City Council held on the ____ day of ____, 2018.

On motion by Council Member _____ and seconded by Council Member _____, the foregoing Resolution is hereby adopted in its entirety on the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CITY OF ATASCADERO

Tom O'Malley, Mayor

ATTEST:

Lara K. Christensen, City Clerk

APPROVED AS TO FORM:

Brian Pierik, City Attorney

EXHIBIT A

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF ATASCADERO,
CALIFORNIA ADDING CHAPTER 3-17 (CANNABIS
BUSINESS TAX) TO TITLE 3 OF THE ATASCADERO
MUNICIPAL CODE ESTABLISHING A CANNABIS
BUSINESS TAX**

THE PEOPLE OF THE CITY OF ATASCADERO DO ORDAIN AS FOLLOWS:

SECTION 1. CODE AMENDMENT. Chapter 3-17 of Title 3 of the Atascadero Municipal Code to read as follows:

**CHAPTER 3-17
CANNABIS BUSINESS TAX**

Sections:

- 3-17.010 Title.
- 3-17.020 Authority and Purpose.
- 3-17.030 Intent.
- 3-17.040 Definitions.
- 3-17.050 Tax imposed.
- 3-17.060 Reporting and remittance of tax.
- 3-17.070 Payments and communications –timely remittance.
- 3-17.080 Payment – when taxes deemed delinquent.
- 3-17.090 Notice not required by City.
- 3-17.100 Penalties and interest.
- 3-17.110 Refunds and credits.
- 3-17.120 Refunds and procedures.
- 3-17.130 Personal cultivation not taxed.
- 3-17.140 Administration of the tax.
- 3-17.150 Appeal procedure.
- 3-17.160 Enforcement –action to collect.
- 3-17.170 Apportionment.
- 3-17.180 Constitutionality and legality.
- 3-17.190 Audit and examination of premises and records.
- 3-17.200 Other licenses, permits, taxes or charges.
- 3-17.210 Payment of tax does not authorize unlawful business.
- 3-17.220 Deficiency determinations.
- 3-17.230 Failure to report – nonpayment, fraud.
- 3-17.240 Tax assessment –notice requirements.
- 3-17.250 Tax assessment – hearing, application, and determination.
- 3-17.260 Relief from taxes-disaster relief.
- 3-17.270 Conviction for violation – taxes not waived.
- 3-17.280 Violation deemed misdemeanor.

- 3-17.290 Severability.
- 3-17.300 Remedies cumulative.
- 3-17.310 Amendment or repeal.

3-17.010 Title.

This ordinance shall be known as the Cannabis Business Tax Ordinance.

3-17.020 Authority and Purpose.

The purpose of this Ordinance is to adopt a tax, for revenue purposes, pursuant to Sections 37101 and 37100.5 of the California Government Code, upon Cannabis Businesses that engage in business in the City, should they be authorized to do so at some future time. The Cannabis Business Tax is shall be levied based upon business gross receipts and square footage of plant canopy, should cannabis businesses ever be authorized to operate in the City. In addition, Cannabis Businesses that operate illegally in the City at any time, regardless of the City's cannabis regulations, are subject to the Cannabis Business Tax. It is not a sales and use tax, a tax upon income, or a tax upon real property.

The Cannabis Business Tax is a general tax enacted solely for general governmental purposes of the City and not for specific purposes. All of the proceeds from the tax imposed by this Chapter shall be placed in the City's general fund and be available for any legal municipal purpose.

3-17.030 Intent.

The intent of this Ordinance is to position the City to levy a tax on all Cannabis Businesses that operate in the City, regardless of whether such business is operating legally or illegally. Nothing in this Ordinance shall be interpreted to authorize or permit any business activity that would not otherwise be legal or permissible under laws applicable to the activity at the time the activity is undertaken.

3-17.040 Definitions.

The following words and phrases shall have the meanings set forth below when used in this Chapter:

A. "Business" shall include all activities engaged in or caused to be engaged in within the City, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

B. "Cannabis" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the 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. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code and is not

limited to medical cannabis.

C. “Cannabis product” means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product. “Cannabis product” also means marijuana products as defined by Section 11018.1 of the California Health and Safety Code and is not limited to medical cannabis products.

D. “Canopy” means all areas occupied by any portion of a cannabis plant whether contiguous or noncontiguous on any one site. When plants occupy multiple horizontal planes (as when plants are placed on shelving above other plants) each plane shall be counted as a separate canopy area.

E. “Cannabis business” means any business activity involving cannabis, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, testing, dispensing, retailing and wholesaling of cannabis, of cannabis products or of ancillary products and accessories, whether or not carried on for gain or profit.

F. “Cannabis business tax” or “business tax,” means the tax due pursuant to this Chapter for engaging in cannabis business in the City.

G. “Commercial cannabis cultivation” means cultivation in the course of conducting a cannabis business.

H. “City permit” means a permit issued by the City to a person to authorize that person to operate or engage in a cannabis business.

I. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis and includes, but is not limited to, the operation of a nursery.

J. “Employee” means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.

K. “Engaged in business as a cannabis business” means the commencing, conducting, operating, managing or carrying on of a cannabis business, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such activities. A person shall be deemed engaged in business within the City if:

1. Such person or person’s employee maintains a fixed place of business within the City for the benefit or partial benefit of such person;
2. Such person or person’s employee owns or leases real property within the City for business purposes;

3. Such person or person's employee regularly maintains a stock of tangible personal property in the City for sale in the ordinary course of business;

4. Such person or person's employee regularly conducts solicitation of business within the City; or

5. Such person or person's employee performs work or renders services in the City.

The foregoing specified activities shall not be a limitation on the meaning of "engaged in business."

L. "Evidence of doing business" means evidence such as, without limitation, use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, or representation to a government agency or to the public that such person is engaged in a cannabis business in the City.

M. "Calendar year" means January 1 through December 31 of the following calendar year.

N. "Gross Receipts," except as otherwise specifically provided, means, whether designated a sales price, royalty, rent, commission, dividend, or other designation, the total amount (including all receipts, cash, credits and property of any kind or nature) received or payable for sales of goods, wares or merchandise or for the performance of any act or service of any nature for which a charge is made or credit allowed (whether such service, act or employment is done as part of or in connection with the sale of goods, wares, merchandise or not), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever. However, the following shall be excluded from Gross Receipts:

1. Cash discounts where allowed and taken on sales;
2. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
3. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
4. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;
5. Cash value of sales, trades or transactions between departments or units of the same business;
6. Whenever there are included within the gross receipts amounts which

reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;

7. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;

8. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the Administrative Services Department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

9. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags, books, posters or other personal tangible property which the Tax Administrator has excluded in writing by issuing an administrative ruling per Section 3-17.140 shall not be subject to the cannabis business tax under this chapter. However, any retail sales not subject to this Chapter as a result of the administrative ruling shall be subject to the appropriate business tax under Chapter 3-5 or any other Chapter or Title as determined by the Tax Administrator.

O. “Indoor cultivation” means the cultivation of cannabis within a permanent structure using exclusively artificial light or within any type of structure using artificial light at a rate above twenty-five (25) watts per square foot.

P. “Lighting” means a source of light that is primarily used for promoting the biological process of plant growth. Lighting does not include sources of light that primarily exist for the safety or convenience of staff or visitors to the facility, such as emergency lighting, walkway lighting, or light admitted via small skylights, windows or ventilation openings.

Q. “Nursery” means a facility or part of a facility that is used only for producing clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.

R. “Outdoor cultivation” means the cultivation of mature cannabis without the use of artificial lighting in the canopy area at any point in time. Artificial lighting is permissible only to maintain immature plants.

S. “Person” means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, whether organized as a nonprofit or for-profit entity, and includes the plural as well as the singular number.

T. “Sale” means and includes any sale, exchange, or barter.

U. “State” means the State of California.

V. “State license,” “license,” or “registration” means a state license issued pursuant to California Business & Professions Code Sections 19300, *et seq.* or other applicable state law.

W. “Tax Administrator” means the City of Atascadero Director of Administrative Services or his or her designee.

X. “Testing Laboratory” means a cannabis business that (i) offers or performs tests of cannabis or cannabis products, (ii) offers no service other than such tests, (iii) sells no products, excepting only testing supplies and materials, (iv) is accredited by an accrediting body that is independent from all other persons involved in the cannabis industry in the state and (v) is registered with the State Department of Public Health.

3-17.050 Tax imposed.

- A. Beginning January 1, 2019, there is imposed upon each person who is engaged in business as a cannabis business a cannabis business tax regardless if the business has been issued a permit to operate lawfully in the City or is operating unlawfully.
- B. The initial rate of the cannabis business tax shall be as follows:
 - 1. For every person who is engaged in commercial cannabis cultivation in the City:
 - a. Seven dollars (\$7.00) annually per square foot of canopy space for indoor cultivation within a permanent structure that uses exclusively artificial lighting.
 - b. Four dollars (\$4.00) annually per square foot of canopy space for indoor cultivation within a permanent structure that uses a combination of natural and supplemental artificial lighting.
 - c. Two dollars (\$2.00) annually per square foot of canopy space for outdoor cultivation that uses no artificial lighting.
 - d. One dollar (\$1.00) annually per square foot of canopy space for any nursery.

For purposes of this subdivision (B), the square feet of canopy space for a business shall be rebuttably presumed to be the maximum square footage of canopy allowed by the business’s City permit for commercial cannabis cultivation, or, in the absence of a City permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. Should a City permit be issued to a business which cultivates only for certain months of the year, the City shall prorate the tax as to sufficiently reflect the period in which cultivation is occurring at the business. In no case shall canopy square footage which is authorized by the City commercial cannabis permit but not utilized for cultivation be deducted for the purpose of determining the tax for cultivation, unless the Tax Administrator is informed in writing and authorizes such reduction for the purpose of relief from the tax prior to the period for which the space will not be used, that such space will not be used.

2. For every person who engages in the operation of a testing laboratory: one percent (1%) of gross receipts.
 3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery) or microbusiness (retail sales): Four percent (4%) of gross receipts.
 4. For every person who engages in a cannabis distribution business: two percent (2%) of gross receipts.
 5. For every person who engages in a cannabis manufacturing, processing, or microbusiness (non-retail), or any other type of cannabis business not described in Section (B) (1), (2), (3) or (4): Two and half percent (2.5%) of gross receipts.
- C. The City Council may, by resolution or ordinance, adjust the rate of the cannabis business tax. However, in no event may the City Council set any adjusted rate that exceeds the maximum rate calculated pursuant to Subdivision (D) of this Section for the date on which the adjusted rate will commence.
- D. The maximum rate shall be calculated as follows:
1. For every person who is engaged in commercial cannabis cultivation in the City:
 - a. Through January 1, 2021, the maximum rate shall be:
 - i. Ten dollars (\$10.00) annually per square foot of canopy space for indoor cultivation within a permanent structure that uses exclusively artificial lighting.
 - ii. Seven dollars (\$7.00) annually per square foot of canopy space for indoor cultivation within a permanent structure that uses a combination of natural and supplemental artificial lighting.
 - iii. Four dollars (\$4.00) annually per square foot of canopy space for outdoor cultivation that uses no artificial lighting.
 - iv. Two dollars (\$2.00) annually per square foot of canopy space for any nursery.
 - b. On January 1, 2022 and on each January 1 thereafter, the maximum annual tax rate per square foot of each type of canopy space shall increase by the percentage change between January of the calendar year prior to such increase and January of the calendar year of the increase in the Consumer Price Index ("CPI") for all urban consumers in the Los Angeles-Long

Beach-Anaheim area as published by the United States Government Bureau of Labor Statistics (BLS). In the event the BLS modifies the Los Angeles-Long Beach-Anaheim Index, then its successor or equivalent shall apply. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.

2. For every person who engages in the operation of a testing laboratory, the maximum tax rate shall not exceed two and a half percent (2.5%) of gross receipts.
3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery business), or microbusiness (retail sales activity) the maximum tax rate shall not exceed six percent (6%) of gross receipts.
4. For every person who engages in a cannabis distribution business, the maximum tax rate shall not exceed three percent (3%) of gross receipts.
5. For every person who engages in a cannabis manufacturing, processing, or microbusiness (non-retail activity) or any other type of cannabis business not described in Section (D) (1), (2), (3) or (4), the maximum tax rate shall not exceed four percent (4%) of gross receipts.

3-17.060 Reporting and remittance of tax.

- A. The cannabis business tax imposed by this Chapter shall be paid, in arrears, on a quarterly basis. For commercial cannabis cultivation, the tax due for each calendar quarter shall be based on the square footage of the business's canopy space during the quarter and the rate shall be 25% of the applicable annual rate. For all other cannabis businesses activities, the tax due for each calendar quarter shall be based on the gross receipts for the quarter.
- B. Each person owing cannabis business tax for a calendar quarter shall, no later than the last day of the month following the close of the calendar quarter, file with the Tax Administrator a statement of the tax owed for that calendar quarter and the basis for calculating that tax. The Tax Administrator may require that the statement be submitted on a form prescribed by the Tax Administrator. The tax for each calendar quarter shall be due and payable on that same date as the statement for the calendar quarter is due.
- C. Upon cessation of a cannabis business, tax statements and payments shall be immediately due for all calendar quarters up to the calendar quarter during which cessation occurred.
- D. The Tax Administrator may, at his or her discretion, establish shorter report and payment periods for any taxpayer as the Tax Administrator deems necessary to ensure collection of the tax. The Tax Administrator may also require that a deposit, to be applied against the taxes for a calendar quarter, be made by a

taxpayer at the beginning of that calendar quarter. In no event shall the deposit required by the Tax Administrator exceed the tax amount he or she projects will be owed by the taxpayer for the calendar quarter. The Tax Administrator may require that a taxpayer make payments via a cashier's check, money order, wire transfer, or similar instrument.

- E. For purposes of this section, the square feet of canopy space for a business shall be rebuttably presumed to be no less than the maximum square footage of canopy allowed by the business's City permit for commercial cannabis cultivation, or, in the absence of a City permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. In no case shall canopy square footage which is authorized by the permit or license but not utilized for cultivation be excluded from taxation unless the Tax Administrator is informed in writing, prior to the period for which the space will not be used, that such space will not be used.

3-17.070 Payments and communications – timely remittance.

Whenever any payment, statement, report, request or other communication is due, it must be received by the Tax Administrator on or before the final due date. A postmark will not be accepted as timely remittance. If the due date would fall on a Saturday, Sunday or a holiday, the due date shall be the next regular business day on which the City is open to the public.

3-17.080 Payment - when taxes deemed delinquent.

Unless otherwise specifically provided under other provisions of this Chapter, the taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not received by the Tax Administrator on or before the due date as specified in Sections 3-17.060 and 3-17.070.

3-17.090 Notice not required by the City.

The City may as a courtesy send a tax notice to the business. However, the Tax Administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this Chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this Chapter.

3-17.100 Penalties and interest.

A. Any person who fails or refuses to pay any cannabis business tax required to be paid pursuant to this Chapter on or before the due date shall pay penalties and interest as follows:

1. A penalty equal to ten percent (10%) of the amount of the tax, in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at the rate of one percent (1.0%) per month.

2. If the tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to twenty-five percent (25%) of the

amount of the tax, plus interest at the rate of one percent (1.0%) per month on the unpaid tax and on the unpaid penalties.

3. Interest shall be applied at the rate of one percent (1.0%) per month on the first day of the month for the full month and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

B. Whenever a check or electronic payment is submitted in payment of a cannabis business tax and the payment is subsequently returned unpaid by the bank for any reason, the taxpayer will be liable for the tax amount due plus any fees, penalties and interest as provided for in this Section, and any other amount allowed under state law.

3-17.110 Refunds and credits.

A. No refund shall be made of any tax collected pursuant to this Chapter, except as provided in Section 3-17.120.

B. No refund of any tax collected pursuant to this Chapter shall be made because of the discontinuation, dissolution, or other termination of a business.

3-17.120 Refunds and procedures.

A. Whenever the amount of any cannabis business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously collected or received by the City under this Chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Tax Administrator within one (1) year of the date the tax was originally due and payable.

B. The Tax Administrator, his or her designee or any other City officer charged with the administration of this Chapter shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the Tax Administrator to do so.

C. In the event that the cannabis business tax was erroneously paid, and the error is attributable to the City, the City shall refund the amount of tax erroneously paid up to one (1) year from when the error was identified. If an error is attributable to the claimant, the City may retain an amount established by resolution of the City Council from time to time in an amount sufficient to recover the City's cost to process the claim and refund the balance.

3-17.130 Personal Cultivation Not Taxed.

The provisions of this Chapter shall not apply to personal cannabis cultivation as defined in the "Medicinal and Adult Use Cannabis Regulation and Safety Act". This Chapter shall not apply to personal use of cannabis that is specifically exempted from state licensing requirements, that meets the definition of personal use or equivalent terminology under state law, and for which the individual receives no compensation whatsoever related to that personal use.

3-17.140 Administration of the tax.

A. It shall be the duty of the Tax Administrator to collect the taxes, penalties, fees, and perform the duties required by this Chapter.

B. For purposes of administration and enforcement of this Chapter generally, the Tax Administrator may from time to time promulgate such administrative interpretations, rules, and procedures consistent with the purpose, intent, and express terms of this Chapter as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

C. The Tax Administrator may take such administrative actions as needed to administer the tax, including but not limited to:

1. Provide to all cannabis business taxpayers forms for the reporting of the tax;
2. Provide information to any taxpayer concerning the provisions of this Chapter;
3. Receive and record all taxes remitted to the City as provided in this Chapter;
4. Maintain records of taxpayer reports and taxes collected pursuant to this Chapter;
5. Assess penalties and interest to taxpayers pursuant to this Chapter;
6. Determine amounts owed and enforce collection pursuant to this Chapter.
7. Take such other reasonable steps as he or she deems necessary and appropriate to enforce this chapter.

3-17.150 Appeal procedure.

Any taxpayer aggrieved by any decision of the Tax Administrator with respect to the amount of tax, interest, penalties and fees, if any, due under this Chapter may appeal to the City Council by filing a notice of appeal with the City Clerk within thirty (30) days of the serving or mailing of the determination of tax due. The City Clerk, or his or her designee, shall fix a time and place for hearing such appeal, and the City Clerk, or his or her designee, shall give notice in writing to such operator at the last known place of address. The finding of the City Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this Chapter for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

3-17.160 Enforcement - action to collect.

A. Any taxes, penalties and/or fees required to be paid under the provisions of this Chapter shall be deemed a debt owed to the City. Any person owing money to the City under the provisions of this Chapter shall be liable in an action brought in the name of the City for the recovery of such debt. The provisions of this Section shall not be deemed a limitation upon the right of the City to bring any other action including criminal, civil and equitable actions, based

upon the failure to pay the tax, penalties and/or fees imposed by this Chapter or the failure to comply with any of the provisions of this Chapter.

B. In addition to any other remedies available under federal, state, or local law, if any amount required to be paid to the City under this Chapter is not paid when due, the Tax Administrator may, within three years after the amount is due record a certificate of lien specifying the amount of taxes, fees and penalties due, and the name and address of the individual or business as it appears on the records of Tax Administrator. The lien shall also specify that the Tax Administrator has complied with all provisions of this Chapter in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid, together with penalties thereon, constitutes a lien upon all real property in the City owned by the individual or business, or subsequently acquired by the individual or business before the lien expires. The lien has the force, effect, and priority of a judgment lien and shall continue for ten years from filing of the certificate unless sooner released or otherwise discharged.

C. At any time within three years after any individual or business is delinquent in the payment of any amount herein required to be paid or within three years after the last recording of a certificate of lien under subsection B of this Section, the Tax Administrator may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the City under this Chapter. The warrant shall be directed to the sheriff and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The Tax Administrator may pay or advance to the sheriff, the same fees, commissions and expenses for service provided by law for similar services pursuant to a writ of execution. The Tax Administrator shall approve the fees for publication in the newspaper.

D. At any time within three years after recording a lien against any individual or business, if the lien is not discharged and released in full, the Tax Administrator may forthwith seize any asset or property, real or personal (including bank account), of the operator and sell at public auction the asset or property, or a sufficient part of it to pay the amount due together with any penalties and interest imposed for the delinquency and any cost incurred on account of the seizure and sale. Assets or property of the business subject to seizure and sale subject to this Chapter shall not include any asset or property which is exempt from execution under the provisions of Code of Civil Procedure.

3-17.170 Apportionment.

If a business subject to the tax is operating both within and outside the City, it is the intent of the City to apply the cannabis business tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the City. To the extent federal or state law requires that any tax due from any taxpayer be apportioned, the taxpayer may indicate said apportionment on his or her tax return. The Tax Administrator may promulgate administrative procedures for apportionment as he or she finds useful or necessary.

3-17.180 Constitutionality and legality.

A. This tax is intended to be applied in a manner consistent with the United States and California Constitutions and state law. None of the tax provided for by this Chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection or due process clauses of the Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution or state law. If a person believes that the tax, as applied to him or her, is impermissible under applicable law, he or she may request that the Tax Administrator release him or her from the obligation to pay the impermissible portion of the tax.

B. The taxes imposed under this chapter are excises on the privilege of engaging in business as a cannabis business in the City. It is not a sales or use tax and shall not be calculated or assessed as such. Nevertheless, at the option of a cannabis business, the tax may be separately identified on invoices, receipts and other evidences of transactions.

C. Pursuant to California Constitution, article XIII B, the appropriation limit for the City is hereby increased to the maximum extent over the maximum period of time allowed under law by the amount of the revenues generated by the tax.

3-17.190 Audit and examination of premises and records.

A. For the purpose of ascertaining the amount of cannabis business tax owed or verifying any representations made by any taxpayer to the City in support of his or her tax calculation, the Tax Administrator shall have the power to inspect any location where commercial cannabis cultivation occurs and to audit and examine all books and records (including, but not limited to bookkeeping records, state and federal income tax returns, and other records relating to the gross receipts of the business) of persons engaged in cannabis businesses. In conducting such investigation, the Tax Administrator shall have the power to inspect any equipment, such as computers or point of sale machines, that may contain such records.

B. It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the City, which records the Tax Administrator or his/her designee shall have the right to inspect at all reasonable times.

3-17.200 Other licenses, permits, taxes, fees or charges.

A. Nothing contained in this Chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any permit or license required by, under or by virtue of any provision of any other Chapter of this code or any other ordinance or resolution of the City, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other Chapter of this code or any other ordinance or resolution of the City. Any references made or contained in any other Chapter of this code to any licenses, license taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges,

or schedule of license fees, provided for in other Chapter of this Code.

- B. Notwithstanding subdivision (A) of this Section, a cannabis business shall not be required to pay the license fee required by Chapter 3-5 of Title 3 of this Code so long as all of business' activities within the City that would require payment of a license fee are activities subject to the cannabis business tax.
- C. The Tax Administrator may revoke or refuse to renew the license required by Chapter 3-5 of Title 3 of this Code for any business that is delinquent in the payment of any tax due pursuant to this Chapter or that fails to make a deposit required by the Tax Administrator pursuant to Section 3-17.060.

3-17.210 Payment of tax does not authorize unlawful business.

A. The payment of a cannabis business tax required by this Chapter, and its acceptance by the City, shall not entitle any person to carry on any cannabis business unless the person has complied with all of the requirements of this Code and all other applicable state laws.

B. No tax paid under the provisions of this Chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any local or state law.

3-17.220 Deficiency determinations.

If the Tax Administrator is not satisfied that any statement filed as required under the provisions of this Chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within three (3) years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Section 3-17.240.

3-17.230 Failure to report—nonpayment, fraud.

A. Under any of the following circumstances, the Tax Administrator may make and give notice of an assessment of the amount of tax owed by a person under this Chapter at any time:

1. If the person has not filed a complete statement required under the provisions of this Chapter;
2. If the person has not paid the tax due under the provisions of this Chapter;

3. If the person has not, after demand by the Tax Administrator, filed a corrected statement, or furnished to the Tax Administrator adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this Chapter; or

4. If the Tax Administrator determines that the nonpayment of any business tax due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this Chapter and any other penalties allowed by law.

B. The notice of assessment shall separately set forth the amount of any tax known by the Tax Administrator to be due or estimated by the Tax Administrator, after consideration of all information within the Tax Administrator's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this Chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

3-17.240 Tax assessment - notice requirements.

The notice of assessment shall be served upon the person either by personal delivery, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the Tax Administrator for the purpose of receiving notices provided under this Chapter; or, should the person have no address registered with the Tax Administrator for such purpose, then to such person's last known address. For the purposes of this Section, a service by mail is complete at the time of deposit in the United States mail.

3-17.250 Tax assessment - hearing, application and determination.

Within thirty (30) days after the date of service the person may apply in writing to the Tax Administrator for a hearing on the assessment. If application for a hearing before the City is not made within the time herein prescribed, the tax assessed by the Tax Administrator shall become final and conclusive. Within thirty (30) days of the receipt of any such application for hearing, the Tax Administrator shall cause the matter to be set for hearing before him or her no later than thirty (30) days after the receipt of the application, unless a later date is agreed to by the Tax Administrator and the person requesting the hearing. Notice of such hearing shall be given by the Tax Administrator to the person requesting such hearing not later than five (5) days

prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Tax Administrator should not be confirmed and fixed as the tax due. After such hearing the Tax Administrator shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 3-17.240 for giving notice of assessment.

3-17.260 Relief from taxes -disaster relief.

(a) If a business is unable to comply with any tax requirement due to a disaster, the business may

notify the Tax Administrator of this inability to comply and request relief from the tax requirement;

(b) The Tax Administrator, in its sole discretion, may provide relief from the cannabis business tax requirement for businesses whose operations have been impacted by a disaster if such tax liability does not exceed five thousand (\$5,000) dollars. If such tax liability is five thousand one (\$5,001) dollars or more than such relief shall only be approved by the City Council;

(c) Temporary relief from the cannabis tax may be relieved for a reasonable amount of time as determined by the Tax Administrator in order to allow the cannabis business time to recover from the disaster;

(d) The Tax Administrator may require that certain conditions be followed in order for a cannabis business to receive temporary relief from the cannabis business tax requirement;

(e) A cannabis business shall not be subject to an enforcement action for a violation of a cannabis business requirement in which the licensee has received temporary relief from the Tax Administrator;

(f) For purposes of this section, "disaster" means fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether or not resulting from natural causes.

(1) The cannabis business must notify the Tax Administrator in writing a request for temporary relief from imposition of the tax requirement pursuant to subsection (a) of this section of such disaster clearly indicates why relief is requested from, the time period for which the relief is requested, and the reasons relief is needed for the specified amount of time;

(2) The cannabis business agrees to grant the Tax Administrator or his/her designee access to the location where the cannabis business has been impacted due to a disaster.

3-17.270 Conviction for violation - taxes not waived.

The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any state law requiring the payment of all taxes.

3-17.280 Violation deemed misdemeanor.

Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor.

3-17.290 Severability.

If any provision of this Chapter, or its application to any person or circumstance, is determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Chapter or the application

of this Chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

3-17.300 Remedies cumulative.

All remedies and penalties prescribed by this Chapter or which are available under any other provision of the Atascadero Municipal Code and any other provision of law or equity are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

3-17.310 Amendment or repeal.

This Chapter may be repealed or amended by the City Council without a vote of the people to the extent allowed by law. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Chapter. The people of the City of Atascadero affirm that the following actions shall not constitute an increase of the rate of a tax:

A. The restoration of the rate of the tax to a rate that is no higher than that set by this Chapter, if the City Council has acted to reduce the rate of the tax;

B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter; or

C. The collection of the tax imposed by this Chapter even if the City had, for some period of time, failed to collect the tax.

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 3. CEQA. This Ordinance is exempt from the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq., because it can be seen with certainty that there is no possibility that the enactment of this Ordinance would have a significant effect on the environment (Pub. Resources Code § 21065; CEQA Guidelines §§ 15378(b)(4), 15061(b)(3)) and because the Ordinance involves the approval of government revenues to fund existing services (Pub. Resources Code § 21080, subd. (b)(8); CEQA Guidelines § 15273(a)(4)). It does not make any commercial activity lawful nor commit the city to fund any particular activity.

This Ordinance was approved and adopted by the People of the City of Atascadero at the City's November 6, 2018 statewide election.

ITEM NUMBER:
DATE:
ATTACHMENT:

C-2
06/12/18
1A

XXX, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DRAFT RESOLUTION B

**RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF ATASCADERO, CALIFORNIA, REQUESTING THE
BOARD OF SUPERVISORS OF THE COUNTY OF SAN LUIS OBISPO
TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION
TO BE HELD ON TUESDAY, NOVEMBER 6, 2018, WITH THE
STATEWIDE GENERAL ELECTION TO BE HELD ON THE DATE
PURSUANT TO § 10403 OF THE ELECTIONS CODE.**

WHEREAS, the City Council of the City of Atascadero called a General Municipal Election to be held on November 6, 2018, for the purpose of submitting to the voters the question relating to a cannabis business tax; and

WHEREAS, it is desirable that the General Municipal Election be consolidated with the Statewide General election to be held on the same date and that within the city the precincts, polling places and election officers of the two elections be the same, and that the county election department of the County of San Luis Obispo canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election.

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Atascadero:

SECTION 1. That pursuant to the requirements of § 10403 of the Elections Code, the Board of Supervisors of the County of San Luis Obispo is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General election on Tuesday, November 6, 2018, for the submittal of a ballot measure to the voters.

SECTION 2. That the measure is to appear on the ballot as follows:

<u>BALLOT MEASURE #</u>	Yes
Shall the measure be adopted to tax cannabis businesses operating illegally or allowed in the future by the voters, State or City, at annual rates not to exceed \$10.00 per canopy square foot for cultivation (adjustable for inflation), 6% of gross receipts for retail cannabis businesses, and 4% of gross receipts for all other cannabis businesses, generating \$0-\$500,000 annually for unrestricted general revenue purposes, such as police , fire and parks, until ended by the voters?	No

SECTION 3. Pursuant to Article XIII C of the Constitution, this measure requires approval by a majority of those casting ballots on the measure unless another threshold is otherwise required by law.

SECTION 4. That the county election department is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used. The election will be held and conducted in accordance with the provisions of law regulating the statewide election.

SECTION 5. That the Board of Supervisors is requested to issue instructions to the county election department to take any and all steps necessary for the holding of the consolidated election.

SECTION 6. That the City of Atascadero recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.

SECTION 7. That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the county election department of the County of San Luis Obispo.

SECTION 8. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED at a regular meeting of the City Council held on the ____ day of ____, 2018.

On motion by Council Member _____ and seconded by Council Member _____, the foregoing Resolution is hereby adopted in its entirety on the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CITY OF ATASCADERO

Tom O'Malley, Mayor

ATTEST:

Lara K. Christensen, City Clerk

APPROVED AS TO FORM:

Brian Pierik, City Attorney

DRAFT RESOLUTION C

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ATASCADERO, CALIFORNIA, SETTING PRIORITIES FOR FILING WRITTEN ARGUMENTS REGARDING CITY MEASURES AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS

WHEREAS, a General Municipal Election is to be held in the City of Atascadero, California, on November 6, 2018, at which there will be submitted to the voters the following measure:

<u>BALLOT MEASURE #</u>	Yes
Shall the measure be adopted to tax cannabis businesses operating illegally or allowed in the future by the voters, State or City, at annual rates not to exceed \$10.00 per canopy square foot for cultivation (adjustable for inflation), 6% of gross receipts for retail cannabis businesses, and 4% of gross receipts for all other cannabis businesses, generating \$0-\$500,000 annually for unrestricted general revenue purposes, such as police , fire and parks, until ended by the voters?	No

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Atascadero:

SECTION 1. That the City Council authorizes the following member(s) of the City Council:

_____, Council Member In Favor
_____, Council Member In Favor
_____, Council Member In Favor
_____, Council Member In Favor
_____, Council Member In Favor

to file (a) written argument(s), not exceeding 300 words regarding the City measure as specified above accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk after which no arguments for or against the City measure may be submitted to the City Clerk.

SECTION 2. That the City Council directs the City Clerk to transmit a copy of the measure to the City Attorney, unless the organization or salaries of the Office of the City Attorney are affected.

a. The City Attorney shall prepare an impartial analysis of the measure not exceeding 500 words showing the effect of the measure on the existing law and the operation of the measure. If the measure affects the organization or salaries of the Office of the City Attorney, the City Clerk shall prepare the impartial analysis.

b. The analysis shall include a statement indicating whether the measure was placed on the ballot by a petition signed by the requisite number of voters or by the governing body of the City.

c. In the event the entire text of the measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-point type, the following: "The above statement is an impartial analysis of Ordinance or Measure _____. If you desire a copy of the ordinance or measure, please call the Election Official's office at (805) 470-3400 and a copy will be provided at no cost to you."

d. The impartial analysis shall be filed by the date set by the City Clerk for the filing of primary arguments.

SECTION 3. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED at a regular meeting of the City Council held on the ____ day of ____, 2018.

On motion by Council Member _____ and seconded by Council Member _____, the foregoing Resolution is hereby adopted in its entirety on the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CITY OF ATASCADERO

Tom O'Malley, Mayor

ATTEST:

Lara K. Christensen, City Clerk

APPROVED AS TO FORM:

Brian Pierik, City Attorney

DRAFT RESOLUTION D

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ATASCADERO, CALIFORNIA, PROVIDING FOR THE FILING OF REBUTTAL ARGUMENTS FOR CITY MEASURES SUBMITTED AT MUNICIPAL ELECTIONS

WHEREAS, §9282 of the Elections Code of the State of California provides for written arguments to be filed in favor of or against city measures not to exceed 300 words in length; and

WHEREAS, § 9285 of the Elections Code of the State of California authorizes the City Council, by majority vote, to adopt provisions to provide for the filing of rebuttal arguments for city measures submitted at municipal elections.

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Atascadero:

SECTION 1. That pursuant to Section 9285 of the Elections Code of the State of California, when the elections official has selected the arguments for and against the measure (not exceeding 300 words each) which will be printed and distributed to the voters, the elections official shall send a copy of an argument in favor of the measure to the authors of any argument against the measure, and a copy of an argument against the measure to the authors of any argument in favor of the measure immediately upon receiving the arguments.

The author or a majority of the authors of an argument relating to a city measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit or sign the rebuttal argument.

A rebuttal argument may not be signed by more than five authors.

The rebuttal arguments shall be filed with the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers, **not more than 10 days after** the final date for filing direct arguments. The rebuttal arguments shall be accompanied by the Form of Statement To Be Filed By Author(s) of Argument.

Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument, which it seeks to rebut.

SECTION 2. That all previous resolutions providing for the filing of rebuttal arguments for city measures are repealed.

SECTION 3. That the provisions of Section 1 shall apply at the next ensuing municipal election and at each municipal election after that time.

SECTION 4. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED AND ADOPTED at a regular meeting of the City Council held on the ____ day of ____, 2018.

On motion by Council Member _____ and seconded by Council Member _____, the foregoing Resolution is hereby adopted in its entirety on the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CITY OF ATASCADERO

Tom O'Malley, Mayor

ATTEST:

Lara K. Christensen, City Clerk

APPROVED AS TO FORM:

Brian Pierik, City Attorney

ORDINANCE NO. 617

AN ORDINANCE OF THE CITY OF ATASCADERO, CALIFORNIA, ADDING CHAPTER 3-17 (CANNABIS BUSINESS TAX) TO TITLE 3 OF THE ATASCADERO MUNICIPAL CODE ESTABLISHING A CANNABIS BUSINESS TAX

THE PEOPLE OF THE CITY OF ATASCADERO DO ORDAIN AS FOLLOWS:

SECTION 1. CODE AMENDMENT. Chapter 3-17 of Title 3 of the Atascadero Municipal Code to read as follows:

CHAPTER 3-17 CANNABIS BUSINESS TAX

Sections:

- 3-17.010 Title.
- 3-17.020 Authority and Purpose.
- 3-17.030 Intent.
- 3-17.040 Definitions.
- 3-17.050 Tax imposed.
- 3-17.060 Reporting and remittance of tax.
- 3-17.070 Payments and communications –timely remittance.
- 3-17.080 Payment – when taxes deemed delinquent.
- 3-17.090 Notice not required by City.
- 3-17.100 Penalties and interest.
- 3-17.110 Refunds and credits.
- 3-17.120 Refunds and procedures.
- 3-17.130 Personal cultivation not taxed.
- 3-17.140 Administration of the tax.
- 3-17.150 Appeal procedure.
- 3-17.160 Enforcement –action to collect.
- 3-17.170 Apportionment.
- 3-17.180 Constitutionality and legality.
- 3-17.190 Audit and examination of premises and records.
- 3-17.200 Other licenses, permits, taxes or charges.
- 3-17.210 Payment of tax does not authorize unlawful business.
- 3-17.220 Deficiency determinations.
- 3-17.230 Failure to report – nonpayment, fraud.
- 3-17.240 Tax assessment –notice requirements.
- 3-17.250 Tax assessment – hearing, application, and determination.
- 3-17.260 Relief from taxes-disaster relief.
- 3-17.270 Conviction for violation – taxes not waived.
- 3-17.280 Violation deemed misdemeanor.
- 3-17.290 Severability.
- 3-17.300 Remedies cumulative.
- 3-17.310 Amendment or repeal.

3-17.010 Title.

This ordinance shall be known as the Cannabis Business Tax Ordinance.

3-17.020 Authority and Purpose.

The purpose of this Ordinance is to adopt a tax, for revenue purposes, pursuant to Sections 37101 and 37100.5 of the California Government Code, upon Cannabis Businesses that engage in business in the City, should they be authorized to do so at some future time. The Cannabis Business Tax shall be levied based upon business gross receipts and square footage of plant canopy, should cannabis businesses ever be authorized to operate in the City. In addition, Cannabis Businesses that operate illegally in the City at any time, regardless of the City's cannabis regulations, are subject to the Cannabis Business Tax. It is not a sales and use tax, a tax upon income, or a tax upon real property.

The Cannabis Business Tax is a general tax enacted solely for general governmental purposes of the City and not for specific purposes. All of the proceeds from the tax imposed by this Chapter shall be placed in the City's general fund and be available for any legal municipal purpose.

3-17.030 Intent.

The intent of this Ordinance is to position the City to levy a tax on all Cannabis Businesses that operate in the City, regardless of whether such business is operating legally or illegally. Nothing in this Ordinance shall be interpreted to authorize or permit any business activity that would not otherwise be legal or permissible under laws applicable to the activity at the time the activity is undertaken.

3-17.040 Definitions.

The following words and phrases shall have the meanings set forth below when used in this Chapter:

A. "Business" shall include all activities engaged in or caused to be engaged in within the City, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

B. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the 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. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code and is not limited to medical cannabis.

C. "Cannabis product" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product. "Cannabis product" also means marijuana products as defined by Section 11018.1 of the California Health and Safety Code and is not limited to medical cannabis products.

D. "Canopy" means all areas occupied by any portion of a cannabis plant whether contiguous or noncontiguous on any one site. When plants occupy multiple horizontal planes (as

when plants are placed on shelving above other plants) each plane shall be counted as a separate canopy area.

E. "Cannabis business" means any business activity involving cannabis, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, testing, dispensing, retailing and wholesaling of cannabis, of cannabis products or of ancillary products and accessories, whether or not carried on for gain or profit.

F. "Cannabis business tax" or "business tax," means the tax due pursuant to this Chapter for engaging in cannabis business in the City.

G. "Commercial cannabis cultivation" means cultivation in the course of conducting a cannabis business.

H. "City permit" means a permit issued by the City to a person to authorize that person to operate or engage in a cannabis business.

I. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis and includes, but is not limited to, the operation of a nursery.

J. "Employee" means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.

K. "Engaged in business as a cannabis business" means the commencing, conducting, operating, managing or carrying on of a cannabis business, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such activities. A person shall be deemed engaged in business within the City if:

1. Such person or person's employee maintains a fixed place of business within the City for the benefit or partial benefit of such person;
2. Such person or person's employee owns or leases real property within the City for business purposes;
3. Such person or person's employee regularly maintains a stock of tangible personal property in the City for sale in the ordinary course of business;
4. Such person or person's employee regularly conducts solicitation of business within the City; or
5. Such person or person's employee performs work or renders services in the City.

The foregoing specified activities shall not be a limitation on the meaning of “engaged in business.”

L. “Evidence of doing business” means evidence such as, without limitation, use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, or representation to a government agency or to the public that such person is engaged in a cannabis business in the City.

M. “Calendar year” means January 1 through December 31 of the following calendar year.

N. “Gross Receipts,” except as otherwise specifically provided, means, whether designated a sales price, royalty, rent, commission, dividend, or other designation, the total amount (including all receipts, cash, credits and property of any kind or nature) received or payable for sales of goods, wares or merchandise or for the performance of any act or service of any nature for which a charge is made or credit allowed (whether such service, act or employment is done as part of or in connection with the sale of goods, wares, merchandise or not), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever. However, the following shall be excluded from Gross Receipts:

1. Cash discounts where allowed and taken on sales;
2. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
3. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
4. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;
5. Cash value of sales, trades or transactions between departments or units of the same business;
6. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;
7. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;
8. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These

agents or trustees must provide the Administrative Services Department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

9. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags, books, posters or other personal tangible property which the Tax Administrator has excluded in writing by issuing an administrative ruling per Section 3-17.140 shall not be subject to the cannabis business tax under this chapter. However, any retail sales not subject to this Chapter as a result of the administrative ruling shall be subject to the appropriate business tax under Chapter 3-5 or any other Chapter or Title as determined by the Tax Administrator.

O. "Indoor cultivation" means the cultivation of cannabis within a permanent structure using exclusively artificial light or within any type of structure using artificial light at a rate above twenty-five (25) watts per square foot.

P. "Lighting" means a source of light that is primarily used for promoting the biological process of plant growth. Lighting does not include sources of light that primarily exist for the safety or convenience of staff or visitors to the facility, such as emergency lighting, walkway lighting, or light admitted via small skylights, windows or ventilation openings.

Q. "Nursery" means a facility or part of a facility that is used only for producing clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.

R. "Outdoor cultivation" means the cultivation of mature cannabis without the use of artificial lighting in the canopy area at any point in time. Artificial lighting is permissible only to maintain immature plants.

S. "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, whether organized as a nonprofit or for-profit entity, and includes the plural as well as the singular number.

T. "Sale" means and includes any sale, exchange, or barter.

U. "State" means the State of California.

V. "State license," "license," or "registration" means a state license issued pursuant to California Business & Professions Code Sections 19300, *et seq.* or other applicable state law.

W. "Tax Administrator" means the City of Atascadero Director of Administrative Services or his or her designee.

X. "Testing Laboratory" means a cannabis business that (i) offers or performs tests of cannabis or cannabis products, (ii) offers no service other than such tests, (iii) sells no products, excepting only testing supplies and materials, (iv) is accredited by an accrediting body that is independent from all other persons involved in the cannabis industry in the state and (v) is registered with the State Department of Public Health.

3-17.050 Tax imposed.

- A. Beginning January 1, 2019, there is imposed upon each person who is engaged in business as a cannabis business a cannabis business tax regardless if the business has been issued a permit to operate lawfully in the City or is operating unlawfully.
- B. The initial rate of the cannabis business tax shall be as follows:
 - 1. For every person who is engaged in commercial cannabis cultivation in the City:
 - a. Seven dollars (\$7.00) annually per square foot of canopy space for indoor cultivation within a permanent structure that uses exclusively artificial lighting.
 - b. Four dollars (\$4.00) annually per square foot of canopy space for indoor cultivation within a permanent structure that uses a combination of natural and supplemental artificial lighting.
 - c. Two dollars (\$2.00) annually per square foot of canopy space for outdoor cultivation that uses no artificial lighting.
 - d. One dollar (\$1.00) annually per square foot of canopy space for any nursery.

For purposes of this subdivision (B), the square feet of canopy space for a business shall be rebuttably presumed to be the maximum square footage of canopy allowed by the business's City permit for commercial cannabis cultivation, or, in the absence of a City permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. Should a City permit be issued to a business which cultivates only for certain months of the year, the City shall prorate the tax as to sufficiently reflect the period in which cultivation is occurring at the business. In no case shall canopy square footage which is authorized by the City commercial cannabis permit but not utilized for cultivation be deducted for the purpose of determining the tax for cultivation, unless the Tax Administrator is informed in writing and authorizes such reduction for the purpose of relief from the tax prior to the period for which the space will not be used, that such space will not be used.

- 2. For every person who engages in the operation of a testing laboratory: one percent (1%) of gross receipts.
- 3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery) or microbusiness (retail sales): Four percent (4%) of gross receipts.
- 4. For every person who engages in a cannabis distribution business: two percent (2%) of gross receipts.
- 5. For every person who engages in a cannabis manufacturing, processing, or microbusiness (non-retail), or any other type of cannabis business not described in Section (B) (1), (2), (3) or (4): Two and half percent (2.5%) of gross receipts.

- C. The City Council may, by resolution or ordinance, adjust the rate of the cannabis business tax. However, in no event may the City Council set any adjusted rate that exceeds the maximum rate calculated pursuant to Subdivision (D) of this Section for the date on which the adjusted rate will commence.
- D. The maximum rate shall be calculated as follows:
 - 1. For every person who is engaged in commercial cannabis cultivation in the City:
 - a. Through January 1, 2021, the maximum rate shall be:
 - i. Ten dollars (\$10.00) annually per square foot of canopy space for indoor cultivation within a permanent structure that uses exclusively artificial lighting.
 - ii. Seven dollars (\$7.00) annually per square foot of canopy space for indoor cultivation within a permanent structure that uses a combination of natural and supplemental artificial lighting.
 - iii. Four dollars (\$4.00) annually per square foot of canopy space for outdoor cultivation that uses no artificial lighting.
 - iv. Two dollars (\$2.00) annually per square foot of canopy space for any nursery.
 - b. On January 1, 2022 and on each January 1 thereafter, the maximum annual tax rate per square foot of each type of canopy space shall increase by the percentage change between January of the calendar year prior to such increase and January of the calendar year of the increase in the Consumer Price Index ("CPI") for all urban consumers in the Los Angeles-Long Beach-Anaheim area as published by the United States Government Bureau of Labor Statistics (BLS). In the event the BLS modifies the Los Angeles-Long Beach-Anaheim Index, then its successor or equivalent shall apply. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.
 - 2. For every person who engages in the operation of a testing laboratory, the maximum tax rate shall not exceed two and a half percent (2.5%) of gross receipts.
 - 3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery business), or microbusiness (retail sales activity) the maximum tax rate shall not exceed six percent (6%) of gross receipts.
 - 4. For every person who engages in a cannabis distribution business, the maximum tax rate shall not exceed three percent (3%) of gross receipts.

5. For every person who engages in a cannabis manufacturing, processing, or microbusiness (non-retail activity) or any other type of cannabis business not described in Section (D) (1), (2), (3) or (4), the maximum tax rate shall not exceed four percent (4%) of gross receipts.

3-17.060 Reporting and remittance of tax.

- A. The cannabis business tax imposed by this Chapter shall be paid, in arrears, on a quarterly basis. For commercial cannabis cultivation, the tax due for each calendar quarter shall be based on the square footage of the business's canopy space during the quarter and the rate shall be 25% of the applicable annual rate. For all other cannabis businesses activities, the tax due for each calendar quarter shall be based on the gross receipts for the quarter.
- B. Each person owing cannabis business tax for a calendar quarter shall, no later than the last day of the month following the close of the calendar quarter, file with the Tax Administrator a statement of the tax owed for that calendar quarter and the basis for calculating that tax. The Tax Administrator may require that the statement be submitted on a form prescribed by the Tax Administrator. The tax for each calendar quarter shall be due and payable on that same date as the statement for the calendar quarter is due.
- C. Upon cessation of a cannabis business, tax statements and payments shall be immediately due for all calendar quarters up to the calendar quarter during which cessation occurred.
- D. The Tax Administrator may, at his or her discretion, establish shorter report and payment periods for any taxpayer as the Tax Administrator deems necessary to ensure collection of the tax. The Tax Administrator may also require that a deposit, to be applied against the taxes for a calendar quarter, be made by a taxpayer at the beginning of that calendar quarter. In no event shall the deposit required by the Tax Administrator exceed the tax amount he or she projects will be owed by the taxpayer for the calendar quarter. The Tax Administrator may require that a taxpayer make payments via a cashier's check, money order, wire transfer, or similar instrument.
- E. For purposes of this section, the square feet of canopy space for a business shall be rebuttably presumed to be no less than the maximum square footage of canopy allowed by the business's City permit for commercial cannabis cultivation, or, in the absence of a City permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. In no case shall canopy square footage which is authorized by the permit or license but not utilized for cultivation be excluded from taxation unless the Tax Administrator is informed in writing, prior to the period for which the space will not be used, that such space will not be used.

3-17.070 Payments and communications – timely remittance.

Whenever any payment, statement, report, request or other communication is due, it must be received by the Tax Administrator on or before the final due date. A postmark will not be accepted as timely remittance. If the due date would fall on a Saturday, Sunday or a holiday, the due date shall be the next regular business day on which the City is open to the public.

3-17.080 Payment - when taxes deemed delinquent.

Unless otherwise specifically provided under other provisions of this Chapter, the taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not received by the Tax Administrator on or before the due date as specified in Sections 3-17.060 and 3-17.070.

3-17.090 Notice not required by the City.

The City may as a courtesy send a tax notice to the business. However, the Tax Administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this Chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this Chapter.

3-17.100 Penalties and interest.

A. Any person who fails or refuses to pay any cannabis business tax required to be paid pursuant to this Chapter on or before the due date shall pay penalties and interest as follows:

1. A penalty equal to ten percent (10%) of the amount of the tax, in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at the rate of one percent (1.0%) per month.
2. If the tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to twenty-five percent (25%) of the amount of the tax, plus interest at the rate of one percent (1.0%) per month on the unpaid tax and on the unpaid penalties.
3. Interest shall be applied at the rate of one percent (1.0%) per month on the first day of the month for the full month and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

B. Whenever a check or electronic payment is submitted in payment of a cannabis business tax and the payment is subsequently returned unpaid by the bank for any reason, the taxpayer will be liable for the tax amount due plus any fees, penalties and interest as provided for in this Section, and any other amount allowed under state law.

3-17.110 Refunds and credits.

A. No refund shall be made of any tax collected pursuant to this Chapter, except as provided in Section 3-17.120.

B. No refund of any tax collected pursuant to this Chapter shall be made because of the discontinuation, dissolution, or other termination of a business.

3-17.120 Refunds and procedures.

A. Whenever the amount of any cannabis business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously collected or received by the City under this Chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Tax Administrator within one (1) year of the date the tax was originally due and payable.

B. The Tax Administrator, his or her designee or any other City officer charged with the administration of this Chapter shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the Tax Administrator to do so.

C. In the event that the cannabis business tax was erroneously paid, and the error is attributable to the City, the City shall refund the amount of tax erroneously paid up to one (1) year from when the error was identified. If an error is attributable to the claimant, the City may retain an amount established by resolution of the City Council from time to time in an amount sufficient to recover the City's cost to process the claim and refund the balance.

3-17.130 Personal Cultivation Not Taxed.

The provisions of this Chapter shall not apply to personal cannabis cultivation as defined in the "Medicinal and Adult Use Cannabis Regulation and Safety Act". This Chapter shall not apply to personal use of cannabis that is specifically exempted from state licensing requirements, that meets the definition of personal use or equivalent terminology under state law, and for which the individual receives no compensation whatsoever related to that personal use.

3-17.140 Administration of the tax.

A. It shall be the duty of the Tax Administrator to collect the taxes, penalties, fees, and perform the duties required by this Chapter.

B. For purposes of administration and enforcement of this Chapter generally, the Tax Administrator may from time to time promulgate such administrative interpretations, rules, and procedures consistent with the purpose, intent, and express terms of this Chapter as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

C. The Tax Administrator may take such administrative actions as needed to administer the tax, including but not limited to:

1. Provide to all cannabis business taxpayers forms for the reporting of the tax;
2. Provide information to any taxpayer concerning the provisions of this Chapter;

3. Receive and record all taxes remitted to the City as provided in this Chapter;
4. Maintain records of taxpayer reports and taxes collected pursuant to this Chapter;
5. Assess penalties and interest to taxpayers pursuant to this Chapter;
6. Determine amounts owed and enforce collection pursuant to this Chapter.
7. Take such other reasonable steps as he or she deems necessary and appropriate to enforce this chapter.

3-17.150 Appeal procedure.

Any taxpayer aggrieved by any decision of the Tax Administrator with respect to the amount of tax, interest, penalties and fees, if any, due under this Chapter may appeal to the City Council by filing a notice of appeal with the City Clerk within thirty (30) days of the serving or mailing of the determination of tax due. The City Clerk, or his or her designee, shall fix a time and place for hearing such appeal, and the City Clerk, or his or her designee, shall give notice in writing to such operator at the last known place of address. The finding of the City Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this Chapter for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

3-17.160 Enforcement - action to collect.

A. Any taxes, penalties and/or fees required to be paid under the provisions of this Chapter shall be deemed a debt owed to the City. Any person owing money to the City under the provisions of this Chapter shall be liable in an action brought in the name of the City for the recovery of such debt. The provisions of this Section shall not be deemed a limitation upon the right of the City to bring any other action including criminal, civil and equitable actions, based upon the failure to pay the tax, penalties and/or fees imposed by this Chapter or the failure to comply with any of the provisions of this Chapter.

B. In addition to any other remedies available under federal, state, or local law, if any amount required to be paid to the City under this Chapter is not paid when due, the Tax Administrator may, within three years after the amount is due record a certificate of lien specifying the amount of taxes, fees and penalties due, and the name and address of the individual or business as it appears on the records of Tax Administrator. The lien shall also specify that the Tax Administrator has complied with all provisions of this Chapter in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid, together with penalties thereon, constitutes a lien upon all real property in the City owned by the individual or business, or subsequently acquired by the individual or business before the lien expires. The lien has the force, effect, and priority of a judgment lien and shall continue for ten years from filing of the certificate unless sooner released or otherwise discharged.

C. At any time within three years after any individual or business is delinquent in the payment of any amount herein required to be paid or within three years after the last recording of a certificate of lien under subsection B of this Section, the Tax Administrator may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the City under this Chapter. The warrant shall be directed to the sheriff and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The Tax Administrator may pay or advance to the sheriff, the same fees, commissions and expenses for service provided by law for similar services pursuant to a writ of execution. The Tax Administrator shall approve the fees for publication in the newspaper.

D. At any time within three years after recording a lien against any individual or business, if the lien is not discharged and released in full, the Tax Administrator may forthwith seize any asset or property, real or personal (including bank account), of the operator and sell at public auction the asset or property, or a sufficient part of it to pay the amount due together with any penalties and interest imposed for the delinquency and any cost incurred on account of the seizure and sale. Assets or property of the business subject to seizure and sale subject to this Chapter shall not include any asset or property which is exempt from execution under the provisions of Code of Civil Procedure.

3-17.170 Apportionment.

If a business subject to the tax is operating both within and outside the City, it is the intent of the City to apply the cannabis business tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the City. To the extent federal or state law requires that any tax due from any taxpayer be apportioned, the taxpayer may indicate said apportionment on his or her tax return. The Tax Administrator may promulgate administrative procedures for apportionment as he or she finds useful or necessary.

3-17.180 Constitutionality and legality.

A. This tax is intended to be applied in a manner consistent with the United States and California Constitutions and state law. None of the tax provided for by this Chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection or due process clauses of the Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution or state law. If a person believes that the tax, as applied to him or her, is impermissible under applicable law, he or she may request that the Tax Administrator release him or her from the obligation to pay the impermissible portion of the tax.

B. The taxes imposed under this chapter are excises on the privilege of engaging in business as a cannabis business in the City. It is not a sales or use tax and shall not be calculated or assessed as such. Nevertheless, at the option of a cannabis business, the tax may be separately identified on invoices, receipts and other evidences of transactions.

C. Pursuant to California Constitution, article XIII B, the appropriation limit for the City is hereby increased to the maximum extent over the maximum period of time allowed under law by the amount of the revenues generated by the tax.

3-17.190 Audit and examination of premises and records.

A. For the purpose of ascertaining the amount of cannabis business tax owed or verifying any representations made by any taxpayer to the City in support of his or her tax calculation, the Tax Administrator shall have the power to inspect any location where commercial cannabis cultivation occurs and to audit and examine all books and records (including, but not limited to bookkeeping records, state and federal income tax returns, and other records relating to the gross receipts of the business) of persons engaged in cannabis businesses. In conducting such investigation, the Tax Administrator shall have the power to inspect any equipment, such as computers or point of sale machines, that may contain such records.

B. It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the City, which records the Tax Administrator or his/her designee shall have the right to inspect at all reasonable times.

3-17.200 Other licenses, permits, taxes, fees or charges.

A. Nothing contained in this Chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any permit or license required by, under or by virtue of any provision of any other Chapter of this code or any other ordinance or resolution of the City, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other Chapter of this code or any other ordinance or resolution of the City. Any references made or contained in any other Chapter of this code to any licenses, license taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other Chapter of this Code.

B. Notwithstanding subdivision (A) of this Section, a cannabis business shall not be required to pay the license fee required by Chapter 3-5 of Title 3 of this Code so long as all of business' activities within the City that would require payment of a license fee are activities subject to the cannabis business tax.

C. The Tax Administrator may revoke or refuse to renew the license required by Chapter 3-5 of Title 3 of this Code for any business that is delinquent in the payment of any tax due pursuant to this Chapter or that fails to make a deposit required by the Tax Administrator pursuant to Section 3-17.060.

3-17.210 Payment of tax does not authorize unlawful business.

A. The payment of a cannabis business tax required by this Chapter, and its acceptance by the City, shall not entitle any person to carry on any cannabis business unless the person has complied with all of the requirements of this Code and all other applicable state laws.

B. No tax paid under the provisions of this Chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any local or state law.

3-17.220 Deficiency determinations.

If the Tax Administrator is not satisfied that any statement filed as required under the provisions of this Chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within three (3) years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Section 3-17.240.

3-17.230 Failure to report—nonpayment, fraud.

A. Under any of the following circumstances, the Tax Administrator may make and give notice of an assessment of the amount of tax owed by a person under this Chapter at any time:

1. If the person has not filed a complete statement required under the provisions of this Chapter;
2. If the person has not paid the tax due under the provisions of this Chapter;
3. If the person has not, after demand by the Tax Administrator, filed a corrected statement, or furnished to the Tax Administrator adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this Chapter; or
4. If the Tax Administrator determines that the nonpayment of any business tax due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this Chapter and any other penalties allowed by law.

B. The notice of assessment shall separately set forth the amount of any tax known by the Tax Administrator to be due or estimated by the Tax Administrator, after consideration of all information within the Tax Administrator's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this Chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

3-17.240 Tax assessment - notice requirements.

The notice of assessment shall be served upon the person either by personal delivery, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the Tax Administrator for the purpose of receiving notices provided under this Chapter; or, should the person have no address registered with the Tax Administrator for such purpose, then to such person's last known address. For the purposes of this Section, a service by mail is complete at the time of deposit in the United States mail.

3-17.250 Tax assessment - hearing, application and determination.

Within thirty (30) days after the date of service the person may apply in writing to the Tax Administrator for a hearing on the assessment. If application for a hearing before the City is not made within the time herein prescribed, the tax assessed by the Tax Administrator shall become final and conclusive. Within thirty (30) days of the receipt of any such application for hearing, the Tax Administrator shall cause the matter to be set for hearing before him or her no later than thirty (30) days after the receipt of the application, unless a later date is agreed to by the Tax Administrator and the person requesting the hearing. Notice of such hearing shall be given by the Tax Administrator to the person requesting such hearing not later than five (5) days

prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Tax Administrator should not be confirmed and fixed as the tax due. After such hearing the Tax Administrator shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 3-17.240 for giving notice of assessment.

3-17.260 Relief from taxes -disaster relief.

(a) If a business is unable to comply with any tax requirement due to a disaster, the business may notify the Tax Administrator of this inability to comply and request relief from the tax requirement;

(b) The Tax Administrator, in its sole discretion, may provide relief from the cannabis business tax requirement for businesses whose operations have been impacted by a disaster if such tax liability does not exceed five thousand (\$5,000) dollars. If such tax liability is five thousand one (\$5,001) dollars or more than such relief shall only be approved by the City Council;

(c) Temporary relief from the cannabis tax may be relieved for a reasonable amount of time as determined by the Tax Administrator in order to allow the cannabis business time to recover from the disaster;

(d) The Tax Administrator may require that certain conditions be followed in order for a cannabis business to receive temporary relief from the cannabis business tax requirement;

(e) A cannabis business shall not be subject to an enforcement action for a violation of a cannabis business requirement in which the licensee has received temporary relief from the Tax Administrator;

(f) For purposes of this section, “disaster” means fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether or not resulting from natural causes.

(1) The cannabis business must notify the Tax Administrator in writing a request for temporary relief from imposition of the tax requirement pursuant to subsection (a) of this section of such disaster clearly indicates why relief is requested from, the time period for which the relief is requested, and the reasons relief is needed for the specified amount of time;

(2) The cannabis business agrees to grant the Tax Administrator or his/her designee access to the location where the cannabis business has been impacted due to a disaster.

3-17.270 Conviction for violation - taxes not waived.

The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any state law requiring the payment of all taxes.

3-17.280 Violation deemed misdemeanor.

Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor.

3-17.290 Severability.

If any provision of this Chapter, or its application to any person or circumstance, is determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Chapter or the application of this Chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

3-17.300 Remedies cumulative.

All remedies and penalties prescribed by this Chapter or which are available under any other provision of the Atascadero Municipal Code and any other provision of law or equity are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

3-17.310 Amendment or repeal.

This Chapter may be repealed or amended by the City Council without a vote of the people to the extent allowed by law. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Chapter. The people of the City of Atascadero affirm that the following actions shall not constitute an increase of the rate of a tax:

A. The restoration of the rate of the tax to a rate that is no higher than that set by this Chapter, if the City Council has acted to reduce the rate of the tax;

B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter; or

C. The collection of the tax imposed by this Chapter even if the City had, for some period of time, failed to collect the tax.

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 3. CEQA. This Ordinance is exempt from the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq., because it can be seen with certainty that there is no possibility that the enactment of this Ordinance would have a significant effect on the environment (Pub. Resources Code § 21065; CEQA Guidelines §§ 15378(b)(4), 15061(b)(3)) and because the Ordinance involves the approval of government revenues to fund existing services (Pub. Resources Code § 21080, subd. (b)(8); CEQA Guidelines § 15273(a)(4)). It does not make any commercial activity lawful nor commit the city to fund any particular activity.

This Ordinance was approved and adopted by the People of the City of Atascadero at the City's November 6, 2018 statewide election.

CITY OF ATASCADERO

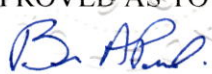


Heather Moreno, Mayor

ATTEST:


Lara K. Christensen, City Clerk

APPROVED AS TO FORM:


Brian A. Pierik, City Attorney

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO) ss
CITY OF ATASCADERO)

I, LARA K. CHRISTENSEN, City Clerk of the City of Atascadero, DO
HEREBY CERTIFY that Ordinance No. 617 was approved and adopted by the
People of the City of Atascadero at the City's November 6, 2018 statewide
election.



LARA K. CHRISTENSEN, CITY CLERK

I hereby certify that the foregoing is the original of Ordinance No. 617 was
approved and adopted by the People of the City of Atascadero at the City's
November 6, 2018 statewide election and that the Ordinance was published on
February 1, 2019 in the Atascadero News newspaper.



LARA K. CHRISTENSEN, CITY CLERK



Council Agenda Report

Department Name: Administration
Cost Center: 1001
For Agenda of: January 21, 2020
Placement: Business Item
Estimated Time: 45 minutes

FROM: Greg Hermann, Deputy City Manager
Prepared By: Ryan Betz, Assistant to the City Manager
Georgina Bailey, Management Fellow

SUBJECT: CONSIDERATION OF A PROHIBITION ON THE SALE OF FLAVORED TOBACCO AND/OR ELECTRONIC CIGARETTE PRODUCTS

RECOMMENDATION

1. Receive a report on the federal, state and regional approaches prohibiting the sale of flavored tobacco and/or electronic cigarette products; and
2. Review and provide direction on an introduced Ordinance (Attachment A) prohibiting the sale of electronic cigarette products that have not received premarket review by the U.S. Food and Drug Administration.

REPORT-IN-BRIEF

Over the past year, the City of San Luis Obispo (City) has monitored the issue of prohibiting the sale of flavored tobacco products and electronic cigarettes (e-cigarettes) at the federal, state and local level. Since the emergence of e-cigarette products in 2007, it has become the predominant method for using tobacco products amongst youth¹. Currently, the U.S. Food and Drug Administration (FDA), which reviews and regulates tobacco products, has not conducted any premarket review of e-cigarette products. Due to the popularity of flavored e-cigarette products with the youth, and absence of a review by the FDA, a number of California cities and counties have prohibited the sale of flavored tobacco products, including e-cigarette products, while allowing the sale of non-flavored e-cigarette products to continue. Recently, several cities and counties have prohibited the sale of all e-cigarette products, including flavored and non-flavored products, to further limit the access of these products to the youth. In June 2019, San Francisco was the first major city in the country to prohibit the sale of all e-cigarette products, followed by the cities of Richmond, Livermore, Morro Bay and Arroyo Grande.

¹ This conclusion is arrived at directly in the Truth Initiative's Fact Sheet "[E-cigarettes: Facts, stats and regulations](#)" which is also supported by the U.S Department of Health & Human Services in their reports "[Adolescents and Tobacco: Trends](#)"

DISCUSSION

Background

In response to concerns expressed by community members, the City Council at its November 27, 2018 meeting, directed staff to analyze issues related to prohibiting or limiting the sale of flavored tobacco and e-cigarettes products within the City. Specifically, the City Council expressed concerns regarding the popularity and effects of flavored e-cigarettes products (also known as vaping, that deliver nicotine through a liquid) on the youth in the community. In response, staff prepared a City Council memo (Attachment b) that analyzed the various policy issues as well as potential options to prohibit the sale flavored tobacco products and e-cigarettes in the City. On October 1, 2019, the City Council directed staff, after additional public concerns were expressed on this topic, to return for additional discussion and direction.

Flavored Tobacco Products and E-cigarettes

Flavored tobacco is a tobacco product that imparts a characterizing flavor other than the taste or aroma of tobacco, including but not limited to menthol, mint, wintergreen, fruits, candies, herbs or spices. These products include, but are not limited to, flavored cigarettes, cigarillos and cigars, hookah, smokeless tobacco, and flavored components and accessories (such as e-juice which is used with e-cigarettes). E-cigarette products include an electronic device, typically battery operated, that heat a liquid to deliver an inhaled dose of nicotine or other substances. The liquid (commonly referred to as e-juice) can be tobacco and/or other flavors. Though flavored tobacco has been in the market for some time, e-cigarettes products were introduced more recently in 2007. Since that time, they have been the most commonly used tobacco product amongst youth in the United States². According to the California Department of Public Health, the shapes and sizes of the devices can vary and include colorful vape pens, modified tank systems, and new pod devices that can look like the USB flash drives for computers, cell phones, credit card holders, and highlighters³.

E-cigarettes can deliver a significant amount of concentrated nicotine to its user, and the long-term effects of vaping have still yet to be fully explored. These products, particularly the flavored variety, are popular among younger users. According to a February 2019 National Institutes of Health report, over 17.6% of 8th graders, 32.3% of 10th graders and 37.3% of 12th graders reported trying e-cigarettes nationwide⁴. In California, according to the 2017-18 California Healthy Kids Survey, more than 30% of high school students used e-cigarettes, with 10% of students saying they regularly use the product⁵. That was a 6.4% increase from the year before. In comparison, traditional cigarette smoking among high school students reached a historic low and decreased from 4.3% in 2015-16 to 2.0% in 2017-18.

² Op.cit. fn.1

³ As defined by the California Department of Public Health “[Vaping Associated Lung Injury \(EVALI\)](#)”

⁴ As identified in February 2019 by the National Institute on Drug Abuse in an article “[Vaping Rises Among Teens](#)” with a graphic that outlines these statistics.

⁵ As reported by the 2017-18 California Student Tobacco Survey and the California Healthy Kids Survey both demonstrate the state trends of high school students e-cigarette usage as is reported in a CBS Los Angeles report “[Survey Cigarette Use Down But Vaping on Rise Among Local High School Students](#)”

The widespread use of e-cigarettes by youth may have significant public health consequences. The U.S. Surgeon General has stated:

“Tobacco use among youth and young adults in any form, including e-cigarettes, is not safe. In recent years, e-cigarette use by youth and young adults has increased at an alarming rate. E-cigarettes are now the most commonly used tobacco product among youth in the United State. E-cigarettes are tobacco products that deliver nicotine. Nicotine is a highly addictive substance, and many of today’s youth who are using e-cigarettes could become tomorrow’s cigarette smokers. Nicotine exposure can also harm brain development in ways that may affect the health and mental health of our kids.”⁶

City of San Luis Obispo Tobacco Regulations

The City has a long history of regulating tobacco and was awarded a grade of “B” for its anti-smoking efforts by the American Lung Association in its 2019 State of Tobacco Control⁷. In 1990, the City was the first city in the world to successfully ban smoking in all public buildings, including bars and restaurants. In 2003, the City established a Tobacco Retail License (TRL) program (Municipal Code Chapter 8.14) to further regulate tobacco sales for tobacco retailers and to discourage violations of the laws which prohibit or regulate the sale or distribution of tobacco products to minors. This is accomplished by both license guidelines and enforcement programs by the San Luis Obispo Police Department. The TRL is required for all retailers selling tobacco products, including e-cigarette products (referenced as electronic smoking devices), is valid for one year and is required to be renewed on annual basis. License compliance monitoring by the Police Department includes compliance checks and the cost of compliance monitoring is incorporated into the license fee which of \$736.80. Enforcement includes periodic operations that focus on underage tobacco sales with tobacco retailers. The Police Department collaborates with the County of San Luis Obispo’s Tobacco Control Program to ensure compliance with local and state regulations. There was one enforcement operation that occurred in 2019, which yielded one violation. There are approximately forty businesses in the City with current licenses through the TRL program. The TRL program was last amended in 2015 to prohibit the use of e-cigarette products in all places where smoking was currently prohibited and required retailers of e-cigarette products to also obtain a TRL. In addition, the City’s Municipal Code section (Chapter 8.18) regulates the sale and distribution of tobacco products including language that forbids the sale of tobacco products to minors.

⁶From the Office of the Surgeon General of the U.S Department of Health and Human Services in a report “[E-Cigarette Use Among Youth and Young Adults A Report of the Surgeon General, 2016](#)”

⁷ From the American Lung Association’s [2019 State of Tobacco Control County Grades](#)

Federal and California and Laws

In 2009, the federal government enacted the Family Smoking Prevention and Tobacco Control Act, which authorized the FDA to regulate the manufacture, marketing, and distribution of tobacco products. At this time, no e-cigarette products have been reviewed and approved by the FDA, as required by federal law. The deadline for FDA application reviews of all e-cigarette products is May 2020, though the timeline for the premarket review and testing process is yet to be determined, the FDA has up to a year after the submission to act. A recently passed federal law, taking effect on January 1, 2020, also prohibits the sale of tobacco products to anyone under the age of 21. The federal government also recently announced the prohibition of most flavored e-cigarette cartridges (single use), but would exempt menthol and tobacco flavors, as well as flavored liquid nicotine sold in open tank systems, typically sold at vape shops. Enforcement against companies that were still making or selling e-cigarette cartridges, would begin in February 2020.⁸

In 2003, California enacted the Cigarette and Tobacco Products Licensing Act to regulate the sale of tobacco and tobacco products. Similar to a business license, the Act requires every person selling cigarettes or tobacco products to the public in California to obtain a license from the California Department of Tax and Fee Administration. Since the California legislature has not fully occupied the field of tobacco sales, California cities are free to implement any tobacco sales regulation or restriction provided they do not involve the collection of taxes or the penal aspects of tobacco sales to minors. As of June 9, 2016, California law prohibits selling, giving, or furnishing tobacco products to individuals under the age of 21, including e-cigarettes.

The Family Smoking Prevention and Tobacco Control Act authorizes the City to adopt local regulations prohibiting the sale, distribution, possession, exposure to, access to, and promotion of, or use of tobacco products, but does preempt the City from regulating tobacco product standards, manufacturing, and labeling. Accordingly, federal law grants the FDA authority to regulate all tobacco products and expressly preserves the power of local governments to enact additional or “more stringent” regulations related to or prohibiting tobacco sales. The City’s TRL program is consistent with the state Cigarette and Tobacco Products Licensing Act and the federal Smoking Prevention and Tobacco Control Act. The TRL regulations could be extended to include prohibitions on the sale of flavored tobacco and e-cigarettes products. On January 6, 2020, California legislatures introduced Senate Bill 793, which bans the sale of flavored tobacco products, including menthol. If approved, the bill would not ban the sale of non-flavored e-cigarette products. The bill is similar to the one that was introduced last year but was ultimately withdrawn.

⁸ For a discussion on the current FDA rules and regulations see <https://www.marketwatch.com/story/federal-government-bans-popular-e-cigarettes-flavors-to-curb-underage-smoking-2020-01-02> and <https://www.marketwatch.com/story/fda-to-ban-fruity-e-cigarette-pod-flavors-but-allow-tank-vaping-systems-2019-12-31> and also <https://www.nytimes.com/2019/12/31/health/e-cigarettes-flavor-ban-trump.html>

Other Cities/Counties in California

Over 55 cities and counties in California have passed restrictions on the sale of flavored tobacco products in an effort to reduce youth tobacco use. Recently, several cities have passed ordinances that limit the ability of tobacco retailers to sell e-cigarette products. San Francisco was the first to do so by placing a temporary moratorium on the sale of these products until they have been reviewed by the FDA. San Francisco's ban on e-cigarettes was subject to a voter referendum that would have overturned the ban; however, voters upheld the ban in November 2019. Similar to San Francisco, several other cities and counties, including Richmond and Livermore have recently banned the sale of e-cigarettes products. Beverly Hills prohibited the sale of all tobacco products, with the exception of cigars at high-end cigar lounges and hotels, in June 2019.

Other Cities/County in the Region

Several cities in San Luis Obispo County and the City of Santa Maria have recently passed additional tobacco regulations.

City of Morro Bay:

- 1) Created a TRL program.
- 2) Prohibited the sale of e-cigarettes products, including all flavored and non-flavored products, without the reference to the FDA review process.
- 3) Prohibited smoking in multi-unit residences, both in the units and common areas.
- 4) Prohibited the sale of tobacco products by retail establishments that contain a pharmacy.
- 5) Prohibited the sale of:
 - (a) single cigars that cost less than five dollars
 - (b) any of number of cigars fewer than the number contained in the manufacturer's original consumer packaging
 - (c) any package of cigars containing fewer than five cigars

The effective date for prohibiting the sale of e-cigarette products is April 2020.

City of Arroyo Grande:

1. Prohibited the sale of e-cigarette products, including all flavored and non-flavored products, until the completion of the FDA review process.
2. Prohibited the possession of all tobacco products and paraphernalia by persons under the age of 21, with a fine of \$75 or thirty hours of community service work.

The effective date for prohibiting the sale of e-cigarette products is March 2020.

City of Santa Maria:

1. Created a TRL program
2. Prohibited the sale of all flavored tobacco products, including those flavored with menthol. The regulations allow the sale of e-cigarette products that are not flavored.

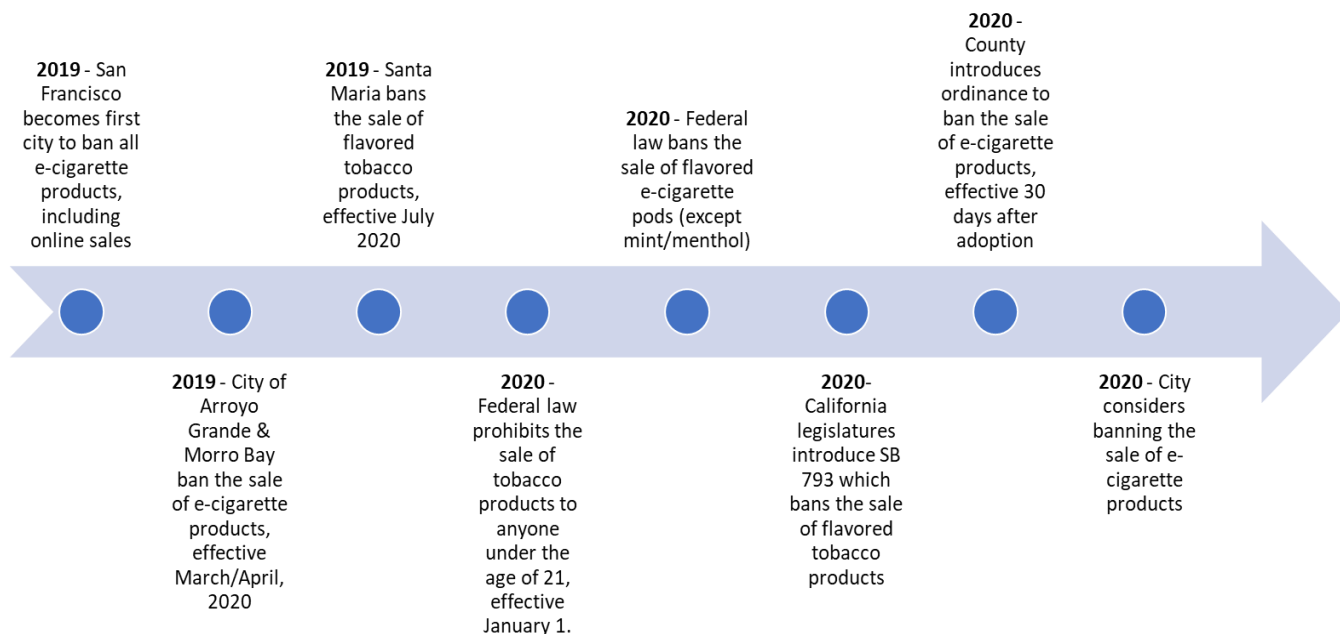
The effective date for prohibiting the sale of flavored tobacco products is July 2020.

County of San Luis Obispo (Scheduled for 1/14/2020):

- Considering the prohibition on the sale of e-cigarette products, including all flavored and non-flavored products, until the completion of the FDA review process, in all unincorporated areas within the County.

The effective date for prohibiting the sale of e-cigarette products is 30 days after final adoption.

Summary of Recent Flavored Tobacco and E-cigarette Products Regulations



The County of San Luis Obispo's Tobacco Control Program is the lead agency in the county in providing community education, prevention services, and technical assistance to a variety of stakeholders on the prevention of tobacco use. The program has been monitoring this issue for some time and has developed a visual to show policy approaches to address youth vaping (Attachment C).

Policy Options

Three options are listed below to guide the Council:

1. The City Council could move to adopt an introduced ordinance (Attachment a) prohibiting the sale of e-cigarette products that have not received premarket review by the FDA. This would be consistent with San Francisco, Arroyo Grande adopted ordinances and the County of San Luis Obispo proposed ordinance. The City of Morro Bay's ordinance is similar, though it does not reference the FDA review process, which means that regardless if the FDA approves an e-cigarette product, the sale would be prohibited in Morro Bay. The Ordinance is designed to become effective 90 days after the second reading and thus provides three months for existing retailers to remove these products from their inventories.

2. The City Council could modify the introduced ordinance to prohibit the sale of flavored tobacco, which would allow the sale of non-flavored e-cigarette products to continue. This would be similar to the City of Santa Maria ordinance, which prohibited the sale of flavored tobacco, including menthol.
3. The City Council could also direct staff to conduct additional public engagement efforts, including public workshops, study sessions, and online surveys. This effort would require additional staff resources, which would be requested as part of the 2019-20 Mid-Year Budget and would delay any adoption of an ordinance by approximately six months.

Environmental Concerns

Due to the design of e-cigarettes, many of the cartridges that contain the ‘e-juice’ are single use. In 2015, of the more than 58 million e-cigarettes and refills that were sold in the United States, 19.2 million were designed as single use.⁹ Though there are few state and national studies in regards to environmental concerns related to e-cigarettes and ‘e-juice’, there are emerging electronic cigarette disposal issues at the City’s local level.¹⁰ Disposal of e-cigarette products, including the cartridge that contains the ‘e-juice’, has become a challenge locally for the San Luis Obispo Integrated Waste Management Authority (IWMA). The waste from the products can contain microplastics, metals, nicotine and combustible lithium ion batteries. Because of this, the waste is categorized is sometimes considered hazardous waste. According to IWMA staff, many of their third-party hazardous waste collectors are limiting the amount of e-cigarette waste collection.

Sale of Cannabis Vaping Products

Cannabis vaping products are recommended to be exempt from the definition of an e-cigarette product, which is consistent with the Morro Bay ordinance. Cannabis vaping products are regulated through the State of California (unlike e-cigarettes products) and are generally subject to additional regulations that prevent diversion to youth.¹¹ In addition, cannabis is exempt from the definition of “electronic smoking device” for the City’s TRL program and instead is governed through the City’s regulations for cannabis businesses. Cannabis consumption, including vaping, remains unlawful to be consumed in public as identified in Section 9.10.210.

PREVIOUS COUNCIL OR ADVISORY BODY ACTION

As was previously discussed, the City Council initially requested that staff explore this item in November 2018 and directed staff to prepare a study session on the topic in October 2019 based on additional concerns expressed from the community.

⁹ As concluded by U.S National Institutes of Health’s National Library of Medicine in their study “[Alert: Public Health Implications of Electronic Cigarette Waste](#)”

¹⁰ Ibid which acknowledges, “No studies have yet traced disposal patterns of e-cigarettes, but research in progress suggests that like cigarette butts, spent e-cigarette capsules or replicable nicotine-filled plastic pods are often littered.”

¹¹ As defined by the [California Code of Regulations, Title 17 Division 1. Chapter 12. Manufactured Cannabis Safety](#) California Department of Public Health – Cannabis Regulations

POLICY CONTEXT

Regulating the sale of flavored tobacco products, e-cigarettes, or both, falls under Chapter 8.14, Health and Safety Tobacco Retailer License, of the City’s Municipal Code. The Council adopted Chapter 8.14 in 2003 to ensure tobacco retailers followed proper compliance with the sale and distribution of tobacco products and to minimize the access of tobacco products to the youth. Additional regulation of the sale and distribution of tobacco products falls under Chapter 8.18, including proper signage, sales to minors, self-service sales of tobacco, out of package sales and violations.

PUBLIC ENGAGEMENT

As was discussed at the October 1, 2019 City Council meeting, staff would not be able to complete significant public engagement on this topic in advance of a public meeting, but that notification of the meeting would be provided to affected retailers and interested parties. As such, staff provided notification of this item to retailers in the City’s Tobacco Retail License program and the County of San Luis Obispo’s Public Health Agency Tobacco Control Program on January 10, 2020.

Public comment can also be provided to the City Council through written correspondence and public comment at the meeting.

ENVIRONMENTAL REVIEW

The California Environmental Quality Act does not apply to the recommended action in this report, because the action does not constitute a “Project” under CEQA Guidelines Sec. 15378.

FISCAL IMPACT

Budgeted: No

Budget Year: 2019-2020

Funding Identified: No

Fiscal Analysis:

Funding Sources	Total Budget Available	Current Funding Request	Remaining Balance	Annual Ongoing Cost
General Fund	N/A			
State				
Federal				
Fees				
Other:				
Total	N/A			

The action before Council in itself does not have a fiscal impact. However, depending on the direction given by Council, any required funding would be considered with the 2019-20 Mid-Year Budget.

ALTERNATIVES

1. Move to adopt the introduced ordinance (Attachment A) prohibiting the sale of e-cigarette products that have not received premarket review by the FDA.
2. Modify and move to adopt the introduced ordinance to prohibit sale of e-cigarette products not received premarket review by the FDA and flavored tobacco products.
3. Direct staff to conduct additional public engagement. Additional public engagement efforts, including public workshops, study sessions, and online surveys, would require additional staff resources. The additional staff resources would be requested as part of the 2019-20 Mid-Year Budget and would delay any adoption of an ordinance by approximately six months.

Attachments:

a - Draft Ordinance - Electronic Cigarette Products

b - Council Memo on Flavored Tobacco Regulations

c - County of San Luis Obispo Tobacco Control Program Policy Approach to Address Youth Vaping

d - Exhibit A to Draft Ordinance

ORDINANCE NO. ____ (2020 Series)**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN LUIS OBISPO, CALIFORNIA, AMENDING THE MUNICIPAL CODE HEALTH AND SAFETY (CHAPTER 8.14) TOBACCO RETAILER LICENSE**

WHEREAS, the City of San Luis Obispo (“City”) is empowered to enact legislation to protect the health, safety, and welfare of the public; and

WHEREAS, the City established a Tobacco Retail License Program (Ordinance 1440, 2003 Series) to ensure compliance with all federal, state and local laws and to protect minors from the illegal sale of tobacco products; and

WHEREAS, the federal government has enacted numerous tobacco related laws that include, but are not limited to the Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”), enacted in 2009, that prohibited candy and fruit-flavored cigarettes, largely because these flavored products are marketed to youth and young adults, and younger smokers were more likely than older smokers to have tried these products. Among other things, the Tobacco Control Act authorized the U.S. Food and Drug Administration (“FDA”) to set national standards governing the manufacture of tobacco products, to limit levels of harmful components in tobacco products and to require manufacturers to disclose information and research relating to the products' health effects; and

WHEREAS, a central requirement of the Tobacco Control Act is premarket review of all new tobacco products. Specifically, every “New Tobacco Product” which is defined by federal law to be any tobacco product not on the market in the United States as of February 15, 2007, must be authorized by the FDA for sale in the United States before it may enter the marketplace; and

WHEREAS, a New Tobacco Product may not be marketed until the FDA has found that the product is: (1) appropriate for the protection of the public health upon review of a premarket tobacco application; (2) substantially equivalent to a grandfathered product; or (3) exempt from substantial equivalence requirements; and

WHEREAS, in determining whether the marketing of a tobacco product is appropriate for the protection of the public health, the FDA must consider the risks and benefits of the product to the population as a whole, including users and nonusers of the product, and taking into account the increased or decreased likelihood that existing users of tobacco products will stop using tobacco products and the increased or decreased likelihood that those who do not use tobacco products will start using them. Where there is a lack of showing that permitting the sale of a tobacco product would be appropriate for the protection of the public health, the Tobacco Control Act requires that the FDA deny an application for premarket review; and

WHEREAS, in July 2013, the FDA published an independent report that concluded that “menthol use is likely associated with increased smoking initiation by youth and young adults,” “menthol in cigarettes is likely associated with greater addiction,” and “that menthol cigarettes pose a public health risk above that seen with nonmenthol cigarettes;” and

WHEREAS, there are currently serious public health concerns about the immediate and long-term harm caused by electronic cigarettes/vaping use; and

WHEREAS, approximately 1,300 cases of electronic cigarettes/vaping products related lung illnesses have been reported in hospitals, health clinics, and emergency rooms nationwide, with at least 26 confirmed electronic cigarettes/vaping use related deaths; and

WHEREAS, the U.S. Surgeon General and the California Department of Public Health (CDPH) have issued health advisories to educate the public about the imminent health risk posed by electronic cigarettes/vaping products; and

WHEREAS, teen use of electronic cigarettes/vaping products has grown rapidly in recent years, with a February 2019 National Institutes of Health report finding that over 17.6% of 8th graders, 32.3% of 10th graders, and 37.3% of 12th graders reported trying electronic cigarettes/vaping products last year nationwide; and

WHEREAS, electronic cigarettes/vaping products, particularly the flavored products, are popular among younger users, and the packaging and advertising of these products by companies are often attractive to younger users; and

WHEREAS, there are over 15,000 electronic cigarettes/vaping flavors available on the market, including youth-orientated flavors such as bubble gum, cotton candy, and fruit punch, among others; and

WHEREAS, the City desires to amend its regulations to make them more comprehensive and effective at protecting the community from the harmful effects of electronic cigarette/vaping products, including devices; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of San Luis Obispo as follows:

SECTION 1. Section 8.14.020, subsection A of the San Luis Obispo Municipal Code is hereby amended as reflected in Exhibit A to read as follows:

“A. “Electronic smoking device” means an electronic device which can be used to deliver an inhaled dose of nicotine or any other substances (excluding cannabis), including any component, part, or accessory of such a device, whether or not sold separately, including flavored vape juices and liquids used in such devices. “Electronic smoking device” includes 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.

SECTION 2. Section 8.14.030, of the San Luis Obispo Municipal Code is hereby amended as reflected in Exhibit A to read as follows:

“The sale or distribution by an establishment of an Electronic Smoking Device is prohibited in the City of San Luis Obispo, including all non-flavored and flavored Electronic Smoking Device products, including mint and menthol where the Electronic Smoking Device:

- (a) Requires premarket review under 21 U.S.C. § 387j, as may be amended from time to time; and
- (b) Does not have a premarket review order under 21 U.S.C. § 387j(c)(1)(A)(i), as may be amended from time to time.”

SECTION 3. Ordinance Number 1613 (2015 Series) is hereby amended and superseded to the extent inconsistent herewith.

SECTION 4. Severability. If any subdivision, paragraph, sentence, clause, or phrase of this Ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforcement of the remaining portions of this Ordinance, or any other provisions of the city's rules and regulations. It is the city's express intent that each remaining portion would have been adopted irrespective of the fact that any one or more subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid or unenforceable.

SECTION 5. Environmental Review. The proposed ordinance amendment is exempt from environmental review requirements of the California Environmental Quality Act (CEQA) because the adoption of this Ordinance is not a project as defined in CEQA Guidelines Section 15378 because it can be seen with certainty that it will not result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

SECTION 6. Effective Date. This ordinance shall be in full force and effect ninety (90) days after it passage.

SECTION 7. A summary of this ordinance, together with the names of Council members voting for and against, shall be published at least five (5) days prior to its final passage, in The New Times, a newspaper published and circulated in this City. This ordinance shall go into effect at the expiration of ninety (90) days after its final passage.

INTRODUCED on the _____ day of _____ 2020, **AND FINALLY ADOPTED** by the Council of the City of San Luis Obispo on the _____ day of _____, 2020, on the following vote:

AYES:

NOES:

ABSENT:

Mayor Heidi Harmon

ATTEST:

Teresa Purrington
City Clerk

APPROVED AS TO FORM:

J. Christine Dietrick
City Attorney

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Luis Obispo, California, this _____ day of _____, 2020.

Teresa Purrington
City Clerk



Council Memorandum

DATE: April 17, 2019

TO: Mayor and City Council

FROM: Greg Hermann, Deputy City Manager

VIA: Derek Johnson, City Manager [DJ](#)

PREPARED BY: Ryan Betz, Assistant to the City Manager

SUBJECT: FLAVORED TOBACCO PRODUCT REGULATIONS

The purpose of this memorandum is to respond to inquiries about the potential to regulate flavored tobacco products in the City. In collaboration with staff from the County of San Luis Obispo's Public Health Department, the following memo summarizes the City's current Tobacco Retailer License (TRL) program, policies and recent actions at the Federal and State level, and work plan options for the Council's consideration.

Background

On November 27, 2018, the City Council (Council) directed staff to study issues related to banning or limiting the sale of flavored tobacco products within City limits. Specifically, the Council expressed concern regarding the effects of vaping (electronic cigarette that delivers nicotine through a liquid) on minors in the community.

The City's TRL program (Muni-code 8.14), which began in 2003 to discourage violations of the laws which prohibit or regulate the sale or distribution of tobacco products to minors, outlines the regulation of tobacco sales for tobacco retailers. This is accomplished by both license guidelines and enforcement programs by the Police Department. Tobacco Retailer Licenses are valid for one year and each tobacco retailer shall apply for the renewal of their tobacco retailer's license prior to its expiration. Enforcement includes periodic sting operations that focus on underage tobacco sales with tobacco retailers. There were two sting operations that occurred during the past ten months, which yielded one violation.

The TRL program was last amended in 2015 to prohibit the use of electronic smoking devices in all places where smoking was currently prohibited and required retailers of electronic smoking devices to obtain a TRL. In addition, the City's municipal code regulates the sale and distribution of tobacco products (Muni-code 8.18) including language that forbids the sale of tobacco products to minors. There are approximately forty businesses within the City that have licenses through the TRL program.

Federal and State Policies and Recent Actions

At the Federal level, the Food and Drug Administration (FDA) recently announced its intention to regulate flavored tobacco products. If passed as proposed, the regulations would restrict the sale of flavored electronic cigarettes (e-cigarettes) to age-restricted, adult-only, in-person stores (e.g.,

tobacco only stores, vape shops), and would ban flavored cigars and menthol-flavored cigarettes. These proposals would not restrict menthol-flavored e-cigarettes. A recent study shows over half of high school students who used e-cigarettes used a menthol- or mint-flavored product.¹ The FDA's final regulations may also be different than the current outlined proposals, as evidenced by the 2009 federal ruling on cigarettes that was weakened with a menthol product exemption.

The intended FDA regulations may also face decreased policy efficacy with the adult-only store exemptions as previously demonstrated within the City of Oakland. When Oakland exempted adult-only stores in their flavored tobacco ban, many retailers modified their store layout or business model to meet the age restriction or "adult-only" requirement. Before their ban, Oakland had 2-5 adult-only tobacco stores, but afterward that number had increased to 45 adult-only stores. As exemplified by the City of Oakland, despite a flavored tobacco ban, the exemption of adult only stores mitigates the impacts of the ban due to ability to easily convert stores to adult-only. This is due to FDA regulations allowing *entry* of persons over 18 into adult-only stores, though California prohibits the *sale* of tobacco to persons under 21 years of age. For example, this allows persons over 18, but under 21, to enter adult-only tobacco stores in the City. By law, those stores are not allowed to sell tobacco products to persons under 21, but their presence in the store could lead to underage purchases of tobacco products should the business not properly verify their age is 21 or older. Also, the timeline for the FDA's formal proposal is uncertain, due to Executive Order 13771. This order requires all federal executive agencies to revoke two rules for every new rule it promulgates, and also requires neutral economic costs without considering the economic benefits of the agency's proposed action. Moreover, federal decisions regarding tobacco have historically taken several years to implement due to tobacco industry advocacy and the potential litigation. This was the case for the 2006 Department of Justice mandate demanding apology advertisements from the tobacco industry, which did not come to fruition until November 2017.

At the State level, Senate Bill (SB) 38 and Assembly Bill (AB) 131 were introduced at the beginning of December 2018. Both bills propose to restrict flavored tobacco products to decrease youth access to nicotine. SB 38 would prohibit the sale or offering of any flavored tobacco product, including menthol cigarettes. The bill defines "characterizing flavor" to mean any distinguishable taste or aroma outside of the traditional taste or aroma of tobacco. The bill also states that this proposed legislation should not preempt local flavored tobacco product bans. Currently, SB 38 has passed the Senate Committee on Health and was re-referred to the Senate Appropriations Committee, set for a hearing on April 22, 2019. AB 131 would prohibit electronic smoking device manufacturers from advertising or promoting the products in ways that appeal to minors: prohibitions would include cartoons or characters popular among children, imitation of candy packaging, or using the words "candy" or "candies." The law would apply to any electronic smoking device that delivers nicotine or other vaporized liquids.² Currently, on January 24, 2019, AB 131 was referred to the Assembly Committee on Government Organization and a hearing has not been scheduled.

¹ Cullen, K.A., Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students—United States, 2011–2018. MMWR. Morbidity and Mortality Weekly Report, 2018. 67.

² American Lung Association. (January 2019). Legislative update January 7, 2019. [Fact sheet]. Retrieved from <https://center4tobaccopolicy.org/wp-content/uploads/2019/01/Leg-Update-2019-01-07.pdf>

Comparable Cities

As of December 2018, at least 28 cities and counties in California have passed policies to restrict or prohibit the sale of flavored tobacco products. Eight of the ten most recent policies are comprehensive bans of flavored tobacco. They include flavored e-cigarettes, menthol flavored tobacco products, flavored little cigars, flavored smokeless tobacco, flavored components and accessories (such as e-juice and flavored wraps), and products marketed as flavored. The aforementioned bans come with exemptions, such as excluding adult-only stores, grandfathering existing retailers, or exempting stores more than 1,000 feet away from schools. The two most common exemptions to the 28 bans are a) excluding adult only stores (4 jurisdictions) and b) excluding menthol flavors from the ban (8 jurisdictions).

Two cities, Santa Cruz and Santa Maria, both considered comparable cities to San Luis Obispo, are currently pursuing and/or implementing flavored tobacco regulations. On November 27, 2018, Santa Cruz's City Council voted to enact a comprehensive ban of flavored tobacco products. Based on discussions with other cities who reported decreased efficacy with, and retailer complaints over, exempting only certain retailers (i.e. adult only stores), Santa Cruz opted for no exemptions. Santa Cruz did face tobacco retailer opposition to the flavored tobacco ban, with the argument being that vaping helps to transition people away from traditional cigarettes and tobacco products. Based upon discussions with staff from the City of Santa Cruz, no retailers argued that they would be forced to close their doors. Santa Cruz allowed retailers six months to liquidate their existing stock of flavored products, and an additional six months of community education and outreach before their enforcement begins. Meanwhile, the City of Santa Maria is pursuing flavored tobacco restrictions in response to community requests, but it is still in the preliminary stage of the process.

Effectiveness of Similar Policies

Banning flavored tobacco within a city could reduce youth access and use of tobacco products. Flavored tobacco bans are grounded in the tenant that these products (flavored e-cigarettes, cigarillos, chewing tobacco, e-juices, etc.) are most popular tobacco product among youth.³ Youth cite flavors as a primary reason for using tobacco products,⁴ with 81% of youth who have used

³ Ambrose BK, Day HR, Rostron B, et al. Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *Jama*. 2015;314(17):1871-1873.

Villanti AC, Johnson AL, Ambrose BK, et al. Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013-2014). *American journal of preventive medicine*. 2017.

Bonhomme MG, Holder-Hayes E, Ambrose BK, et al. Flavored noncigarette tobacco product use among US adults: 2013-2014. *Tobacco control*. 2016;25(Suppl 2):ii4-ii13.

⁴ Rutten LJ, Blake KD, Agunwamba AA, et al. Use of E-Cigarettes Among Current Smokers: Associations Among Reasons for Use, Quit Intentions, and Current Tobacco Use. *Nicotine & tobacco research: official journal of the Society for Research on Nicotine and Tobacco*. 2015;17(10):1228-1234. 16

Farsalinos KE, Romagna G, Voudris V. Factors associated with dual use of tobacco and electronic cigarettes: A case control study. *The International journal on drug policy*. 2015;26(6):595-600. 17

Kong G, Morean ME, Cavallo DA, Camenga DR, Krishnan-Sarin S. Reasons for Electronic Cigarette Experimentation and Discontinuation Among Adolescents and Young Adults. *Nicotine & tobacco research : official journal of the Society for Research on Nicotine and Tobacco*. 2015;17(7):847-854.

tobacco starting with a flavored tobacco product.⁵ A policy would also aim to reduce access to tobacco specifically in retail settings, which is where a significant amount of underage purchasing occurs.⁶

The first comprehensive local flavored tobacco ban in California was passed by Yolo County in October 2016. As this occurred relatively recently, there are no peer-reviewed studies of the efficacy of a comprehensive flavor ban at a local level yet. However, the data from other longer-established flavor bans (i.e. FDA flavored cigarette ban and New York City flavored tobacco ban) can help predict local policy efficacy. The FDA banned flavored cigarettes (excluding menthol cigarettes) in 2009.

This ban resulted in both the reduced probability of adolescents (middle and high school students) becoming cigarette smokers, and a reduction in the total number of cigarettes smoked by adolescents. However, the ban was positively associated with an increase in the adolescent smokers' use of menthol cigarettes. Thus, while the 2009 flavored cigarette ban did achieve its objective of reducing adolescent tobacco use, the effects were likely diminished by the continued availability of menthol cigarettes and other flavored tobacco products via online outlets.⁷ In a peer-reviewed research article projecting the impact that a US menthol ban would have on smoking prevalence and smoking-attributable deaths, the conclusion was that that in *absence* of a menthol ban, smoking prevalence would decline but the percentage of those using menthol products would increase.⁸ New York City (NYC) prohibited the sale of all flavored tobacco products (excluding menthol products) in 2009, with enforcement beginning in 2010. The evaluation from the NYC legislation found that flavored tobacco product sales and the odds of using any tobacco products among teens declined significantly after enforcement began.⁹

Policy Considerations

Should the Council direct staff to move forward with this issue, staff would conduct a regulatory takings analysis. Specifically, a regulatory taking is a situation in which a government regulation limits the uses of private property to such a degree that the regulation effectively deprives the property owners of economically reasonable use or value of their property to such an extent that it deprives them of utility or value of that property, even though the regulation does not formally divest them of title to it. For some businesses, that may be 5 percent of sales, while it could be higher for others. Analyzing and identifying specific findings, such as the impacts of tobacco

⁵Dai, H. (2018). Single, Dual, and Poly Use of Flavored Tobacco Products Among Youths. *Preventing Chronic Disease*, 15(6), E87.

Villanti, Johnson, Ambrose, Cummings, Stanton, Rose, . . . Hyland. (2017). Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013–2014). *American Journal of Preventive Medicine*, 53(2), 139-151.

⁶ Willett, J., Bennett, M., Hair, E., Xiao, H., Greenberg, M., Harvey, E., . . . Vallone, D. (2018). Recognition, use and perceptions of JUUL among youth and young adults. *Tobacco Control*, 28(1), 115-116.

⁷ Courtemanche, C.J., Palmer, M.K., Pesko, M.F., 2017. Influence of the flavored cigarette ban on adolescent tobacco use. *Am. J. Prev. Med.* 52, e139–e146. <https://doi.org/10.1016/j.amepre.2016.11.019>

⁸ Levy, D. T., Pearson, J. L., Villanti, A. C., Blackman, K., Vallone, D. M., Niaura, R. S., & Abrams, D. B. (2011). Modeling the future effects of a menthol ban on smoking prevalence and smoking-attributable deaths in the United States. *American journal of public health*, 101(7), 1236-40.

⁹ Farley, S., & Johns, M. (2016). New York City flavored tobacco product sales ban evaluation. *Tobacco Control*, 26(1), 78-84.

products on the youth, that counter a regulatory taking, are critical to minimizing the City's exposure to potential litigation.

Most regulatory takings challenges against tobacco control policies are centered on the argument that the proposed policy will have a negative economic impact on a business. According to the Public Health Law Center, the court typically evaluates regulatory takings claims by looking at whether the regulation has destroyed all value to the business. If the regulations do not go so far as to completely eliminate a business's value, the court focuses on three factors: (1) the economic impact of the government action; (2) the degree to which the action interferes with reasonable, investment-backed expectations; and (3) the character of the government action. In other words, the court will weigh the economic interests of the business against the law's goals and purpose.¹⁰

The City of Berkeley directly addressed this issue in their 2015 flavored tobacco ban by allowing retailers "engaged primarily" in the sale of e-cigarettes and e-liquids an exemption for up to three years if it made "a showing, as determined by the City Manager or his or her designee, "that [the flavor ban] would result in a taking without just compensation under either the California or the United States Constitution. 'Engaged primarily' for purposes of this subsection means that the sale of electronic nicotine delivery systems and e-liquids account for more than 50% of the tobacco retailer's calendar year 2014 gross receipts."

Potential Next Steps

There are several options for the Council to consider as potential next steps:

- 1) Public hearing only – This would involve moving forward with directly placing the introduction of an ordinance banning the sale of flavored tobacco products in the City on a future City Council agenda. This option could be accomplished in late summer or fall and can be accomplished with existing resources but would not include any public engagement or stakeholder outreach.
- 2) Standard ordinance amendment process – This would involve a more typical process including a study session to explore the issue in depth during a public meeting, public and stakeholder outreach and engagement and a public hearing with ordinance amendments based on the feedback received through the process. This process typically takes 6-9 months and would require additional resources or tradeoffs with other projects currently in process such as Funding the Future.
- 3) No action at this time - The Council could choose to not take action at this time and closely monitor related Federal and State policies.

Attachments

1. [Statewide Matrix](#)
2. [List of Tobacco Retailers in the City](#)

¹⁰ Public Health Law Center. (2011). *Tobacco Control and the Takings Clause*. Retrieved from https://publichealthlawcenter.org/sites/default/files/resources/tclc-guide-tobacco-takingsclause-2011_0.pdf



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NOVEMBER 2018

The tobacco industry has a long history of using flavored tobacco to target youth and communities of color. The majority of youth who start experimenting with tobacco begin with flavored tobacco.¹ These products come in a variety of candy-like flavors including bubble gum, grape, menthol and cotton candy and include e-cigarettes, hookah tobacco, cigars, smokeless tobacco, and even flavored accessories such as blunt wraps.

Since 2009, the United States Food and Drug Administration (FDA) has banned flavored cigarettes nationwide. However, this ban included an exemption for menthol flavored cigarettes and doesn't extend to non-cigarette tobacco products. There are currently no state laws in California restricting the sale of flavored tobacco products. It is up to local communities to take action to protect their youth from the lure of enticing flavored tobacco.

The first community to restrict the sale of flavored tobacco in California was Santa Clara County in 2010. Since then, twenty-six communities have passed similar policies.

What products may be included?

- 1. E-Cigarettes** – Restricts the sale of flavored electronic cigarettes.
- 2. Menthol** – Restricts the sale of tobacco products labelled as menthol, including cigarettes, smokeless tobacco, little cigars, etc.
- 3. Little Cigars** – Restricts the sale of flavored little cigars, which are small, usually filtered cigars wrapped in brown paper containing tobacco leaf. Little cigars became a popular alternative following the FDA's ban on flavored cigarettes.
- 4. Smokeless Tobacco** – Restricts the sale of flavored smokeless tobacco such as chewing tobacco, dip, snus and snuff.

5. Components & Accessories – Restricts the sale of flavored accessory products such as blunt wraps and e-juice additives. These products cannot be smoked alone and serve as a delivery system for smoked products.

6. Products Marketed as Flavored – Tobacco companies sometimes try to circumvent flavor restrictions by marketing products as flavored without directly labelling them as such. This policy option allows communities to broaden the definition of flavored tobacco to include these products.

What exemptions are allowed?

- 1. Adult-Only Stores Exempted** – Adult-only retailers are limited to customers who are 21 and over. This limits sales of flavored tobacco to stores that youth do not have access to.
- 2. Grandfathered Retailers Exempted** – Allows retailers that were in operation prior to a specified date to continue selling flavored tobacco products.
- 3. Limited to Youth-Populated Areas** – Retailers are required to be a certain distance away from schools, parks, or other youth-oriented locations. Since many flavored tobacco products target youth, including buffer zones is a way to limit their access to flavored products.

Resources

The Center has additional resources on tobacco retailer licensing ordinances, plug-in policies, and ordinances restricting menthol tobacco available at: <http://center4tobaccopolicy.org/tobacco-policy/tobacco-retail-environment/>. ChangeLab Solutions has model ordinance language available for ordinances restricting flavored tobacco at: <http://changelabsolutions.org>.

City/County Date Passed	Products Included						Exemptions		
	E-Cigs	Menthol	Little Cigars	Smokeless	Components & Accessories	Products marketed as flavored	Adult-Only Stores Exempted	Grandfathered Retailers Exempted?	Limited to Youth-Populated Areas?
Marin County Nov 2018	X	X	X	X	X	X			
Saratoga Oct 2018	X		X	X	X	X			
Half Moon Bay Oct 2018	X	X	X	X	X	X			
Portola Valley Sep 2018	X	X	X	X	X	X			
Beverly Hills August 2018	X	X	X	X	X	X			
Richmond July 2018	X	X	X	X	X	X			
Sausalito July 2018	X	X	X	X	X				
San Mateo County June 2018	X	X	X	X	X	X			
San Francisco June 2018	X	X	X	X	X	X			
Mono County July 2018		X	X	X	X	X			
Windsor March 2018	X		X**	X	X	X			
Cloverdale December 2017	X		X	X		X			
Fairfax December 2017	X		X**	X**		X			
San Leandro Oct 2017	X		X	X	X	X			
Palo Alto Oct 2017	X	X	X	X	X	X	X		
Oakland Sep 2017	X	X	X	X	X	X	X		
Contra Costa County July 2017	X	X	X	X	X	X			X 1000 ft
Los Gatos May 2017	X	X	X	X	X	X	X		
Novato Jan 2017	X		X**	X	X	X			
Santa Clara County Oct 2016	X	X	X	X	X	X	X		

City/County Date Passed	Products Included						Exemptions		
	E-Cigs	Menthol	Little Cigars	Smokeless	Components & Accessories	Products marketed as flavored	Adult-Only Stores Exempted	Grandfathered Retailers Exempted?	Limited to Youth-Populated Areas?
Yolo County Oct 2016	X	X	X	X	X				
Manhattan Beach Dec 2015	X		X	X	X	X			
El Cerrito Oct 2015	X	X*	X	X	X	X			
Berkeley Sept 2015	X	X	X	X	X	X			X 600 ft
Sonoma June 2015	X		X**	X***	X				
Hayward July 2014	X	X*	X	X	X	X		X	X 500 ft

¹ Ambrose, B.K., et al., Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. JAMA, 2015; p.1-3.

*Does not include menthol cigarettes

**Exempts packages of at least 5 or more

***Doesn't apply to pipe tobacco

Active Tobacco Retailers

Date: 1/10/2019

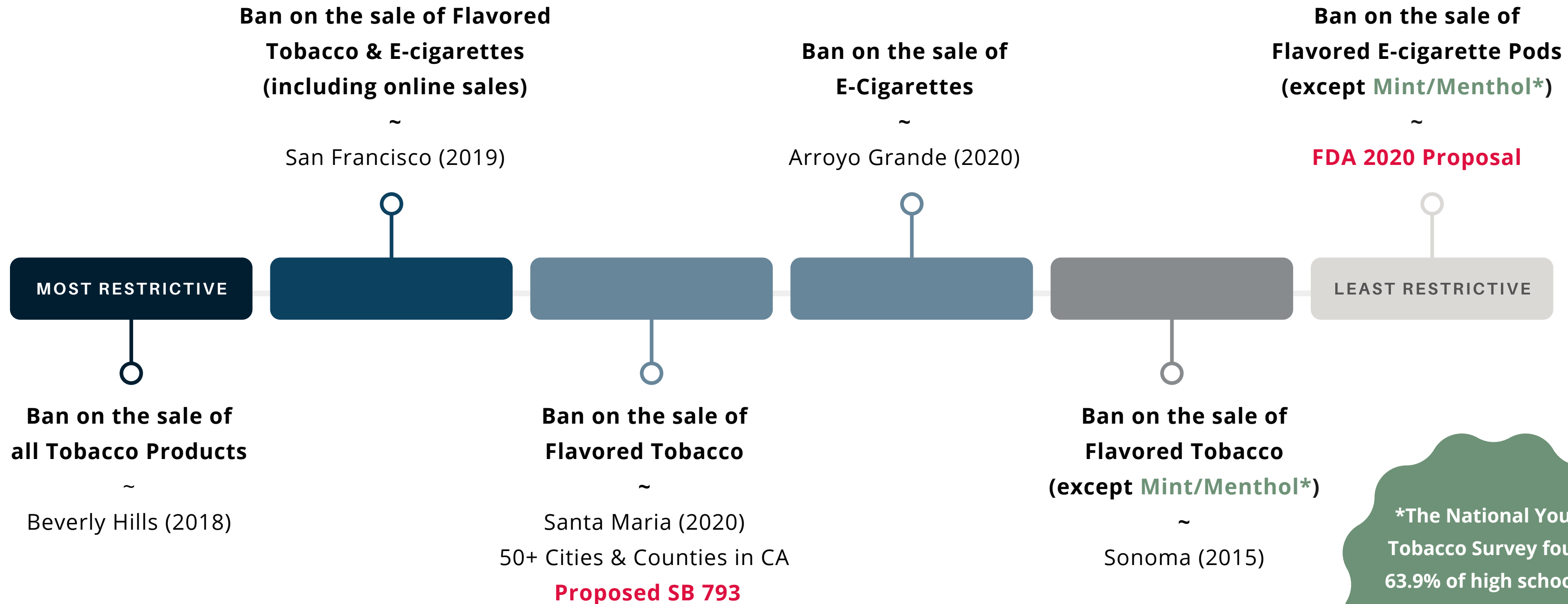
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Customer Number	Customer Status	Service Address Line 1	Service Address Line 2	Service Code	Invoice Status	Customer Number	Customer Name Line 1
9517	A	151 N SANTA ROSA		S17	A	9517	CHEVRON STATIONS INC
9514	A	956 E FOOTHILL BL		S17	A	9514	RITE AID #5822
9527	A	552 CALIFORNIA		S17	A	9527	SEVEN 11
9526	A	290 CALIFORNIA		S17	A	9526	CAMPUS BOTTLE SHOP
9525	A	201 MADONNA RD		S17	A	9525	RALPHS GROCERY CO
9523	A	204 MADONNA RD		S17	A	9523	MADONNA SHELL
9520	A	3 SANTA ROSA		S17	A	9520	SANTA ROSA SHELL
9511	A	774 FOOTHILL		S17	A	9511	CORK AND BOTTLE
9508	A	692 MARSH		S17	A	9508	SEVEN ELEVEN STORE #27835C
9521	A	11590 LOS OSOS VALLEY RD		S17	A	9521	LAGUNA LAKE SHELL
9495	A	1291 LAUREL LANE		S17	A	9495	LAUREL LANE MARKET
9496	A	1401 OSOS		S17	A	9496	SIDEWALK MARKET
9492	A	3180 BROAD		S17	A	9492	CHEVRON STATIONS INC
9489	A	3211 BROAD		S17	A	9489	CROSSROADS LIQUOR
9488	A	2015 BROAD		S17	A	9488	BROAD STREET UNOCAL
9487	A	2145 BROAD		S17	A	9487	MANUEL'S
9506	A	157 HIGUERA		S17	A	9506	76 STATION
9504	A	586 HIGUERA		S17	A	9504	SANDY'S LIQUOR AND DELI
9503	A	2000 MONTEREY		S17	A	9503	COAST INVESTMENTS, INC.
9500	A	1301 MONTEREY		S17	A	9500	SEVEN 11
9522	A	12424 LOS OSOS VALLEY RD		S17	A	9522	B N B CHEVRON
9519	A	296 SANTA ROSA		S17	A	9519	CONICO
8180	A	1251 JOHNSON AVE		S17	A	8180	RITE AID DRUGS #5820
10156	A	973 FOOTHILL BL SUITE 104		S17	A	10156	CLOUD 9 IMPORTS
8199	A	3550 BROAD ST		S17	A	8199	VONS #2306
0000030909	A	871 SANTA ROSA ST		S17	A	0000030909	WEIRD WILLIES II CA CORPORATION
10198	A	1111 CHORRO ST		S17	A	10198	SANCTUARY TOBACCO SHOP, THE
0000027566	A	3920-3 BROAD ST		S17	A	0000027566	THE CLUB SMOKE SHOP
10083	A	2600 BROAD ST		S17	A	10083	SLO QUICK STOP
0000028450	A	1756 MONTEREY ST		S17	A	0000028450	UNIVERSITY SPIRIT GAS & MINI MART
0000025857	A	11560 LOS OSOS VALLEY RD, STE		S17	A	0000025857	LAGUNA SMOKES
0000032059	A	592 CALIFORNIA BL		S17	A	0000032059	ROYAL SMOKE & VAPE
0000032058	A	487 MADONNA RD, SUITE 2		S17	A	0000032058	SMOKE N VAPE INC
0000030280	A	158 HIGUERA ST, STE E		S17	A	0000030280	SLO BEVERAGE N MORE INC
0000025443	A	254 SANTA ROSA		S17	A	0000025443	MOLLER INVESTMENT GROUP #6103
11183	A	4021 BROAD ST		S17	A	11183	EDNA VALLEY SHELL
0000025270	A	1502 FROOM RANCH WAY		S17	A	0000025270	BEVERAGES & MORE
0000028549	A	328 MARSH ST		S17	A	0000028549	MISSION STATION INC
0000025657	A	2211 BROAD ST		S17	A	0000025657	MOLLER INVESTMENT GROUP #6112

Policy Approaches to Address Youth Vaping

Item 14

The evidence is clear that flavors play a critical role in the youth vaping epidemic: Nearly all youth e-cigarette users use flavored products and 70% cite flavors as a key reason for their use. In January 2020, the FDA released their policy proposal to address youth vaping, however, many health organizations cited this policy as a shortfall. Here's a snapshot of the policy solutions some California jurisdictions have pursued in an effort to end youth vaping.



For up-to-date information on tobacco regulation at the federal, state, and local level, contact the **Tobacco Control Program** at tobaccofree@co.slo.ca.us (Created 1/7/2020)

*The National Youth Tobacco Survey found 63.9% of high school e-cigarette users used mint and menthol flavors in 2019.
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Chapter 8.14

TOBACCO RETAILER LICENSES

8.14.010 Purpose.

8.14.020 Definitions.

8.14.030 Requirement for tobacco retailer license.

8.14.040 Application procedure.

8.14.050 Issuance of license.

8.14.060 Display of license.

8.14.070 Fees for license.

8.14.080 Licenses nontransferable.

8.14.085 Noncompliance with tobacco related laws—License violation.

8.14.090 License compliance monitoring.

8.14.100 Suspension or revocation of license.

8.14.110 Appeal of suspension and/or revocation.

8.14.120 Administrative fine—Penalties—Enforcement.

8.14.130 Severability.

8.14.010 Purpose.

It is the intent of the city of San Luis Obispo, in enacting this chapter, to discourage violations of laws which prohibit or regulate the sale or distribution of tobacco products to minors, but not to expand or reduce the degree to which the acts regulated by state or federal law are criminally proscribed or to alter the penalty provided therefor. (Ord. 1440 § 1 (part), 2003)

8.14.020 Definitions.

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

A. “Electronic smoking device” means an electronic device which can be used to deliver an inhaled dose of nicotine or any other substances (excluding cannabis), including any component, part, or accessory of such a device, whether or not sold separately, including flavored vape juices and liquids used in such devices, even if sold separately. “Electronic smoking device” includes 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.

B. “Person” means any natural person, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

C. “Proprietor” means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share, ultimate control over the day-today operations of a business.

D. “Tobacco product” means any product containing, made from, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, electronic smoking devices or any other preparation of tobacco including Indian cigarettes called “bidis.” “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes and is marketed and sold solely for such an approved purpose.

E. “Tobacco retailer” means any person who sells, offers for sale, or does or offers to exchange for any form of consideration tobacco, or tobacco products; “tobacco retailing” shall mean the doing of any of these things.

F. “Licensing agent” means a city employee designated by the city administrative officer to serve in this capacity.

G. “Enforcement agency” means the San Luis Obispo police department.

H. “Hearing officer” means the city employee designated by the city administrative officer to serve in this

8.14.030 Requirement for tobacco retailer license.

It shall be unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer’s license pursuant to this chapter for each location at which that activity is to occur.

No license will be issued to authorize tobacco retailing at other than a fixed location; itinerant tobacco retailing and tobacco retailing from vehicles are prohibited.

No license will be issued to authorize tobacco retailing at any location that is licensed under state law to serve alcoholic beverages for consumption on the premises (e.g., an “on-sale” license issued by the California

The sale or distribution by an establishment of an Electronic Smoking Device is prohibited in the City of San Luis Obispo, including all non-flavored and flavored Electronic Smoking Device products, including mint and menthol where the Electronic Smoking Device is:

- (a) Requires premarket review under 21 U.S.C. § 387j, as may be amended from time to time; and
- (b) Does not have a premarket review order under 21 U.S.C. § 387j(c)(1)(A)(i), as may be amended from time to time.

Department of Alcoholic Beverage Control); tobacco retailing in bars and restaurants serving alcoholic beverages is prohibited.

Licenses are valid for one year and each tobacco retailer shall apply for the renewal of his or her tobacco retailer’s license prior to its expiration. The conference of a tobacco retailer license does not confer any new rights under any other law and does not exempt any business that otherwise would be subject to the smoke-free workplace provisions within the San Luis Obispo Municipal Code and Labor Code Section 6404.5. (Ord. 1440 § 1 (part), 2003)

8.14.040 Application procedure.

A. Application for a tobacco retailer’s license shall be submitted to the licensing agent in the name of each proprietor/person proposing to conduct retail tobacco sales and shall be signed by such person or an authorized agent thereof. All applications shall be submitted on a form supplied by the licensing agent and shall contain the following information:

1. The name, address, and telephone number of the applicant.
2. The business name, address, and telephone number of each location for which a tobacco retailer’s license is sought.
3. Such other information as the licensing agent deems necessary for enforcement of this chapter.
4. Whether or not any proprietor has previously been issued a license pursuant to this chapter that is, or was at any time, suspended or revoked and, if so, the dates of the suspension period or the date of revocation. (Ord. 1440 § 1 (part), 2003)

8.14.050 Issuance of license.

Upon the receipt of an application for a tobacco retailer’s license, the licensing agent shall issue a license unless substantial record evidence demonstrates one of the following bases for denial:

- A. The application is incomplete or inaccurate; or
- B. The application seeks authorization for tobacco retailing by a person or at a location for which a suspension is in effect pursuant to Section 8.14.100 of this chapter; or

C. The application seeks authorization for tobacco retailing in an area that is in violation of city zoning pursuant to Title 17 of this code or that is unlawful pursuant to any other local, state, or federal law. (Ord. 1440 § 1 (part), 2003)

8.14.060 Display of license.

Each license shall prominently display the license in a public place at each location where tobacco retailing occurs. (Ord. 1440 § 1 (part), 2003)

8.14.070 Fees for license.

The fee for a tobacco retailer's license shall be established by resolution of the city council of the city of San Luis Obispo. The fee shall be calculated so as to recover the total cost, but no more than the total cost, of license administration and enforcement, including, for example, but not limited to, issuing the license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violation, and prosecution of violators. The fee for tobacco retailer's license shall be paid to the licensing agent. (Ord. 1440 § 1 (part), 2003)

8.14.080 Licenses nontransferable.

A tobacco retailer's license is nontransferable. For example, if a proprietor to whom a license has been issued changes business location, that proprietor must apply for a new license prior to acting as a tobacco retailer at the new location. Or if the business is sold, the new owner must apply for a license for that location before acting as a tobacco retailer. (Ord. 1440 § 1 (part), 2003)

8.14.085 Noncompliance with tobacco related laws—License violation.

Compliance with all local, state and federal tobacco-related laws shall be a condition of a city tobacco retailer license and it shall be a violation of a license for a licensee or his or her agents or employees to violate any local, state or federal tobacco-related law. (Ord. 1473 § 1, 2005)

8.14.090 License compliance monitoring.

Compliance with this chapter shall be monitored by the San Luis Obispo police department. At least four compliance checks of each tobacco retailer shall be conducted during each twelve-month period. The cost of compliance monitoring shall be incorporated into the license fee. (Ord. 1440 § 1 (part), 2003)

8.14.100 Suspension or revocation of license.

A. In addition to any other penalty authorized by law, a tobacco retailer's license may be suspended or revoked if the city finds, after notice to the licensee and opportunity to be heard, that the licensee or his or her agents or employees has violated the conditions of the license imposed pursuant to this chapter.

1. Upon a finding by the city of a first license violation within any five-year period, the license shall be suspended for thirty days.
2. Upon a finding by the city of a second license violation within any five-year period, the license shall be suspended for ninety days.

3. Upon a finding by the city of a third license violation within any five-year period, the license shall be suspended for one year.

4. Upon a finding by the city of a fourth license violation within any five-year period, the license shall be revoked.

B. A tobacco retailer's license shall be canceled if the city finds, after notice and opportunity to be heard, that one of the following conditions exists. The revocation shall be without prejudice to the filing of a new application for a license.

1. The application is incomplete for failure to provide the information required by Section 8.14.040.

2. The information contained in the application, including supplemental information, if any, is found to be false in any material respect.

3. The application seeks authorization for a license for tobacco retailing that is unlawful. (Ord. 1440 § 1 (part), 2003)

8.14.110 Appeal of suspension and/or revocation.

A. A decision of the city to revoke or suspend a license is appealable to a hearing officer and must be filed with the hearing officer at least ten working days prior to the commencement date of the license suspension or revocation. An appeal shall stay all proceedings in furtherance of the appealed action. Following appeal, the decision of the hearing officer may be appealed to the city administrative officer or his or her designee. A decision of the city administrative officer or his or her designee shall be the final decision of the city.

B. During a period of license suspension, the tobacco retailer must remove from public view all tobacco products. (Ord. 1440 § 1 (part), 2003)

8.14.120 Administrative fine—Penalties—Enforcement.

A. Any violation of the provisions of this chapter by any person is a misdemeanor and is punishable as provided in Chapter 1.12, Section 1.12.030 of this code. Any violation of the provisions of this chapter by any person is also subject to administrative fines as provided in Chapter 1.24 of this code.

B. If the city of San Luis Obispo finds, based on substantial record evidence, that any unlicensed person has engaged in tobacco retailing activities in violation of Section 8.14.030 of this chapter, the city shall fine that person as follows. Each day that an unlicensed person offers tobacco, tobacco products or tobacco for sale or exchange shall constitute a separate violation and assessed a fine in accordance with Sections 1.12.080 and 1.24.070(A) of this code.

C. Violations of this chapter are hereby declared to be public nuisances.

D. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the city attorney, including but not limited to administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity. (Ord. 1440 § 1 (part), 2003)

8.14.130 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this chapter or the rules adopted hereby. The city council of the city of San Luis Obispo hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable. (Ord. 1440 § 1 (part), 2003)

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