

**CONCURRENT REGULAR MEETINGS OF THE SONOMA CITY COUNCIL
&
SONOMA CITY COUNCIL AS THE SUCCESSOR AGENCY TO THE DISSOLVED
SONOMA COMMUNITY DEVELOPMENT AGENCY**

Community Meeting Room, 177 First Street West, Sonoma CA

Monday March 2, 2015

6:00 p.m.

AGENDA



City Council
David Cook, Mayor
Laurie Gallian, Mayor Pro Tem
Madolyn Agrimonti
Gary Edwards
Rachel Hundley

Be Courteous - **TURN OFF** your cell phones and pagers while the meeting is in session.

OPENING

CALL TO ORDER & PLEDGE OF ALLEGIANCE
ROLL CALL (Gallian, Hundley, Agrimonti, Edwards, Cook)

1. COMMENTS FROM THE PUBLIC

At this time, members of the public may comment on any item not appearing on the agenda. It is recommended that you keep your comments to three minutes or less. Under State Law, matters presented under this item cannot be discussed or acted upon by the City Council at this time. For items appearing on the agenda, the public will be invited to make comments at the time the item comes up for Council consideration. Upon being acknowledged by the Mayor, please step to the podium and speak into the microphone. Begin by stating and spelling your name.

2. MEETING DEDICATIONS

3. PRESENTATIONS

Item 3A: Recognition of Melinda Kelley's service on the Community Services and Environment Commission

Item 3B: Presentation of Mid-Year Report of the Sonoma Tourism Improvement District

4. CONSENT CALENDAR/AGENDA ORDER – CITY COUNCIL

All items listed on the Consent Calendar are considered to be routine and will be acted upon by a single motion. There will be no separate discussion of these items unless members of the Council, staff, or public request specific items to be removed for separate action. At this time Council may decide to change the order of the agenda.

Item 4A: Waive Further reading and Authorize Introduction and/or Adoption of Ordinances by Title Only. (Standard procedural action - no backup information provided)

Item 4B: Approval of the Minutes of the February 18, 2015 City Council meeting.
Staff Recommendation: Approve the minutes.

Item 4C: Approval and ratification of the reappointment of Kimberly Blattner to the Community Services and Environment Commission for a term ending March 4, 2017.
Staff Recommendation: Approve and ratify the reappointment.

4. CONSENT CALENDAR/AGENDA ORDER – CITY COUNCIL, Continued

- Item 4D:** Approval and ratification of the appointment of Christopher Johnson to the Design Review and Historic Preservation Commission for a term ending March 2, 2017.
Staff Recommendation: Approve and ratify the appointment.
- Item 4E:** Adoption of a resolution adopting the revised Special Events Policy.
Staff Recommendation: Adopt the resolution.
- Item 4F:** Adoption of an ordinance amending the Development Code by prohibiting Automated Purchasing Machines in the City of Sonoma.
Staff Recommendation: Adopt the ordinance.

5. CONSENT CALENDAR/AGENDA ORDER – CITY COUNCIL AS SUCCESSOR AGENCY

All items listed on the Consent Calendar are considered to be routine and will be acted upon by a single motion. There will be no separate discussion of these items unless members of the Council, staff, or public request specific items to be removed for separate action. At this time Council may decide to change the order of the agenda.

- Item 5A:** Approval of the portions of the Minutes of February 18, 2015 City Council meeting pertaining to the Successor Agency.
Staff Recommendation: Approve the minutes.

6. PUBLIC HEARING – None Scheduled

7. REGULAR CALENDAR – CITY COUNCIL

(Matters requiring discussion and/or action by the City Council)

- Item 7A:** Discussion, consideration and possible action on draft letter to the Sonoma County Board of Supervisors indicating the City's opposition to the proposed fluoridation program. (City Manager)
Staff Recommendation: Council discretion.
- Item 7B:** Discussion, consideration, and possible action on the question of whether to revisit the regulation of leaf-blowers (Requested by Mayor Pro Tem Gallian). (City Manager and Planning Director)
Staff Recommendation: Council discretion.
- Item 7C:** Discussion, consideration and possible action on: (1) setting date(s) for study sessions to discuss proposed amendments to rent control ordinance; and/or (2) creating task force, retaining facilitator and committing staff and City resources to facilitated discussions between residents and park owners about amending rent control ordinance. (City Attorney)
Staff Recommendation: It is recommended that the City Council (1) set date(s) for Council study sessions to discuss proposed amendments to rent control ordinance; and/or (2) consider forming a task force (made up of park owners, park residents, and/or their representatives), retaining facilitator and committing staff and City resources to facilitated discussions between residents and park owners about amending rent control ordinance.

7. REGULAR CALENDAR – CITY COUNCIL, Continued

Item 7D: Presentation of FY 2014 - 2015 Midyear Budget; discussion, consideration and possible action on Amendments to the FY 2015 Operating Budget. (Finance Director)

Staff Recommendation: Accept Mid-Year Budget Report and Adopt Resolution Amending Fiscal Year 2015 Operating Budget.

Item 7E: Discussion, Consideration and Possible Action to Provide Direction to Councilmember Hundley on Potential Voting Action by Mayor & Councilmember Legislative Action Committee on SB 128 [Requested by Councilmember Hundley]. (City Manager)

Staff Recommendation: Council discretion.

8. REGULAR CALENDAR – CITY COUNCIL AS THE SUCCESSOR AGENCY

(Matters requiring discussion and/or action by the Council as the Successor Agency)

9. COUNCILMEMBERS' REPORTS AND COMMENTS

10. CITY MANAGER COMMENTS AND ANNOUNCEMENTS INCLUDING ANNOUNCEMENTS FROM SUCCESSOR AGENCY STAFF

11. COMMENTS FROM THE PUBLIC

12. ADJOURNMENT

I do hereby certify that a copy of the foregoing agenda was posted on the City Hall bulletin board on February 26, 2015. Gay Johann, Assistant City Manager/City Clerk

Copies of all staff reports and documents subject to disclosure that relate to any item of business referred to on the agenda are normally available for public inspection the Wednesday before each regularly scheduled meeting at City Hall, located at No. 1 The Plaza, Sonoma CA. Any documents subject to disclosure that are provided to all, or a majority of all, of the members of the City Council regarding any item on this agenda after the agenda has been distributed will be made available for inspection at the City Clerk's office, No. 1 The Plaza, Sonoma CA during regular business hours.

If you challenge the action of the City Council in court, you may be limited to raising only those issues you or someone else raised at the public hearing described on the agenda, or in written correspondence delivered to the City Clerk, at or prior to the public hearing.

In accordance with the Americans With Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk (707) 933-2216. Notification 48-hours before the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.



CITY OF SONOMA
City Council
Agenda Item Summary

City Council Agenda Item: 3A

Meeting Date: 03/02/2015

Department

Administration

Staff Contact

Gay Johann, Assistant City Manager/City Clerk

Agenda Item Title

Recognition of Melinda Kelley's service on the Community Services and Environment Commission

Summary

The City Council desires to publicly recognize the volunteers who so selflessly serve on the various City commissions.

Melinda Kelley served on the Community Services and Environment Commission March 4, 2009 through March 4, 2015.

Recommended Council Action

Mayor Cook to present a certificate of appreciation to Ms. Kelley.

Alternative Actions

N/A

Financial Impact

N/A

Environmental Review

- Environmental Impact Report
- Negative Declaration
- Exempt
- Not Applicable

Status

- Approved/Certified
 - No Action Required
 - Action Requested
-

Attachments:

Certificate of Appreciation

cc:

Melinda Kelley via email

CITY OF SONOMA
Certificate of Appreciation

PRESENTED TO

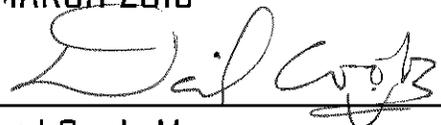
Melinda Kelley

FOR SERVICE ON THE

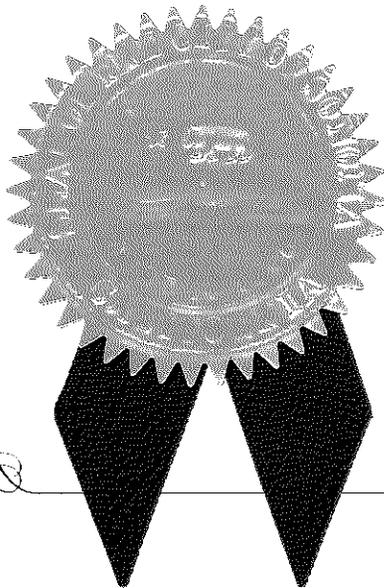
Community Services & Environment Commission

2009-2015

PRESENTED THIS 2nd DAY OF MARCH 2015



David Cook, Mayor





City of Sonoma
City Council
Agenda Item Summary

City Council Agenda Item: 3B

Meeting Date: 03/02/2015

Department

Administration

Staff Contact

Carol E. Giovanatto, City Manager

Agenda Item Title

Presentation of Mid-Year Report of the Sonoma Tourism Improvement District

Summary

The Sonoma Tourism Improvement District (TID) is a benefit assessment district proposed to help fund marketing and sales promotion efforts for Sonoma lodging businesses. TID includes all lodging businesses (hotels, motels, inns, bed and breakfasts, and vacation rentals) located within the boundaries of the City of Sonoma. The Council approved the renewal of the District Management Plan for a 10-year period through June 30, 2025. In accordance with the Plan, the TID board is required to present an annual report at the end of each year of operation to the City Council pursuant to Streets and Highways Code §36650. The TID Board requested the opportunity to update the Council at mid-year of their activities and status as a “kick off” to the peak tourism season.

In accordance with Council policy on Presentations, the TID Board has been requested to limit their presentation to ten (10) minutes.

Recommended Council Action

Accept 2015 midyear report.

Alternative Actions

Request additional financial information.

Financial Impact

TID collections provide an estimated \$5,500 (1%) administrative fee payable to the City of Sonoma

Environmental Review

- Environmental Impact Report
- Negative Declaration
- Exempt
- Not Applicable

Status

- Approved/Certified
- No Action Required
- Action Requested

Attachments:

Mid-Year Report

cc:

Sonoma Tourism Board c/o Bill Blum, MacArthur Place

Wendy Peterson, Sonoma Valley Visitors Bureau



**MID YEAR REPORT
2014-2015**



- Formed July 1, 2012 with approval by Sonoma City Council
- 10 year Renewal approved by Sonoma City Council
- District is the Sonoma City limits
- Adds a 2% assessment on all overnight stays in the City limits (hotels, motels, B&Bs, vacation rentals)
- Assessment dollars are used to market Sonoma to visitors
- 2% assessment collected is given to the City along with the 10% Transient Occupancy Tax (TOT) and the 2% is given back to the Sonoma TID for marketing and promotion



Sonoma TID Board

- Norman Krug, Owner, Sonoma Valley Inn – President
- Wendy Stewart, Owner, El Pueblo Inn – Vice President
- Dan Parks, Owner, Inn at Sonoma –Treasurer
- Bill Blum, General Manager, MacArthur Place – Secretary
- Suzy Hart, General Manager, Renaissance Lodge at Sonoma
- Byron Jones, Owner, Auberge Sonoma, President Sonoma Valley B&B Association
- Carol Giovanatto, Sonoma City Manager



Benefits

- The Sonoma Tourism Improvement District (Sonoma TID) was formed to provide a stable source of funding for a sustained marketing program with the goal of increasing occupancy and room revenues at lodging properties in the City of Sonoma.
- Helps grow Transient Occupancy Tax (TOT) and Sales Tax in the City limits of Sonoma. Allows for funding of Visitor Services.
- Helps grow occupancy and room revenues at Sonoma lodging properties.
- Helps Sonoma compete with other destinations with Tourism Improvement Districts (Napa Valley, Monterey, San Francisco, Lake Tahoe, Mendocino, etc.)

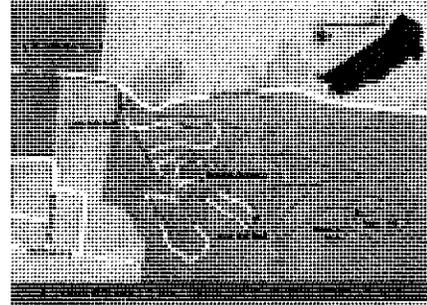
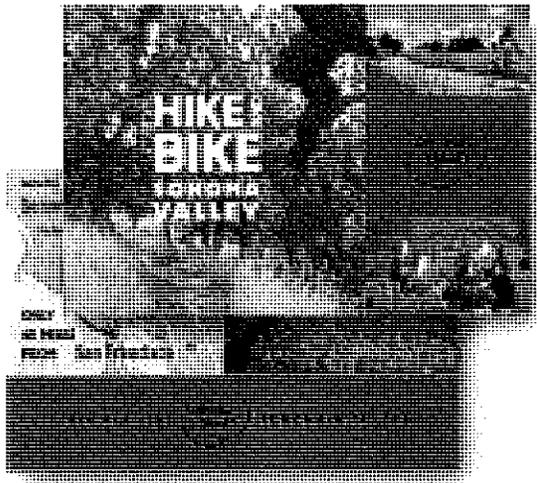


Use of Funds

- Partner with the Sonoma Valley Visitors Bureau to develop and implement a comprehensive plan to market Sonoma as an overnight destination with the goal of increasing occupancy and rooms revenue.
- Funds can also be used to support visitor center services if needed - currently not needed with contracted Redevelopment funds approved for use by the State (contract expires June 30, 2016).
- Special Event and Promotional Program provides grants to support events that help drive off-season and midweek business – Sonoma International Film Festival, Valley of the Moon Certified Farmers Market, Valley of the Moon Vintage Festival, Sonoma Valley Museum of Art and the Sonoma Community Center have all been recipients of grant funds.



- Results/Data
- Year over year occupancy in the City of Sonoma jumped from 59.7% in 2013 to 72.1 % in 2014, a 21% increase!
- That's 24,128 additional sold rooms in 2014 over the prior year, and 38,605 more "heads in beds"* spending money at our local businesses and shops, buying wine and increasing the City's TOT and Sales Tax.
* based on 1.6 guests per room
- During the off-season months of November through April (Jan-April 2012 and Nov-Dec 2013 vs Jan-April 2013 and Nov-Dec 2014) occupancy increased from 53% to 62%, an increase of 7,420 room nights or 11,872 more "heads in beds" during our slower winter months, and the first quarter of 2015 is looking to be the best on record.



SONOMA OVERLOOK TRAIL
 The Sonoma Overlook Trail is a popular 3-mile walking path that winds along scenic ridges at the top of a look-out point that gives out upon Sonoma Valley.
 A diverse array of native plants and animals can be observed along the grade-grass trail, as well as spectacular panoramic views of Sonoma Valley and the Bay Area from the meadow at the trail's top.
 Dog and leash laws are available for students and adults every weekend. The trail is open to the public for walking during daylight hours.
 Sonoma Overlook Trail's main trailhead is at the entrance to the Mountain Cemetery off of Fair Street West, just four blocks north of the Plaza. The upper trailhead rises off from Fair Street with the Mountain Cemetery.
 Pets, dogs and horses are not permitted on the trail.

SONOMA'S OVERLOOK TRAIL

HIKE+BIKE GUIDE POCKETBOOK OF MAPS

RADIO CAMPAIGN 15 + 30 SEC SPOTS

KOIT

HOLIDAYS & CONTESTS

KFOG

GIRLFRIENDS GETAWAY WITH RENEE & CONTESTS

KCBS AM/FM

FOODIE CHAP WITH LIAM MAYCLEM

KLLC FM

GIRLFRIENDS GETAWAY WITH UZETTE

KKSF

DINING AROUND WITH JOEL RIDDELL

PANDORA

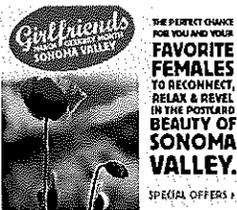
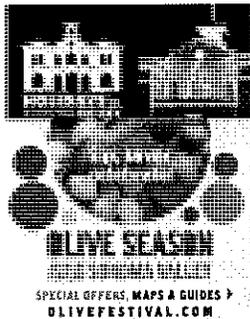
OLIVE SEASON

JANUARY FEBRUARY **SONOMA VALLEY**
 Season of Festivities in REAL WINE COUNTRY



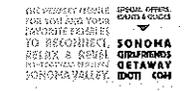
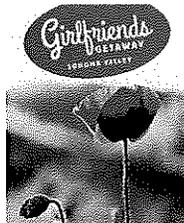
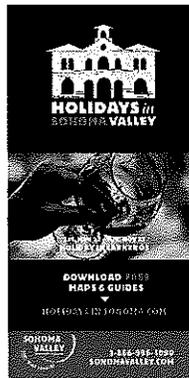
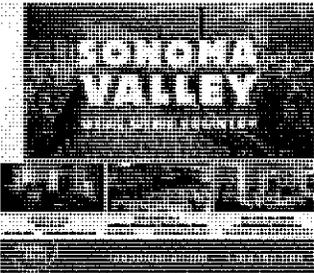
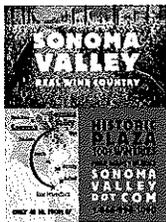
DIGITAL CAMPAIGN

COMCAST / XFINITY KCBS / KLLC
 STEEL MEDIA WEEKEND SHERPA
 KFOG WHERE MAGAZINE DIABLO A-LIST



PRINT CAMPAIGN

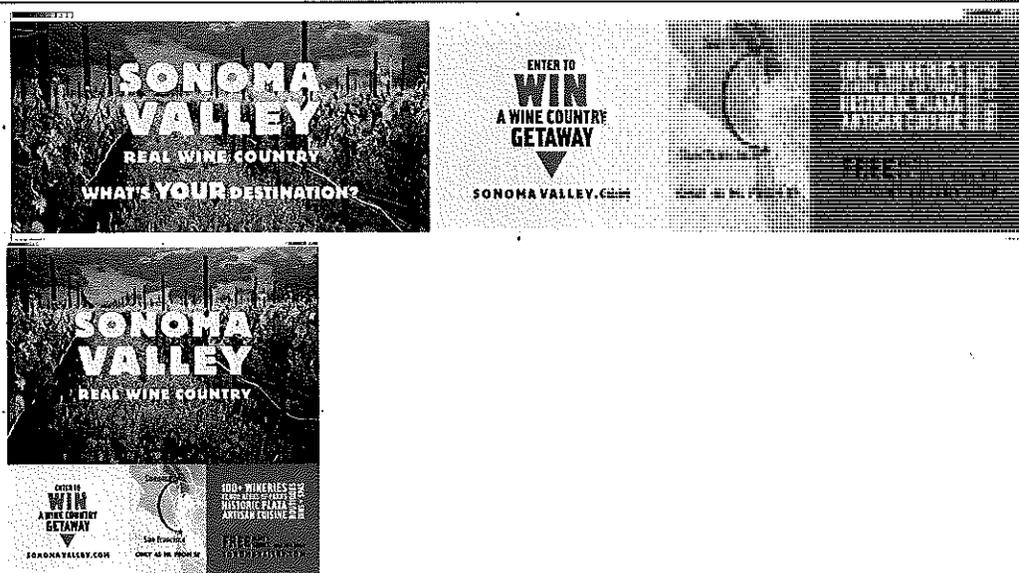
SUNSET VIA SONOMA COUNTY GUIDE SF TRAVEL GUIDE WHERE MAGAZINE
 SONOMA MAGAZINE INDEX-TRIBUNE MAP TRAVEL GUIDE TO CALIFORNIA
 USA TODAY STEPPIN' OUT SF CHRONICLE DIABLO 101 THINGS TO DO



OUTDOOR CAMPAIGN



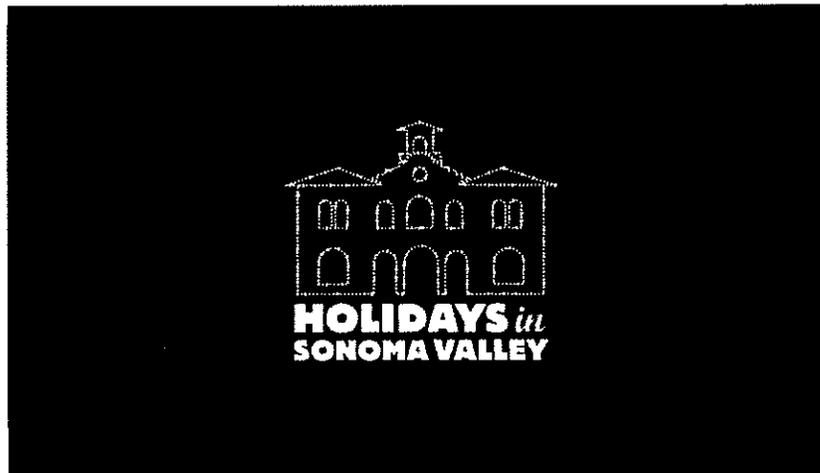
HIGHWAY 37 BILLBOARD



BART SFO, CIVIC CENTER, DUBLIN/PLEASANTON, WALNUT CREEK

HOLIDAYS IN SONOMA VALLEY CAMPAIGN

NOVEMBER + DECEMBER

A collage of promotional materials for the "Holidays in Sonoma Valley" campaign. It includes:

- A top banner with the text "HOLIDAYS in SONOMA VALLEY" and "SPECIAL OFFERS MAPS & GUIDES" next to a small building icon.
- Two vertical social media-style posts. The left one features the building icon, "HOLIDAYS in SONOMA VALLEY", "SPECIAL OFFERS MAPS & GUIDES", and "HOLIDAYS IN SONOMA.COM". The right one features the building icon, "HOLIDAYS in SONOMA VALLEY", "SPECIAL OFFERS MAPS & GUIDES", and "HOLIDAYS IN SONOMA.COM".
- A large screenshot of a website. The website header includes "CBS San Francisco" and "HOLIDAYS in SONOMA VALLEY". The main content area has a dark background with the building icon and text: "SIP, SAVOR, CELEBRATE!", "Special Offers Maps & Guides", "SPECIAL OFFERS MAPS & GUIDES", and "HOLIDAYS IN SONOMA.COM". There are also sections for "Local Offers" and "SAFETY TIPS".
- Another vertical post on the right side of the collage with the text "SIP, SAVOR, CELEBRATE!" and "HOLIDAYS IN SONOMA.COM".



HOLIDAYS in SONOMA VALLEY GUIDE
NOV DEC 2014

Sonoma Valley offers everything to make the holidays bright and beautiful - from festive lights and innumerable winery dinners, cooking classes, shopping, spa stays and affordable resort packages.

WHERE TO STAY

Best Western Sonoma Valley Inn - Holidays in Sonoma
Celebrate the best of Sonoma Valley during the holidays with a special 40% discount on all rooms. Book now to secure your stay in Sonoma Valley. Enjoy a complimentary breakfast and a complimentary room upgrade. Book now to secure your stay in Sonoma Valley. www.bestwestern.com (707) 798-7000

Dimingham Bed & Breakfast - Just the Two of Us Getaway Package
\$149.00. All-in-one getaway package for two. Includes breakfast, wine tasting, and a complimentary room upgrade. Book now to secure your stay in Sonoma Valley. www.dimingham.com (707) 533-9976

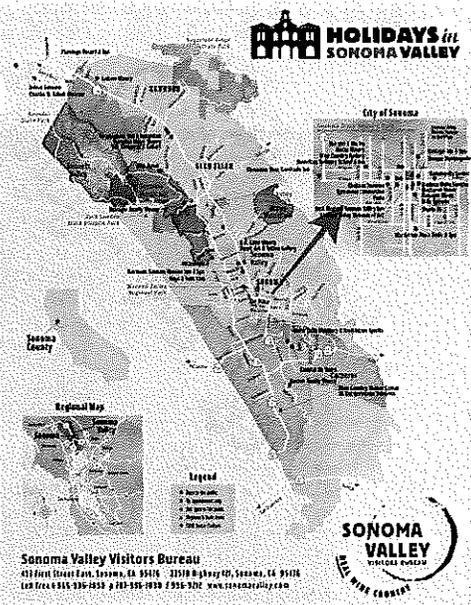
Cinnamon Bear Creekside Inn - Winter Nights
\$149.00. All-in-one getaway package for two. Includes breakfast, wine tasting, and a complimentary room upgrade. Book now to secure your stay in Sonoma Valley. www.cinnamonbear.com (707) 533-9976

Cottage Inn & Spa - Winter Special
\$149.00. All-in-one getaway package for two. Includes breakfast, wine tasting, and a complimentary room upgrade. Book now to secure your stay in Sonoma Valley. www.cottageinn.com (707) 533-9976

Fairmont Sonoma Mission Inn & Spa - Take the Elevator Home Package
\$149.00. All-in-one getaway package for two. Includes breakfast, wine tasting, and a complimentary room upgrade. Book now to secure your stay in Sonoma Valley. www.fairmont.com (707) 533-9976

Flamingo Resort & Spa - Holiday Hot Dates
\$149.00. All-in-one getaway package for two. Includes breakfast, wine tasting, and a complimentary room upgrade. Book now to secure your stay in Sonoma Valley. www.flamingo.com (707) 533-9976

MacArthur Place Hotel & Spa - Holidays in Sonoma Special
\$149.00. All-in-one getaway package for two. Includes breakfast, wine tasting, and a complimentary room upgrade. Book now to secure your stay in Sonoma Valley. www.macarthur.com (707) 533-9976



HOLIDAYS in SONOMA VALLEY

Sonoma Valley Visitors Bureau
411 First Street East, Sonoma, CA 94965 | 707.939.4000 | 10199 Highway 101, Sonoma, CA 94965
Tel Fax 888.838.8338 | 1-800-878-8788 | 707.939.4000 | www.sonoma.org

OLIVE SEASON CAMPAIGN

JANUARY + FEBRUARY



OLIVE SEASON
JANUARY + FEBRUARY
SONOMA VALLEY
Season of Festivities in REAL WINE COUNTRY

OLIVE SEASON
#SONOMA VALLEY

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JANUARY FEBRUARY
SPECIAL OFFERS, MAPS & GUIDES ▶
OLIVEFESTIVAL.COM

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JANUARY
FEBRUARY

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JANUARY
FEBRUARY

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SONOMA VALLEY

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2015 JANUARY FEBRUARY
OLIVEFESTIVAL.COM a Season of Festivities in REAL WINE COUNTRY

ANNUAL OLIVE SEASON
JANUARY FEBRUARY
Season of Festivities in REAL WINE COUNTRY

JANUARY 2015 Taste of the Olive Month

For an unforgettable experience, enjoy a special olive-themed menu at one of our featured restaurants. From January 1st to February 28th, enjoy a special olive-themed menu at one of our featured restaurants. From January 1st to February 28th, enjoy a special olive-themed menu at one of our featured restaurants.

FEATURED EVENTS

OLIVE SEASON DINING

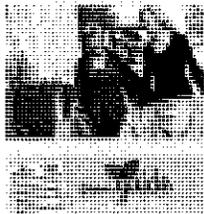
OLIVE SEASON GUIDE

POPULAR OLIVE VARIETIES

OLIVE SEASON GUIDE TO SAVORING

GIRLFRIENDS GETAWAY CAMPAIGN

MARCH + APRIL



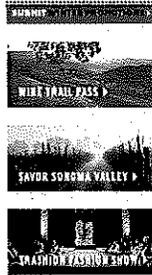
Welcome!

Sonoma Valley Girlfriends Getaways offer up the perfect chance for you and your favorite females to reconnect, relax and revel in the postcard beauty of Real Wine Country.



Sonoma Valley is California's ideal Wine Country and a beautiful scenic destination. For over 200 years, we've played host to ladies who lunch, couples on honeymoon, women who love and appreciate each other. Now it's your turn! From luxury shopping to hiking on great wine and food, Sonoma Valley is the perfect place for a girlfriends getaway. So come take, take, sip and savor just how real and special your girls!

Get out your gal pals, browse special events and savings on flights, dining, shopping and playing and then join us during the months of March & April to celebrate all things girl in Real Wine Country.



- DANCE PARTY
- VINOLIVO
- FILM FESTIVAL
- TRASHION FASHION
- G-3 CONFERENCE
- SAVOR SONOMA
- HIKES + TASTINGS
- SPA DAYS
- RESTAURANT WEEK
- GIRLFRIENDS SPECIAL EVENTS



PUBLIC RELATIONS

JOURNALISTS ASSISTS 705

CIRCULATION 259,119,393

MEDIA VALUE 3,814,076.59

7x7SF
An Anti-Tasting Room Weekend in Sonoma

TRAVEL+LEISURE
America's Favorite Towns

THE HUFFINGTON POST

7 Trips To Take If You Want To Enjoy Traveling Slowly

TRAVEL+LEISURE
America's Quirkiest Towns

JETSETTER
PERFECT DAY
One Day in Sonoma Valley

GoodDay
Feast of the Olive

The Press Democrat
Olive season underway in Sonoma

KRON 4
4th of July in Sonoma!

MAXIM
Drinking Hard Liquor in Wine Country

Marin

SONOMA VALLEY

prettiest • happiest

greenest • slowest

historic • romantic

friendliest • quirkiest



CITY OF SONOMA
City Council
Agenda Item Summary

City Council Agenda Item: 4B

Meeting Date: 03/02/2015

Department

Administration

Staff Contact

Gay Johann, Assistant City Manager/City Clerk

Agenda Item Title

Approval of the Minutes of the February 18, 2015 City Council meeting.

Summary

The minutes have been prepared for Council review and approval.

Recommended Council Action

Approve the minutes.

Alternative Actions

Correct or amend the minutes prior to approval.

Financial Impact

N/A

Environmental Review

- Environmental Impact Report
- Negative Declaration
- Exempt
- Not Applicable

Status

- Approved/Certified
- No Action Required
- Action Requested

Attachments:

Minutes

Alignment with Council Goals: N/A

cc: N/A

**SPECIAL & REGULAR MEETINGS OF THE SONOMA CITY COUNCIL
&
CONCURRENT REGULAR MEETING OF SONOMA CITY COUNCIL AS THE
SUCCESSOR AGENCY TO THE DISSOLVED SONOMA COMMUNITY
DEVELOPMENT AGENCY**



Community Meeting Room, 177 First Street West, Sonoma CA

**Wednesday February 18, 2015
5:30 p.m. Closed Session (Special Meeting)
6:00 p.m. Regular Meeting**

City Council
David Cook, Mayor
Laurie Gallian, Mayor Pro Tem
Madolyn Agrimonti
Gary Edwards
Rachel Hundley

MINUTES

SPECIAL MEETING - CLOSED SESSION

The closed session agendized for this meeting was canceled.

REGULAR MEETING

Mayor Cook called the meeting to order at 6:00 p.m. Miss Sonoma County Skylaer Palacios led the Pledge of Allegiance.

CITY COUNCILMEMBERS PRESENT: Edwards, Gallian, Hundley, Agrimonti and Mayor Cook
ABSENT: None

OTHERS PRESENT: City Manager Giovanatto, Assistant City Manager/City Clerk Johann, City Attorney Walter, Development Services Director Wirick, Public Works Director Takasugi, and Planning Director Goodison.

CONTINUANCE OF AGENDA ITEM 7B

City Manager Giovanatto requested that Agenda Item 7B "**Discussion, consideration, and possible action to approve a proposed amendment to the City Watersheds Proposition 1E Grant for Drainage Improvements along First St. West between West Spain St. and Depot Park**" be continued to a future meeting. She stated that earlier in the day, staff had been advised by the Sonoma County Water Agency that they had received results of new modeling tests for the proposed project that needed further study and they had requested that the item be tabled and brought back at a later date. Giovanatto stated that staff was supportive of the request to continue the matter.

Clm. Hundley noted a number of interested residents were present and asked if they would have a chance to speak on the issue. Mayor Cook stated they could speak to the issue of whether the item should be continued and he invited comments from the public.

Jim Bohar stated that he was concerned because the agency was already under pressure to meet the grant application deadline. He questioned if those who came up with the plan had explored new approaches being used by other communities to deal with similar issues.

Bill Spencer stated that the people who live on the street should be able to decide how their neighborhood looked.

Public Works Director Takasugi stated that the water agency would request another extension of the grant application deadline to allow additional time to analyze the new data.

Clm. Agrimonti pointed out that part of the delay (and creation of the time crunch) in bringing this project forward was due to the previous lengthy consideration of a project on the Montini property.

It was moved by Clm. Gallian, seconded by Clm. Edwards, to continue the matter to a future date. The motion carried unanimously.

1. COMMENTS FROM THE PUBLIC

Tony Gerald, Executive Director of the Miss Sonoma County program, invited everyone to attend the 69th annual pageant on March 7 at the Spreckles Performing Arts Center in Rohnert Park.

James Bennett stated that the tone set by the City Council was an interactive one and that was a good barometer to use in any relationship. He stated that the City Council should make its constituents aware of the Climate Action Plan and the Plan Bay Area movements.

Gwen ____ spoke against fracking and encouraged people to text Governor Brown about it.

Skylaer Palacios, Miss Sonoma County, spoke about her life and stated that she enjoyed the public service aspect of holding the title of Miss Sonoma County.

Jack Wagner encouraged the City Council to explore creation of a public transit system for Sonoma.

Peter Alexander Chernoff read a poem.

Rosemary Pedranzini thanked the couple who came to her rescue when she fell in her yard and thanked the City for repairing the potholes in her street.

2. MEETING DEDICATIONS

Clm. Edwards dedicated the meeting to his son Sullivan and wished him a Happy 4th Birthday.

3. PRESENTATIONS – None Scheduled

4. CONSENT CALENDAR/AGENDA ORDER – CITY COUNCIL

Item 4A: Waive Further reading and Authorize Introduction and/or Adoption of Ordinances by Title Only.

Item 4B: Approval of the Minutes of the February 2, 2015 City Council meeting.

Item 4C: Consideration and Possible Action to Direct Mayor to Open Negotiations with City Manager for a Successor Employment Agreement.

Item 4D: Approval and ratification of the appointment of Ron Wellander to the Planning Commission.

Item 4E: Approval and ratification of the appointment of Robert McDonald to the Planning Commission as the Alternate Commissioner.

The public comment period was opened and closed with none received. It was moved by Clm. Agrimonti, seconded by Clm. Gallian, to approve the consent calendar as presented. The motion carried unanimously.

5. CONSENT CALENDAR/AGENDA ORDER – CITY COUNCIL AS SUCCESSOR AGENCY

Item 5A: Approval of the portions of the Minutes of February 2, 2015 City Council meeting pertaining to the Successor Agency.

Item 5B: Adoption of the FY 15-16A Recognized Obligation Payment Schedule [ROPS] for the period July 1, 2015 through December 31, 2015.

The public comment period was opened and closed with none received. It was moved by Clm. Gallian, seconded by Clm. Edwards, to approve the consent calendar as presented. The motion carried unanimously.

6. PUBLIC HEARINGS

Item 6A: Discussion, consideration and possible action to update City Fee Schedule based on FY 2014-15 Operating Budget.

City Manager Giovanatto reported that the City established the Fee Schedule for those services that benefit only the specific users of that service and do not benefit the general public as a whole. She said that fees were generated from a variety of services including building and planning permits, special event fees, appeal fees, public safety fees and water service fees. Annually, the Council reviews staff's recommended user fee schedule to determine if fees are calculated in line with the cost of providing the service. With exception to fees established or limited by State law, all other fees were determined through a cost accounting analysis of actual costs incurred by the City. She explained that Department Managers review staff hours necessary to provide the service factored by the allowable overhead costs. The direct-charge of fees in this manner, frees up general purpose tax funds to be used for services, maintenance and facility costs which benefit the entire community.

Giovanatto stated that during this year's evaluation, staff reviewed and implemented a change in allocation of overhead costs (benefits, operating expenses, overhead, and fixed assets) to standardize across general fund departments. The primary visible impact of this change was a decrease in a number of building fees and a corresponding increase in some Planning Department fees. City staff also identified services that were being provided that were not incorporated into the Fee Schedule and were being recommended as new fees this year. Giovanatto stated that the overall impact of the annual recalculation was that some fees increased while other fees decreased. This was a direct reflection of tighter budgeting controls, efficiencies by City employees processing service requests, new software technology and the re-evaluation of overhead and benefit rates. City Manager Giovanatto stated that fees and charges represented approximately 2.9%% (\$570,630) of the projected General Fund Revenue. City Manager Giovanatto highlighted the major changes included in the recommended fee

schedule and stated that if adopted the fees would go into effect immediately except for the Planning fees which would not go into effect for thirty days. She recognized and commended Finance Director Hilbrants for spearheading the fee schedule update.

The public comment period was opened and closed with none received. Clm. Hundley stated her appreciation of the format used to present the fee schedule and was pleased to see a reduction to some of the water service fees. It was moved by Clm. Gallian, seconded by Clm. Edwards, to adopt the resolution entitled Resolution of the City Council of the City of Sonoma Amending the Previously Adopted Schedule of User Fees, Licenses and Permit Charges for Fiscal Year 2014-15. The motion carried unanimously.

Item 6B: Discussion, consideration and possible action on an ordinance amending the Development Code by prohibiting Automated Purchasing Machines in the City of Sonoma.

Planning Director Goodison reported that automated purchasing machines (APMs) were freestanding kiosk-type machines that enabled the sale of cell phones, mp3 players, and similar devices for immediate cash. They utilize specialized technology to assess the value of the device based on model, condition, and value on secondary markets and newer devices in good working condition could generate as much as \$300 from the transaction. He said that although APMs feature some security features, they were generally not sufficient to deter criminal exploitation and some cities reported an increase in theft of personal electronic devices where APMs were permitted. Goodison stated that the Police Department was concerned that the presence of APMs could bring thieves from other communities to Sonoma for quick cash and, once here, subject citizens to additional criminal acts and they recommended that the City Council prohibit the machines.

The public comment period was opened and closed with none received. It was moved by Clm. Agrimonti, seconded by Clm. Hundley, to introduce the ordinance entitled An Ordinance of the City Council of the City of Sonoma Amending the Development Code by Prohibiting the Establishment and Operation of Automated Purchasing Machines. The motion carried unanimously.

7. REGULAR CALENDAR – CITY COUNCIL

Item 7A: Discussion, consideration and possible action on the renewal of the lease of the Youth Center Building located at 136 Mission Terrace to the Valley of the Moon Nursery School.

Development Services Director/Building Official Wirick reported the Youth Center Building, located at 136 Mission Terrace was built by the Sonoma Kiwanis Club in 1945 and subsequently donated to the City. The property had been leased or licensed for use to the Valley of the Moon Nursery School (VOMNS) since 1954. He said the existing lease would expire in June and the school would like to continue to lease the building with the flexibility to opt-out of the lease on an annual basis if the ever-changing economics of operating a pre-school become unsustainable. Wirick stated that the Building Department conducted an inspection of the premises and identified a number of items that need to be repaired or corrected for the continued long-term use of the building. Features of the proposed lease include: One year term July 1, 2015 – June 30, 2016 with an option to renew for four additional one-year terms through to June 30, 2020. An increase to lease from \$822 per month to \$832

per month with lease rate being adjusted annually by the average annual change in the Consumer Price Index (CPI-U) for All Urban Consumers for the San Francisco Bay Area. Maintenance and repair responsibilities for the premises will remain the same as the current lease, with the City responsible for the maintenance and repairs of the Well Pump Room, the roof, exterior side walls, exterior painting, foundation and for the maintenance of plumbing and electrical lines within the walls and underneath the building; and the School responsible for maintaining the interior of the main building, the play yard, accessory structures, parking area and landscaping. By March 31, 2017, the school will need to complete code required improvements designated as "Tenant Responsibility" in the 2012 Building Survey report. By June 30, 2020, the City would plan and implement "City Responsibility" code improvements, including certain Americans with Disabilities Act (ADA) improvements, that are designated in the 2012 Building Survey report.

Wirick added that the City did not lease the building for profit but expected to recover sufficient funds from the lease to pay for ongoing maintenance. An analysis of the actual and projected income and expenses for the building from 1986 through 2020, including necessary ADA and other improvements indicated that the City would realize an estimated net gain of approximately \$27,400 if the lease was renewed through June 30, 2020. One-time City capital costs to mitigate current ADA and other code related deficiencies is estimated at approximately \$86,900 over the next 5 years. Wirick reported that sufficient funds had been set aside in the City's Long-Term Building Maintenance Fund to make the necessary improvements and repairs.

Mayor Cook invited comments from the public. Peter Alexander Chernoff stated the middle class had been gutted and that the Federal Government and the IRS were criminal and illegal.

Speaking in support of the lease agreement were Erin McTaggart, Chris Petlock, Rosemarie Pedranzini, Robert Pickett, Rebecca Wallace, and Zac Weinberg.

It was moved by Clm. Agrimonti, seconded by Clm. Gallian, to authorize the City Manager to execute the lease with Valley of the Moon Nursery School. The motion carried unanimously.

Item 7B: Discussion, consideration, and possible action to approve a proposed amendment to the City Watersheds Proposition 1E Grant for Drainage Improvements along First St. West between West Spain St. and Depot Park.

This item was continued to a future meeting.

RECESS: The meeting recessed from 7:20 to 7:30 p.m.

Item 7C: Discussion, consideration and possible action to authorize correspondence to the Sonoma County Board of Supervisors indicating the City's opposition to the proposed fluoridation program, requested by Mayor Cook.

City Manager Giovanatto reported that the Sonoma County Department of Health Services, under the direction of the Board of Supervisors, had been researching and moving forward with plans for a fluoridation program for Sonoma County's water distribution systems. Presentations were made to the Sonoma City Council on both sides of the issue in 2013 culminating in a request by former Councilmember Barbose to place consideration of sending a letter of opposition to the Board of Supervisors; however, no formal action was ever taken by the City Council in that regard largely due to the fact that the County had not completed their plan. She

said that Mayor Cook requested this item be on the Council agenda upon being contacted by Dawna Gallagher-Stroeh, Director of Clean Water Sonoma-Marin, a non-profit organization.

Mayor Cook invited comments from the public. Rosemarie Pedranzini stated her disapproval of adding fluoride to the water and then introduced her husband Benny.

Summary of comments against fluoridation and in support of sending the letter: Bonnie Faulkner, the fluoride was not pharmaceutical grade and was a toxic byproduct of industry and adding it to the water supply would eliminate free choice. Gwen _____ fluoride was fertilizer waste, went down the drain and into the streams. Peter Alexander Chernoff alters the soil structures. Judith _____ 97% of Europe and many other countries do not do it. 40% of American teens subject to fluoridated water show signs of overexposure. It causes many ailments. Gale Hartman, Latinos and the NAACP were against it, minority communities were the most impacted by kidney disease. Laura Gator Benson, DDS, no safety studies had been conducted and fluoridation did not produce a significant reduction in cavities, those who cannot tolerate fluoride would have to invest in expensive water filtration systems. Robert Adams, most of the water goes down the drain into streams and rivers. Council needs to be informed and respect personal choice. James Bennett, we've all been deceived beyond our current understanding because our whole information construct is owned by a handful of people that are largely behind everything that is wrong. Will Pier, with education and good information people can make a choice if they want fluoride or not. Dawna Gallagher, it was a bad time to put chemicals into the groundwater, North Marin Water Agency, Sonoma County Water Agency, and other Sonoma County cities do not want to fluoridate, she supports the other County Health Department pillars of health.

Summary of comments in favor of fluoridation: Dan Kittleson, DDS, convinced that it was safe and reduced cavities, suggested the Council wait until the study was concluded. Martin Van Tassel, Fluoride Advisory Committee, any action by Council would be premature. Tom Hauser, dental health of the low income was a major issue, would be a disservice to those without access to dental care. Anthony Fernandez, DDS, Council needed to research all sides of the issue, let the County go through its process. Dave Chambers, former Dean of UOP Dental School, it would save the school districts money. Karen Milman, Sonoma County Health Officer, dental decay was at epidemic proportions and fluoridation was the most effective treatment. Council should work with the County and have a discussion about their concerns before making a decision.

Fred Allebach stated that he had listened to both sides and it was a tough decision for Council.

Mayor Cook stated that this subject came before Council previously and had been well vetted. He did not support fluoridation and did not want fluoridated water in City wells or aquifers. He stated the money could be better spent on education and he had heard that less than 1% of the fluoride was actually ingested and the rest went into lawns and down the drains.

CIm. Hundley stated that she had heard from a lot of people on this issue and that about ninety percent of them opposed adding fluoride to the water supply. Their main reasons seemed to be that there were better methods of acquiring fluoride through free choice. She said she was not convinced this was the best time to send a letter to the County. CIm. Hundley asked what the process would be.

Public Works Director Takasugi stated that when the studies were completed they would be reviewed by the Fluoride Advisory Committee and the Water Technical Advisory Committee

upon which Clm. Gallian sat as a representative of the City. The City would be asked to weigh in when a recommendation came forward.

Clm. Agrimonti stated that she did not have enough information to support sending a letter at this time.

Clm. Edwards pointed out that no one was talking about sugary drinks and questioned why the focus was on fluoridation and was not addressing the real problem. He said he had spoken with doctors and a number of other people and was supportive of sending the letter. Clm. Edwards stated he did not want fluoride in the food he ate and Sonoma should take a leadership role within the County on this matter.

Clm. Gallian stated she had attended numerous meetings over the past three and a half years and this was not a matter about which you could educate yourself in a short amount of time. She said it was important to listen to both sides of the matter and pointed out that the County was weighing all the available information and welcomed everyone to weigh in; however she did not feel the three new Councilmembers had been presented with all the information and she wanted to see the results of the latest study conducted by the County before weighing in.

Mayor Cook expressed concern about the future drawing of water from the Russian River for groundwater banking and fluoride getting into the aquifers. Public Works Director Takasugi stated it had not yet been studied but that it would not be that unusual to find fluoride in the aquifers.

Clm. Hundley asked if anyone had fact-checked the draft letter that had been provided by Ms. Gallagher. She said it would be more meaningful if it mentioned concerns about the wine industry to make it more about Sonoma. Mayor Cook added that he wanted concerns about the drought conditions included.

It was moved by Clm. Hundley, seconded by Clm. Edwards, to direct staff to write a letter that reflected the discussion and comments by Council and to bring it back for final approval. Mayor Cook added the letter should state the City was considering putting water into our wells and would not support putting fluoride into our aquifers. Clm. Gallian stated she still did not feel Council had enough information. Clm. Edwards stated one thing he knew for sure was that a fluoridation program would not be free. The motion carried with the following roll call vote: AYES: Edwards, Hundley, Cook. NOES: Gallian, Agrimonti. ABSENT: None. Clm. Agrimonti stated that she was never comfortable making a decision without having all the information.

8. REGULAR CALENDAR – CITY COUNCIL AS THE SUCCESSOR AGENCY

9. COUNCILMEMBERS’ REPORTS AND COMMENTS

Clm. Agrimonti commented that her office hour was going well and she was learning a lot.

Clm. Hundley stated she had not established office hours but people could contact her anytime.

Clm. Gallian reported on the Sonoma County Transportation Authority meeting.

Mayor Cook reported on the Sonoma Clean Power and the Library Advisory Board meetings.

10. CITY MANAGER COMMENTS AND ANNOUNCEMENTS INCLUDING ANNOUNCEMENTS FROM SUCCESSOR AGENCY STAFF

City Manager Giovanatto stated she had nothing to report.

11. COMMENTS FROM THE PUBLIC

Joanne Sanders congratulated City Manager Giovanatto for receiving the 2015 Spencer Flournoy Good Government Award from the Sonoma County Taxpayers Association. She stated that the level of traffic congestion on Highways 37 and 121 was ever increasing and affecting the local economy and that the City should demand that more County Tax dollars be spend on a solution.

12. ADJOURNMENT

The meeting was adjourned at 8:48 p.m. in recognition of Sullivan Edwards' fourth birthday.

I HEREBY CERTIFY that the foregoing minutes were duly and regularly adopted at a regular meeting of the Sonoma City Council on the day of 2015.

Gay Johann
Assistant City Manager / City Clerk



CITY OF SONOMA
City Council
Agenda Item Summary

City Council Agenda Item: 4C

Meeting Date: 03/02/2015

Department

Administration

Staff Contact

Gay Johann, Assistant City Manager/City Clerk

Agenda Item Title

Approval and ratification of the reappointment of Kimberly Blattner to the Community Services and Environment Commission for a term ending March 4, 2017.

Summary

The Community Services and Environment Commission consists of 9 members and 1 alternate who serve at the pleasure of the City Council. Appointments are made when a nomination by the Mayor is ratified by the City Council. Kimberly Blattner has served on the Commission since March 4, 2009 and is eligible for reappointment to an additional two-year term ending March 4, 2017.

Recommended Council Action

Approve and ratify the reappointment.

Alternative Actions

Council discretion.

Financial Impact

n/a

Environmental Review

- Environmental Impact Report
- Negative Declaration
- Exempt
- Not Applicable

Status

- Approved/Certified
- No Action Required
- Action Requested

Attachments:

None

CC: Kimberly Blattner via email



CITY OF SONOMA
City Council
Agenda Item Summary

City Council Agenda Item: 4D

Meeting Date: 03/02/2015

Department

Administration

Staff Contact

Gay Johann, Assistant City Manager/City Clerk

Agenda Item Title

Approval and ratification of the appointment of Christopher Johnson to the Design Review and Historic Preservation Commission for a term ending March 2, 2017.

Summary

The Design Review and Historic Preservation Commission (DRHPC) consists of 5 members and one alternate who serve at the pleasure of the City Council. At least four of the members and the alternate must be City residents. Appointments are made when a nomination made by the Mayor is ratified by the City Council.

This appointment will be to fill the vacancy created by the departure of Commissioner McDonald upon his appointment to the Planning Commission.

Section 2.40.110D of the Sonoma Municipal Code provides that *"In the event that a vacancy occurs on the board or commission, upon nomination by the mayor and ratification by the city council, the alternate may be appointed to the vacancy without further recruitment for a replacement for the regular member. For the purpose of determining the term of office pursuant to SMC 2.40.070, the time served as an alternate member shall not be counted toward the term to be served as a regular member."*

Christopher Johnson has served as the DRHPC Alternate since September 2013 and Mayor Cook has nominated him for appointment to a regular position on the Commission.

Recommended Council Action

Approve and ratify the appointment.

Alternative Actions

Council discretion.

Financial Impact

n/a

Environmental Review

- Environmental Impact Report
- Negative Declaration
- Exempt
- Not Applicable

Status

- Approved/Certified
 - No Action Required
 - Action Requested
-

Attachments:

None.

Copy to:

Christopher Johnson, via email



**City of Sonoma
City Council
Agenda Item Summary**

City Council Agenda Item: 4E
Meeting Date: 03/02/15

Department

Planning

Staff Contact

Associate Planner Atkins / Asst. C.M. Johann

Agenda Item Title

Adoption of a resolution adopting the revised Special Events Policy.

Summary

Background

The City's Special Events Policy, last updated in January 2015, provides rules and processes utilized by staff and the Community Services and Environment Commission (CSEC) in relation to Special Events. Since the last update staff became aware of the need to address issues related to fees and the application process for a series of events (such as the Sonoma Valley Jazz Society Tuesday Night Jazz). The purpose of this proposed revision to the Special Events Policy is to address the application fee and processing of multiple day event applications.

The proposed revisions consist of the following changes in addition to some corrective renumbering of the original policy:

Insert into section F. RESTRICTIONS, REQUIREMENTS AND GUIDELINES after Date and Location Preference:

3. Series of Events – A Multiple Day Event permit may be issued at the discretion of the CSEC or the Special Event Coordinator for events meeting the following criteria: 1) Each event is one in a series of events; 2) The application for the permit is for all of the events (dates); 3) The nature, purpose, location and target audience of each of the events (dates) are the same; and 4) The event is not for profit.

A Series of Events will be subject to one event application fee. Depending on the intensity of the proposed use CSEC or the Special Event Coordinator will determine whether the application fee is that of a small scale event or a large scale event. All other fees will be applicable for each day of use. (For instance a music series of five separate events will be required to pay one application fee and five daily use fees (rent, maintenance, security deposit, etc.).

Insert into Definitions alphabetically:

Series of Events – A non-consecutive multiple day event such as concert series or farmer/art markets that have identical event set-up and dismantle times, site plans, and service providers.

Recommended Council Action

Adopt the resolution adopting the updated Special Events Policy.

Alternative Actions

Council discretion

Financial Impact

Fees associated with special events are included in the Fee Schedule adopted by City Council on February 18, 2015.

Environmental Review

- Environmental Impact Report
- Negative Declaration
- Exempt
- Not Applicable

Status

- Approved/Certified
- No Action Required
- Action Requested

Attachments:

Resolution

Special Events Policy

Alignment with Council Goals: Balancing City character by setting policy for community events to not impact our City in negative ways.

cc: CSEC Members

CITY OF SONOMA

RESOLUTION NO. xx - 2015

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SONOMA
ADOPTING A SPECIAL EVENTS POLICY

WHEREAS, the City Council adopted Resolution No. 04-2015 adopting an updated and revised Special Events Policy on January 7, 2015; and

WHEREAS, the Community Services and Environment Commission has recommended a change to the adopted policy relating to multiple day events.

NOW THEREFORE BE IT RESOLVED:

1. The revised Special Events Policy attached hereto and by this reference made a part hereof is hereby adopted.
2. Resolution No. 04-2015 is rescinded in its entirety.

The foregoing Resolution was duly adopted this day 2nd day of March 2015, by the following vote:

Ayes:
Noes:
Absent:

David Cook, Mayor

ATTEST:

Gay Johann
Assistant City Manager/City Clerk

CITY OF SONOMA

SPECIAL EVENTS POLICY

A. RIGHTS OF APPEAL

Any decision of the CSEC or the Special Event Coordinator regarding a Special Event application may be appealed to the City Council. Appeals must be filed with the City Clerk within fifteen (15) calendar days following the CSEC or Special Event Coordinator decision, unless the fifteenth day falls on a weekend or a holiday, in which case the appeal period ends at the close of the next working day at City Hall. Appeals must be made in writing and must clearly state the reason for the appeal. Appeals will be set for hearing before the City Council on the earliest available agenda. A fee is charged for appeals.

B. PURPOSE

The purpose of this policy is to set rules and processes that will guide the Community Services and Environment Commission (CSEC) and City staff in seeking an appropriate balance between the benefits of organized events and their associated impacts on the community.

C. COMMUNITY BENEFITS OF SPECIAL EVENTS

Special Events can create a sense of community for the City of Sonoma and Sonoma Valley by, among other things:

- Providing a gathering place for residents
- Establishing and maintaining local traditions
- Providing exposure and celebration of diverse cultures
- Showcasing the talents of local artists
- Enhancing the local economy by promoting Sonoma as a destination for tourists and shoppers
- Generating income for local community-serving non-profit organizations
- Generating funds to support public programs and projects
- Generating income for non-local causes
- Educating the public and increasing public awareness about issues of local concern

D. COMMUNITY COSTS OF SPECIAL EVENTS

Special Events can generate impacts to area residents and businesses and to the City of Sonoma by, among other things:

- Adding to traffic congestion and exacerbating parking problems
- Impinging on the use of public spaces for non-structured, passive enjoyment by area residents
- Having a negative impact on the health and appearance of public landscaping and on the condition of public buildings

- Adding direct expenses to the City budget for maintenance of public facilities
- Adding indirect expenses to City operations by diverting staff resources away from other high priority work programs and projects

E. SPECIAL EVENT APPLICATION AND PERMIT PROCESS

Every special event held on property or in a facility owned, leased, or otherwise controlled by the City of Sonoma requires a Special Event Permit.

This provision is not intended to regulate recurring program activities on public property, conducted by the City or by a lessee of City property, where the activity is specifically authorized by use permit and/or by the terms of the property lease.

1. Application Content and Deadlines

- a. A complete application must be submitted prior to a proposed event being considered for approval. An incomplete application will not be processed or scheduled for review until all information is submitted in accordance with this policy.

- 1) For small scale events, complete applications must be submitted at least 21 days prior to the event.
- 2) For all other events, complete applications must be submitted at least 120 days prior to the event. An exception to the 120 day submittal deadline may be granted provided 2/3 of the CSEC vote in the affirmative to grant the exception.

Note: a special event shall not be advertised until the application has been approved by the Special Event Coordinator, CSEC, or City Council.

- b. A complete application must include the following:

- 1) Special Event Application Form with required attachments.
- 2) Payment of all required application fees, rental fees, costs and damage deposits.
- 3) If the event includes an admission charge, sale of event promotional items such as, but not limited to clothing and souvenirs, charges to exhibitors or vendors for booth or display space, sponsorship involving cash donations to the sponsoring organization, on-site solicitation of donations or any other cash income, an event budget shall be submitted showing estimated income by source, estimated direct event production expenditures (including, but not limited to, the costs of goods to be sold) and a letter identifying the planned beneficiary(ies) of any excess of income over expenditures.

- 4) Site plan:

- Indicate the number and location of all proposed food vendors (including food trucks) barbecues, and generators (if proposed). The number of food vendors allowed shall be at the discretion of the CSEC or the Special Event Coordinator. Indicate type, layout, and method of support for all proposed fencing (Note: staking or fencing to delineate activity areas is discouraged).

- Indicate type and layout of all proposed furniture (i.e. tables and chairs).
- c. Costs associated with efforts required of City forces to provide traffic control, parking restrictions, special barricading, emergency medical services, on-site monitoring of events or other special event needs shall be the responsibility of the applicant and shall include all costs incurred by the City, including actual time, material and equipment costs. A cost estimate will be provided subsequent to staff review of the application. A deposit for estimated costs shall be provided prior to the application being considered by the CSEC. Payments and deposits for police services must be arranged through the Police Department with the Sonoma County Sheriff's Department.
 - d. Special Events proposing encroachments on the state highway or the closure of City streets must obtain the appropriate permits as set forth in Chapter 12.20 of the Sonoma Municipal Code.
 - e. New events that are unique in nature will be evaluated on a case-by-case basis and may be subject to City Council approval. All costs associated with efforts required of City forces to review the Special Event Permit application and provide comments related to event needs and City impact shall be the responsibility of the applicant. A cost estimate will be provided with initial application review; a deposit for estimated costs shall be provided at the time the application is submitted and is required to complete the application process.
 - f. Special events sponsored by, and, held on the property owned by other governmental agencies including, but not limited to the Sonoma Valley Unified School District, Sonoma County, and the State of California Department of Parks and Recreation, are not required to obtain Special Events Permits from the City. Such agencies are encouraged to consult with the Special Events Coordinator during the planning stages of such events to address community impacts such as traffic, parking, noise, security, etc.

2. Staff Review

- a. Small-scale events may be reviewed and approved by the Special Event Coordinator, with or without interdepartmental review by the Special Event Committee (SEC).
- b. Large-scale events, or events which in the judgment of the Special Event Coordinator raise unusual issues, will be subject to an interdepartmental review (prior to a decision by the Special Event Coordinator or by the CSEC). Interdepartmental review will be scheduled on an as-needed basis by the Special Event Coordinator. Interdepartmental review may result in recommended conditions of approval to be considered by the Special Event Coordinator or by the CSEC.
- c. The CSEC may allow the review of large-scale reoccurring events by the Special Event Coordinator, with or without interdepartmental review by the SEC, provided zero violations of the Special Event Policy were indicated during the previous Post-Event Review.

3. CSEC Review

Applications for events requiring CSEC approval will be placed on the next available CSEC agenda after staff review is completed. Applications will not be scheduled for CSEC review and approval until all required information has been provided and all staff reviews have been completed. CSEC meetings are scheduled in conformance with Brown Act noticing requirements.

4. Findings

In making determinations about approval or conditions of a special event permit, the CSEC or the Special Event Coordinator shall consider and make findings regarding the following factors:

- a. Does the application conform to all general and site-specific restrictions, requirements and guidelines as set forth in this Policy and in the Appendices hereto?
- b. In the case of a recurring event, to what level did prior events adhere to all general and site-specific restrictions, requirements and guidelines and to specific conditions of approval, as indicated in post-event reports prepared by staff and in the post-event reviews conducted by the CSEC?
- c. What are the nature and magnitude of the community benefits that are anticipated for this event, and, for recurring events, what was the magnitude of community benefits, including the value of donations to non-profit beneficiaries, realized by prior events?
- d. What are the nature and magnitude of the community costs and impacts that are anticipated for this event and, for recurring events, what was the magnitude of community costs and impacts that were experienced in prior events?

5. Post-Event Review

Sponsoring organizations of large-scale events must attend a post event review at the next meeting of the CSEC that is held not more than ninety days after the event. The requirement for CSEC post-event review may be waived by the CSEC (if waved by the CSEC the review is required by the Special Events Coordinator). The event representative shall provide the event's complete and full financial statements (actual gross income and expenditures) to the Special Event Coordinator within seventy days after the event. The financial statement shall be prepared in accordance with Generally Accepted Accounting Principles, including a simple budget to actual analysis and detail of any overhead expense line that exceeds 10% of gross receipts. City staff shall provide completed post event evaluation for review and discussion at the post event review). Payment of all post event invoices, charges, fees or penalties must be received within thirty days of the post event review Proof of receipt of funds from the beneficiary(ies) of the event is required to be submitted.

Conditions of approval of subsequent years' events may be affected by the organization's failure to attend the mandatory post event review and/or to provide required information, which failure may also constitute grounds for denial of future years' event permits.

6. Modification of Approved Permit

Once an application is approved, no event shall be modified without prior approval of the CSEC or of the Special Event Coordinator, whichever approved the event. The Special Event Coordinator is authorized to approve minor modifications to events. Modifications that require CSEC approval include, but are not limited to, changes in the dates, duration, and location of the event.

8. Prohibitions

- a) Inflatable Jumpers are not allowed in City Parks.
- b) Stakes are not allowed to be inserted into the lawn area unless approved by the CSEC or Special Event Coordinator.

F. RESTRICTIONS, REQUIREMENTS AND GUIDELINES

1. Public Access to City Facilities During Events

Special Events shall not exclude the public from the general use of any park or public property or charge an entry fee to any City Park or public property during the course of the event. Fees may be charged for event participation.

2. Date and Location Preference

- a. Date and location preference for City facility use is given to longstanding recurring events and to locally based City or Sonoma Valley organizations benefiting the community on a non-profit basis.
- b. In order to qualify for a preference in conducting a regularly scheduled event, sponsors of recurring events shall submit a letter to the Special Events Coordinator by January 1 of the year in which the event is to take place indicating the date or dates and the location on which the event is expected to take place, being sure to include set-up and take-down dates. This letter will be used for scheduling purposes only and will not constitute an application as required above.
- c. A “master calendar” shall be prepared by City staff to assist with schedule coordination.
- d. Upon receiving their approvals, all other events shall be placed on the master calendar on a first-come, first-served basis subject to location availability and adherence to policies limiting the number and frequency and the location of events. Applicants are encouraged to submit an alternate venue location as a backup, along with the application for the desired venue.
- e. Except for small scale events as defined herein, in no case shall two or more special events be scheduled on the same weekend at any given venue.
- f. Series of Events – A Multiple Day Event permit may be issued at the discretion of the CSEC or the Special Event Coordinator for events meeting the following criteria: 1) Each event is one in a series of events; 2) The application for the permit is for all of the

events (dates); 3) The nature, purpose, location and target audience of each of the events (dates) are the same; and 4) The event is not for profit.

A Series of Events will be subject to one event application fee. Depending on the intensity of the proposed use CSEC or the Special Event Coordinator will determine whether the application fee is that of a small scale event or a large scale event. All other fees will be applicable for each day of use. (For instance a music series of five separate events will be required to pay one application fee and five daily use fees (rent, maintenance, security deposit, etc.).

e.1)

~~f. Minimum Contributions (not applicable to locally based tax-exempt non-profit organization)~~

- ~~• Events that are sponsored by a for-profit organization (as defined in this policy) shall donate a minimum of 10% of gross revenue or 40% of the net profits (whichever is greater) to one or more locally based non-profit organizations. The amount of donation to each specified non-profit beneficiary shall be submitted at the post event review meeting.~~

3. Minimum Contributions (not applicable to locally based tax-exempt non-profit organization)

- Events that are sponsored by a for-profit organization (as defined in this policy) shall donate a minimum of 10% of gross revenue or 40% of the net profits (whichever is greater) to one or more locally based non-profit organizations. The amount of donation to each specified non-profit beneficiary shall be submitted at the post event review meeting.

Conditions of approval of subsequent years' events may be affected by the organization's failure to provide the required information regarding the required donation to non-profit beneficiaries, which failure may also constitute grounds for denial of future years' event permits. A copy of non-profit IRS form 990 or equivalent shall be required with subsequent year's Special Event Application submittal.

~~g.~~ 4. Limitations on the Sale of Wholesale Purchased Arts and Crafts

Arts and crafts sold at special events shall not be purchased wholesale and then sold retail at the event.

~~h.~~ 5. Proof of Insurance

1. Proof of insurance shall be provided at least one week prior to the commencement of any event.
2. No event shall commence set up or delivery of event supplies, materials, or equipment without required insurance documents submitted and verified by the Special Events Coordinator to meet all City requirements.

~~Except for small scale events as defined herein, in no case shall two or more special events be scheduled on the same weekend at any given venue.~~

| 62. Plaza Park Events

For restrictions, requirements and guidelines applicable to events at Plaza Park, see Appendix A.

| 73. Depot Park Events

For restrictions, requirements and guidelines applicable to events at Depot Park, see Appendix B.

| 8.4. Events at All Other Venues

For restrictions, requirements and guidelines applicable to events at any venue other than Plaza Park and Depot Park, see Appendix C.

| 95. Unique Events and/or Locations

As determined by the City Manager, event locations or new events that are unique in nature may be referred to the City Council for review and approval.

| 106. Safety and Security

- a. Crowd managers shall be provided by the event organizer for events where more than 1,000 persons congregate. The minimum number of crowd managers shall be established at a ratio of one crowd manager to every 250 persons, unless a lesser amount is established by the Fire Code Official. The event organizer shall contact the police department concerning security related issues and this information shall be provided in the required Public Safety Plan. The City may require professional security or contracted police department services for events where alcoholic beverages will be sold or consumed (with an estimated attendance in excess of 750 persons), or for any event for which the Special Events Coordinator or Police Chief determines identified public safety concerns warrant security.
- b. The City reserves the right of full access to all activities at any time to insure all rules and laws are being observed. The City reserves the right to suspend any individual or group from using City facilities and property if their behavior is determined to be abusive, destructive or in violation of any City rule without refund. The City reserves the right to cancel any scheduled event.
- c. All special events closing streets, or estimating 250 or more people must submit a Public Safety Plan with their application. Safety Plan must contain who is monitoring the event for safety and what is the action plan in the event of a minor or major injury or incident.
- d. The Fire Department requires that all decorations be fire-retardant per Chapter 8 of the California Fire Code and no open flame or pyrotechnics are allowed without written approval from the Sonoma Valley Fire and Rescue Department (707) 996-2102.
- e. Temporary tents and membrane structures having an area in excess of 400 square feet and individual tents (open on all sides) having a maximum size of 700 square feet shall

not be erected, operated, or maintained for any purpose without first obtaining a permit, inspection, and approval from the fire code official.

| ~~117.~~ Restrooms

Events with attendance of 100 persons must provide portable restrooms as defined in the attached Restroom/Sink Estimator for Special Events unless a lesser amount is established by the Parks Supervisor, 10% of which must meet ADA specifications. At least one hand washing station shall also be provided.

| ~~128.~~ Solid Waste and Recycling

All event applicants are required to submit a recycling and solid waste plan. Helpful hints for event planners will be provided as part of the special event application packet.

| ~~139.~~ Sales and Distribution of Food, Beverages, or Merchandise

- a. Any person or organization, including a non-profit organization, who is selling food or merchandise at a special event, must obtain a City of Sonoma business license, as provided in Title 5 of the Sonoma Municipal Code. Please call the City of Sonoma Finance Department at (707) 938-3681 for more information.
 1. Sponsoring organizations are required to cooperate with the City in assuring compliance with the City's business license requirements, for example, by providing lists of vendors and exhibitors upon request by the City.
 2. Sponsoring organizations shall cooperate with the City in programs to assure that all taxable retail sales occurring at events are reported as taking place within the City.
- b. Events that are sponsored by a for-profit organization must comply with the City of Sonoma policy regulating Food and Beverage Ticket Sales.
- c. Each participating food vendor shall obtain a City of Sonoma Business License. Each vendor shall post their business license in a readily visible location at or upon the vending station.
- d. Each participating food vendor shall obtain a Sonoma County Health Department Permit to Operate. Each vendor shall post an SB180-"public right to know" sign in a readily visible location at or upon the vending station.
- e. Food vendors shall comply with the County of Sonoma, Department of Health Services, Environmental Health & Safety Section temporary food facilities requirements and procedures.

G. FEES AND COSTS

1. The City Council shall from time to time by resolution as it deems necessary and appropriate provide for and set all rates, charges and fees for special event permit applications, use of, or impact to, City facilities and other costs related to special events.
2. The annual Fourth of July Parade and Plaza Event and the annual City party are sponsored by the City and the organizer of these events shall not be charged

application, rental fee maintenance fees, or a damage deposit; however, said events shall be subject to the standard application, review, and approval process.

3. The Community Services and Environment Commission shall annually establish an appropriate rental fee for the Farmers' Market, as part of its annual review of the Farmers' Market Plaza Use Application.
4. The following events shall be exempt from paying the application fee, rental fee, and maintenance fee provided the Small-scale event may be reviewed by the Special Event Coordinator:
 - a. Easter Egg Hunt
 - b. Santa on the Plaza

H. DEFINITIONS

For the purpose of this Policy, the following definitions shall apply:

Application Processing Fee – Charges for staff time and expenses for processing special event permit applications. Application fees are established by the City Council by resolution.

City Property – Any City street, sidewalk, parking lot, park, plaza, or any other property owned or controlled by the City.

Crowd Manager – One or more people who are assigned the responsibility of maintaining safety of attendees during an event, duties include but are not limited to the following:

- Provide a safe environment.
- Be aware of and maintain event safety requirements required by the Special Events Coordinator.
- Conduct pre-event inspections to verify that the event safety requirements are in place.
- Use a portable fire extinguisher.
- Guide the crowd in an emergency.
- Identify problem attendees and what to do once they are identified.
- Coordinate with emergency responders.

Event – Includes special event.

Event Organizer – Any person or organization that conducts, manages, promotes, organizes, aids or solicits attendance at a commercial or non-commercial special event.

For-profit Organization -- A business or other organization whose goal is to return a profit to the owners.

Goods – Includes goods, wares, personal property, merchandise or any other similar item which is generally sold.

Gross Revenue – The sum of all cash received by an event organizer for a special event, including, but not limited to, admission charges, sale of event promotional items, charges to exhibitors or vendors for booth or display space, licensing, sponsorships, television, advertising, sale of goods, donations at the event and similar revenues and concessions.

Large-scale Events -- An event that, in the judgment of the Special Event Coordinator, meets one or more of the following three requirements: 1) requires more than two hours of total staff time for pre-event preparation and/or post-event rehabilitation of the event venue; 2) makes use of more than one sector of the Plaza only; and, 3) exceeds eight hours in duration (including time required for set-up and take down).

Locally Based Tax-exempt Non-profit Organization—An organization that qualifies as a tax-exempt non-profit organization and provides community benefit within Sonoma City, Sonoma Valley, or Sonoma County. Proof of tax exempt status must be submitted with application.

Longstanding Recurring Event – An event that has utilized the same City venue for 20 consecutive years.

Net Profit – The sum of all cash remaining after assets have been sold and related expenses have been paid.

Public Facility – Any property located within the Sonoma City limits and owned by the City of Sonoma or by any other governmental agency, such as the Sonoma Valley Unified School District, California State Parks or Sonoma County.

Public Safety Plan – A plan that address such items as emergency vehicle ingress and egress, fire protection, emergency egress or escape routes, emergency medical services, public assembly areas and the directing of both attendees and vehicles (including the parking of vehicles), vendor and food concession distribution, and the need for the presence of law enforcement, and fire and emergency medical services personnel at the event.

Rental Fee - A fixed amount for the rental of all or a portion of a venue, based on the length of the event; where applicable a maintenance fee for facility rehabilitation/maintenance is included with the rental fee. Rental fees are established by the City Council by resolution.

Series of Events – A non-consecutive multiple day event such as concert series or farmer/art markets that have identical event set-up and dismantle times, site plans, and service providers.

Sidewalk – That portion of a highway or street, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel.

Small Scale Event – An event that, in the judgment of the Special Event Coordinator, meets all three following requirements: 1) requires less than two hours of total staff time for pre-event preparation and/or post-event rehabilitation of the event venue; 2) makes use of no more than one sector of the Plaza only; and, 3) does not exceed eight hours in duration (including time required for set-up and take down).

Solid Waste Recycling Plan – A written plan that achieves the following: 1) minimizes the production of solid waste; 2) provides for convenient recycling containers for event attendees and for event participants/vendors/etc. 3) provides for a sufficient number of trash receptacles

for non-recyclable waste; and, 4) assures that the venue is returned to a trash-free and sanitary condition for use by the general public.

Special Event – An activity on public property open to the general public, with or without an admission charge. Special events include:

1. Any organized formation, parade, procession or assembly of persons, which may or may not include animals, vehicles or any combination thereof which is to assemble or travel in unison on any street which does not comply with normal or usual traffic regulations or controls; or,
2. Any organized assemblage of persons at any park or facility, owned by the City or by any other governmental agency, such as the Sonoma Valley Unified School District, California State Parks or Sonoma County which is to gather for a common purpose under the direction and control of a person; or,
3. Any other organized activity conducted by a sponsoring organization or person for a common or collective use, purpose or benefit which involves the use of, or has an impact on, City property or facilities and the provisions of city services in response thereto.

Examples of special events include, but are not limited to concerts, parades, special interest shows or expos, markets, fairs, festivals, block parties, community events or mass participation sports (such as, marathons and running events, bicycle races or tours, etc.).

For the purpose of this policy, special events are distinguished from the following:

- Private events which may be authorized on public property but which are not open to the general public;
- Recurring program activities on public property, conducted by the City or by a lessee of City property, where the activity is specifically authorized by use permit and/or by the terms of the property lease;
- Events on private property.

Special Event Coordinator — The person assigned by the city manager to carry out the duties and responsibilities set forth in this policy.

Special Event Permit - A permit issued under this Resolution.

Special Event Venue - That area for which a special event permit has been issued.

Street – A way or place of whatever nature publicly maintained and open to use of the public for purposes of vehicular travel. Street includes Highway 12.

Tax-exempt non-profit organization – An organization that is exempted from payment of income taxes by federal or state law and which has been in existence for a minimum of three months preceding the date of application for a special event permit. Proof of tax exempt status must be submitted with application.

Vendor – any person who sells or offers to sell any goods, food, beverages, or services within a special event venue.

CITY OF SONOMA
SPECIAL EVENTS POLICY

APPENDIX A

PLAZA PARK
RESTRICTIONS, REQUIREMENTS AND GUIDELINES

The following restriction, requirements and guidelines apply to all special events conducted at the Plaza Park.

1. Limitations on the number and frequency of events and on event activities

- a. Events exceeding eight hours in duration (including set-up and take-down time) shall not be scheduled in the Plaza Park on successive weekends between June 1 and October 1 of any given year.

With the approval of the CSEC, exceptions may be granted to the following longstanding recurring special events: The Ox Roast, Hit the Road Jack, Flag Day Celebration, Fourth of July Celebration, and the Valley of the Moon Vintage Festival.

- b. The Plaza Horseshoe Lawn shall not be available for active use, such as, but not limited to, tents, booths, umbrellas, tables, signs etc. during special events. This restriction is intended to allow an unobstructed view of City Hall a National Historic Landmark and to minimize damage to the lawn. With the approval of the CSEC, an exception may be granted for limited active use of the Plaza Horseshoe Lawn.
- c. Finish line delineation demarcations in the Plaza Horseshoe area taller than ten feet in height shall be prohibited unless specifically approved by the CSEC. Finish line delineation demarcations shall comply with the California Fire Code and provide a minimum clearance of 14 feet.
- d. No tents (greater than 10 square feet in area and a maximum height of 10 feet) or structures (including inflatables) shall be placed in the horseshoe area unless specifically approved by the CSEC.
- e. In order to minimize compaction and damage to the Plaza landscape during the wet season, Special Events shall be restricted to paved areas of the Plaza from and including November through May. Small scale events, as defined in this policy, may be allowed to use lawn area during the wet season.
- f. The number of Special Events held in the Plaza Park is limited to twenty-five events per calendar year. The Jazz Society Summer Music Series held on Farmers' Market nights and the Farmers' Market events shall be counted as one event.

2. Hours of Operation

- a. Special Events shall be limited to the following hours of operation, unless specifically approved by the CSEC:
- Monday through Thursday 5 p.m. to 7:30 a.m.

- Friday through Sunday, events may begin set up at 5 p.m. on Friday. Event cleanup shall be completed by 7:30 a.m. Monday morning.

3. Restroom Facilities

All events utilizing public restrooms shall be required to provide restroom monitors to ensure that no vandalism occurs during the course of the event and that restrooms are vacated, locked, cleaned, and resupplied at the close of the event. Event Sponsors shall be responsible for cleaning and supplying restrooms. Restrooms shall be monitored and cleaned (if necessary) at least once per hour during the event.

4. Noise

Amplified music shall not begin prior to 7 a.m. and normally cease no later than 10:00 p.m.; however, the CSEC shall have the authority to extend the time through the application review process if circumstances warrant an extension.

5. Event Banner

With approval of the CSEC or Special Event Coordinator, a banner may be displayed on the historic directory sign located on the southeast portion of the Plaza.

Banner Design and Fabrication Guidelines

- Banner schematic to be submitted and reviewed along with event application.
- The banner is to be sized compatible with the Historic Directory Sign policy.
- The banner is to be fabricated using marine acrylic, canvas, or other environmentally-friendly material.
- The banner may be displayed beginning the Monday prior to the event and must be removed the last day of the event. Banner installation shall be completed by City staff.

6. Food Vendors

Barbeques shall not be located adjacent to the City Hall building in an attempt to prohibit smoke fumes from entering the building and grease from damaging the exterior stone of the building.

7. Reserved Street Parking

Event applicants may request reserved on-street parking in conjunction with a Plaza event with the submittal of a Permit Application for Reserved Street Parking and shall be consistent with the applicable fee schedule. The CSEC or Special Event Coordinator shall make a recommendation to the Streets Supervisor as to the maximum number of parking spaces to be reserved.

CITY OF SONOMA
SPECIAL EVENTS POLICY

APPENDIX B

DEPOT PARK
RESTRICTIONS, REQUIREMENTS AND GUIDELINES

The following restriction, requirements and guidelines apply to all special events conducted at Depot Park.

1. Limitations on the number and frequency of events and on event activities

- a. Events exceeding eight hours in duration (including set-up and take-down time) shall not be scheduled in the Depot Park on successive weekends between June 1 and October 1 of any given year.
- b. In order to minimize compaction and damage to the Depot Park landscape during the wet season, Special Events shall be restricted to paved areas of the Depot Park from and including November through May. Small scale events, as defined in this policy, may be allowed to use lawn area during the wet season.
- c. The number of Special Events held in the Depot Park is limited to twenty-five events per year. The Farmers Market events shall be counted as one event.

2. Signage

A banner advertising the event will be allowed in the Depot Park only with the approval of the CSEC. Banners shall not exceed six square feet, nor shall they be displayed for longer than the duration of the event; allowable display time commencing with the first day of the event. Appearance and content of the banner are subject to CSEC review and approval. Methods of supporting the banner and location in the Depot Park are subject to review and approval by the Public Works Administrator or his or her designee.

4. Restroom Facilities

All events utilizing public restrooms shall be required to provide restroom monitors to ensure that no vandalism occurs during the course of the event and that restrooms are vacated, locked, cleaned, and resupplied at the close of the event. Event Sponsors shall be responsible for cleaning and supplying restrooms. Restrooms shall be monitored and cleaned (if necessary) at least once per hour during the event.

5. Noise

Amplified music shall not begin prior to 8 a.m. and cease no later than 10:00 p.m.; however, the CSEC shall have the authority to extend the time through the application review process if circumstances warrant an extension.

CITY OF SONOMA
SPECIAL EVENTS POLICY

APPENDIX C

**ALL VENUES OTHER THAN PLAZA PARK AND DEPOT PARK
RESTRICTIONS, REQUIREMENTS AND GUIDELINES**

The following restriction, requirements and guidelines apply to special events conducted at venues other than Plaza Park and Depot Park

1. Restroom Facilities

All events utilizing public restrooms shall be required to provide restroom monitors to ensure that no vandalism occurs during the course of the event and that restrooms are vacated, locked, cleaned, and resupplied at the close of the event. Event Sponsors shall be responsible for cleaning and supplying restrooms. Restrooms shall be monitored and cleaned (if necessary) at least once per hour during the event.

2. Noise

Amplified music shall comply with the Noise Ordinance consistent with the Residential Power Equipment restrictions; however, the CSEC shall have the authority to extend the time through the application review process if circumstances warrant an extension.

3. Duration and Hours of Operation

Hours of operation shall be established by the permitting authority based on the nature of the event and the nature of impacts on neighboring properties.

4. Other Conditions

- a. Other restrictions, requirements and guidelines for events at City venues other than Plaza and Depot Parks may be developed on a case by case basis during the application review to address specific impact or issues at such venues.
- b. Recommended conditions are identified through the staff review process; conditions for approval are moved forward with applications that require CSEC approval.
- c. As determined by the City Manager, event locations or new events that are unique in nature may be subject to City Council approval.



City of Sonoma
City Council
Agenda Item Summary

City Council Agenda Item: 4F

Meeting Date: 03/02/15

Department

Planning and Community Services

Staff Contact

David Goodison, Planning Director

Agenda Item Title

Adoption of an ordinance amending the Development Code by prohibiting Automated Purchasing Machines in the City of Sonoma.

Summary

Automated purchasing machines (APMs) are a freestanding kiosk-type machines that enables the sale of cell phones, mp3 players, and similar devices for immediate cash. APMs use specialized technology to assess the value of the device based on model, condition, and value on secondary markets. Newer devices in good working condition may generate as much as \$300 from the transaction. Although APMs feature some security features, they are generally not sufficient to deter criminal exploitation and some cities report an increase in theft of personal electronic devices in cities that permit APMs. Theft of personal electronic devices is already a problem in Sonoma even without the addition of APMs. Additionally, the Police Department is concerned that the presence of APMs could bring thieves from other communities to Sonoma for quick cash and, once here, subject citizens to additional criminal acts. For these reasons, the Police Department recommended to the City Council that APMs be prohibited. To allow time for the development and review of a amendment to the Development Code prohibiting APMs, the City Council adopted an Urgency Ordinance establishing a temporary moratorium at its meeting of October 20, 2014.

Staff prepared a draft amendment to the Development Code establishing a ban APMs that was reviewed by the Planning Commission at its meeting of December 11, 2015. On a vote of 4-1-1 (Comm. Howarth dissenting, Comm. Roberson abstaining), the Commission recommended its adoption, subject to the following: 1) inclusion of a sunset clause providing for its automatic expiration in five years; and, 2) broadening the definition of an APM. As recommended by the Planning Commission, the definition of an APM was revised. However, in consulting with City Attorney, it was determined that a sunset provision is not possible as, under State Law, a regulation established by ordinance may only be removed by the adoption of a subsequent ordinance. At its meeting of February 18, 2015, the City Council voted 5-0 to introduce the ordinance.

Recommended Council Action

Adopt the attached ordinance.

Alternative Actions

N.A.

Financial Impact

N.A.

Environmental Review

- Environmental Impact Report
- Negative Declaration
- Exempt
- Not Applicable

Status

- Approved/Certified
 - No Action Required
 - Action Requested
-

Alignment with Council Goals:

The development of regulations pertaining to APMs is consistent with the "Policy and Leadership" goal, as it emphasizes local control through the planning process.

Attachments:

1. Draft Ordinance

cc: Bret Sacket, Police Chief

CITY OF SONOMA

ORDINANCE NO. xx - 2015

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SONOMA AMENDING THE DEVELOPMENT CODE BY PROHIBITING THE ESTABLISHMENT AND OPERATION OF AUTOMATED PURCHASING MACHINES

WHEREAS, Automated Purchasing Machines are self-operating kiosks which allow users to sell their cell phones, tablets, or MP3 devices to a machine, for which the seller immediately receives cash for this transaction; and

WHEREAS, despite owner and operator claims that Automated Purchasing Machines are equipped with safety features to support public safety, Automated Purchasing Machines do not have the technology to verify whether the government-issued ID, fingerprint, and photograph collected by the machine belong to the person completing the transaction and whether the person is the true owner of the device being sold; and

WHEREAS, nationwide, there have been reported many cell phone robberies linked to Automated Purchasing Machines in which criminals intentionally rob individuals of their cell phone devices and sell them shortly thereafter at Automated Purchasing Machines; and

WHEREAS, Automated Purchasing Machines are responsible for a rise in violent and non-violent theft of personal electronic devices in cities permitting these machines; and

WHEREAS, it can be anticipated that due to technological advancements and continued demand for the production and placement of these machines, these machines will be manufactured to accommodate the sale of items of personal property other than and in addition to the electronic devices described above, and it is in the best interests of the City to address these potential advancements and avert their probable adverse consequences at the present time; and

WHEREAS, the Sonoma Municipal Code and Development Code are silent with regard to the regulation and location of Automated Purchasing Machines and there are currently no such machines operating in the City.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Sonoma as follows:

Section 1. Findings

The City Council finds that for the reasons stated above issuing permits, business licenses or other applicable licenses or entitlements providing for the establishment of and/or operation of Automated Purchasing Machines poses a threat to the public health, safety, and welfare.

Section 2. Amendments to Chapter 19.40 of the Sonoma Municipal Code (General Property Development and Use Standards)

Section 19.40.140 is hereby added to the Sonoma Municipal Code to read as follows:

Section 19.40.140 Prohibition of Automated Purchasing Machines

19.40.140.A Purpose. The purpose and intent of this section is to establish and enforce a city-wide prohibition on the establishment, maintenance, and operation of Automated Purchasing Machines, as defined in Chapter 19.92 (Definitions).

19.40.140.B Prohibited. Automated Purchasing Machines, as defined in Chapter 19.92, are prohibited in all zoning districts in the city. No permit or any other applicable license or entitlement for use, including but not limited to the issuance of a business license, shall be approved or issued for the establishment or operation of an Automated Purchasing Machine.

Section 3. Amendments to Title 19, Division VIII of the Sonoma Municipal Code (“Definitions”)

Section 19.92.020 (Definitions of Specialized Terms and Phrases) is hereby amended to add the following:

“Automated Purchasing Machine” means a self-service automated kiosk or other similar device or machine that, without the physical presence of a human agent, is capable of dispensing money in exchange for personal property, including but not limited to personal electronic devices.

“Personal Electronic Device” means any cell phone, mp3 player, tablet, or other similar device or machine.

Section 4. CEQA Findings

The City Council finds that this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 5. Effective Date

This ordinance shall become effective 30 days after the date of adoption.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Sonoma this ___ day of _____ 2015.

David Cook, Mayor

ATTEST:

Gay Johann
Assistant City Manager / City Clerk



CITY OF SONOMA
City Council/Successor Agency
Agenda Item Summary

City Council Agenda Item: 5A

Meeting Date: 03/02/2015

Department

Administration

Staff Contact

Gay Johann, Assistant City Manager/City Clerk

Agenda Item Title

Approval of the portions of the Minutes of February 18, 2015 City Council meeting pertaining to the Successor Agency.

Summary

The minutes have been prepared for Council review and approval.

Recommended Council Action

Approve the minutes.

Alternative Actions

Correct or amend the minutes prior to approval.

Financial Impact

N/A

Environmental Review

- Environmental Impact Report
- Negative Declaration
- Exempt
- Not Applicable

Status

- Approved/Certified
- No Action Required
- Action Requested

Attachments:

See Agenda Item 4B for the minutes

Alignment with Council Goals: N/A

cc: NA



CITY OF SONOMA
City Council
Agenda Item Summary

City Council Agenda Item: 7A

Meeting Date: 03/02/2015

Department

Administration

Staff Contact

Carol Giovanatto, City Manager

Agenda Item Title

Discussion, consideration and possible action on draft letter to the Sonoma County Board of Supervisors indicating the City's opposition to the proposed fluoridation program

Summary

At the February 18th Council meeting the Council considered issue of preparing a letter to the Sonoma County Board of Supervisors requesting that they oppose the Sonoma County Department of Health Services report recommending plans for a fluoridation program for Sonoma County's water distribution systems. Following significant public comment and discussion, the Council voted 3-2 (Mayor Pro Tem Gallian and Councilmember Agrimonti dissenting) to direct staff to draft a letter expressing Council's position of opposition to fluoridation and to return the draft letter for final vote of the Council. The February 18th Council agenda item contained a draft letter submitted by Dawna Gallegher-Stoeh, which Council chose not to wholly endorse but requested staff to include Sonoma-centric conclusions in a modified draft which is presented on this agenda for Council review.

The draft of the fluoridation engineering design report from the Sonoma County Public Health Department (SCHPD) has been prepared and the Fluoridation Advisory Committee is reviewing the report. The review is not expected to be complete until Spring 2015.

Recommended Council Action

Council discretion.

Alternative Actions

N/A

Financial Impact

N/A

Environmental Review

- Environmental Impact Report
- Negative Declaration
- Exempt
- Not Applicable

Status

- Approved/Certified
 - No Action Required
 - Action Requested
-

Attachments:

- Draft letter of opposition
-

Alignment with Council Goals:

cc: Dawna Gallagher

Dear Honorable Supervisor Gorin and Members of the Board,

The City of Sonoma is a contractor of the Sonoma County Water Agency, currently purchasing approximately 93% of all domestic water used within the City. We are aware that the Sonoma County Public Health Department (SCHPD) has prepared a Fluoridation Engineering Design report which will include a recommendation for ***Fluoridating our Drinking Water*** which is being reviewed by the Fluoridation Advisory Committee. The review is not expected to be complete until Spring 2015. This report, while not yet specifically reviewed by this Council, does have the potential for serious consequences to our constituents in Sonoma and as such, on February 18th and March 2nd the Council discussed the issue of fluoridation in drinking water. This discussion included the general impacts of adding fluoride to water, but also more specifically the direct impacts to projects in Sonoma. Upon conclusion of Council deliberations, the City Council of the City of Sonoma, voted to go on record as not supporting the fluoridation of our drinking water for based on the following reasons:

- 1) According to Statewide averages, less than 1% of all drinking water is consumed equating to less than 1% of the fluoride coming into topical contact with teeth, with the remainder going into lawns and drains.
- 2) City is currently working with the Water Agency on a groundwater banking project and injecting fluoridated water may pose an additional challenge from a regulatory perspective.
- 3) Citizens of Sonoma should have freedom of choice when deciding on their use and/or ingestion of fluoride. There are many other inexpensive over-the-counter sources of fluoride that can be obtained for those that choose to use such products.
- 4) Introduction of any new substance into our drinking water source during a time of severe drought should be prohibited.
- 5) Under the State's unfunded mandate to fluoridate, AB 733, communities with 10,000 customer connections or more are urged to fluoridate. However, if a municipality has multiple sources of water supplies, they would be exempt. The City of Sonoma is thus exempt under both of these requirements.

While we applaud the efforts of the SCHPD to address the other four pillars of oral health, perhaps supporting increased funding for the programs that are working (i.e. outreach, nutritional education and more access to affordable dental care) would be far more effective to improving dental health while respecting our community's right to choose. We strongly urge you to look at these issues and review alternative methods other than directly fluoridating our water.

Respectfully submitted,

David Cook, Mayor

(?) All Councilmembers signatures or Mayor only to sign?



CITY OF SONOMA
City Council
Agenda Item Summary

City Council Agenda Item: 7B

Meeting Date: 03/02/2015

Department

Administration

Staff Contact

Carol E. Giovanatto, City Manager

David Goodison, Planning Director

Agenda Item Title

Discussion, consideration, and possible action on the question of whether to revisit the regulation of leaf-blowers (Requested by Mayor Pro Tem Gallian)

Summary

A review of the City's regulations concerning leaf-blowers has been requested by Mayor Pro-tem Gallian and to facilitate this discussion staff has prepared background information on the subject. Since 2010, the regulation of leaf-blowers has been an on-going subject of discussion by the City Council. In the most recent review, which occurred in 2013, the Council directed staff to prepare an ordinance banning the use of gas-powered leaf-blowers within city limits. This ordinance was subsequently introduced by the City Council, but a motion for adoption, held at the meeting of October 21, 2013, failed on a vote of 2-3. No subsequent discussion was undertaken by the Council.

Recommended Council Action

Council discretion.

Alternative Actions

N/A

Financial Impact

Undetermined at this time; based on Council direction.

Environmental Review

- Environmental Impact Report
- Negative Declaration
- Exempt
- Not Applicable

Status

- Approved/Certified
 - No Action Required
 - Action Requested
-

Attachments:

Supplemental Report

Alignment with Council Goals:

POLICY & LEADERSHIP

Provide continuing leadership as elected officials and residents of the community.

cc:

SUPPLEMENTAL REPORT

Discussion, consideration, and possible action on the question of whether to revisit the regulation of leaf-blowers

For the City Council meeting of March 2, 2015

Background

A review of the City's regulations concerning leaf-blowers has been requested by Mayor Protem Gallian and to facilitate this discussion staff has prepared background information on the subject. Since 2010, the regulation of leaf-blowers has been an on-going subject of discussion by the City Council. In the most recent review, which occurred in 2013, the Council directed staff to prepare an ordinance banning the use of gas-powered leaf-blowers within city limits. This ordinance was subsequently introduced by the City Council, but a motion for adoption, held at the meeting of October 21, 2013, failed on a vote of 2-3, and the matter was dropped.

The City's leaf-blower regulations were last amended in 2011, at which time more restrictive hours were established and the maximum allowed decibel level was reduced. The table below summarizes the existing regulations.

Leaf Blower Regulations			
Limit	Residential	Commercial and Mixed Use	Parks and Public
Hours/ Days	Monday - Saturday: 9-4 Banned Sundays and holidays	Banned Sundays and City- recognized holidays	Monday – Friday: 7-4 Banned Saturdays, Sundays and holidays
Decibel Level	70 dDA at 50 feet	70 dDA at 50 feet	70 dDA at 50 feet

Note: With respect to noise limitations, the former standard of 90 decibels measured at the property line was lowered to 70 decibels, measured at 50 feet from the noise source, with the revised standard applicable to all forms of residential power equipment (e.g., lawnmowers, chain saws, weed-eaters, etc.).

In addition, the 2011 regulations imposed a requirement on landscape contractors to have the name and phone number of their business prominently displayed on maintenance vehicles. Although the decibel limit on residential power equipment is standardized, the allowed hours for the use of leaf blowers are more restrictive.

Defining the Problem

If the City Council does wish to revisit the leaf blower regulations, discussion and direction on the issues to be addressed would be helpful in defining an appropriate outcome. In previous discussions, three main concerns have been raised with regard to leaf-blowers:

1. **Noise.** Leaf blowers can be noisy, whether they are gas powered or electric. As discussed above, the decibel limits apply to all forms of residential power equipment, not just leaf-

blowers. However, it is possible that leaf-blowers are used more frequently than other forms of powered landscaping equipment. It is also the case that electric leaf-blowers tend to be less noisy than gas-powered varieties.

2. **Emissions.** Gas-powered leaf-blowers typically use the same type of two-stroke engine found in a lawn mower, which makes it difficult, at least in staff's view, to single out leaf blowers as being uniquely polluting. (It should be noted that in the year 2000, emission standards were significantly upgraded for all forms of gas-powered residential power equipment.) However, as discussed above, it may be that leaf blowers are used more frequently than other forms of residential power equipment.
3. **Dust Generation.** Leaf blowers are not unique in that they stir up dust, but they are more problematic in that regard than most other types of landscaping equipment. Whether gas-powered or electric, by design leaf-blowers cause particulate matter to be blown into the air. In a previous review of this issue, staff identified only one study that measured this effect in a quantified manner (*Determination of Particulate Emission Rates for Leaf Blowers*; Fitz, 2006). According to this study, leaf-blowers produce particulate spikes immediately upon use, as would be expected. The report also found that particulate levels subsided to normal conditions relatively quickly, typically reaching 90% of normal within 30 minutes.

Use of Leaf Blowers by City Forces

The City's Public Works Department uses gas-powered leaf-blowers for a variety of purposes, including cleaning sidewalks and trails within City cemeteries, cleaning debris from roofs and gutters, and cleaning street surfaces as part of the preparation for striping and other painting, crack sealing, and placing asphalt patches. From the perspective of the Public Works Department, the use of leaf-blowers to quickly clear Plaza sidewalks after wind events is of great importance in order to remove trip-and-fall hazards. That said, the Public Works Director has determined that it would be feasible to switch to electric leaf-blowers, although there would be some cost involved in the purchase of new equipment. The cost issue is detailed in the Financial Impacts discussion.

Landscape Contractors and Residents

Staff would note that in the course of the previous reviews of leaf-blower regulations, many local landscape contractors expressed opposition to a ban on leaf-blowers or a targeted ban on gas-powered leaf-blowers. If the Council is interested revisiting leaf-blower regulations and possibly considering a ban on certain types of leaf-blowers, outreach to local landscape contractors should be part of the process. An unknown number of residents within city limits own and use leaf-blowers. If a ban on gas-powered leaf-blowers is contemplated, staff would suggest that consideration be given to a transition period in order to provide an opportunity to educate affected parties about the new rules as well as time to secure replacement equipment.

Enforcement

As discussed above, the City attempts to achieve compliance with the current regulations primarily through education. Local landscape contractors were invited to participate in the 2011 review of leaf-blower regulations and, following their adoption, the City has conducted an annual mailing to the contractors reminding them of the regulations. When noise complaints do occur, it is the Police Department that responds. A review of noise complaints from January 2012 to July 2013 found that out of 157 noise-related complaints, 16 were attributable to leaf blowers. In those cases where the operator was identified, they were advised of the regulations. To date, no citations have been issued for a violation of the leaf-blower regulations. According to the Police Chief, changing the current regulations to ban gas-powered leaf-blowers will have little or no effect on the enforcement process, neither simplifying it nor complicating it.

Financial Impacts of a Ban on Gas-powered Leaf-blowers

In 2013, the Public Works Director has researched the cost of switching to industrial-grade battery-powered leaf-blowers and estimates it to be approximately \$10,000:

6 blower units at \$300 each	\$1,800
6 quad power packs at \$500 each	\$3,000
12 additional power packs at \$200 each	\$2,400
12 rapid chargers at \$100 each	\$1,200
6 harnesses and straps at \$200 each	\$1,200
Total:	\$9,600

In addition, the City contracts out for the maintenance of eight of its sixteen parks and for its affordable senior apartment project. In the event that a ban on gas-powered leaf-blowers is adopted, it is possible that contract maintenance costs could increase. If a ban on all types of leaf-blowers were imposed, it is likely that maintenance contact costs would increase.

Recommendation

This item is before the City Council for discussion, in order to determine whether there is interest on the part of a Council majority in revising the current regulations on leaf-blowers. Direction should be given to staff should any future action be necessary.



CITY OF SONOMA
City Council
Agenda Item Summary

City Council Agenda Item: 7C

Meeting Date: 03/02/2015

Department

City Attorney

Staff Contact

Jeffrey Walter, City Attorney

Agenda Item Title

Discussion, consideration and possible action on: (1) setting date(s) for study sessions to discuss proposed amendments to rent control ordinance; and/or (2) creating task force, retaining facilitator and committing staff and City resources to facilitated discussions between residents and park owners about amending rent control ordinance.

Summary

Through its attorney, William Constantine, the Homeowners' Association at Pueblo Serena Mobilehome Park ("Association") has proposed a number of amendments to the City's existing mobilehome park rent control ordinance. These amendments include, but are not limited to:

(a) disbanding the Mobilehome Park Rental Review Board as the decision maker on rent increase applications, and, instead, assigning that responsibility to the City Manager, whose decision is based solely on experts' evaluations without hearing, and is appealable to an independent hearing officer selected through the State's Office of Administrative Hearings.

(b) authorizing the city manager to retain experts to assist the city manager in making decisions on individual rent increase applications and requiring the applicant to advance funds to pay for such experts.

(c) setting up a process whereby the residents, in response to the filing of a rent increase application, can make a settlement offer to the applicant-park owner approving a certain rent increase. If that offer is not accepted by the park owner and the application proceeds to a final decision that is less than the offered amount, then the park owner is not entitled to recover its expenses incurred in prosecuting its rent increase application after the offer was made by the residents and the residents' costs in defending the application incurred after the offer was made are recoverable against the park owner.

The number of amendments being proposed, their intricacies and their implications for the City in administering and enforcing its rent control ordinance will need extensive vetting and discussion. Many policy questions will need to be answered by the Council in this process.

Recommended Council Action

It is recommended that the City Council (1) set date(s) for Council study sessions to discuss proposed amendments to rent control ordinance; and/or (2) consider forming a task force (made up of park owners, park residents, and/or their representatives), retaining facilitator and committing staff and City resources to facilitated discussions between residents and park owners about amending rent control ordinance.

Alternative Actions

Council discretion.

Financial Impact

If the Council determines to leave the existing rent control ordinance "as is," there should be little additional costs incurred at this time. On the other hand, if the Council determines to entertain the amendments being proposed, the financial impact to the City will depend upon which approach the Council takes. Should the Council decide to conduct its own study sessions, the costs involved will

primarily take the form of staff time and legal fees of the City Attorney. Those cannot be estimated with certainty at the present time. Alternatively, should the Council decide to form a task force, retain a facilitator and direct that facilitated discussions occur over a period of time, the costs involved will be generated by the facilitator's fees, legal fees of the City Attorney, and staff time. Again, these costs cannot be estimated with certainty at the present time.

Environmental Review

Status

- Environmental Impact Report
- Negative Declaration
- Exempt
- Not Applicable

- Approved/Certified
 - No Action Required
 - Action Requested
-

Attachments:

1. Supplemental Report
 2. Residents' Attorney's Proposed Changes and Modifications (March 12, 2014)
-

Alignment with Council Goals:

N/A

cc:

SUPPLEMENTAL REPORT

Discussion, consideration and possible action on: (1) setting date(s) for study sessions to discuss proposed amendments to rent control ordinance; and/or (2) creating task force, retaining facilitator and committing staff and City resources to facilitated discussions between residents and park owners about amending rent control ordinance.

For the City Council meeting of March 2, 2015

Background

General Summary of Chief Provisions of Current Rent Control Ordinance

The City has adopted an ordinance controlling rents charged by owners of mobilehome parks to mobilehome owners who rent pads (spaces) located at those parks. Generally speaking, except as described below, the rents that can be charged for those spaces cannot exceed the rates charged on January 1, 1992. Under the ordinance, the three, most utilized methods available to increase those rents are: (a) every year since 1992, rents have been allowed to automatically adjust upwards in an amount not to exceed 80% of the change in the CPI, (b) the park owners are permitted to seek rent increases to pay for capital improvements to their parks, and (c) the park owners are permitted to seek rent increases to maintain the net operating income (“MNOI”) enjoyed by the parks in 1992. The ordinance presumes that the net operating income (“NOI”) earned by a park in 1992 provided the owner with a fair and reasonable rate of return. The MNOI procedures are aimed at assuring that if the annual automatic increases allowed under the ordinance are insufficient to maintain the same NOI a park generated in 1992, the park owner may apply to the City for an increase in rent to maintain that NOI.

Rent increase petitions filed by park owners are decided by a Rental Review Board appointed by the Council.

The City’s rent control ordinance also provides that a park owner can increase the rent charged for renting a space whose coach is sold in place to a new owner or where the space becomes vacant due to the lawful termination of the space’s lease or the voluntary removal of the mobilehome from that space, among other reasons. However, that new rent cannot exceed 10% of the rent in effect at the time of the sale or vacancy. This is sometimes referred to as “partial vacancy control.”

Summary of Some of the Proposed Revisions to Ordinance

Some of the proposed revisions to the ordinance include:

1. Disbanding the Rental Review Board as the decision maker on rent increase applications, and, instead, assigning that responsibility to the City Manager, whose decision is based solely on experts’ evaluations without hearing, and is appealable to an independent hearing officer selected through the State’s Office of Administrative Hearings.
2. Authorizing the city manager to retain experts to assist the city manager in making decisions on individual rent increase applications and requiring the applicant to advance funds to pay for such experts. It appears that the proposed revisions allow the applicant to recoup those costs in the form of rent increases if the applicant is successful in achieving the results sought in its application.

3. Setting up a process whereby the residents, in response to the filing of a rent increase application, can make a settlement offer to the applicant-park owner agreeing to accept a certain rent increase. If that offer is not accepted by the park owner and the application is prosecuted to a final decision that is less than the settlement amount, then the park owner is not entitled to recover its expenses incurred in prosecuting its rent increase application after the offer was made by the residents and the residents' costs in defending the application incurred after the offer was made are recoverable against the park owner.

4. Requiring that each park's residents annually elect a resident as the residents' representative. This representative is vested with the authority to speak on behalf of and bind the residents to certain decisions made by the representative.

5. Reducing the amount of increased rent the park owner can charge a new resident-tenant who purchases a coach-in-place or who brings a coach into the park to fill a vacancy. Instead of being allowed to charge a rent 10% higher than the pre-existing rent, the park owner is allowed to charge an increase not exceeding 5% of the pre-existing rent.

6. Expanding the definitions and provisions governing what constitutes income and expenses in the context of a petition seeking rental increases in order to MNOI.

7. Requiring park owners to file "complete" applications for rent increases before time periods begin running and as a condition to the City's obligation to process the application.

8. Amortizing over 5 years the legal and expert fees and other costs incurred by a park owner in processing a rent increase application so that even though the park owner is entitled to recoup those costs as part of a successful rent increase application, the full amount of those costs are not included in the first month's or year's increased rent.

9. Adding a provision expressly authorizing residents to petition for rent reductions in those situations where the park has reduced services or amenities as defined in the proposed revisions.

10. Expanding the sections dealing with administration fees, their collection and their calculations.

Complexity of Issues and Extent of Proposed Revisions Requires Careful Study by City Council or Task Force

From the time that the residents' attorney (William Constantine) first submitted his draft revisions to the City's rent control ordinance to the City for the latter's consideration, Mr. Constantine has suggested several further revisions to his proposed amendments, culminating in his letter of March 12, 2014 (attached). To that letter he attached the latest iteration of the amendments he was then proposing. That too is attached to this staff report. All together, they consume 48 pages. Please note that in Mr. Constantine's letter, he responds to criticisms of his proposal made by lawyers representing some of the mobilehome parks' owners. I did not include copies of the park owners' attorneys' letters nor all of the legal letter briefs submitted by Mr. Constantine. All told, they produced about four inches of material. If necessary, those can be supplied to the City Council and/or task force at a later, more pertinent time. The purpose of attaching Mr. Constantine's letter of March 12, 2014, to this staff report is to illustrate the contentiousness, complexity and number of issues that the City Council will be expected to resolve as it makes its way through the process of understanding the proposals being made and determining which, if any, it wishes to incorporate into an amended rent control ordinance.

It is the City Attorney's recommendation that the Council agree on some process that lends itself to the careful and objective examination of these proposals to assure that the ultimate outcome is in the best interests of the City and its affected residents.

Recommendation

It is recommended that the City Council (1) set date(s) for Council study sessions to discuss the proposed amendments to the City's rent control ordinance; and/or (2) consider forming a task force (made up of park owners, park residents, and/or their representatives), retaining a facilitator and committing staff and City resources to facilitated discussions between residents and park owners about amending the City's rent control ordinance.

Attachments

1. Residents' Attorney's (Mr. Constantine's) Proposed Changes and Modifications to Rent Control Ordinance (as of March 12, 2014)

William J. Constantine, Attorney

303 Potrero Street, Building #29, Suite 106
Santa Cruz, California 95060

☎ (831) 420-1238

Fax: (831) 480-5934

e-mail: wconstantinesantacruz@gmail.com

March 12, 2014

Jeffrey A. Walter
Walter & Pistole
670 West Napa Street, Ste. F
Sonoma, CA 95476

Sent via E-mail to:

Re: Reply to Moon Valley MHP's Objections to the Association's Proposed Amendments to Sonoma's Manufactured Home Rent Control Ordinance

I am replying on behalf of my clients, the Homeowners Association of Pueblo Serena Manufactured Home Park (the Association), to Attorney Bradley Yusim's January 31, 2014 - letter, which, on behalf of his client, the owner of Moon Valley MHP (the Moon Valley letter), opposes the amendments (the Amendments) that the Association proposed to Sonoma's Manufactured Home Rent Control Ordinance (the Ordinance), which accompanied my December 13, 2013 - letter to the City of Sonoma (the Association's December 13, 2013 - letter) advocating the adoption of those Amendments.

Below I will be replying to the Moon Valley letter on a point-by-point basis because it is entirely misleading with almost all of its arguments being baseless. I will demonstrate that not even a single authority that it cites supports the claims that it cites them for. However, in the spirit of compromise, and although the Association believes that the Amendments are lawful and fair as proposed, it has also modified numerous provisions of the Amendments to comply with any of Moon Valley's requests that raise legitimate concerns. (*See* enclosed modifications of original Amendments.)

I. THE AMENDMENTS PROTECT THE CITY FROM FRIVOLOUS DAMAGES-SEEKING LAWSUITS.

The most critical new provision of the Amendments is the "bifurcated - hearing process" that protects the City from, expensive damages-seeking lawsuits that are based on frivolous claims of local bias in fair return rent petition decisions. Although they do not expect to win these sham lawsuits, some unscrupulous park owners in other jurisdictions have used the high cost of defending against them as a nefarious mechanism to financially extort other cities into abandoning manufactured home rent protections. Moon Valley's

Jeffrey A. Walter
March 12, 2014
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letter's claims that the Amendments will not protect the City from these lawsuits. It attempts to support that conclusion through a series of misleading argument, which are not even supported by the case law, or other factors, that it offers in support of them. For these reasons, the Association has begun this response to that letter by analyzing and refuting each of these arguments below.

First, Moon Valley's letter misleads the City by arguing that the proposed Amendments' bifurcated administrative process does not allow the City to avoid litigation challenging fair return administrative decisions. (Moon Valley at para. 3 of p. 1 and para 5 p. 7) This argument is a red herring, since the Association's December 13, 2013 - letter does not claim that all litigation can be entirely avoided. Instead, it properly states that "The bifurcated administrative process insulates the City from **any damages-seeking lawsuits alleging "local bias"** in the City's fair return application decisions." (*See* para. 2 p. 4 of the Association's December 13, 2013 - letter) The Association's letter then points out that it is these types of damages-seeking frivolous lawsuits that have been routinely used in other jurisdictions to financially extort other cities into abandoning rent control. It explains that the Amendments' "bifurcated administrative process" will prevent this type of lawsuit because its use will only allow park owners to challenge the de novo-OAH decision and not the City manager's initial determination. In that regard, park owners can certainly still pursue litigation against the City that challenges the OAH's final decision on a rent increase petition, but they cannot include a claim against the City for damages based on allegations that the decision was improperly influenced by a local hearing officer, the City's Rent Board, or the City Council because the OAH decision supersedes and nullifies the City manager's initial determination and only the de novo-OAH hearing decision is the subject of judicial review. *See Kaczorowski v. Mendocino County Board of Supervisors* (2001) 88 Cal. App. 4th 564, 569-570.

Moon Valley's letter then continues to mislead the City by falsely claiming that the *Kaczorowski* decision does not hold that a subsequent outside agency-de novo hearing (*The Coastal Commission in Kaczorowski and here, the OAH*) will supersede the agency's (*the Board of Supervisors in Kaczorowski and here, the city manager's*) initial determination. (Moon Valley at p. 7.) It does so by arguing that *Kaczorowski* did not address that issue but only decided whether or not the "Coastal Commission" was an "indispensable party" in its proceedings. (*Id.*) That argument is dishonest because the *Kaczorowski* decision makes it clear that its holding that the Coastal Commission was an indispensable party was based on its first determination that the Coastal Commission's "de novo" hearing "superseded" and "completely nullified the former determination" of the Mendocino County Board of Supervisors:

"A hearing de novo literally means a new hearing, or a hearing the second time. [Citation.] Such a hearing contemplates an entire trial of the controversial matter in the same manner in which the same was originally heard. It is in no sense a review of the hearing previously held, but is a complete trial of the controversy, the same as if no previous hearing had ever been held.... **The decision therein ... takes the**

place of and completely nullifies the former determination of the matter." (Collier & Wallis, Ltd. v. Astor (1937) 9 Cal.2d 202, 205 [70 P.2d 171]; accord, REA Enterprises v. California Coastal Zone [88 Cal.App.4th 570] Conservation Com. (1975) 52 Cal.App.3d 596, 612 [125 Cal.Rptr. 201] [construing comparable provisions of California Coastal Zone Conservation Act of 1972].) **Once the Commission conducted its de novo examination, there was no longer a decision by the Board to review.** More fundamentally, the Board—although still interested in the matter—was no longer plaintiff's adversarial opponent. **The Commission's findings that the proposed inn complied with CEQA superseded equivalent findings by the Board (see § 21080.5, subd. (d)(2)(i); Cal. Code Regs., title. 14, § 13096, subd. (a)) in precisely the same manner that the Board's decision superseded that of the planning commission."**

Thus, the Amendments' bifurcated hearing process will inoculate the City from such damages-seeking due process-based lawsuits because the second level OAH decisions will "supersede" and "nullify" the City manager's initial determinations, since the park owners are then provided with a full evidentiary hearing by the OAH. This process also nullifies any due process objections that a park owner might have wanted to raise against the City manager's initial determination, since only one full evidentiary hearing is required. *See Kramer v. State Bd. of Accountancy* (1962) 200 Cal.App.2d 163, 175.

Moon Valley's letter then continues to mislead the City by arguing that the *Kramer* decision is distinguishable by falsely claiming that its ruling holds only that due process does not require an evidentiary hearing to be held during the "second level" hearing of an administrative review process if an evidentiary hearing was already provided at the *first level* hearing of the administrative process. (Moon Valley at p. 8). It then argues that it does not apply to the Amendments' bifurcated two-level hearing process because the full OAH evidentiary hearing will be held at the *second level* of the administrative process. *Id.* However, *Kramer* does not make that distinction and clearly holds that, regardless of when in the order of the administrative process it is held, due process only requires that one full evidentiary hearing is held "somewhere along the line" in the process, without limiting it to having to have occurred at the *first level* of the administrative review:

"Due process contemplates that somewhere along the line a fair trial be had—not that there be two or three fair trials. ... [A]ppellant having had a fair and impartial trial before a superior court, is in no position to contend he has not been afforded due process." [Citation] "Due process cannot become a blunderbuss to pepper proceedings with alleged opportunities to be heard at every ancillary and preliminary stage, or the process of administration itself must halt. Due process insists upon the opportunity for a fair trial, not a multiplicity of such

Moon Valley's letter then falsely claims that the *Besaro* and the *TG Oceanside* decisions demonstrate that a city can be sued for damages based on local bias on a rent increase decision rendered by an outside independent hearing officer (the OAH in *Besaro* and an independent hearing officer in *TG Oceanside*). (See Moon Valley at p. 7, citing *Besaro Mobile Home Park, LLC v. City of Fremont* (2012) 204 Cal. App. 4th 345, 350 and *TG Oceanside v. City of Oceanside*

Jeffrey A. Walter
March 12, 2014
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(2007) 156 Cal. App. 4th 1355, 1369) That reliance is also misplaced, as those decisions only hold that a city that contracts with an outside hearing officer to hear and decide an administrative rent increase hearing, and not with the contracted independent hearing officer, is the proper defendant in a challenge to the rent-increase decision rendered by the contracted independent hearing officer and also that the contracted independent hearing officer is not an indispensable party to that challenge. *Id.* They do not, however, hold that, in such instances, park owners can pursue the city for damages based on denial of due process at the initial City-rendered decision that has then appealed to the subsequent de novo-OAH hearing. In that regard, the Moon Valley letter fails to disclose that neither of those decisions involved the circumstances of an initial decision by either city that is then appealed to a de novo hearing in front of an independent outside hearing officer. Even more important is that the Moon Valley letter also fails to disclose that both of those cases **confirm** that the use of the OAH, or another independent outside hearing officer, actually protected those cities from expensive damages-seeking lawsuits since both of those lawsuits sought only to have the decision of the independent hearing officers overturned through writ of mandates and did not seek damages against those cities!

Finally, Moon Valley's letter then argues that the Association's letter's claim that the cities of Watsonville and Marina have successfully immunized themselves from these "damage-based lawsuits is false, without offering any support for that claim--and for good reason, as that letter admits, Moon Valley's attorney simply had no information on them!

In contrast to Moon Valley's admitted lack of any information about the proceedings in either Watsonville or Marina, I am currently retained by the City of Watsonville to defend its rent-control decisions, including to defend the City against a writ of mandate petition that is currently pending that challenges a second level - OAH decision on a fair return petition. In that regard, since Watsonville followed the same bifurcated procedures utilizing the OAH to conduct a de novo hearing at the final stage in that matter, the park owner's lawsuit was limited to seeking to overturn the OAH decision and was prevented from seeking any damages against Watsonville.

Similarly, last year I represented, this time, the homeowners, in defending against three separate fair return petitions under the City of Marina's bifurcated procedures (i.e., the very procedures that the Amendments now ask Sonoma to adopt). In that regard, when Marina first adopted its new manufactured home rent control ordinance, the attorney representing several of Marina's park owners threatened that he would sue the City "to cause them to spend hundreds of thousands of dollars in attorneys' fees" if they did so. However, the bifurcated procedures worked and resulted in all three parks that had submitted rent petitions accepting reasonable rent increase settlement offers from the homeowners and preventing the filing of those threatened "hundreds of thousands of dollars to defend against" - lawsuits.

In a footnote, the Moon Valley letter also argues that the proposed "bifurcated hearing process" will not protect the City from the above due process based damages seeking - lawsuits because it does not specify that the final OAH hearing is to be a de novo - evidentiary hearing. (*See* Moon Valley footnote No. 3 p. 7). Although proposed subsection 9.80.080 D 2 does not directly specify that the OAH hearing will be a de novo review hearing, the procedures that it is required to follow, contained in subsections 9.80.080 D 6 through 9, are those for conducting a de novo hearing, so it is one, regardless of its not being labeled as one. That is why, using the same procedures, both Watsonville and Marina have never even questioned that a de novo hearing was

Jeffrey A. Walter
March 12, 2014
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required at the second level of their administrative processes. However, although, based on the above reason, the Association believes it is not necessary, in order to accommodate the Moon Valley's objection, the Association has modified subsection 9.80.080 D 2 of its proposal (*modifications in red and original proposal in blue*) so that it now also clearly states that the OAH evidentiary hearing will be a "de novo hearing" as is set forth below:

"9.80.080 D 2. Appeal of City Manager's Decision. The decision of the city manager may be appealed within twenty days to a hearing officer. An appeal by the tenant - homeowners must be signed by tenant - homeowners from a majority of the mobile home spaces that are subject to the city manager's decision. The appealing party shall be required to pay for costs of the appeal process in accordance with any fees set forth by resolution of the city council. The Appeal shall be conducted through a de novo evidentiary hearing, which shall consider the Fair Return Petition, all information, expert opinions and arguments submitted by the park owner to the City manager in support of the Petition; the City manager's decision, and the opinions of the City's independent witness(es) and any additional arguments, upon which the City manager's decision is based; and the briefs, evidence and testimony submitted, under the provisions of this Chapter, in support of or in opposition to the Petition or the City Manager's decision by any of the parties to the proceedings, which are submitted under the provisions contained in subsections 9.80.080 D 6 through 8 of this Section.

II. THE AMENDMENTS ATTORNEYS' FEES PROVISIONS ARE CONSTITUTIONAL AND HAVE WORKED WELL IN OTHER CITIES.

Moon Valley's letter also fails to demonstrate that the Amendments' proposed attorneys' fees provisions are either unconstitutional or unworkable, attempting to do so by again relying on a series of misleading citations and unsupported claims. Accordingly, each of its arguments on this issue will also be analyzed and refuted below.

A. MHC Financing Limited Partnership Two v. City of Santee Does Not Support Moon Valley's Claims.

Moon Valley's letter mis-cites the appellate court decision in *MHC Financing Limited Partnership Two v. City of Santee* (2005) 125 Cal.App.4th 1372, 1399 by strongly implying that it affirmed a trial court "Final Statement of Decision and Judgement" declaring unconstitutional similar provisions requiring park owners to pay the attorneys' fees incurred by tenants who oppose the park owners rent increase petition. (Moon Valley at p. 3) That reference to the Appellate citation is dishonest, since it leads the City into mistakenly believing that the appellate court had affirmed the trial court's decision on that issue, when it clearly had not! Comparing the Appellate decision to the trial court's decision clearly reveals that the letter's use of the Appellate citation is entirely inappropriate, since the appellate decision makes it clear that it was not addressing the attorney's fees recovery issue. In section 7 on page 31 of the trial court ruling (attached as Exhibit A to the Moon Valley letter), the trial court did, as Moon Valley's letter claims, rule that Santee's provision awarding homeowners their attorneys' fees in its rent adjustment proceedings (section 7) was unconstitutional. However, that is only the ruling of the trial court, which provides no precedent value in California. In fact, it is a

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sanctionable violation of the California Rules of Court to even cite a Superior Court ruling in a brief filed in a California court. See California Rules of Court, Rule 8.1115 and *Santa Ana Hospital Medical Center v. Beishe*,¹ (1997) 56 Cal.App.4th 819 at 830 to 831.

However, after improperly citing the Superior Court ruling as establishing law on the attorneys' fees issue, Moon Valley's letter then also fails to mention that the City of Santee did not appeal that portion of the Superior Court's ruling and, therefore, that the Court of Appeal made no ruling on it. Instead, the City of Santee only appealed an entirely independent portion of that trial court's ruling, which had stated that the city, after adopting the language from the wrong initiative (Initiative #381) as their rent control ordinance, could not cure that defect by adopting the language from the correct initiative (Initiative #412), and that the entire ordinance was invalid on that basis. The Appellate court's ruling makes it clear that the city had decided to accept the trial court's ruling on that ordinance's section 7 attorneys' fees recovery provision and did not appeal it:

“Because none of the rulings in sections 3 through 7 of the court's decision were challenged on appeal, we were not seeking supplemental briefing regarding the correctness of those rulings, but rather on whether they should be viewed as part of the judgment despite not being set forth in the judgment section of the court's final statement of decision and judgment.” [125 Cal.App.4th at 1391]

The only issue relating to section 7 that the Court of Appeal addressed was whether or not the City's decision to not appeal the trial court's ruling on it rendered the rest of the ordinance also invalid or whether section 7 was severable. In that regard, the Court of Appeal sided with the City, on all issues on appeal, and ruled that section 7 was severable and that the City properly substituted the language of initiative 412:

“The City contends that the court's rulings that certain provisions of Ordinance 412 are unconstitutional or are preempted by the MRL may be severed from the ordinance under the ordinance's severability clause and California law, and that the remainder of the ordinance is operative. fn. 18 MHC contends that the court's ruling that the attorney fees and assessment provisions of Ordinance 412 unconstitutionally infringe MHC's right to petition the City for rent adjustments renders the entire ordinance void. We agree with the City.” [125 Cal.App.4th at 1392]

However, in making that ruling, the Court of Appeal made it clear that it was not affirming the trial court's ruling on section 7, which it specifically stated was not challenged on appeal, but was only ruling that it agreed with the City that, by accepting the trial court's section 7 ruling, that the City had not invalidated the rest of the ordinance. Accordingly, Moon Valley's letter's citation of the appellate court decision is misleading and has no value.

Just as important, even if the trial court's ruling had precedential value on the proposed Amendments to Sonoma's Ordinance, which it does not⁽¹⁾, it would still not

¹Trial court rulings have no precedential value in California and attorneys are prohibited from citing them in California courts.

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invalidate the Amendments' proposed Section 9.80.020(I)(1)(ix) expense recovery provisions because that section is clearly distinguishable from the attorney's fee provision invalidated by the trial court in *MHC Financing v. Santee*. In *MHC Financing v. Santee*, the trial court ruled that section 7 of Santees' ordinance had a chilling effect on the park owner's right to pursue a rent increase because it always mandated the payment of the homeowners' attorneys' fees whenever a park owner failed to obtain "a rent increase in excess of the increase that the park owner was entitled to under automatic adjustment provision" of their ordinance. (See page 32 of Exhibit A of Moon Valley letter) Section 9.80.070 F 3 a viii (A) of the proposed Amendments, however, simply does not do that. Instead, as explained above, it is modeled after CCP Section 988 in that it allows the homeowners to evaluate the park owner's rent increase application and the City's expert witness' evaluation of it and then to make an offer to their park owner based upon that evaluation. If the park owner accepts that offer, the homeowners get no attorneys' fees. If, however, the park rejects that offer (*and, thereby, causes the homeowners to unnecessarily have to spend substantial attorneys' fees*) and does not exceed the offer, only then does the park owner have to pay only their post-offer attorneys' fees. California Code of Civil Procedure 988, as well as California's other statutes that award attorneys' fees to prevailing party (*for example section 798.85 of the Mobile Home Residency Law*), have been in effect for decades and have all been upheld as constitutional.

B. The Moon Valley's Arguments on the Four "Critical Differences" That it Alleges Between the Amendments' Attorneys' Fees Provisions and CCP Section 998 Are Also Baseless.

Moon Valley's letter also lists four arguments that it describes as "critical differences" between CCP Section 998's provisions and the Amendment's attorneys' fees provisions, which it claims render the Amendment's provisions unlawful. (Moon Valley at para 5, p. 3 to para. 4, p. 4) Those four arguments are also baseless, as will be shown below:

Moon Valley Argument 1. The proposed Amendments are unlawful because they directly authorized the recovery of attorneys' fees and costs compared to CCP Section 998, which does not and, instead, relies on other statutes already authorizing attorneys' fees recovery. (Moon Valley at para. 1 p. 4).

Response: It is irrelevant that CCP Section 998 relies on other statutes, which must already allow for the recovery of attorneys' fees, and that the proposed Amendments' provisions allow for their direct recovery, since, in California, as elsewhere, legislation providing for the direct recovery of the legal fees by a prevailing private party in civil disputes is common. Hundreds of California statutes provide for an award of attorney fees to the prevailing party. (*See* Pearl, Cal. Attorney Fee Awards (Cont. Ed. Bar 2d Ed. 2001) § 2.1, p. 12; see also *Id.*, ch. 17 [charting many such statutes].)

Such fee-shifting statutes are not unconstitutional because they **simply require the party that creates the costs to bear them.** [*See Premier Elec. Const. Co. v. N.E.C.A., Inc.* (7th Cir. 1987) 814 F.2d 358, 373.] *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 62]

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Municipal provisions of this type are in effect in local tenant protection statutes. (E.g., Oakland Mun. Code Secs. 8.22.300 -390, San Francisco Rent Stabilization and Arbitration Ord., 37.9(f), Watsonville Mun. Code Secs 11-3.450., Marina Mun. Code Sec. 5.72.100F3aviii)

Moon Valley Argument 2. The proposed Amendments are unlawful because they do not allow both sides to make a settlement offer compared to CCP Section 998, which does. (*Id.* at para. 2 of p. 4):

Response: It is irrelevant that CCP Section 998 allows either litigant to make an offer of compromise and that the Amendments do not because the allowance of such reciprocal offers is not a prerequisite to establish the validity of a fee-shifting statute. Moreover, the amount that the Park owner will settle for is already stated, as it is simply the amount requested in the park owner's rent increase application. More important, the park owners are able to recover their attorneys' fees and costs if they achieve **any** amount above their residents' offers, even if the awards are well below the amount requested in the park owners' original petitions, so park owners do not need an extra opportunity to make settlement offers, as they can simply reject the residents' offers and then exceed them in their awards to recover their fees.

However, although, for the reasons above, the Association believes that it is not needed, in order to accommodate the Moon Valley's objection, the Association has modified its proposal to also allow park owners to make settlement offers under the same procedures that are available to the residents. That modification is contained in the modified Amendments submitted with this letter, as follows (modification in red and originally proposed language in blue):

Modifications to Proposed Section 9.80.070 F 3 a viii (A) (1) through (4):

(1) Recovery of fees, expenses, and other costs incurred in the course of preparing and presenting a fair return petition, or in responding to a resident service reduction petition under section 9.80.100, shall be limited when a park owner rejects a settlement offer from the residents and then does not ~~recover more~~ achieve an award that exceeds the terms of the proposed settlement, unless the park owner has also made a settlement offer to the residents and the residents have not accepted the park owner's offer within seven days of its being made to them and the park owner's award then meets or exceeds the terms of the park owner's settlement offer. The purpose of this limitation is to encourage both park owners and mobile home owners to minimize, to the extent possible, the cost and expense of fair rate of return mobile home space rent and service reduction administrative proceedings by providing a mechanism for the early settlement of ~~fair rate of return~~ those administrative proceedings.

(2) At any time after the filing of a ~~fair rate of return rent application~~ either of the petitions covered under the provisions of subsection (1) above, the designated representative of the residents of the mobile home park, or the mobile home park owner, may serve an offer in writing on the mobile home park owner who has filed that petition opposing party to stipulate to a compromise amount for the fair rate of return rent increase of the award or relief requested in the petition. The designated representative The offering party shall also file a copy of this written settlement offer with the city in a separately sealed envelope and with a statement on the outside of the envelope stating that it is a written settlement offer pursuant to this subsection.

(3) The sealed copy of the written settlement offer that is so filed with the city is not to be opened by the city until it is either accepted by the park owner opposing party or, if it is not accepted by the park owner opposing party, after a final rent increase award or denial has been made on the park owner's petition by either the city manager or by the hearing officer. Upon receiving such offer to compromise, the mobile home park owner opposing party has seven days to accept the offer by filing a written acceptance with the city clerk.

(4) A mobile home park owner is not entitled to recover the portion of its petition expenses, fees, or other costs that are incurred following the submission of a prevailing offer by the residents and the residents may recover reasonable attorneys' fees incurred by the residents after the rejection of a their "prevailing" offer. The designated tenant - homeowners' representative shall be determined to have made a prevailing offer if a their settlement offer has been made and that offer has not been accepted by the park owner within seven days after the making of that offer, and the park owner's rent increase petition award fails to exceed the amount of that settlement offer unless the park owner has also made a settlement offer to the residents and the residents have not accepted the park owner's offer within seven days of it being made to them and the park owner's rent increase petition's award then meets or exceeds the amount of the park owner's settlement offer.

Moon Valley Argument 3: That the Amendments are unlawful because they penalize a park owner by not allowing them to recover their attorneys' fees incurred for the time period following a prevailing settlement offer from the residents. (*Id.* at para. 3, p. 4):

Response: This argument is baseless because the proposed amendment's fees' recovery provision copies CCP Section 998 on that procedure and CCP Section 998, likewise, does not allow a litigant to recover their attorney's fees and costs that they incur after the date of the opposing litigant's settlement offer to them, if their final award does not exceed that settlement offer (i.e., a "prevailing settlement offer"):

"If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall not recover his or her post offer costs and shall pay the defendant's costs from the time of the offer" [CCP 998 (c)(1)]

In both instances, CCP Section 998 and the Amendments reasonably limit the recovery of those fees and costs to discourage the parties from incurring unnecessary fees and costs, and their making the other side pay those fees and costs, that could have been avoided by accepting the offers to compromise.

Moon Valley Argument 4: That the proposed Amendments are unlawful, under *Wear v. Calderon*, 121 Cal. App. 3d 818, 821 (2d Dist. 1981), because Section 998 contains a "good faith" requirement and the Amendments' fees recovery provisions do not and that this will allow the residents to make a "token or nominal" offer that will then put their park owner at risk for their attorneys' fees. (*Id.* at para. 4, p. 4) Likewise, paragraph 3 on page 3 of the Moon Valley letter makes this same argument in a different form by also arguing that the homeowners are not "incentivized" to make a realistic offer because it is not true that they will be required to reimburse the park owner for his expenses if the rent award exceeds

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their offer as his fees will simply be amortized as an expense in the MNOI calculations rather than being recovered directly from the residents.

Response: CCP Section 988 also does not contain a “good faith requirement” in its codified text. Instead, it was imposed by case law: *Wear*. *Id.* However, even if the *Wear* analysis applied here, which--as is explained below--it does not, then the *Wear* decision would also require the same good faith requirement be implied here. (i.e., CCP Section 998 was not declared unconstitutional and voided by *Wear* for not containing a “good faith requirement” in its codified section, it was simply imposed, so that, likewise, if a court found that it was required here, it would simply impose it based on *Wear* rather than invalidating that provision of the Amendments.)

More important, the *Wear* analysis simply does not apply to the Amendments’ attorneys’ fees shifting provisions because they clearly provide no encouragement to the residents to make “token offers” that then put the park owners at risk of paying significant penalties. Moon Valley’s claim to the contrary is nonsensical and demonstrates a misunderstanding of how the Amendments’ attorneys’ fees provisions work, since they actually do the exact opposite: They put heavy pressure on the residents to make a settlement offer as high as possible and penalize them to deter them from making token or low offers! The Amendments accomplish this because the residents can recover their attorneys’ fees, and prevent their park owners from recovering their fees, only if their park’s rent increase award is less than the amount of the resident’s settlement offer. Accordingly, a token or nominal offer by the residents is worthless to them and will almost always result in their park owner recovering its full attorneys’ fees and the residents recovering none of theirs. For example, if a fair return petition requests a \$200 per month rent increase and the residents offer a token \$10/mo. rent increase, and their park is then only awarded a \$20/mo. rent increase at the hearing, then the residents will be responsible for paying the park’s their full fees, even though their park owner only achieved an award of 10% of the amount requested in their application, because it, nevertheless, exceeded the residents’ “token - nominal” offer.

In that regard, the Amendment’s settlement procedures are designed to enable both sides to respond to the City manager’s determination, which is based on the independent expert’s recommendation. If that independent determination determines a rent increase of \$50 per month is appropriate, then the residents are under significant pressure to make a significant settlement offer in that amount and would be foolish to make a “token - nominal” offer, instead.

The Moon Valley letter’s argument that the homeowners are not incentivized to make a reasonable offer because their park owners’ reasonable costs of pursuing a successful MNOI will only be amortized as an expense over five years, rather than being directly recovered, also misunderstands and misstates the operation of proposed attorneys’ fees provisions. Instead, the provisions actually amortize both the expense **and** the payback period over five years and allow the park owner to recover the attorneys’ fees as a separate direct pass-through because those fees are not a permanently recurring expense. The park owner, thereby, recovers them directly as a five-year pass-through, including interest. Although the Association believes it is unnecessary, the Association has modified those procedures to clarify that process as follows (modifications in red and originally proposed language in blue):

Modifications to Proposed Section 9.80.070 F 3 a viii (A) and ix:

(A) Reasonable fees, expenses, and other costs incurred in the course of successfully pursuing rights under or in relationship to this chapter and regulations adopted pursuant to the chapter including costs incurred in the course of pursuing

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successful fair return petitions. The recovery of these said expenses shall be separated out from any MNOI rent increase award and recovered from the residents as a separate, limited time period, passthrough. These expenses shall be amortized and recovered in equal monthly payments over a five-year period, unless the city manager concludes that a differing period is more reasonable, and the passthrough payment of these fees shall terminate after the full payment of those fees with interest has been recovered by the park owner at the end of the amortization/payback period.

ix. Interest Allowance for Expenses That Are Amortized. An interest allowance shall be allowed on the cost of amortized expenses, including but not limited to the special legal expenses passthroughs provided for in subsection viii above; the allowance shall be the interest rate on the cost of the amortized expense equal to the "average rate" for thirty-year fixed rate on home mortgages plus two percent. The "average rate" shall be the rate Freddie Mac last published in its weekly Primary Mortgage Market Survey (PMMS) as of the date of the initial submission of the petition. In the event that this rate is no longer published, the index which is most comparable to the PMMS index shall be used.

C. The Moon Valley's Remaining Arguments against the Amendments' Attorneys' Fees and Expenses Provisions Are Also Baseless.

The Moon Valley letter also argues that it is unconstitutional to require the park owners to pay for the costs of the city's independent experts to analyze the fair return petition, again citing *MHC Financing Limited Partnership Two v. City of Santee* (2005) 125 Cal.App.4th 1372, at 1399. (Moon Valley at para. 5, p. 4) However, that citation is a dishonest ruse, because, as is explained in II A of this letter, that was not one of the issues that was considered or decided by that appellate court. *Id.* Additionally, it is a routine procedure for cities to require an applicant to cover the costs incurred by a city in reviewing and in deciding on discretionary administrative applications. Moreover, a park owner is not permanently stuck with those costs because, under proposed section 9.80.070 F 3 a viii (A), a Park owner is later able to pass those costs to the residents.

The Moon Valley letter then concludes its critique of the Amendments' attorneys' fees provisions by making three arguments, which are simply rephrased repeats of three of its "page 4 - four bullet point arguments," which have already been refuted in Section II B above, but now also arguing that, for the same reasons that are refuted in Section II B above, the provisions are also not permitted under *Galland v. City of Clovis* (2001) 24 Cal.4th 1003. (Moon Valley at paras. 2 to 4 of p. 5).

Since the substance of all three of these arguments has been rebutted in section II B above, the City is directed to that section rather than our repeating that rebuttal here. The *Galland* decision does not change those arguments, or Section II B's rebuttal of them, because it did not consider the circumstances presented by those provisions of the Amendments, and it holds only that a park owner must be compensated for the reasonable costs of pursuing a fair return application. *Id.* It does not, however, prohibit those costs from being amortized and paid over a period of five years, with appropriate interest, as subsections 9.80.070 F 3 a viii (A) and ix provide. *Galland* also does not require that a park owner be able to recover "avoidable" application legal expenses that could have been avoided by the acceptance of the residents' settlement offer, as such avoidable expenses are clearly not reasonable. *Id.* (Also see Section II B, above.)

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III. MOON VALLEY FIVE “PROBLEMS” WITH THE AMENDMENTS’ PROPOSED SERVICE REDUCTION PROCEDURES ARE ALSO BASELESS.

The Moon Valley letter’s list of five “problems” with the proposed service reduction procedures are also baseless as will be demonstrated below:

Moon Valley Argument 1. Proposed amendment section 9.80.100(C)(2), the service reduction procedures, are unfair and arbitrary because they provide no guidelines or standards for determining whether a material service reduction has occurred.

Response: Almost all manufactured home rent control ordinances have similar service reduction procedures. Since a manufactured home park contains numerous facilities and services, which are all unique from each other, it would be unduly burdensome to attempt to legislate service reduction standards for all of them. Instead, as other manufactured rent control ordinances provide, service reduction claims are based on their unique factual circumstances and are determined on a case-by-case, which is properly left to the discretion of the hearing officer. Although there are numerous similar provisions in almost all other manufactured home park rent control ordinances in California, Moon Valley cites no case law stating that the similar service reduction procedures of any of those ordinances have ever been ruled unlawful for not containing those guidelines and standards, for a good reason: None have!

Moon Valley Argument 2. The procedures discriminate against park owners because when they seek a rent increase they are required to pay up front the City’s expert witnesses’ fees and risk paying the homeowners’ fees but there are no corresponding provisions for homeowners who seek a rent reduction.

Response: Park owners routinely utilize expert witnesses to support their complicated fair return application, and so, as is pointed out in the Association’s December 13, 2013 letter, case law mandates that the City’s decision on those applications must also be supported by such expert analysis. [*See Whispering Pines Mobile Home Park, Ltd. v. City of Scotts Valley* (1986)180 Cal.App.3d 152.] However, unlike that circumstance, rent reduction petitions involve simple factual circumstances not requiring the employment of expert witnesses, and there is no case law that holds that a City’s decision on a rent reduction petition must be supported by an expert analysis. Accordingly, that requirement is not needed to support proposed section 9.80.100(C)(2), as experts will not be used.

Regarding the attorneys’ fees recovery provisions, in response to Moon Valley’s objection, the Association has modified the proposed amendment’s attorneys’ fees provision to make them also apply to section 9.80.100 (C)(2), as they are so set forth in response to Moon Valley Argument 2 in Section II B of this letter, above.

Moon Valley Argument 3. The procedure is unfair to park owners because there is no reciprocal process for increasing rents where services have been increased or enhanced.

Response: This argument is simply not accurate. Park owners simply do not increase or enhance services in circumstances under which they cannot then recover the expenses, under an ordinance’s fair return procedures, for those increased services. In that regard, under both Sonoma’s current ordinance and under Amendments, a park owner can either pass-through most of those increased services or enhancements to the residents or, if the “pass-through provisions” do not apply, and the increase in the services or enhancements then cause the park owner to no

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longer be receiving a fair return, then the increased expenses of those increased services can be submitted as expenses in a MNOI-fair return petition, and the park owner will then be compensated through that procedure. Accordingly, that claim is baseless.

Moon Valley Argument 4. Subsection 9.80.100(C)(3)'s provision allowing homeowners to receive a service reduction - rebate to cover the period from their notice to the park owner of the service reduction allegation through the date of the city manager determined of it, gives the homeowners an incentive to flood Park owners with complaints.

Response: That claim is nonsense, as Moon Valley's letter offers no explanation as to how or why that rebate provision gives homeowners an incentive to flood park owners with those complaints. In fact, there is no incentive. If a rent reduction request is legitimate, then the homeowners will rightly have an incentive to pursue it and will also be properly entitled to subsection (3)'s rebate. However, if the rent reduction is not legitimate, then they will receive neither the rent reduction nor subsection (3)'s related rebate, so there simply is no incentive to flood park owners with frivolous complaints. Moreover, now that the attorney's fee shifting provisions also applies to section 9.80.100 rent reduction petitions, that will provide an additional strong disincentive against homeowners filing such frivolous complaints.

Moon Valley Argument 5. Homeowners will file frivolous rent reduction petitions, and consolidate them with park owner rent increase petitions to gain settlement leverage.

Response: The Moon Valley letter again offers no explanation as to what benefit the homeowners will receive from filing frivolous rent reduction petitions, this time, doing so in response to park owner rent increase petitions. For the same reasons as above, if a rent reduction request is legitimate, then the homeowners will rightly have an incentive to pursue it and are properly likely to do so regardless of whether or not their park has also filed a rent increase petition. However, if the rent reduction is not legitimate, they gain no benefit for filing one in response to the park owner's filing a rent increase petition and would be wasting their time, and now also risking having to pay the park owner's attorney's fees, if they do so.

IV. MOON VALLEY'S CRITICISM OF REDUCING FROM TO 5% THE ADDITIONAL RENT INCREASE THAT PARK OWNERS ARE PERMITTED TO RECEIVE UPON THE SALE OR TRANSFER OF A MOBILE HOME IS BASELESS.

The Amendments reduce from 10% to 5% , the additional rent increase that park owners are allowed to receive whenever a home is sold or transferred (i.e., partial vacancy decontrol). The Moon Valley letter claims that this change is unconstitutional **without** citing any case law in support of that conclusion. In that regard, most manufactured home rent control ordinances in California do not allow any rent increase whenever a home is sold or transferred (i.e., they have full "vacancy control"). After years of challenges, full vacancy control has been firmly upheld by both the federal courts and the California Supreme Court. Accordingly, over the last 15 years many cities have replaced their vacancy decontrol and partial vacancy decontrol with full vacancy control.

In 1998 Sonoma adopted an additional partial vacancy decontrol rent increase 10%, on top of the annual CPI rent increase. However, it has turned out to be too large as it has resulted in many homes' monthly rents being hundreds of dollars per month above their neighboring homes making them unaffordable to Sonoma's low and very low income

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housing population. Given that Sonoma has a shortage of low-income housing, that growth of unaffordability has to be slowed. Rather than requesting full vacancy control, the Amendments are moderate in seeking only to reduce Sonoma's partial vacancy decontrol to 5%. This is needed to slow the loss of affordable housing in Sonoma, it is fair to both sides and it is constitutional.

V. MOON VALLEY'S CRITICISMS OF THE AMENDMENTS' SUPPLEMENTAL ADMINISTRATIVE SERVICE FEE IS BASELESS.

The Moon Valley letter also argues that it is unconstitutional to require the park owners to collect for the City, from the homeowners, the supplemental administrative service fee, again citing *MHC Financing Limited Partnership Two v. City of Santee* (2005) 125 Cal.App.4th 1372, at 1399. (Moon Valley at para. 5, p. 4) However, for the third time, that citation is a dishonest ruse, because, as is explained in II A of this letter, that was not one of the issues that was considered or decided by that appellate court. (*Id.* at 1391)

Just as important, even if the trial court decision had value as precedent, which it does not (as explained in Section II A of this letter), a primary consideration that the trial court highlighted in making its ruling that the City of Santee's fee had an unconstitutional chilling effect was that it was "not a pass through" because Santee's park owners "remained liable to the city for payment" even if a homeowner refused to pay it the park owner. (*See* p 35 of Exhibit A to Moon Valley letter). Here, the Amendments' Supplemental Administrative Fee provision does not require a park owner to pay the administrative fee for any homeowner who fails to pay it to the park owner so it clearly is a "pass through" rather than a fee that the park owner is liable for:

"This Fee shall be deemed a debt owed by the tenant - homeowner to the City. Any such Fee that has been collected by a Park owner, which has not been paid over to the City, shall be deemed a debt owed to the City. Park owners are not required to pay the Fee to the City for spaces occupied by tenant - homeowners who fail to pay the fee to the Park owner and failure to pay the Fee shall not be grounds for a Mobile homepark rule violation or grounds for eviction under Civil Code Section 798.56 (a) or (e)." (*See* second sentence of section 9.80.270 of proposed Amendments)

VI. MOON VALLEY'S OBJECTION TO SECTION 9.80.070(G)'S PROVISION ALLOWING THE PARK OWNER TO RECEIVE A RETROACTIVE RENT INCREASE IS ABSURD SINCE THAT SECTION ONLY BENEFITS PARK OWNERS.

The Moon Valley letter claims that Section 9.80.070(g)'s provision allowing the park owner to receive a retroactive rent increase is unfair because homeowners simply have sufficient time to prepare to pay huge retroactive rent increases all at once. (Moon Valley at p. 6) Since that Section only benefits the park owners by allowing them to recover more rent, Moon Valley's claim is simply absurd! More important, since that provision allows park owners to collect reasonable interest on the collection of retroactive rent surcharges, which are amortized and paid over five years, the park owners are fully compensated for any retroactive rents that they may be entitled, which are due to the City's taking longer than 120 days to decide a fair return petition. It is also absurd to claim that manufactured home owners can simply plan ahead, save up their money, and pay a retroactive rent increase all at once since many of these home owners are low income and will not be able to do so.

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VII. THE ADOPTION OF THE PROPOSED AMENDMENTS DOES NOT RE-OPEN THE STATUTE OF LIMITATION THAT PREVENTS MOON VALLEY FROM BRINGING A FACIAL CHALLENGE AGAINST THE ORDINANCE.

Moon Valley's letter also threatens that adopting the Amendments will dramatically increase their ability to bring a new "facial" claim challenging the constitutionality of the Ordinance. Similar to its other boasts, this threat is simply not supported by the citations that it purports to rely on.

To begin with, Moon Valley's reliance on *De Anza Properties X Ltd. v. County of Santa Cruz*, 936 F.2d 1084, 1086 (9th Cir. 1991) is entirely misplaced because, as Moon Valley's letter actually admits, *DeAnza* holds that a subsequent amendment only reopens the statute of limitation for making a facial challenge on a rent control ordinance if it "substantially changes its impact on the property owner" [*See* Moon Valley letter at p. 8, citing *De Anza Properties X Ltd. v. County of Santa Cruz*, 936 F.2d 1084, 1086 (9th Cir. 1991)].

Under *De Anza Properties X Ltd.*, the Amendments do not reopen the statute of limitations time period because they clearly do not change the two primary protections of the ordinance that Moon Valley's letter complains of. In that regard, they neither enact nor substantially change the standard for granting fair return petitions (the MNOI -- standard) nor do they enact vacancy control, since Sonoma's ordinance currently contains both of those provisions. Instead, the Amendments simply enact new reasonable procedures for implementing those two provisions, which are already contained in Sonoma's current ordinance. Accordingly, they do not "substantially **change** (i.e., detrimentally increase) its impact on Sonoma's park owners." *Id.*

In truth, the procedures actually lessen the impact on Sonoma's park owners by providing them, for the first time, with a codified mechanism to recover all of their attorneys' fees, expert witnesses' fees and costs whenever they are in need of a legitimate fair return rent adjustment. The fact that the Amendments do not allow that recovery for frivolous fair return petitions (i.e., those that could be avoided through reasonable settlement) does not increase the ordinance's impact on the park owners. Additionally the Amendments further lessen the ordinance's impact on park owners by providing an additional mechanism to recover a retroactive rent increase if the proceedings take more than 120 days. Since the current ordinance allows park owners to make neither of these recoveries, the Amendments' clearly lessen, rather than increases, the ordinance's detrimental impact on park owners.

Even if Moon Valley somehow got past the above barrier and filed a lawsuit challenging the Amendments' above provisions (i.e., by foolishly arguing that they substantially increase rather than substantially decrease the ordinance's impact on park owners), then that frivolous lawsuit would only be permitted to challenge the Amendments' new provisions to the ordinance and not the ordinance's long use of the MNOI method and vacancy control, since all ordinances are "severable" for statute of limitation purposes. This means a park owner could then only challenge those parts of the ordinance that were recently amended, and **not those that are simply continuing or reenacted:**

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“The only question that remains is whether Action’s asserted injury arises from provisions that were enacted in 1979 or from substantive amendments that were enacted in 2002 and that altered “the effect of the ordinance on” Action. **If Action challenges either the substance of the 1979 provisions or the mere re-enactment of those provisions in 2002, then it’s claim is time barred.**” *See* Action Apartment Ass’n v. Santa Monica Rent Control Opinion Bd., 509 F. 3d 1020, 1027 (9th. Cir 2007). *Also See De Anza Properties X, Ltd.* 936 F.2d at 1086 [holding is the same - that action is time barred if it challenges unamended portions of ordinance].

Finally, Moon Valley also makes the argument that the Association’s reliance on the Ninth Circuit’s *MHC Financing* decision is misplaced because it affirms the constitutionality of only San Rafael’s ordinance and not Sonoma’s Ordinance. (Moon Valley at p. 9). That argument is absurd, since it argues that Federal Ninth Circuit Court of Appeal decisions on manufactured home rent control ordinances provide no precedent over the same constitutional, or other, challenges against other similar ordinances. Since the *MHC Financing* decision decided the same challenges that Moon Valley is threatening the Amendments with, it certainly applies to Sonoma’s Ordinance.

VIII . MOON VALLEY’S UNSUPPORTED REQUESTED AMENDMENTS SHOULD BE REJECTED.

Moon Valley ends its letter with a list of eight counter-amendments that they urge the City to adopt instead of those proposed by the Association. It is notable that they fail to offer any legal, or other, argument justifying the adoption of any of them--and for good reason: there are none, and their proposed amendments are all unsupportable! Accordingly, all eight of Moon Valley’s proposed amendments (which are all located on pages 9 and 10 of Moon Valley’s letter) are briefly refuted below:

Moon Valley Proposed Amendment 1: Eliminate vacancy control.

Association’s Response: Vacancy control has been upheld by both the California and US Supreme Courts and it is needed to preserve the homeowners’ equity in their homes.

Moon Valley Proposed Amendment 2: Increase the Ordinance’s cap on annual rent increases from 80% to 100% of the CPI change, and remove the 5% cap on annual increases.

Association’s Response: 80% CPI annual increases and 5% caps have been upheld and are needed to preserve the affordability of the rents. If a park owner needs a larger increase to maintain a fair return, then the Ordinance’s MNOI-fair return provisions provide a procedure for obtaining that increase.

Moon Valley Proposed Amendment 3: Amend the MNOI formula to allow a park owner a rent increase sufficient to ensure its NOI increases by 100%, rather than 80%, of the CPI change.

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Association's Response: The Amendments proposed by the Association have already made this change.

Moon Valley Proposed Amendment 4: Add to the Ordinance a provision that would allow park owners to pass through to homeowners any fees or charges that a majority of homeowners request or agree should be passed through.

Association's Response: Moon Valley offers no legal support for this change, as there simply is none. More important, this could result in the constructive eviction of the low income homeowners in a park who could not afford the increased fees and charges that a majority of the higher income homeowners in a park might want. This could result in parks being converted into high end-luxury parks and the elimination of the low-income housing opportunities that they currently provide.

Moon Valley Proposed Amendment 5: Clarify the types of expenses that do not meet the definition of "Capital Improvements" as set forth on page 3, subparagraph B of Resolution 57-1998.

Association's Response: This is simply not needed. Moon Valley offers no examples of any parks being prevented from seeking needed capital improvements because they could not determine whether they fit into the Resolution's definitions. The Resolution's method is consistent with the standards used in manufactured home rent control ordinances throughout California, which have been upheld.

Moon Valley Proposed Amendment 6: Amend Section 9.80.065(C) of the Ordinance to eliminate homeowners' right to protest a rent increase for capital improvements that is based on a "Necessary Capital Improvement," as that term is defined in Section 9.80.020(B)(1), and thus ensure that park owners are able to pass-through to homeowners any capital improvement that is necessary to maintain the park (as is the owner's obligation).

Association's Response: The homeowners must have the right to contest the legitimacy of and costs of a proposed capital improvement that a park owner claims is a "Necessary Capital Improvement" under Sections 9.80.065(C) and 9.80.020(B)(1). Eliminating this right would open the floodgates of illegitimate and overpriced pass-throughs being obtained by park owners, against which the homeowners would have no defense.

Moon Valley Proposed Amendment 7: Amend the amortization periods for "Sewer systems" and "Water distribution systems" in Resolution 57-1998 from 50 years to 15 years and 25 years, respectively.

Association's Response: Since an amortization period of a sewer system or a water distribution system should equal its useful lifetime, it is simply absurd for Moon Valley to argue that they are 15 years and 25 years, respectively. There are hundreds of mobile home parks in California, and it would be almost impossible to find one that has replaced their sewer system every 15 years or their water distribution system every 25 years.

Moon Valley Proposed Amendment 8: Amend the definition of "in-place" sale to limit the exclusion only to a transfer to a spouse, and otherwise including in the definition any other transfer of a mobilehome, upon death or otherwise (*see* Resolution 57-1998 at 4).

Association's Response: This is a sneaky "end run" to eliminate vacancy control by making it apply only to transfers to a spouse. Vacancy control has been upheld by both the California and the US Supreme Courts and is needed to preserve the homeowners' equity in their homes. Moon Valley's proposal would effectively eliminate vacancy control and allow park owners to "steal" the equity that homeowners have invested in their homes.

IX. CONCLUSION

The Moon Valley letter starts off by claiming that the proposed Amendments are overwhelmingly pro-tenant, unfair to park owners and unconstitutional. (Moon Valley at p.1) As demonstrated above, Moon Valley's letter was then unable to support any of those conclusions. It has also been suggested that concessions may have to be given to the park owners in exchange for the Amendments, which seems to buy into Moon Valley's conclusion. That suggestion is also unfounded because the Amendments are taken from the City of Marina's ordinance, which already went through the process of balancing out the interests of the homeowners and park owners and of ensuring that neither side is treated either unfairly nor in an unconstitutional manner. In that regard, the proposed Amendments provide the following significant concessions to park owners, over Sonoma's current ordinance, and, as explained above, the Association also further modified the originally proposed Amendments in response to Moon Valley's letter, providing even more concessions:

- The Amendments allow park owners to recover their full legitimate expenses of pursuing legitimate fair return petitions. The current ordinance prohibits that recovery.
- The Amendments allow Park owners to recover a retroactive rent surcharge, with interest, if the fair return administrative process exceeds 120 days. The current ordinance does not allow for that recovery with interest.
- The Amendments' MNOI - formula allows for increases in its NOI factor of 100% of the CPI. The current ordinance only allows for an 80% CPI increase.
- The Association has modified the Amendments to allow park owners to utilize the settlement procedures of the Amendments to recover their attorneys' fees in defending against service reduction - rent reduction petitions filed by the homeowners.
- The Association has modified the Amendments to allow park owners to make an additional settlement offer to increase their ability of recovering attorneys' fees in fair rate of return petition proceedings.
- The Association has modified the Amendments to clarify that appeals of the city manager's initial fair rate of return petition determinations, to the State Office of Administrative Hearings, will be subject to de novo hearings.

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The proposed Amendments are balanced and should be adopted as proposed. It should also be remembered that the last time the City amended the ordinance, in 1998, it adopted two significant concessions to the park owners, because it believed that they were necessary, without feeling obligated to adopt additional counter - concessions to the homeowners. Those concessions were increasing the automatic CPI increase from 60% to 80% and allowing park owners an additional rent increase of 10%, whenever a home is sold. Here, the Amendments are much more balanced than that, providing park owners with significant concessions but moderating them so they cannot be used unfairly against the City's manufactured home owners.

For all of the above reasons, the Association respectfully requests that the City adopt the Amendments proposed by the Association, with the compromise modifications proposed in this letter and in the attached modified proposal, and reject those proposed by Moon Valley.

Sincerely,

Will Constantine

William J. Constantine, Attorney for the Homeowners
Association of Pueblo Serena Manufactured Home Park

cc: client

enclosure

VII. Consumer Protection

Chapter 9.80

MOBILEHOME PARK SPACE RENT PROTECTION*

Sections:

Article I. General Provisions

9.80.010 Findings and purpose.

~~9.80.020 Definitions for Article I.~~

~~9.80.030 Mobilehome park rental review board.~~

~~9.80.035 Rental increase applications.~~

~~9.80.040 Base rent.~~

~~9.80.045 Automatic annual rental increases.~~

~~9.80.050 Permitted rental increases required to maintain net operating income.~~

~~9.80.060 Rebutting base year net operating income fair return presumption.~~

~~9.80.065 Pre-approved temporary rental increases for specified capital improvements. Now moved 9.80.090~~

~~9.80.070 Full and partial vacancy decontrol – Establishment of new base rent. Now moved 9.80.060~~

~~9.80.080 Fees: Now moved 9.80.210 Administrative Service Fee.~~

~~9.80.090 Permissible reasons for terminating or refusing to renew a tenancy Now moved~~

~~9.80.100 Refusal of tenant - homeowner to pay illegal rent Now moved~~

~~9.80.120 Remedies Now moved~~

~~Article II. Administration Fees Now moved~~

~~9.80.130 Definitions for Article II. Now moved~~

~~9.80.140 Registration – Required. Now moved~~

~~9.80.150 Fees. Now moved~~

~~9.80.160 Late payment – Fee. Now moved~~

9.80.020 Definitions.

9.80.030 Applicability of chapter.

9.80.035 Exemptions from this chapter.

9.80.040 Permissible rent increases.

9.80.045 Automatic annual increases based on increases in the Consumer Price Index.

9.80.050 Allowable rent following the expiration of an exempt lease.

9.80.060 Full and partial vacancy decontrol – Establishment of new base rent. .

9.80.070 Fair return standard.

9.80.080 Procedures for review of fair return petitions.

9.80.090. Pre-approved temporary rental increases for specified capital improvements

9.80.100 Rent reductions for service reductions.

9.80.110 Waivers.

9.80.120 Information to be supplied by the park owner to tenant - homeowner and prospective tenant - homeowner .

9.80.125 Information to be provided by the city to the public.

9.80.130 Designated Tenant -Homeowner Representatives.

9.80.140 Rights of prospective tenant - homeowners.

9.80.150 Annual registration and other notices required from owner.

9.80.160 Retaliation prohibited.

9.80.170 Excessive rents or demands therefor.

9.80.180 Excessive rents—Refusal to Pay and Remedies

9.80.185 Permissive Reasons for Terminating or Refusing to Renew a Tenancy

9.80.190 Rules and guidelines.

9.80.200 Authority of city council to bring civil action to compel compliance.

~~9.80.80 Fees~~ 9.80.210 Administrative Service Fee.
9.80.215 Supplemental Administrative Service Fee.
9.80.220 Appeal of decisions pursuant to this chapter.
Article II. Collection and Payment of Administration Service Fees
~~9.80.130~~ 9.80.230 Definitions for Article II.
~~9.80.140~~ 9.80.240 Registration – Required.
~~9.80.150~~ 9.80.250 Payment of Administration Fee.
~~9.80.160~~ 9.80.260 Late payment – Fee.
9.80.270 Collection and Payment of Supplemental Administrative Fee.
9.80.280 Spaces Excluded from Paying Supplemental Administrative Fee.
9.80.290 Amount of the Supplemental Administrative Fee.
9.80.300 Severability.
APPENDIX A

9.80.010 Findings and purpose.

The city council has recognized and finds that:

A. Captive Nature of Mobile Home Park Tenancies. As a practical matter, the mobile homes in Sonoma’s mobile home parks are “immobile” homes. Very few mobile home parks in the area will accept mobile homes that are more than a few years old. The cost of moving and setting up a mobile home in a park is substantial. Mobile homes are rarely moved after they are placed in mobile home parks. When mobile home park residents move they sell their mobile homes in place.

Special characteristics of mobile home park tenancies in urban areas generally include the following:

1. The “historical” investments of the mobile home owner (tenants) in mobile homes in mobile home parks generally exceed those of the landlord park owners.
2. The physical relocation of mobile homes is costly.
3. Relocation within metropolitan areas is practically impossible because there are virtually no vacant spaces in mobile home parks.
4. Park owners generally will not permit older mobile homes to be moved into their parks when they do have vacant spaces for rent.
5. The supply of mobile home park spaces in urban areas in California is either frozen or declining. Mobile home park construction in urbanized areas of California virtually ceased by the early 1980’s as alternative land uses became more profitable and land use policies continually tightened restrictions on the construction of new mobile home parks.

The investments of mobile home park residents in their mobile homes are “sunk” costs. The benefits of these investments can only be realized by continuing occupancy in the mobile home or by an “in-place” sale of the mobile home.

In 2001, the California Supreme Court concluded:

BACKGROUND:

THE MOBILEHOME OWNER/MOBILEHOME PARK OWNER RELATIONSHIP

“This case concerns the application of a mobilehome rent control ordinance, and some background on the unique situation of the mobilehome owner in his or her relationship to the mobilehome park owner may be useful. “The term ‘mobilehome’ is somewhat misleading. Mobile homes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself. They are generally placed permanently in parks; once in place, only about 1 in every 100 mobile homes is ever moved. [Citation.] A mobile home owner typically rents a plot of land, called a ‘pad,’ from the owner of a mobile home park. The park owner provides private roads within the park, common facilities such as washing machines or a swimming pool, and often utilities. The mobile home owner often invests in site-specific improvements such as a driveway, steps, walkways, porches, or landscaping. When the mobile homeowner wishes to move, the mobile home is usually sold in place, and the purchaser continues to rent the pad on which the mobile home is located.” (Yee v. Escondido (1992) 503 U.S. 519, 523, 112 S.Ct. 1522, 118 L.Ed.2d 153.) Thus, unlike the usual tenant, the mobilehome owner generally makes a substantial investment in the home and its appurtenances—typically a greater investment in his or her space than the mobilehome park owner. [cite omitted] The immobility of the mobilehome, the investment of the mobilehome owner, and restriction on mobilehome spaces, has sometimes led to what has been perceived as an economic imbalance of power in favor of mobilehome park owners.” (Galland v. Clovis, 24 Cal.4th 1003, 1009 (2001))

Court opinions and academic reviews have repeatedly noted the captive nature of mobile home park tenancies. For example, in one case the Florida Supreme Court concluded that mobile home owners face an “absence of meaningful choice” when their space rents are increased:

“Where a rent increase by a park owner is a unilateral act, imposed across the board on all tenants and imposed after the initial rental agreement has been entered into, park residents have little choice but to accept the increase. They must accept it or, in many cases, sell their homes or undertake the considerable expense and burden of uprooting and moving. The “absence of meaningful choice” for these residents, who find the rent increased after their mobile homes have become affixed to the land, serves to meet the class action requirement of procedural unconscionability.” *Lanca Homeowners, Inc. v. Lantana Cascade of Palm Beach, Ltd.*, 541 So. 2d 1121, 1124 (Fla.), cert. denied, 493.

In response to the special situation of tenant - homeowners, California has adopted landlord-tenant laws which provide special protections for them. (California Civil Code Section 798.)

In addition, approximately ninety jurisdictions in California have adopted some type of rent control of mobile home park spaces. Typically the rent control ordinances tie annual allowable rent increases to the percentage increase in the Consumer Price Index (CPI)—All Items. Most of the ordinances do not permit additional rent increases (vacancy decontrol) or limit rent increases to ten percent or less when a mobile home is sold in place. Under all ordinances, park owners are entitled to petition for additional rent increases in order to obtain a fair return.

The state of California has recognized, by the adoption of special legislation regulating tenancies of mobilehome owners in mobilehome parks, that there is a significant distinction between tenants of mobilehome parks and other dwelling units, and the council likewise has recognized that tenants of mobilehome parks, unlike apartment tenants or residents of other rental stock, are in the unique position of having made a substantial investment in a residence, the space for which is rented or leased as distinguished from owned. The physical removal and relocation of a mobilehome from a rented or leased space within a mobilehome park can be accomplished only at substantial cost and inconvenience with the concurrent ability to find another location, and, in many instances, the removal requires a separation of the mobilehome unit from appurtenances which

have been made permanent, thus creating severe damage and depreciation in value to the mobilehome. As a result of the absence of vacant spaces and park restrictions on accepting mobilehomes that are not new, it is virtually impossible for mobilehome owners to move their mobilehomes from one park to another park within the city.

B. The city council finds and declares that the existing mobilehome parks in the city are the only lands designated for mobilehome parks by the 1985-2005 Sonoma General Plan and no new sites for mobilehome parks are anticipated; that the average value of a mobilehome (\$47,527) is less than 20 percent of the average value of a home in Sonoma, making mobilehomes an important source of affordable housing for the community; that 30 percent of the households below the poverty level in the city are aged 65 and over; that the median age of mobilehome park residents is 76 years; that 54 percent of mobilehome residents are single-person households, most (64 percent) headed by females; and that based on five years of experience in administering a very low-income senior rental development and reviewing the applications of prospective tenants, the incomes of the predominant residents of mobilehomes (i.e., senior citizens) is likely to fall into the very low (50 percent or less of the county median income) category (a gross annual income of \$15,350 or less) as determined by the U.S. Government Department of Housing and Urban Development.

C. Studies and hearings have shown that there is presently within the city and surrounding areas a shortage of spaces for the location of mobilehomes, resulting in a low vacancy rate. Space rent increases at the time of sale or other transfer of a mobilehome within a park have been shown to be as great as a 50 percent increase over the pretransfer rent. In some mobilehome parks, rent increases in the past decade have been substantially in excess of the increases in the Consumer Price Index.

D. Rapidly rising and large incremental increases in space rent have resulted in an atypical market depression in the resale value of mobilehomes within the city.

E. Because of the shortage and potential for rapidly rising rates, regulation is necessary to assure that economic hardship to a substantial number of mobilehome park tenants in the city, many of whom are senior citizens on low fixed incomes, does not occur.

F. Pursuant to studies and hearings conducted by the city council and city staff, the city council has determined it necessary and in the public interest to establish a mechanism to assist in the resolution of disputes that may arise from time to time between tenants and management of mobilehome parks regarding the rates charged for the rental or lease of space.

G. Therefore, the city council does accordingly find and declare that it is necessary to establish a means to provide protection to mobilehome park tenants tenant - homeowners from unreasonable rent increases, while at the same time recognizing the need of mobilehome park management to receive a fair return and to receive rent increases sufficient to cover increased cost of repairs, maintenance, service, insurance, upkeep, and other amenities.

H. The city council further finds and declares that the adoption of this chapter will not have a significant, substantial or adverse effect on the physical environment of the community because enactment of this chapter involves no deviation from the general plan and no change in the present use of any property within the city. (Ord. 98-6 § 1, 1998).

Current 9.80.020 to 9.80.090 (except for 9.80.045, 9.80.065 and 9.80.090) deleted and replaced or moved and re-numbered with the below provisions of the City of Marina's Rent Stabilization Ordinance

9.30.020 Definitions.

- A. "City manager" shall include the city manager or a person designated by the city manager to perform the functions required by this chapter.
- B. "Consumer Price Index" means the Consumer Price Index—All Items for all urban consumers for the San Francisco-Oakland-San Jose area (base year equals 1982—1984) as reported by the Bureau of Labor Statistics of the United States Department of Labor.
- C. "In-place transfer" means the transfer of the ownership of a mobile home with the mobile home remaining on the mobile home lot following the transfer.
- D. "Landlord" means a mobile home park owner, mobile home owner, lessor or sublessor who receives or is entitled to receive rent for the use and occupancy of any rental unit or portion thereof, and the agent, representative or successor of any of the foregoing.
- E. "Mobile home" means a structure transportable in one or more sections, designed and equipped to contain not more than one dwelling unit, to be used with or without a foundation system.
- G. F. "Mobilehome park" means any area of land within the city where five or more mobilehome spaces are rented, or held out for rent, to accommodate mobilehomes used for human habitation.
- H. G. "Mobilehome space" means the site within a mobilehome park intended, designed or used for the location or accommodation of a mobilehome and any accessory structures or appurtenances attached thereto or used in conjunction therewith.
- H. "Rent" means any consideration, including any bonus, benefit or gratuity, demanded or received by a landlord for or in connection with the use or occupancy, including housing services, of a rental unit or in connection with the assignment of a lease or in connection with subleasing of the rental unit.
- "Rent" shall not include:
1. Utility charges for charges for sub-metered gas and electricity.
 2. Charges for water, refuse disposal, sewer service, and/or other services which are either provided and charged to mobile home residents solely on a cost pass-through basis and/or are regulated by state or local law.
 3. Any amount paid for the use and occupancy of a mobile home unit (as opposed to amounts paid for the use and occupancy of a mobile home space).
 4. Charges for laundry services.
 5. Storage charges.
- H. "Rent increase" means any rent demanded of or paid by a tenant - homeowner or mobile home tenant in excess of rent paid for the rental unit immediately prior to such demand or payment. Rent increase includes any reduction in the services provided to a mobile home resident or transfer of the cost without a corresponding reduction in the moneys demanded for or paid as rent.

I. "Rental agreement" means a written agreement between a landlord and a tenant - homeowner or mobile home tenant for the use and occupancy of a rental unit to the exclusion of others.

J. "Rental unit" means a mobile home or mobile home lot, located in a mobile home park in the city of Sonoma, which is offered or available for rent. Rental unit includes the land, with or without a mobile home, and appurtenant buildings thereto and all housing services, privileges and facilities supplied in connection with the use or occupancy of the mobile home or mobile home lot.

K. "Service reduction" means a decrease or diminution in the basic service level provided by the park since January 1, 1992 including but not limited to services the park owner is required to provide pursuant to:

1. California Civil Code Sections 1941.1 and 1941.2.
2. The Mobile Home Residency Law, California Civil Code Section 798 et seq.
3. The Mobile Home Parks Act, California Health and Safety Code Section 18200 et seq.
4. The landlord's implied warranty of habitability.
5. An express or implied agreement between the landlord and the resident.

Ø. L. "Tenancy" means the right of a tenant to use or occupy a mobilehome park space.

P. M. ~~"Tenant"~~ Tenant - Homeowner means a person who has a tenancy in a mobilehome park or who has purchased or is in the process of purchasing or otherwise acquiring a mobilehome that will remain at a particular mobilehome park. (Ord. 98-6 § 1, 1998).

9.80.030 Applicability of chapter.

This chapter shall be applicable to all mobile home park spaces within the city of Sonoma except as provided in Section 5.72.050 of this chapter.

9.80 .035 Exemptions from this chapter.

A. Exemptions Provided by State Law. As of August 2011, the following exemptions from local rent regulations are provided by state law:

1. Spaces that are subject to a lease which exempts that space from rent regulation pursuant to the California Mobilehome Residency Law, California Civil Code Section 798 et seq.
2. New mobile home park spaces which are exempted pursuant to Civil Code Section 798.45.
3. Spaces which are not the principal residence of the tenant - homeowner, which are exempt pursuant to Civil Code Section 798.21.

The purpose of this subsection is to provide information about exemptions based on state law which preempts local law, rather than to provide any basis for an exemption based on this chapter.

B. Units Owned or Operated by Government Agencies. This chapter shall not apply to mobile homes or

mobile home parks owned or operated by any governmental agency or any rental unit whose rent is subsidized pursuant to a public program that limits the rent that can be charged for the mobile home.

C. Mobile Home Parks with Less Than Ten Spaces. This chapter shall not be applicable to spaces in mobile home parks with less than ten spaces.

9.80.040 Permissible rent increases.

No rent in excess of rent in effect on January 1, 1985, may be charged unless authorized by one of the following sections: Section 9.80.045 (Automatic annual increases based on increases in the Consumer Price Index), 9.80.050 (Allowable rent following the expiration of an exempt lease), 9.80.060 (Rent increases upon in-place transfers of mobile home ownership), 9.80.070 (Fair return standard), or 9.80.090 (Rent increases for new capital improvements) of this chapter

9.80.045 Automatic annual increases.

A. Once every 12 months, an owner shall be permitted an automatic rental increase for each space in a percentage amount equal to 80 percent of the percent change in the Consumer Price Index (CPI) between the CPI index in effect in the month the increase is calculated and that published 12 months prior, so that if the CPI in effect at the time of the calculation is the December index, the calculation will be based on the current December index and that published in the prior December; in no instance shall the rental increase permitted pursuant to this section result in a rental increase of greater than five percent per 12-month period over that in effect prior to the rental increase permitted pursuant to this section. (Ord. 98-6 § 1, 1998).

B. Notice of Allowable Annual Rent Increase.

1. Notice by City Manager. The allowable annual rent increase shall be annually calculated by the city manager and posted by February 15th of each year in City Hall and on the city's website, and on a notice board in each mobile home park and shall be mailed to each park owner and to the mobile home owner representative in each park.

2. Notice in Mobile Home Parks. A copy of the clerk's notice shall be posted in a prominent place by each park owner in each mobile home park within three work days after it is received by the park owner.

C. No Decrease if CPI Decreases. In the event that the CPI decreases, no rent decrease shall be required pursuant to this section. In the event that the CPI decreases by more than two percent in any year, said decrease shall be subtracted from the following annual increase(s) allowable pursuant to this section.

D. Banking of Allowable Annual Increases. Increases authorized pursuant to this section may be implemented by the landlord at any future time, subject to the precondition that by January 30th of each year the park owner notify the mobile home owner of each increase allowed pursuant to this section which has not been implemented and notification that the banked increase may be added to the rent at a future date.

E. Compliance with State Law. Rent increases permitted pursuant to this section shall not be effective and shall not be demanded, accepted, or retained until the landlord has given the notice required by state law.

9.80.050 Allowable rent following the expiration of an exempt lease.

In the event a space was previously exempt under a lease pursuant to California Civil Code Section 798.17, the base space rent, for purposes of calculating the annual adjustment, shall be the rent in effect as of the date of expiration of the lease; provided, that space rents can be verified by information required on, and/or documentation submitted with, the annual registration application. (Ord. 2011-05 § 1 (Bxh. A (part)), 2011)

~~9.80.070~~ **9.80.060 Full and partial vacancy decontrol – Establishment of new base rent.**

A. A mobilehome park owner shall be permitted to charge a new base rent for a mobilehome space whenever a coach-in-place sale or lawful space vacancy occurs.

B. For purposes of this chapter, a lawful space vacancy is defined as follows:

1. A vacancy occurring because of the termination of the tenancy of the affected mobilehome tenant in accordance with the Mobilehome Residency Law, California Civil Code Sections 798.55 through 798.60, as amended, excepting Section 798.59; or

2. A vacancy of the mobilehome space arising from the voluntary removal of a mobilehome from the mobilehome space by the affected ~~mobilehome tenant~~ tenant - homeowner. A removal of the mobilehome from the space for the purpose of performing rehabilitation or capital improvements to the space or for the purpose of upgrading the mobilehome shall not constitute a voluntary removal of the mobilehome.

C. For purposes of this chapter, a coach-in-place sale occurs when a mobilehome space occupancy changes as a result of the voluntary sale of the mobilehome and the voluntary termination of the mobilehome tenancy by the seller of the mobilehome.

D. When a new base rent is established following the vacancy of a mobilehome space pursuant to this section, the park owner shall give written notice to the new affected ~~mobilehome tenant~~ tenant - homeowner of the 12-month anniversary date for rental increases allowed in this section, and shall give written notice to such affected tenant that the space rent may be subject to stabilized rent increases pursuant to the provisions of this chapter.

E. No rental increase made pursuant to this section resulting from a coach-in-place sale shall be greater than ~~10~~ 5 percent of the rent in effect prior to the increase unless the resulting rent is less than \$350.00 per month, in which case the rent may be increased to \$350.00 per month except that if the monthly rent in effect prior to vacancy is less than \$300.00, the maximum increase in rent shall be \$50.00 per month. No more than one rental increase per space shall be made under this section in any 12-month period. The \$350.00 minimum rent established in this section shall be adjusted annually on the anniversary date of the effective date of the ordinance codified in this chapter which change shall equal a percentage equal to 80 percent of the change in the CPI between the date of the prior change in the minimum rent (or the effective date of the ordinance codified in this chapter as the case may be) and the date of the annual adjustment. (Ord. 98-6 § 1, 1998).

9.80.070 Fair return standard.

A. **Presumption of Fair Base Year Net Operating Income.** It shall be presumed that the net operating income received by the landlord in the base year provided the park owner with a fair return.

B. **Fair Return.** A park owner has the right to obtain a net operating income equal to the base year net operating income adjusted by one hundred percent of the percentage increase in the CPI since the base year. It

shall be presumed this standard provides a fair return. The base year CPI shall be the annual average CPI for 1992. The current year CPI shall be the annual average CPI for the calendar year which is used as the current year in the application.

C. Base Year.

Except as provided in this chapter, an owner shall not demand, accept, or retain rent for a mobilehome space exceeding the rent in effect for said space on January 1, 1992. If a previously rented mobilehome space was not rented on January 1, 1992, the owner shall not demand, accept, or retain rent for said space exceeding the rent in effect during the last month the space was rented prior to January 1, 1992. If a mobilehome space is rented for the first time after January 1, 1992, the owner shall not demand, accept, or retain rent for said spaces exceeding the rent first charged for the space. (Ord. 98-6 § 1, 1998).

D. Current Year. The current year shall be the calendar year that precedes the year in which the application is filed.

E. Adjustment of Base Year Net Operating Income. The park owner or tenant - homeowners may present evidence to rebut the presumption of fair return based upon the base year net operating income as set forth in subsection A of this section based on at least one of the following findings:

1. Exceptional Expenses in the Base Year. The park owner's operating expenses in the base year were unusually high or low in comparison to other years. In such instances, adjustments may be made in calculating operating expenses so the base year operating expenses reflect average expenses for the property over a reasonable period of time. The following factors shall be considered in making such a finding:

- a. Extraordinary amounts were expended for necessary maintenance and repairs.
- b. Maintenance and repair was below accepted standards so as to cause significant deterioration in the quality of services provided.
- c. Other expenses were unreasonably high or low notwithstanding the application of prudent business practices.

2. Exceptional Circumstances in the Base Year. The gross income during the base year was disproportionately low due to exceptional circumstances. In such instances, adjustments may be made in calculating base year gross rental income consistent with the purposes of this chapter. The following factors shall be considered in making such a finding:

- a. If the gross income during the base year was lower than it might have been because some residents were charged reduced rent.
- b. If the gross income during the base year was significantly lower than normal because of the destruction of the premises and/or temporary eviction for construction or repairs.
- c. The pattern of rent increases in the years prior to the base year and whether those increases reflected increases in the CPI.
- d. Base period rents were disproportionately low in comparison to the base period rents of other comparable parks in the city.

e. Other exceptional circumstances, excluding any comparisons of base period rents to rents of other comparable parks located outside of the City or to market rents, which are determined by comparisons of rents from comparable parks located outside of the City .

F. Calculation of Net Operating Income.

1. Net Operating Income. Net operating income shall be calculated by subtracting operating expenses from gross rental income.

2. Gross Rental Income.

a. Gross rental income shall include:

i. Gross rents calculated as gross rental income at one hundred percent occupancy, adjusted for uncollected rents due to vacancy and bad debts to the extent such vacancies or bad debt are beyond the control of the landlord. Uncollected space rents in excess of three percent of gross space rent shall be presumed to be unreasonable unless established otherwise and shall not be included in computing gross income.

ii. All other income or consideration received or receivable in connection with the use or occupancy of the rental unit, except as provided in subsection (F)(2)(b) of this section.

b. Gross rental income shall not include:

i. Utility charges for charges for sub-metered gas and electricity.

ii. Charges for water, refuse disposal, sewer service, and/or other services which are either provided and charged to mobile home residents solely on a cost pass-through basis and/or are regulated by state or local law.

iii. Any amount paid for the use and occupancy of a mobile home unit (as opposed to amounts paid for the use and occupancy of a mobile home space).

iv. Charges for laundry services.

v. Storage charges.

3. Operating Expenses.

a. Included in Operating Expenses. Operating expenses shall include the following:

i. Reasonable costs of operation and maintenance.

ii. Management Expenses. It shall be presumed that management expenses have increased by the percentage increase in rents or the CPI, whichever is greater, between the base year and the current year unless the level of management services has either increased or decreased significantly between the base year and the current year.

iii. Utility Costs. Utility costs except utility where the consideration of the income associated with the provision of the utility service is regulated by state law and consideration of the costs associated with the provision of the utility service is preempted by state law.

iv. Real Property Taxes. Property taxes are an allowable expense, subject to the limitation that property taxes attributable to an assessment in a year other than the base year or current year shall not be considered in calculating base year and/or current year operating expenses.

v. License and Registration Fees. License and registration fees required by law to the extent these expenses are not otherwise paid or reimbursed by tenants.

vi. Landlord-Performed Labor. Landlord-performed labor compensated at reasonable hourly rates.

(A) No landlord-performed labor shall be included as an operating expense unless the landlord submits documentation showing the date, time, and nature of the work performed.

(B) There shall be a maximum allowed under this provision of five percent of gross income unless the landlord shows greater services were performed for the benefit of the residents.

vii. Costs of Capital Replacements. Costs of capital replacements plus an interest allowance to cover the amortization of those costs where all of the following conditions are met:

(A) The capital improvement is made at a direct cost of not less than one hundred dollars per affected rental unit or at a total direct cost of not less than five thousand dollars, whichever is lower.

(B) The costs, less any insurance proceeds or other applicable recovery, are averaged on a per unit basis for each rental unit actually benefited by the improvement.

(C) The costs are amortized over a period of not less than thirty-six months.

(D) The costs do not include any additional costs incurred for property damage or deterioration that result from any unreasonable delay in undertaking or completing any repair or improvement.

(E) The costs do not include costs incurred to bring the rental unit into compliance with a provision of the Sonoma Municipal Code or state law where the original installation of the improvement was not in compliance with code requirements.

(F) At the end of the amortization period, the allowable monthly rent is decreased by any amount it was increased because of the application of this provision.

(G) The amortization period shall be in conformance with a schedule adopted by the city manager unless it is determined that an alternate period is justified based on the evidence presented in the hearing.

viii. Legal Expenses. Attorneys' fees and costs incurred in connection with successful good faith attempts to recover rents owing, successful good faith unlawful detainer actions not in derogation of applicable law, and legal expenses necessarily incurred in dealings with respect to the normal operation of the park to the extent such expenses are not recovered from adverse or other parties, subject to the following requirements:

(A) Reasonable fees, expenses, and other costs incurred in the course of successfully pursuing rights under or in relationship to this chapter and regulations adopted pursuant to the chapter including costs incurred in the course of pursuing successful fair return petitions. The recovery of these said expenses shall be separated out from any MNOI rent increase award and recovered from the residents as a separate, limited time period, passthrough. These expenses shall be amortized and recovered in equal monthly payments over a five-year period, unless the

city manager concludes that a differing period is more reasonable, and the passthrough payment of these fees shall terminate after the full payment of those fees with interest has been recovered by the park owner at the end of the amortization/ payback period..

(1) Recovery of fees, expenses, and other costs incurred in the course of preparing and presenting a fair return petition, or in responding to a resident service reduction petition under section 9.80.100, shall be limited when a park owner rejects a settlement offer from the residents and then does not ~~recover more~~ achieve an award that exceeds the terms of the proposed settlement, unless the park owner has also made a settlement offer to the residents and the residents have not accepted the park owner's offer within seven days of its being made to them and the park owner's award then meets or exceeds the terms of the park owner's settlement offer. The purpose of this limitation is to encourage both park owners and mobile home owners to minimize, to the extent possible, the cost and expense of fair rate of return mobile home space rent and service reduction administrative proceedings by providing a mechanism for the early settlement of ~~fair rate of return~~ those administrative proceedings.

(2) At any time after the filing of a ~~fair rate of return rent application~~ either of the petitions covered under the provisions of subsection (1) above, the designated representative of the residents of the mobile home park, or the mobile home park owner, may serve an offer in writing on the mobile home park owner who has filed that petition opposing party to stipulate to a compromise amount for the fair rate of return rent increase of the award or relief requested in the petition. The designated representative. The offering party shall also file a copy of this written settlement offer with the city in a separately sealed envelope and with a statement on the outside of the envelope stating that it is a written settlement offer pursuant to this subsection.

(3) The sealed copy of the written settlement offer that is so filed with the city is not to be opened by the city until it is either accepted by the park owner opposing party or, if it is not accepted by the park owner opposing party, after a final rent increase award or denial has been made on the park owner's petition by either the city manager or by the hearing officer. Upon receiving such offer to compromise, the mobile home park owner opposing party has seven days to accept the offer by filing a written acceptance with the city clerk.

(4) A mobile home park owner is not entitled to recover the portion of its petition expenses, fees, or other costs that are incurred following the submission of a prevailing offer by the residents and the residents may recover reasonable attorneys' fees incurred by the residents after the rejection of a their "prevailing" offer. The designated tenant - homeowners' representative shall be determined to have made a prevailing offer if a their settlement offer has been made and that offer has not been accepted by the park owner within seven days after the making of that offer, and the park owner's rent increase petition award fails to exceed the amount of that settlement offer unless the park owner has also made a settlement offer to the residents and the residents have not accepted the park owner's offer within seven days of it being made to them and the park owner's rent increase petition's award then meets or exceeds the amount of the park owner's settlement offer..

(5) Allowable legal expenses which are of a nature that does not recur annually shall be amortized over a reasonable period of time. separated out from any MNOI rent increase award and recovered as a separate special limited time period pass through. These expenses shall be amortized and recovered in equal monthly payments over a five-year period, unless the city manager concludes that a differing period is more reasonable, and shall be eliminated after payment is completed at the end of the amortization / payback period.

ix. Interest Allowance for Expenses That Are Amortized. An interest allowance shall be allowed on the cost of amortized expenses, including but not limited to the special legal expenses pass throughs provided for in subsection viii above; the allowance shall be the interest rate on the cost of the amortized expense equal to the "average rate" for thirty-year fixed rate on home mortgages plus two percent. The "average rate" shall be the

rate Freddie Mac last published in its weekly Primary Mortgage Market Survey (PMMS) as of the date of the initial submission of the petition. In the event that this rate is no longer published, the index which is most comparable to the PMMS index shall be used.

b. Exclusions from Operating Expenses. Operating expenses shall not include the following:

i. Mortgage principal or interest payments or other debt service costs.

ii. Any penalties, fees or interest assessed or awarded for violation of any provision of this chapter or of any other provision of law.

iii. Land lease expenses.

iv. Political contributions and payments to organizations which are substantially devoted to legislative lobbying purposes.

v. Depreciation.

vi. Any expenses for which the landlord has been reimbursed by any utility rebate or discount, security deposit, insurance settlement, judgment for damages, settlement or any other method or device.

vii. Unreasonable increases in expenses since the base year.

viii. Expenses associated with the provision of master-metered gas and electricity services.

ix. Expenses which are attributable to unreasonable delays in performing necessary maintenance or repair work or the failure to complete necessary replacements (e.g., a roof replacement may be a reasonable expense, but if water damage occurred as a result of unreasonable delays in repairing or replacing the roof, it would not be reasonable to pass through the cost of repairing the water damage).

c. Adjustments of Operating Expenses. Base year and/or current operating expenses may be averaged with other expense levels for other years or amortized or adjusted by the CPI or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses. Grounds for such adjustments include, but are not limited to:

i. An expense item for a particular year is not representative;

ii. The base year expense is not a reasonable projection of average past expenditures for that item in the years immediately preceding or following the base year;

iii. The current year expense is not a reasonable projection of expenditures for that item in recent years or of future expenditures for that item;

iv. A particular expense exceeds the normal industry or other comparable standard for the area, the park owner shall bear the burden of proving the reasonableness of the expense. To the extent that it is found that the expense is unreasonable it may be adjusted to reflect the normal industry standard;

v. A base year expense is exceptionally low by industry standards and/or on an inflation adjusted basis is

exceptionally low relative to current year expenses although the level or type of service has not changed significantly;

vi. An increase in maintenance or management expenses is disproportionate to the percentage increase in the CPI, while the level of services has not changed significantly and/or is not justified by special circumstances.

G. Rent Increases for Periods Preceding Date That a Park Owner May Implement Rent Increases Pursuant to This Section. In the event that the period for determining the allowable rent increase pursuant to this section exceeds one hundred twenty days, the park owner may recover a retroactive rent charge to cover the time period from the date that the rent increase would have begun if the rent increase decision had been made within one hundred twenty days. In order to avoid undue hardship on the mobile home owners, this retroactive rent charge shall be amortized and paid over a period of five years, unless the City manager or hearing officer determine that different amortization period is more reasonable, and then shall be eliminated at the end of that five-year time period. An interest allowance shall be allowed on this amortized rent charge; the allowance shall be the interest rate on the amount of the amortized retro active rent charge equal to the "average rate" for thirty-year fixed rate on home mortgages plus two percent. The "average rate" shall be the rate Freddie Mac last published in its weekly Primary Mortgage Market Survey (PMMS) as of the date of the initial submission of the petition. In the event that this rate is no longer published, the index which is most comparable to the PMMS index shall be used.

H. Per Space Rent Adjustment Pursuant to Fair Return Standard. The allowable rent increase per mobile home park space pursuant to this section shall not be increased as a result of the fact that there are exempt spaces in the park.

I. Assurance of a Fair Return. It shall be presumed that the MNOI standard provides a fair return. Nothing in this chapter shall preclude the city manager or hearing officer from granting an increase that is necessary in order to meet constitutional fair return requirements.

9.80.080 Procedures for review of fair return petitions.

A. Right to Petition. A park owner may petition for a rent increase in order to obtain a fair return. No petition for a fair return rent adjustment may be filed pursuant to this chapter until thirty days after this chapter goes into effect. No petition may be filed in November or December except in cases of exceptional unforeseen circumstances.

B. Limit on Frequency of Petitions. Only one petition pursuant to this section may be filed for a mobile home park within a twelve-month period. An exception to this limitation shall be authorized in the event of extraordinary circumstances that could not reasonably have been foreseen at the time the prior petition was filed.

C. Submission of Petition.

1. **Petition Form Required.** Such petition shall be on a form prescribed by the city manager.

2. **Petition Fee.** Upon the receipt of a fair return application, the city manager shall determine if the employment of experts will be necessary or appropriate for a proper analysis of the applicant's presentation. If the city manager so determines, it shall also determine the anticipated cost of employing any such experts. The resulting figure shall be communicated to the applicant. The application shall not be further processed until the applicant has paid to the city the estimated cost of expert analysis. Any unused portion of the advance payment

for expert analysis shall be refunded to the applicant.

3. Contents of Petition Form. The form may require any information deemed relevant by the administrator. The form shall include, but not be limited to:

- a. A list of the names and addresses of all mobile home park tenants subject to the rent increase.
- b. A statement of the date the rent increase is proposed to be effective.
- c. The rent for each space in the park in the base year, the current year, and the three prior years.
- d. An income and expense statement for the base year, the current year, and the three years prior to the current year.
- e. Evidence documenting the income and expenses claimed by the park owner.
- f. All other documentation and opinion testimony upon which the park owner is relying to justify the rent increase.
- g. A statement of the petitioner's theories in support of the rent increase application.

4. Notice of Petition. The park owner and the city shall provide notice of a petition by:

- a. Sending a hard copy and electronic .pdf copy of the petition to the homeowners' representative;
- b. Providing the city with hard and electronic copies of the petition;
- c. Notifying each tenant household that the petition has been filed on a form provided by the city.

5. Determination That the Petition Is Complete. The city manager will determine if a petition pursuant to this section is complete within thirty days after the petition is submitted. An application will not be deemed complete if the required fees have not be paid. If the application is incomplete, the city manager will inform the petitioner as to what additional information is required.

6. Access to the Petition. The documentation required by this section shall be available for inspection and copying by any person during the normal business hours of the city. The city shall make a copy of all submissions by the park owner and the residents in conjunction with a petition that shall be available in the form of an electronic .pdf file.

7. Cost of Expert Analysis. Upon the receipt of a fair return application, the city manager shall determine if the employment of experts will be necessary or appropriate for a proper analysis of the applicant's petition. Depending upon the complexity of the fair return application, and the park owner's use of experts, the City manager shall retain a certified public accountant to verify the accuracy of the expense and income items stated in the application; an expert in the use and theory of the Fair Return and MNOI methods utilized in this Chapter for determining fair return applications and, if appropriate, a licensed appraiser. If the City manager so determines, the City manager shall also determine the anticipated cost of employing any such experts. The resulting figure shall be communicated to the petitioner. The petition shall not be further processed until the petitioner has paid to the city the estimated cost of expert analysis. Within thirty days after a petition and the required fee, if any, is submitted to the city, the city manager shall determine if the petition is complete. Any

unused portion for payments so collected shall be refunded to the petitioner.

8. Contents of Expert Analysis. Any analysis pursuant to this subsection shall include a determination of:
 - a. Base year and current year rental income;
 - b. Base year and current year operating expenses by category;
 - c. Base year and current year overall operating expenses;
 - d. Base year and current year net operating income;
 - e. The percentage change in net operating income between the base period and the current period;
 - f. The percentage change in the CPI between the base period and the current period;
 - g. The ratio of the percentage change in net operating income to the percentage change in the CPI between the base period and the current period;
 - h. The rent adjustment required under an MNOI standard pursuant to chapter.
9. Submission by tenant - homeowners. The tenant - homeowners may submit a written response to the park owner's submission within thirty days after the petition is deemed complete, unless the City manager determines that there is good cause to extend that deadline.

D. Review Procedures.

1. An application for a fair return adjustment shall be decided by the city manager within sixty days of the date that the application has been deemed complete, unless the City manager determines that there is good cause to extend that deadline.

The decision shall be emailed and sent by mail, with proof of mailing to the park owner, the park owner's designated representative for the petition, and a designated representative of the residents.

2. Appeal of City Manager's Decision. The decision of the city manager may be appealed within twenty days to a hearing officer. An appeal by the tenant - homeowners must be signed by tenant - homeowners from a majority of the mobile home spaces that are subject to the city manager's decision. The appealing party shall be required to pay for costs of the appeal process in accordance with any fees set forth by resolution of the city council. The Appeal shall be conducted through a de novo evidentiary hearing, which shall consider the Fair Return Petition, all information, expert opinions and arguments submitted by the park owner to the City manager in support of the Petition; the City manager's decision, and the opinions of the City's independent witness(es) and any additional arguments, upon which the City manager's decision is based; and the briefs, evidence and testimony submitted, under the provisions of this Chapter, in support of or in opposition to the Petition or the City Manager's decision by any of the parties to the proceedings, which are submitted under the provisions contained in subsections 9.80.080 D 6 through 8 of this Section

3. Procedure for Selection of a Hearing Officer.

- a. Qualifications. Hearing officers shall be licensed attorneys of the State Bar of California in good standing,

and shall have no financial interest in mobile homes, mobile home spaces or mobile home parks and shall not have represented mobile home park owners or mobile home park tenant - homeowners in rent setting cases or park closing or park conversions or any disputes between park owners and park residents.

b. A hearing officer shall be selected through the California Office of Administrative Hearings (OAH). In the event that it is not possible to set up a hearing through the OAH, the city manager may elect to contract with another statewide agency that provides arbitration services or may establish a panel in accordance with the following procedure set forth in subsection (D)(3)(c) of this section.

c. In the event that a panel of hearing officers is established, the city manager shall make all reasonable efforts to ensure that there are at least five qualified candidates to form a panel of prospective hearing officers.

The hearing officers shall be selected on a rotational basis from the panel list. A hearing officer shall disqualify himself or herself from serving as hearing officer in a particular matter where he/she has a conflict of interest within the meaning of the Political Reform Act (Government Code Section 87100 et seq.), and shall otherwise comply with the disqualification provisions of Canon 3.E. of the Code of Judicial Ethics. The parties shall be advised in writing of the selected hearing officer, and advised of their right to disqualify the selected hearing officer. In the event of a disqualification, another hearing officer shall be randomly selected from the panel, and a new notice of hearing sent to the parties. Each party shall have the right to disqualify one hearing officer for a particular matter if there are five or fewer hearing officers on the list and may disqualify up to two hearing officers if there are eight or more hearing officers on the list.

4. Time of and Scheduling of Hearing.

a. A hearing on the petition shall commence within thirty days of the selection of a hearing officer unless both parties agree to a different schedule. The hearing shall be completed within fifteen days after it is commenced. These time deadlines may be extended if the hearing officer finds that there is good cause to commence and/or complete the hearing at a later date.

b. The hearing may be scheduled during the normal business hours of the city unless a majority of the residents that are subject to the petition requests that the hearing be scheduled during the evening. The hearing shall be scheduled at a time that it is convenient for the residents' and park owner's representatives.

c. The presentations of each party at the hearing and of the city staff and experts shall be limited to ninety minutes each unless the hearing officer determines that there is good cause to extend that deadline. Each party and the city shall be permitted one hour of cross-examination of expert witnesses, unless the hearing officer determines that there is good cause to extend that deadline. The City shall provide legal counsel to help prepare the City's expert for their presentation under this section, to defend the City's expert witness and to cross examine the expert witnesses of the parties.

5. Notice of Hearing. Written notice of the time, date and place of the hearing shall be given at least ten days prior to the hearing.

6. Requests for Additional Information by Opposing Party.

a. Either party or the city may request that additional specific supporting documentation be provided to substantiate the claims made by a party. The request shall be presented in writing to the hearing officer.

b. The hearing officer may order production of such requested documentation, if the hearing officer

determines the information is relevant to the proceedings.

7. Submission of Reports.

- a. Responses may be submitted by the residents or the park owner to the decision of the city manager or report by the city and shall be submitted to the other parties at least ten days prior to the hearing. The submissions shall be in printed and electronic form.
- b. Rebuttal reports may be submitted by the park owner, tenant - homeowners and/or city staff and/or a consultant on behalf of the city; it shall be submitted to the parties at least five days prior to a hearing.
- c. The parties' Responses, provided for in subsection "a" above, and their and the City's Rebuttal reports, provided in subsection "b" above, shall be considered the pre-hearing briefs of the parties and the City and no other pre-hearing briefs shall be allowed unless requested by the hearing officer for good cause. The submissions shall be in printed and electronic form.
- d. For good cause, the hearing officer may accept additional information at the hearing.

8. Conduct of Hearing.

- a. The hearing shall be conducted in accordance with such rules and regulations as may be promulgated by the city council and any rules set forth by the hearing officer.
- b. The hearing officer shall have the power and authority to require and administer oaths or affirmations where appropriate, and to take and hear evidence concerning any matter pending before the hearing officer.
- c. The rules of evidence generally applicable in the courts shall not be binding in the hearing. Hearsay evidence and any and all other evidence which the hearing officer deems relevant and proper may be admitted and considered.
- d. Any party or such party's representative, designated in writing by the party, may appear at the hearing to offer such documents, oral testimony, written declaration or other evidence as may be relevant to the proceedings.
- e. The hearing officer may grant or order not more than two continuances of the hearing for not more than ten working days each. Additional continuances may be granted only if all parties stipulate in writing or if the hearing officer finds that there is a good cause for the continuance. Such continuances may be granted or ordered at the hearing without further written notice to the parties.
- f. A tape recording of the proceedings shall be made by the city manager in a format that is easily made available and is easily usable.
- g. The hearing shall be conducted in a manner that ensures that parties have an opportunity to obtain documents and to obtain information about the theories and facts to be presented by the opposing parties in adequate time in advance of the hearing to enable preparation of a rebuttal.

9. Required Findings in Decision. Any decision pursuant to this subsection shall include a determination of:

- a. Base year and current year rental income;

- b. Base year and current year operating expenses by category;
 - c. Base year and current year overall operating expenses;
 - d. Base year and current year net operating income;
 - e. The percentage change in net operating income between the base period and the current period;
 - f. The percentage change in the CPI between the base period and the current period;
 - g. The ratio of the percentage change in net operating income to the percentage change in the CPI between the base period and the current period;
 - h. The rent adjustment required under an MNOI standard pursuant to Section 5.72.100 and this section.
10. Conditions for Allowance or Disallowance of Rent Increase. The allowance or disallowance of any proposed rent increase or portion thereof may be reasonably conditioned in any manner necessary to effectuate the purposes of this chapter.
11. Deadline for Decision. An application for a fair return adjustment shall be decided by the hearing officer within sixty days of the date that the filing of the appeal, including the receipt of fees, has been deemed complete, unless the hearing officer determines that there is good cause for an extension of this period or the city manager extends this period due to the length of time required to accommodate scheduling availability and limitations required to obtain the services of a hearing officer.
12. Notice of Decision. The city manager shall mail copies of the decision to the park owner and all affected mobile home park tenants within three days of the decision. Copies of the decision shall be emailed to the park owner and residents' representative as soon as possible after the decision is made and in all cases within twenty-four hours after the decision is made.
13. Preservation of Record. Any findings pursuant to this section shall be reported to the city in an agenda packet and permanently preserved in the city records, so that they are available in the event of a future rent increase application involving the same mobile home park.
14. Representation of Parties.
- a. The parties in any hearing may be represented at the hearings by a person of the party's choosing. The representative need not be an attorney.
 - b. Written designation of representatives shall be filed with the city manager or hearing officer.
 - c. The written designation of the representative shall include a statement that the representative is authorized to bind the party to any stipulation, decision or other action taken at the administrative hearing.
15. Modification of Decision in the Event of Mathematical or Clerical Inaccuracies. Any party alleging that the hearing officer's statement of decision contains mathematic or clerical inaccuracies may so notify the hearing officer and the other party within fifteen calendar days of the mailing of the decision. The hearing officer may make any corrections warranted, and re-file the statement of decision within ten working days after receiving the allegation of the mathematical error. Upon re-filing of the statement, the decision shall be final.

16. Calculation of Allowable Application Expenses if a Sealed Offer Has Been Submitted. If any sealed settlement offers have been submitted to the city by any parties to the dispute, after the hearing officer determines the allowable rent adjustment pursuant to this section, the hearing officer shall open the sealed offers and make a determination of whether there has been a "prevailing party" and shall announce that determination in the hearing officer's notice of decision issued pursuant to subsection (D)(12) of this section. Within seven days of their receipt of the notice of decision awarding fees, the prevailing party shall submit a written request and accounting of these fees and serve that request simultaneously on all parties by regular mail and electronic mail. Within seven days of receiving the request by the prevailing party, the opposing party may file an objection to that request. Within seven days of the date that an opposition is submitted or within seven days of the deadline for an opposition, if none is submitted, the hearing officer shall submit a proposed supplemental decision stating the amount of fees included in the award, which shall become final in seven days after the proposed decision, unless either party requests an evidentiary hearing within seven days, in which case a final decision shall be made within seven days after the hearing. If the prevailing party is the tenant - homeowners' representative, then the park owner shall file an affidavit with the city manager, stating that the award of attorneys' fees has been paid in full and shall not be permitted to implement a rent increase pursuant to this section until such payment has been made. For good cause, the hearing officer may modify the procedure set forth in this subsection for determining an award for a prevailing party.

E. Overall Period for Review of Fair Return Petition. After a petition is deemed complete, the overall time for a decision of the city manager and conducting a hearing and issuing a final decision by the hearing officer shall not exceed one hundred eighty days, unless the hearing officer determines that there is good cause for extending this deadline or the city manager extends this period due to the length of time required to accommodate scheduling availability and limitations required to obtain the services of a hearing officer.

~~9.80.065~~ 9.80.090 Pre-approved temporary rental increases for specified capital improvements.

A. An owner shall be permitted to obtain a temporary rental increase to obtain reimbursement for specified capital improvements pursuant to the provisions of this section.

B. The city council shall from time to time adopt an amortization schedule for typical capital improvements subject to the provisions of this section.

C. Prior to making a necessary capital improvement described in the adopted amortization schedule or a necessary capital improvement reasonably similar to the types of improvements described in the adopted amortization schedule, the park owner shall be permitted to seek approval of a temporary rental increase to reimburse the owner for the cost of the capital improvement. The clerk shall provide notice of the application to all affected tenants. The notice shall indicate the proposed capital improvement, the amortization schedule including interest for the capital improvement, and the resulting temporary rental increase proposed. Within 15 calendar days following the mailing date of such notice the clerk shall approve the proposed temporary rental increase; provided, that each of the following findings can be made:

1. That the capital improvement is warranted;
2. That the amortization period is consistent with the amortization schedule;
3. That the interest to be charged is comparable to interest that would be charged on a commercially available loan; and
4. That the rental increase has been fairly and evenly distributed to all affected tenants.

If the ~~clerk~~ City Manager makes a contrary determination, he or she shall deny the application, or approve it with conditions required to make the rental increase consistent with the provisions of this section. In the event that 50 percent plus one of the affected ~~tenants~~ tenant - homeowners receiving notice of the temporary rental increase protest the application in writing to the ~~clerk~~ city manager within the 15-day notice period, the ~~clerk~~ city manager shall schedule a public meeting of the board hearing officer where all affected ~~tenants~~ tenant - homeowners may respond to the proposed capital improvement. At said meeting, it shall be the responsibility of the protestors to provide reasonable, quantifiable evidence as to why the temporary rental increase should not be approved or conditionally approved by the ~~clerk~~ city manager pursuant to findings 1 through 4 of this subsection C. No such rental increase shall become effective until the first full month following the filing of a notice of completion of the capital improvement with the clerk. Any rental increase approved pursuant to the provisions of this section shall be itemized separately on any rental statement or billing provided to the affected tenant and shall terminate upon the conclusion of the approved amortization period.

D. A park owner shall be entitled to seek a temporary rent increase in order to make an upgrade capital improvement only if the park owner has:

1. Consulted with the park's tenant - homeowners ~~residents~~ prior to initiating construction of the improvements regarding the nature and purpose of the improvements and the estimated cost of the improvements;
2. Obtained the prior written consent of at least one adult ~~resident~~ tenant - homeowner from each space of a majority of the mobilehome spaces to include the upgrade as a capital improvement eligible for amortization as a temporary rental increase. (That is, if the park has 50 spaces, the approval of one ~~adult resident~~ tenant - homeowner from each of 26 separate spaces would be required.) Evidence of such consent must be presented at the time of filing the application.

E. An increase in rent or a portion of an increase in rent granted by the board pursuant to this section as a result of the costs of capital improvements to the mobilehome park shall be limited to the length of time necessary to allow the park owner to reasonably amortize the cost of a capital improvement, including interest. Such increase granted as a result of the capital improvement shall not continue beyond the time necessary for reasonable amortization of the cost of such improvement. In the event that the capital improvement expenditure is necessitated as a result of an accident, disaster, or other event for which the park owner received insurance benefits, only those capital improvement costs otherwise allowable exceeding the insurance benefits may be calculated as capital improvements.

F. Nothing in this section shall prevent the park owner from making emergency capital improvements required as a result of a disaster or other unpredictable event; in such event, the park owner may make such limited and reasonable capital improvements required to protect the public health and safety and to limit further damage to the park, and to seek a capital improvement rental adjustment for such capital improvement pursuant to the provisions of this section. (Ord. 98-6 § 1, 1998).

9.80.100 Rent reductions for service reductions.

A. Definition. "Service reductions" shall mean the elimination or reduction of any service or facility provided as of January 1, 1992. "Service" shall also include physical improvements or amenities.

B. Submission of Service Reduction Complaint to City Manager. A service reduction complaint shall be submitted to the city manager alleging in a written form and should state:

1. The affected spaces;
2. The prior level of service established by the park owner for that homeowner's mobile home space and common facilities used by that homeowner;
3. The specific changes in the prior level of services comprising the alleged reduction in service;
4. The date the service reduction was first noticed by the tenant - homeowner ;
5. The date of notice to the park owner of the alleged service reduction, and if such notice was given, whether the notice was given orally or in writing;
6. When and how the park owner responded to the tenant - homeowner 's notice, if notice was given;
7. Whether the condition was improved or corrected, and if so, when and how;
8. The status of the condition as of the date the complaint is signed; and
9. Where such service reduction was the result of a vote of a majority of the affected tenant - homeowners.

C. Submission of Service Reduction Complaint to Hearing Officer.

1. Thirty days after the service reduction complaint is submitted to the city manager, if the dispute is not settled, either one-third of the tenant - homeowners in a park or the park owner may request that the dispute be submitted to a hearing officer.
2. If the hearing officer finds that a material service reduction has occurred, the hearing officer shall determine the resultant percentage reduction in the tenant - homeowners' enjoyment of their homes due to the service reduction.
3. Rent shall be reduced by that percentage or amount. The tenant - homeowners also shall be entitled to a rebate of the following sum: the monthly rent reduction multiplied by the number of months between the date the homeowners notified the park owner of the reduction in service, and the date the city manager determined the rent reduction.
4. A service reduction shall not include the elimination or reduction of a recreational facility or service when such elimination or reduction and rent decrease resulting therefrom have the prior written approval of two-thirds of the homeowners. In such cases no rebate shall be required.
5. No recreational service or facility which has been reduced or eliminated shall be reinstated at any cost to the homeowners without prior written approval of two-thirds of the tenant - homeowners.

D. Consolidation of Service Reduction Complaint with Consideration of Fair Return Petition. In the event that a service reduction claim is filed while a fair return petition is pending, either the city, the park owner, or the tenants may require consideration of a claim pursuant to this section in conjunction with the fair return claim.

9.80.110 Waivers.

- A. Any waiver or purported waiver by a tenant - homeowner or mobile home tenant of rights granted under

this chapter shall be void as contrary to public policy.

B. It shall be unlawful for a landlord to require or attempt to require, as a condition of tenancy in a mobile home park, a tenant - homeowner, a mobile home owner, mobile home tenant, prospective mobile home owner, or prospective mobile home tenant to waive in a lease or rental agreement or in any other agreement the rights granted to a mobile home owner or mobile home tenant by this chapter.

C. It shall be unlawful for a landlord to deny or threaten to deny tenancy in a mobile home park to any person on account of such person's refusal to enter into a lease or rental agreement or any other agreement under which such person would waive the rights granted to a mobile home owner or mobile home tenant by this chapter.

9.80.120 Information to be supplied by the park owner to tenant - homeowners and prospective tenant - homeowner .

A. Posting of Chapter. A copy of this chapter shall be posted in the office of every mobile home park and in the recreation building or clubhouse of every mobile home park.

9.80.125 Information to be provided by the city to the public.

The city's web page shall include a copy of this chapter, a summary of this chapter and other issues related to mobile home park space rentals within the city, and a copy of California's Mobilehome Residency Law.

9.80.130 Designated Tenant - Homeowners' Representatives.

The tenant - homeowners of each mobile home park in the city shall annually elect by majority vote, with one vote per space, a designated resident representative to receive all notices required by this chapter. The tenant - homeowners shall advise the city manager of the name, address and phone number of the elected resident representative in writing no later than January 31st of each year and shall promptly notify the city manager of any change of representative.

9.80.140 Rights of prospective tenant - homeowners.

Any prospective tenant - homeowner must be offered the option of renting a mobile home space in a manner which will permit the "tenant-to-be" to receive the benefits of the mobile home space rent stabilization program which includes, but is not limited to, rental of a mobile home space on a month-to-month basis. Such a person cannot be denied the option of a tenancy of twelve months or less in duration.

The park owner shall provide each prospective tenant - homeowner with a photocopy of the written notification (see Appendix A of this chapter) and will provide each prospective tenant with a copy of this chapter.

Any effort to circumvent the requirements of this section shall be unlawful.

9.80.150 Annual registration and other notices required from owner.

A. Due Date. No later than February 1st of each year, each park owner shall file an annual registration statement, on a form provided by the city manager.

B. Contents of Registration Form. The registration forms shall include the name(s), business address(es), and business telephone number(s) of each person or legal entity possessing an ownership interest in the park and the

nature of such interest; the number of mobile home spaces within the park; a rent schedule reflecting the current space rents within the park; a listing of all other charges, including utilities not included in space rent, paid by mobile home owners within the park and the approximate amount of each such charge; the name and address to which all required notices and correspondence may be sent; and other information required by the city manager.

C. **Certification of Registration Forms.** All registration forms, and any documentation accompanying any registration forms, shall contain an affidavit or declaration, signed by the park owner or a designated agent, with his/her signature notarized, certifying that the information contained therein is true, correct and complete.

D. **Notice of Sale of a Park.** Upon the sale or transfer of a mobile home park, the seller or transferor shall notify the city manager of the sale or transfer and of the name and address of the buyer or transferee. Within ten days of the sale or transfer of a mobile home park, the buyer or transferee shall provide a new registration form.

E. **Notice to Prospective Park Purchasers.** The park owner shall provide prospective park purchasers with a copy of this chapter and notice that the following would be a prerequisite to filing a rent increase application pursuant to Sections 9.80.080 and 9.80.090:

1. A statement of the base year income, expenses, and net operating income of the park with a breakdown of income and expenses by category.
2. Documents supporting the amounts reported in the income and expense statement.

9.80.160 Retaliation prohibited.

A. It shall be unlawful for any landlord to evict a tenant - homeowner or mobile home tenant where the landlord's dominant motive in seeking to recover possession of the rental unit is:

1. Retaliation for the tenant - homeowner's or mobile home tenant's organizing, petitioning government for rent relief, or exercising any right granted under this chapter; or
2. Evasion of the purposes of this chapter.

B. It shall be unlawful for a landlord to retaliate against a tenant - homeowner or mobile home tenant for the owner's or tenant's assertion or exercise of rights under this chapter in any manner, including but not limited to:

1. Threatening to bring or bringing an action to recover possession of a rental unit.
2. Engaging in any form of harassment that causes the tenant - homeowner to quit the premises.
3. Decreasing housing services.
4. Increasing rent.
5. Imposing or increasing a security deposit or other charge payable by the owner or tenant.

9.80.170 Excessive Rents or Demands Therefor.

It shall be unlawful for a park owner to demand, accept, receive, or retain any rent in excess of the amounts authorized by this chapter.

9.80.180 Excessive rents - Refusal to Pay and Remedies

~~9.80.100~~ A. Refusal of ~~tenant~~ tenant - homeowner to pay illegal rent.

A ~~tenant~~ tenant - homeowner may refuse to pay any rent in excess of the maximum rent permitted by this chapter. The fact that such unpaid rent is in excess of the maximum rent shall be a defense in any action brought to recover possession of a mobilehome space for nonpayment of rent or to collect the illegal rent. (Ord. 98-6 § 1, 1998).

~~9.80.120~~ B. Remedies.

Any person who demands, accepts or retains any payment or rent in violation of the provisions of this chapter shall be liable in a civil action to the person from whom such payment is demanded, accepted or retained for damages in the sum of three times the amount by which the payment or payments demanded, accepted, or retained exceed the maximum rent which could be lawfully demanded, accepted or retained together with reasonable attorney's fees and costs as determined by the court. (Ord. 98-6 § 1, 1998).

C. Remedies provided by this section are in addition to any other legal or equitable remedies and are not intended to be exclusive.

~~9.80.090~~ 9.80.185 Permissible reasons for terminating or refusing to renew a tenancy.

A tenancy which is not subject to the provisions of the Mobilehome Residency Law shall not be terminated nor shall its renewal be refused, except for one or more of the following reasons:

A. Failure of the ~~tenant~~ tenant - homeowner to comply with a local ordinance or state law or regulation relating to mobilehomes within a reasonable time after the ~~tenant~~ tenant - homeowner receives a notice of noncompliance from the appropriate governmental agency;

B. Conduct by the ~~tenant~~ tenant - homeowner, upon the mobilehome park premises, which constitutes a substantial annoyance to other tenants;

C. Failure of the tenant to comply with a reasonable rule or regulation of the mobilehome park. No act or omission of the ~~tenant~~ tenant - homeowner shall constitute such failure to comply unless and until the owner has given the tenant written notice of the alleged rule or regulation violation and the tenant has failed to adhere to the rule or regulation within seven days;

D. Nonpayment of rent, utility charges, or reasonable incidental service charges;

E. Condemnation of the mobilehome park;

F. Change of use of the mobilehome park; provided, that the provisions of subsection (f) of Section 798.56 of the California Civil Code are followed:

1. The owner gives the ~~tenant~~ tenant - homeowner written notice of the proposed change 12 months or more before the date of the proposed change,

2. The owner gives each proposed ~~tenant~~ tenant - homeowner whose tenancy will commence within 12 months of the proposed change written notice thereof prior to the inception of that person's tenancy. Notice of termination or refusal to renew must be given in writing in the manner prescribed by Section 1162 of the Code of Civil Procedure or at least 60 days prior to the termination date of the tenancy. Said notice shall state the date

the tenancy terminates, the reason for the termination or refusal to renew, and the specific facts upon which the owner is relying. (Ord. 98-6 § 1, 1998).

9.80.190 Rules and guidelines.

The city manager may adopt rules and procedures to implement the applications, notices, registration, verification and certification required by this chapter, and for the review of rent increase applications and the conduct of hearings. Such rules and guidelines shall be submitted to the city council for review and approval.

9.80.200 Authority of city council to bring civil action to compel compliance.

The city council may institute a civil action to compel compliance with this chapter.

~~9.80.080~~ **9.80.210 Fees Administrative Service Fee.**

A. The costs of administration of this chapter shall be borne by the city, subject to reimbursement of the city's general fund by imposition of a rent stabilization administration fee chargeable against each mobilehome space in the city. The park owner who pays these fees may not pass through any of the fees assessed against a mobilehome space to the tenants tenant - homeowner .

B. The fees imposed by this section shall be paid annually. The time and manner of payment, delinquency status, and assessment and collection of penalties for delinquent payment of the fees imposed by this section shall be as provided by separate ordinance of the city council. The ~~clerk~~ city manager shall recommend to the city from time to time the amount of such fee and the city council shall adopt such fee by resolution.

9.80.215 Supplemental Administrative Fee.

A. **Definition.** "Supplemental Administrative Fee" or "Supplemental Fee" means a charge upon tenant - homeowner occupying a space within a mobile home park for the privilege granted by this chapter of receiving the specific rent stabilization benefits conferred by this chapter.

B. **Collection.** The Supplemental Administrative Fee is to be paid to the city from every occupied mobile home space except exempt spaces which shall be excluded from paying the fee.

C. **Purpose and Limitation on Use.** The purpose of the fee is to reimburse, in whole or in part, the city for the reasonable costs of conferring the benefits and privileges provided by this chapter to the benefit of the mobile home owners who are collectively paying the fee.

These costs may include, but not be limited to, the costs of administering and enforcing the rent stabilization provisions of this chapter; defending those provisions and their administrative enforcement from litigation challenging them; defending the administrative decisions of the city that would result in the preservation of the mobile home spaces receiving the benefits of this chapter as rental spaces that are qualified, under state law, to continue to receive the benefits of this chapter from their conversion to subdivided lots or other uses that would result in their loss of the rent stabilization benefits and privileges conferred by this chapter from litigation challenging them and providing grants to mobile home park tenant - homeowners' associations, or legal service providers, to partly cover the costs of providing the legal services necessary for enforcing their rights in administrative proceedings under this chapter, including representing mobilehome owners in responding to Fair rate of return applications under this Chapter. All moneys collected by the city through this administrative fee shall be set aside and used by the city only for the purposes set forth in this subsection and shall not exceed the reasonable costs of conferring the benefits and privileges provided by this chapter to the persons collectively

paying the fee, including providing the city with a reserve for covering such future costs, compensating the city for the expenditure of such prior costs and covering the payment of any loans that the city has or may incur to help pay for the costs of providing the benefits and privileges of this chapter, including loans to help pay the city's costs of defending against litigation that is covered under this subsection.

9.80.220 Appeal of decisions pursuant to this chapter.

City determinations pursuant to this chapter, including but not limited to fair return determinations, shall be subject to review pursuant to California Code of Civil Procedure Section 1094.5 as a final administrative determination, within the time constraints established pursuant to Code of Civil Procedure Section 1094.6.

Article II. Collection and Payment of Administration Fees

~~9.80.130~~ **9.80.230 Definitions for Article II.**

A. As used in this article, "owner" and "owner of a mobilehome park" mean any owner, lessor or sublessor of a mobilehome park in the city who receives or is entitled to receive rents for the use or occupancy of any mobilehome space thereof, and the representative, agent or successor of such owner, lessor or sublessor, and who reports to the Internal Revenue Service any income received or loss of income resulting from such ownership or claims any expenses, credits or deductions because of such ownership.

B. As used in this article, "mobilehome park," "mobilehome," and "mobilehome space" shall have the same meanings as set forth in Section 9.80.020 of this Chapter

~~9.80.140~~ **9.80.240 Registration – Required.**

On or before May 31st of each year, each owner of a mobilehome park, as defined in Section 9.80.230, in the city, as long as the city council may so authorize and/or allow, shall register with the city clerk of the city by providing, in writing, the name and address of each such mobilehome park owner, and a statement of the number of mobilehome spaces including both occupied and unoccupied spaces and spaces subject to lease agreements, as described under Civil Code Section 798.17, contained in each such park, and a statement of the number of recreational vehicle spaces in the park. Reregistration and provision of this information must also be made upon change of ownership of the mobilehome park or an increase or a decrease in the number of spaces.

~~9.80.150~~ **9.80.250 Payment of Administration Service Fee.**

A. On or before June 30th of each year, each owner of a mobilehome park, as defined in Section 9.80.230, shall pay to the city clerk of the city a mobilehome park rent stabilization program administration fee in the sum of \$24.00 per year for each "mobilehome space" as defined in Section 9.80.020, including both occupied and unoccupied mobilehome spaces not subject to a rental agreement in full compliance with the requirements of Civil Code Section 798.17(a) and (b). The City Council shall be authorized to increase the Administrative Service Fee each year thereafter by the amount of the increase of the Consumer Price Index. City staff shall determine the rise in the Consumer Price Index, as defined in Section 09.08.020(B) of this Chapter, from December to December, and round this percentage amount to the nearest Five Cents (\$.05).

B. The city clerk of the city shall forward these funds to the city's community development department to administer the mobilehome park rent stabilization ordinance enacted in Article I of this chapter. Further, the city clerk of the city shall issue to each mobilehome park owner a receipt for payment of the fees required to be paid in this article.

C. Any person owing money to the city under the provisions of this article shall be liable to an action brought in

the name of the city for the recovery of such amount.

9.80.160 9.80.260 Late payment – Fee.

A service fee equal to one and one-half percent per month will be charged on all late payments of registration fees under this article.

9.80.270 Collection and Payment of Supplemental Administrative Fee.

The Supplemental Administrative Fee is to be paid to the City monthly, collected from the tenant - homeowners by the Park Owner with the monthly rent, prorated if necessary, from every occupied Mobile home space except those spaces that are excluded from paying the Fee under subsection 11-3.222. This Fee shall be deemed a debt owed by the tenant - homeowner to the City. Any such Fee that has been collected by a Park owner, which has not been paid over to the City, shall be deemed a debt owed to the City.

Park owners are not required to pay the Fee to the City for spaces occupied by tenant - homeowners who fail to pay the fee to the Park owner and failure to pay the Fee shall not be grounds for a Mobile home park rule violation or grounds for eviction under Civil Code Section 798.56 (a) or (e). Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Sonoma for the recovery of such amount.

9.80.280 Spaces Excluded from Paying Supplemental Administrative Fee.

Only tenant - homeowners occupying spaces that receive the specific rent stabilization privileges granted and benefits conferred by this Chapter shall be assessed this Rent Control Fee. Persons occupying spaces that are excluded from the rent stabilization privileges granted and benefits conferred by this Chapter, either through state law or otherwise, shall not be charged this Rent Control Fee.

9.80.290 Amount of the Supplemental Administrative Fee.

For the first year of implementation, the Fee shall be set in the amount of \$5.00 per month as soon after the effective date of the implementing ordinance as is practicable. The City Council shall be authorized to increase the Supplemental Administrative Service Fee each year thereafter by the amount of the increase of the Consumer Price Index; provided that the City Council shall waive, in whole or in part, the Fee or any increase for a particular year if the City Council determines that the Fee otherwise collected for that particular year together with the Fees collected from prior years would exceed the reasonable costs of conferring the benefits and privileges provided by this Chapter, including a reasonable reserve for covering future legal fees and costs. City staff shall determine the rise in the Consumer Price Index, as defined in Section 09.08.020(B) of this Chapter, from December to December, and round this percentage amount to the nearest Five Cents (\$.05).

9.80.300 Severability.

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The city council declares that it would have passed the ordinance codified in this chapter and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases hereof be declared invalid or unconstitutional.

APPENDIX A

IMPORTANT NOTICE TO PROSPECTIVE HOMEOWNER REGARDING THE PROPOSED RENTAL AGREEMENT FOR THE _____ MOBILE HOME PARK.

PLEASE TAKE NOTICE THAT THIS RENTAL AGREEMENT CREATES A TENANCY WITH A TERM

IN EXCESS OF TWELVE MONTHS.

BY SIGNING THIS RENTAL AGREEMENT, YOU ARE EXEMPTING THIS MOBILE HOME SPACE FROM THE PROVISIONS OF THE CITY OF Sonoma MOBILE HOME RENT STABILIZATION ORDINANCE FOR THE TERM OF THIS RENTAL AGREEMENT.

THE CITY OF Sonoma MOBILE HOME RENT STABILIZATION ORDINANCE AND THE STATE MOBILE HOME RESIDENCY LAW (CALIFORNIA CIVIL CODE SEC. 798 et seq.) GIVE YOU CERTAIN RIGHTS. BEFORE SIGNING THIS RENTAL AGREEMENT YOU MAY CHOOSE TO SEE A LAWYER.

UNDER THE PROVISIONS OF STATE LAW, YOU HAVE A RIGHT TO BE OFFERED A RENTAL AGREEMENT FOR:

- (1) A TERM OF TWELVE MONTHS, OR
- (2) A LESSER PERIOD AS YOU MAY REQUEST, OR
- (3) A LONGER PERIOD AS YOU AND THE MOBILE HOME PARK MANAGEMENT MAY AGREE. YOU HAVE A RIGHT TO REVIEW THIS AGREEMENT FOR 30 DAYS BEFORE ACCEPTING OR REJECTING IT.

IF YOU SIGN THE AGREEMENT YOU MAY CANCEL THE AGREEMENT BY NOTIFYING THE PARK MANAGEMENT IN WRITING OF THE CANCELLATION WITHIN 72 HOURS OF YOUR EXECUTION OF THE AGREEMENT.

IT IS UNLAWFUL FOR A MOBILE HOME PARK OWNER OR ANY AGENT OR REPRESENTATIVE OF THE OWNER TO DISCRIMINATE AGAINST YOU BECAUSE OF THE EXERCISE OF ANY RIGHTS YOU MAY HAVE UNDER THE CITY OF SONOMA MOBILE HOME RENT REVIEW LAW, OR BECAUSE OF YOUR CHOICE TO ENTER INTO A RENTAL AGREEMENT WHICH IS SUBJECT TO THE PROVISIONS OF THAT LAW.



City of Sonoma
City Council
Agenda Item Summary

City Council Agenda Item: 7D

Meeting Date: 03/02/2015

Department

Finance

Staff Contact

DeAnna Hilbrants, Finance Director

Agenda Item Title

Presentation of FY 2014 - 2015 Midyear Budget; discussion, consideration and possible action on Amendments to the FY 2015 Operating Budget

Summary

On June 30, 2014 Council adopted the 2014-2015 Operating Budget. Now that the City has completed the first six months of operations, staff will present a status report of Revenue and Expenditures.

As a result of the mid-year budget review and due to events occurring subsequent to the adoption of the budget, staff is recommending several amendments to the adopted budget. A summary of the recommended changes are as follows:

SUMMARY OF AMENDMENTS TO THE FY 2014-15 OPERATING BUDGET	
General Fund	\$316,400
Gax Tax Fund	\$7,200
Cemetery Fund	\$2,300
Water Fund	\$29,000
Long-term Building Maintenance Fund	\$65,325

Recommended Council Action

Accept Mid-Year Budget Report

Adopt Resolution Amending Fiscal Year 2015 Operating Budget

Alternative Actions

Request additional information.

Financial Impact

The requested modifications to the FY 14-15 Budget as presented, total \$346,725

Environmental Review

- Environmental Impact Report
- Negative Declaration
- Exempt
- Not Applicable

Status

- Approved/Certified
 - No Action Required
 - Action Requested
-

Attachments:

Midyear Budget Report
Resolution

Alignment with Council Goals:

Fiscal Management: Maintain fiscal responsibility that ensures short and long term prosperity through effective fiscal planning and efficient management of the taxpayers' assets; apply sound budget strategy assure financial stability in the General and Enterprise Funds through the continued application of sound financial policies; maintain stable reserve levels.

Exhibit A: Proposed Amendments to City of Sonoma Operating Budget for 2014 - 2015

Department / Account	Adopted Budget	Amount of Request	Source	Description	City Council Goal
715-00000-000-25315	N/A	250,000	General Fund Special Projects Reserve (Undesignated)	Establish trust for Community Pool. Action approved by City Council on October 20, 2014. This approval authorizes the financial transaction.	Recreation and Community Resources
Community Activities	179,500	25,000	Use revenues in excess of budget.	Renew Chamber of Commerce Economic Development Partnership.	Balancing City Character
Planning	708,661	6,400	Use revenues in excess of budget.	Reclassify Planning Administrative Assistant position from part-time to full time due to increase in planning and building activity.	Public Service
General Fund - All Departments (Fund 100)	16,089,814	35,000	Use revenues in excess of budget.	Salary increases resulting from new MOU approved December 1, 2014.	Public Service
Gas Tax (Fund 302)	823,040	7,200	Use revenues in excess of budget.	Salary increases resulting from new MOU approved December 1, 2014.	Public Service
Cemetery (Fund 501)	339,832	2,300	Use revenues in excess of budget.	Salary increases resulting from new MOU approved December 1, 2014.	Public Service
Water Operations (Fund 510)	6,808,625	17,000	Use revenues in excess of budget.	Salary increases resulting from new MOU approved December 1, 2014.	Public Service
Water Operations (Fund 510)	6,808,625	12,000	Use revenues in excess of budget.	Conduct Feasibility for construction of irrigation well in the Plaza.	Water
Long Term Building Maintenance (Fund 610)	197,500	50,325	Available in Fund Balance	Increase budget for City Hall Bell Tower Replacement Project due to unanticipated dry rot and termite repairs.	Infrastructure
Long Term Building Maintenance (Fund 610)	197,500	15,000	Available in Fund Balance	Additional budget needed for Fire Station Exterior Painting Project.	Infrastructure



City of Sonoma

MID-YEAR FINANCIAL REPORT

Fiscal Year 2014-2015

The Mid-Year Budget report is a summary of activities of major funds of the City of Sonoma and is particularly focussed on the general fund. This report is intended to provide the Council and the public with snapshot of financial activities and the state of the City's fiscal condition. The report is not inclusive of all transactions.



GENERAL FUND

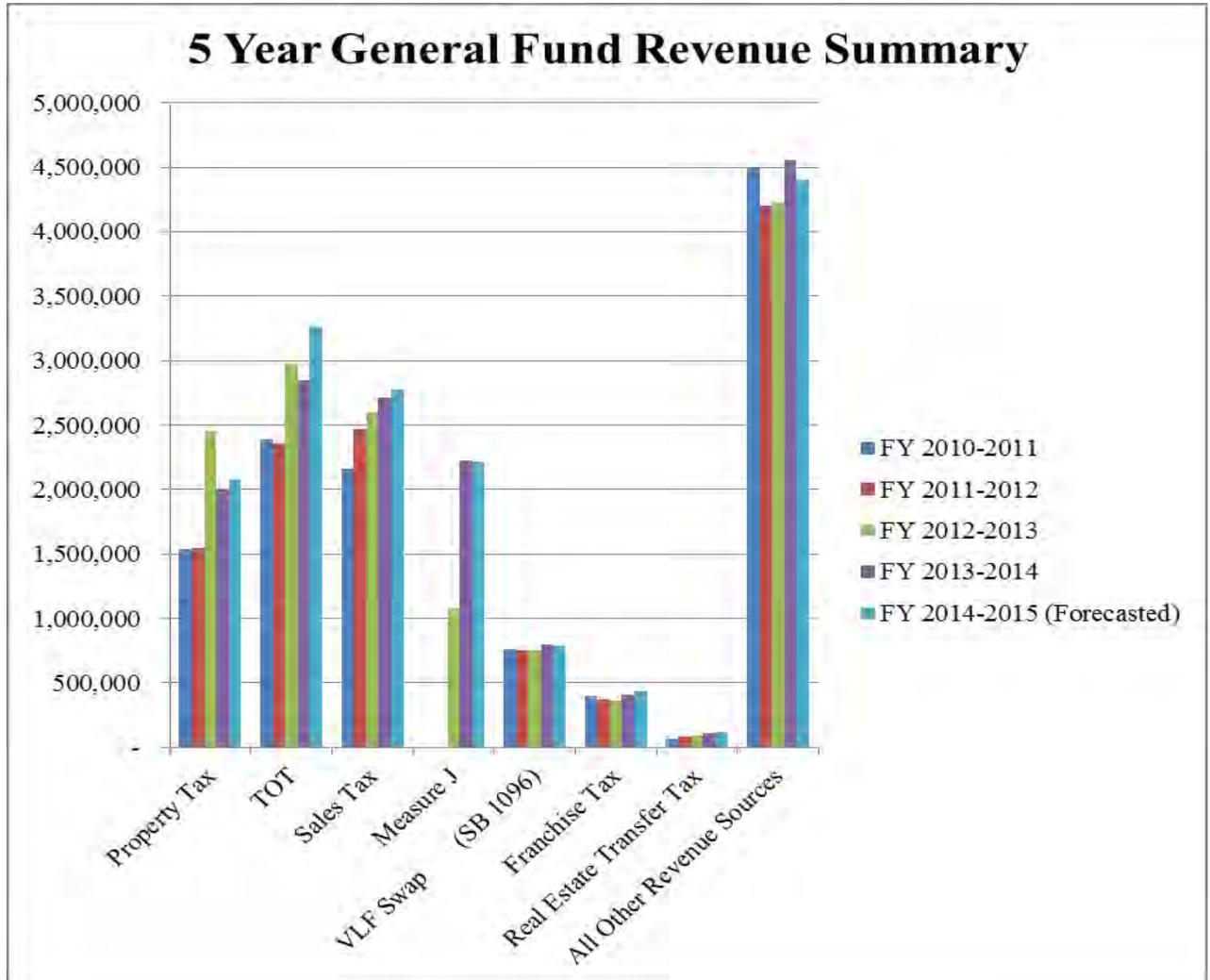
FISCAL 2014 - 2015 @ MIDYEAR – July 1, 2014 through December 31, 2014

Six months (50%) into the fiscal year, the City is *“in the black”* with no anticipated drawdown from reserves. At December 31, 2014, General Fund revenue exceeds expenditures by approximately \$191,779. Note that some of this difference results from timing of receipt of invoices from vendors.

GENERAL FUND	CURRENT YEAR		% of Budget
	FY 14-15 Budget	Year to Date Actual	
Revenue	\$16,089,814	\$8,228,046	51%
Expenditure	\$16,089,814	\$8,036,267	50%
Balance	0	\$191,779	

GENERAL FUND REVENUE TRENDS

Top revenue sources for the General Fund continue to signal a stable and healthy economy and are in line with the City's adopted budget forecasts.



Year	Property Tax	TOT	Sales Tax	Measure J	VLF Swap (SB 1096)	Franchise Tax	Real Estate Transfer Tax	All Other Revenue Sources
FY 2010-2011	1,536,625	2,385,554	2,159,024	N/A	758,639	398,940	65,490	4,503,964
FY 2011-2012	1,544,459	2,358,718	2,467,826	N/A	750,732	370,967	80,536	4,205,983
FY 2012-2013	2,454,062	2,974,285	2,591,251	1,081,166	752,054	362,495	90,219	4,231,543
FY 2013-2014	1,996,713	2,849,939	2,717,216	2,225,657	794,157	406,409	115,555	4,552,521
<i>FY 2014-2015 (Forecasted)</i>	<i>2,082,974</i>	<i>3,262,255</i>	<i>2,778,442</i>	<i>2,214,316</i>	<i>789,600</i>	<i>434,000</i>	<i>125,000</i>	<i>4,403,227</i>

Over the past several years, Sonoma has weathered the impacts of the downturn of the economy, loss of redevelopment, and reduction in the City's investment portfolio interest earnings. Surviving those impacts was only possible through the Council's sound fiscal policies, the passage of Measure J, the formation of the Tourism Improvement District to increase tourism-related revenues and the rebound of the real estate market. In addition, for Fiscal Year 2014 - 2015, staff successfully applied for and received grants to support streets projects. Even though these grants require expenditures ahead of grant repayment, the overall revenue / expenditure picture for the city remains positive.

Overview of Primary Revenue sources at mid-year:

- **Transient Occupancy Tax**– TOT collections at midyear are at 61% of budget. TOT collections have increased approximately 14% over the same period last year. Some of these are one time collections from the vacation rental project. Overall, this segment reflects the positive work of the Tourism Improvement District.
- **Property Tax**– While property tax is at nearly 55% of budget reflecting healthy property values, the property tax increment received for Successor Agency was insufficient to meet the outstanding obligations of the Successor Agency to the Sonoma Community Development agency. Staff will identify options to address this issue in the Successor Agency to the Sonoma Community Development Agency (Fund 391).
- **Sales Tax**– Sales tax revenues continue to increase but at a slower rate than in previous years. As reported by the City's Sales Tax Audit firm, the City's increase for sales through December 2014, is up by 3.4% from the period through December 2013. The statewide increase is 5.7%.
- **Transactions and Use Tax / Measure J -** The voter-approved ½ percent sales tax measure is out-performing the original budget projections anticipated in the ballot measure. At midyear, Measure J collections are reflecting an approximate 5% increase over budget.
- **Vehicle License Fees/VLF Swap SB 1096** – Vehicle License Fees (VLF) are collected by the Department of Motor Vehicles and disbursed by the State Controller to the City. Collections are at 54% of budget at midyear.
- **Real Estate Transfer Tax**– The Real Estate market appears to remain robust with the Transfer Tax revenue at 54% of budget.
- **Franchise Taxes**– Franchise taxes are derived through agreements with Sonoma Garbage, Comcast Cable and P G & E. These taxes are calculated based on the revenue generated by each franchisee. The major franchisee, P G & E, remits taxes in arrears. Therefore, this revenue account is at 40% of budget but is anticipated to meet or exceed budget projections by year end.

GENERAL FUND EXPENDITURES:

Department managers and employees continue to be diligent in managing their individual departmental expenditures as reflected in the table below. With a few exceptions reflecting timing of payments (payments in advance) or one time large expenses (such as vehicle purchase), all departments are at 50% of budget or lower. Streets Capital Projects reflect a greater expenditure level due to funding being allocated to projects in the CIP. Note that some of this difference is related to timing of invoices from vendors.

The following summarizes the individual departments in the General Fund and the expenditure level percentages.

Department	FY 2014 - 2015 Adopted Budget	Actual Expenses through 12/31/2014	Percent of Budget
City Council	\$ 139,160	\$ 70,230	50%
City Clerk	\$ 161,353	\$ 68,279	42%
City Manager	\$ 191,461	\$ 91,175	48%
Finance	\$ 202,801	\$ 84,720	42%
Legal	\$ 250,000	\$ 106,971	43%
Police	\$ 4,393,933	\$ 1,998,950	45%
Fire	\$ 5,038,273	\$ 2,712,888	54%
Public Works Admin & Parks	\$ 899,942	\$ 424,231	47%
Streets / Capital	\$ 2,150,964	\$ 1,217,210	57%
Planning	\$ 708,661	\$ 323,224	46%
Building	\$ 486,126	\$ 246,329	51%
Community Activities	\$ 179,500	\$ 103,667	58%
Successor Agency Administration	\$ 369,209	\$ 165,471	45%
Non Departmental	\$ 476,284	\$ 201,851	42%
Transfers Out	\$ 442,145	\$ 221,073	50%
TOTAL	\$ 16,089,812	\$ 8,036,267	50%

OTHER MAJOR FUNDS:

Other major funds of the City including Gas Tax (Fund 302), Cemetery Operations (Fund 501), and Water Operations (Fund 510) demonstrate a similar pattern with revenues slightly above budget and expenses within or below budget. Note that this is reflective of the current year. Staff will be bringing a recommendation in the future regarding deficit balances in Gas Tax and Cemetery Fund.

FISCAL 2013 - 2014 YEAREND POSITION [PRIOR FISCAL YEAR]

The results for prior fiscal year [FY 2013 - 2014] are still considered preliminary due to the transition of balances to the new software and the completion of the annual audit. The City anticipates closing the prior year with an increase to fund balance. Due to ongoing work in reconciling other funds, completion of the annual audit and the need to evaluate the impacts of PERS costs and Affordable Care Impacts, staff will bring recommendations for use of these funds during the annual budget process.

RECOMMENDED BUDGET AMENDMENTS @ MIDYEAR

As a result of the Midyear Budget review, staff is recommending certain amendments to the 2014 - 2015 operating budget which are primarily related to previously approved Council actions or funding of Council related Goals. Those recommendations are detailed in Exhibit A: Proposed Amendments to the City of Sonoma Operating Budget for 2014 - 2015.

ACTIONS REQUESTED AT MIDYEAR:

- 1) Accept Mid-Year Report
 - 2) Adopt Resolution amending FY 2015 Operating Budget for the appropriations identified on the attached Exhibit A: Proposed Amendments to the City of Sonoma Operating Budget for 2014 - 2015.
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CITY OF SONOMA

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SONOMA
AMENDING THE FY 2014 - 2015 BUDGET

WHEREAS, the 2014 -2015 Fiscal Year Budget was adopted on June 30, 2014, and

WHEREAS, subsequent to its adoption issues have arisen which require amendments to the FY 2015 operating budget, and

WHEREAS, the City Council, following review of the 2015 Midyear Budget, determined that a budget amendment should be made as stated on Exhibit A: Amendments to the City of Sonoma Operating Budget for 2014 - 2015 to this resolution, and

WHEREAS, sufficient funds are available in the individual funds for this budget amendment.

NOW, THEREFORE, BE IT RESOLVED by this City Council that the Budget for Fiscal Year 2015 is hereby amended as stated.

The foregoing Resolution was duly adopted this 2nd day of March, 2015, by the following roll call vote:

AYES:
NOES:
ABSENT:

David Cook, Mayor

ATTEST:

Gay Johann
Assistant City Manager/City Clerk

Exhibit A: Amendments to City of Sonoma Operating Budget for 2014 - 2015

Department / Account	Adopted Budget	Amount of Request	Source	Description	City Council Goal
715-00000-000-25315	N/A	250,000	General Fund Special Projects Reserve (Undesignated)	Establish trust for Community Pool. Action approved by City Council on October 20, 2014. This approval authorizes the financial transaction.	Recreation and Community Resources
Community Activities	179,500	25,000	Use revenues in excess of budget.	Renew Chamber of Commerce Economic Development Partnership.	Balancing City Character
Planning	708,661	6,400	Use revenues in excess of budget.	Reclassify Planning Administrative Assistant position from part-time to full time due to increase in planning and building activity.	Public Service
General Fund - All Departments (Fund 100)	16,089,814	35,000	Use revenues in excess of budget.	Salary increases resulting from new MOU approved December 1, 2014.	Public Service
Gas Tax (Fund 302)	823,040	7,200	Use revenues in excess of budget.	Salary increases resulting from new MOU approved December 1, 2014.	Public Service
Cemetery (Fund 501)	339,832	2,300	Use revenues in excess of budget.	Salary increases resulting from new MOU approved December 1, 2014.	Public Service
Water Operations (Fund 510)	6,808,625	17,000	Use revenues in excess of budget.	Salary increases resulting from new MOU approved December 1, 2014.	Public Service
Water Operations (Fund 510)	6,808,625	12,000	Use revenues in excess of budget.	Conduct Feasibility for construction of irrigation well in the Plaza.	Water
Long Term Building Maintenance (Fund 610)	197,500	50,325	Available in Fund Balance	Increase budget for City Hall Bell Tower Replacement Project due to unanticipated dry rot and termite repairs.	Infrastructure
Long Term Building Maintenance (Fund 610)	197,500	15,000	Available in Fund Balance	Additional budget needed for Fire Station Exterior Painting Project.	Infrastructure



City of Sonoma
City Council
Agenda Item Summary

City Council Agenda Item: 7E

Meeting Date: 03/02/2015

Department

Administration

Staff Contact

Carol E. Giovanatto, City Manager

Agenda Item Title

Discussion, Consideration and Possible Action to Provide Direction to Councilmember Hundley on Potential Voting Action by Mayor & Councilmember Legislative Action Committee on SB 128 [Requested by Councilmember Hundley]

Summary

Councilmember Hundley has requested Council direction on a potential vote upcoming by the Mayor & Councilmember Legislative Action Committee to send a letter in support of SB 128 End of Life Option Act by Senator William Monning, Senator Lois Wolk and Assemblymember Susan Talamantes Eggman. This vote would require a unanimous vote of members of the Legislative Committee to send a letter of support. This item was discussed at their last meeting and decided that it would be discussed by individual Councils and returned to the Committee prior to final voting. The next meeting of the Legislative Committee is March 8th.

Bill Summary

SB 128 would establish the End of Life Option Act in California, modeled after Oregon law that was enacted in 1997. This would give a terminally ill, mentally competent California adult resident the legal right to ask and receive a prescription to hasten death from his/her physician after all required criteria is met.

Recommended Council Action

Council discretion.

Alternative Actions

N/A

Financial Impact

Undetermined.

Environmental Review

- Environmental Impact Report
- Negative Declaration
- Exempt
- Not Applicable

Status

- Approved/Certified
 - No Action Required
 - Action Requested
-

Attachments:

Request from Councilmember Hundley

cc:



Senate Bill 128

End of Life Option Act

*By Senator William Monning, Senator Lois Wolk
and Assemblymember Susan Talamantes Eggman*

Bill Summary

SB 128 would establish the End of Life Option Act in California, modeled after Oregon law that was enacted in 1997. This would give a terminally ill, mentally competent California adult resident the legal right to ask and receive a prescription to hasten death from his/her physician after all required criteria is met.

Specifically, this bill will allow terminally ill patients the right to obtain a prescription from his or her physician for medication to be self-administered. It requires two physicians to confirm a prognosis of six months or less to live, a written request and two oral requests to be made a minimum of 15 days apart, and two witnesses to attest to the request. The two physicians must also ensure that the patient has the mental competency to make health care decisions for him or herself.

SB 128 includes safeguards for physicians, pharmacists and health care providers that follow the law to ensure they will be immune from civil or criminal liability or professional disciplinary action when a patient exercises this option. In addition, participation for physicians, pharmacists and health care providers in this law is voluntary with the ability to opt-out. Measures to protect vulnerable patients are also included in the legislation by establishing felony penalties for coercing someone to request the medication or forging a request. The attending physician of the terminally ill patient who wishes to engage in the End of Life Option Act is required to discuss feasible alternatives or additional treatment opportunities, including but not limited to comfort care, hospice care, palliative care and pain control. Finally, the patient can decide not to use the prescription or can rescind his or her request for the drug at any time.

Background

This medical practice is already recognized in other states such as Oregon, Washington and Vermont and in Montana under the State Supreme Court's 2010 decision in the *Baxter* case. The experiences in these states demonstrate that any objections or legitimate concerns initially raised have been shown to be unfounded. The data collected in Oregon shows this end of life option is sparingly used with fewer than 1 in 500 deaths (60 or 70 a year out of a total of over 30,000 deaths). Comparable numbers are seen in the state of Washington.

A recent study in Oregon also showed that a sizable percentage of individuals who obtained the prescription never ingested the medication in the end.

February 6, 2015

Recent polls indicate that public opinion has changed significantly in the last few years. Two-thirds of Californians, including majorities from every demographic subgroup, support the freedom of terminally ill individuals to exercise this end-of-life option. Recently, Medscape conducted a survey and found that most American physicians now also support this measure for patients with an incurable and terminal disease.

Support

Compassion & Choices

The California Senior Legislature

Death with Dignity National Center

Walter Stullman, M.D., Cardiologist, Highland General Hospital

Staff Contact:

Marivel Barajas, Legislative Consultant for Senator Wolk – 916.651.4003

Kathy Smith, Senior Legislative Consultant for Senator Monning – 916.651.4017



CITY OF SONOMA
 City Council
 Agenda Item Summary

Agenda Item:	9
Meeting Date:	03/02/2015

Department Administration	Staff Contact Gay Johann, Assistant City Manager/City Clerk
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Agenda Item Title

Councilmembers' Reports on Committee Activities.

Summary

Council members will report on activities, if any, of the various committees to which they are assigned.

MAYOR COOK	MPT GALLIAN	CLM. AGRIMONTI	CLM. EDWARDS	CLM. HUNDLEY
City Audit Committee	ABAG Delegate	North Bay Watershed Association	ABAG Alternate	Sonoma Clean Power Alt.
City Facilities Committee	Cittaslow Sonoma Valley Advisory Council, Alt.	Sonoma County Health Action & SV Health Roundtable	Cittaslow Sonoma Valley Advisory Council	Sonoma County M & C Assoc. Legislative Committee
LOCC North Bay Division Liaison	City Audit Committee	Sonoma County Trans. & Regional Climate Protection Authority, Alternate	City Facilities Committee	S. V. Citizens Advisory Commission
Oversight Board to the Dissolved CDA	LOCC North Bay Division Liaison, Alternate	Sonoma County Waste Management Agency		S.V. Economic Dev. Steering Committee, Alt.
Sonoma Clean Power	Oversight Board to the Dissolved CDA, Alt.	VOM Water District Ad Hoc Committee, Alternate		S. V. Library Advisory Committee, Alternate
Sonoma County Mayors & Clm. Assoc. BOD	Sonoma County Mayors & Clm. Assoc. BOD, Alt.	Water Advisory Committee, Alternate		
Sonoma Disaster Council	Sonoma County M & C Assoc. Legislative Committee, Alt.			
Sonoma Housing Corporation	Sonoma County Trans. Authority & Regional Climate Protection Authority			
Sonoma Valley Citizens Advisory Comm. Alt.	Sonoma Disaster Council, Alternate			
S.V.C. Sanitation District BOD	Sonoma Housing Corporation			
S.V. Economic Dev. Steering Committee	S.V.C. Sanitation District BOD, Alt.			
S.V. Fire & Rescue Authority Oversight Committee	S.V. Fire & Rescue Authority Oversight Committee			
S. V. Library Advisory Committee	LOCC North Bay Division, LOCC E-Board (M & C Appointment)			
	Ag Preservation and Open Space (M & C Appointment)			
	VOM Water District Ad Hoc Committee			
	Water Advisory Committee			

Recommended Council Action – Receive Reports

Attachments: None