CONCURRENT SPECIAL 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, June 1, 2015
6:15 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 (Hundley, Agrimonti, Edwards, Gallian, 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: **World Elder Abuse Awareness Day Proclamation**

Item 3B: **Presentation of annual stormwater report and update on stormwater program activities**

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 May 18, 2015 City Council Meeting.**
Staff Recommendation: Approve.

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

Item 4C: **Adoption of Ordinance No. 04-2015 entitled AN ORDINANCE OF THE CITY OF SONOMA REQUIRING THE LICENSURE OF TOBACCO RETAILERS AND AMENDING CHAPTER 7.25 OF THE MUNICIPAL CODE.**
Staff Recommendation: Adopt the ordinance.

Item 4D: **Approval of Successor Employment Agreement between the City of Sonoma and Carol Giovanatto as City Manager.**
Staff Recommendation: Approve agreement and authorize the Mayor to execute the agreement on behalf of the City.

Item 4E: **Approval of Participation in the Intergovernmental Transfer with Partnership HealthPlan of California (PHC) and Authorization for the City Manager to Sign Agreements.**
Staff Recommendation: Adopt the Resolution Authorizing the City Manager to Execute an Agreement for Intergovernmental Transfer with Partnership HealthPlan of California.

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 May 18, 2015 City Council Meeting Pertaining to the Successor Agency.**
Staff Recommendation: Approve.

6. PUBLIC HEARING

Item 6A: **Discussion, consideration, and possible action to conduct the first reading of an Ordinance of The City Council of the City of Sonoma amending Titles 13, 14, and 19 of the Sonoma Municipal Code by Amending the Stormwater and Development Regulations as they Pertain to the City's Legal Authority and Ability to Comply with NPDES Permit No. 2013-0001-DWQ.** (Stormwater Compliance Specialist)
Staff Recommendation: Conduct the first reading of ordinance.

7. REGULAR CALENDAR – CITY COUNCIL

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

Item 7A: **Discussion, consideration and possible action to provide comments and consensus agreement on issues related to the Sonoma County Waste Management Agency (SCWMA).** (City Manager)
Staff Recommendation: Provide comments and consensus agreement on specific issues related to the SCWMA.

Item 7B: **Discussion, consideration and possible action of a resolution establishing procedures pertaining to appointments to City boards and commissions.** (City Manager)
Staff Recommendation: Provide direction to staff.

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 May 28, 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: **06/01/2015**

Department	**Staff Contact**
Administration	Gay Johann/Assistant City Manager/City Clerk

Agenda Item Title

World Elder Abuse Awareness Day Proclamation

Summary

Cynthia Scarborough, Executive Director of Vintage House Senior Center, requested a proclamation recognizing June 15, 2015 as World Elder Abuse Awareness Day.

World Elder Abuse Awareness Day (WEAAD) was launched on June 15, 2006 by the International Network for the Prevention of Elder Abuse and the World Health Organization at the United Nations.

The purpose of WEAAD is to provide an opportunity for communities around the world to promote a better understanding of abuse and neglect of older persons by raising awareness of the cultural, social, economic and demographic processes affecting elder abuse and neglect.

In keeping with City practice, proclamation recipients have been asked to keep the total length of their follow-up comments and/or announcements to no more than 10 minutes.

Recommended Council Action

Mayor Cook to present the proclamation.

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:

Proclamation

Alignment with Council Goals: N/A

cc: Cynthia Scarborough via email

City of Sonoma

Proclamation

WORLD ELDER ABUSE AWARENESS DAY

WHEREAS, Sonoma's senior citizens are valued members of society; and

WHEREAS, abuse of older people is a tragedy inflicted on vulnerable seniors and an ever-increasing problem in today's society that crosses all socio-economic boundaries; and

WHEREAS, elderly and dependent adults have the right to be protected under the law from all types of abuse, including financial, physical, psychological, sexual, or neglect; and

WHEREAS, combating abuse of older people will help improve the quality of life for Sonoma's seniors, and enable them to continue to serve as leaders, mentors volunteers, and important and active members of this community; and

WHEREAS, the issue of elder abuse prevention requires continual community awareness and education; and

WHEREAS, elder abuse should not be ignored nor endured; and

WHEREAS, the City of Sonoma provides support, services and education to seniors through Vintage House Senior Center;

NOW, THEREFORE, BE IT RESOLVED THAT I, David Cook, Mayor of the City of Sonoma, do hereby proclaim June 15, 2015

WORLD ELDER ABUSE AWARENESS DAY

And I encourage all Sonoma residents to recognize and celebrate the accomplishments of Sonoma's senior citizens.

IN WITNESS WHEREOF, I have hereunto set my hand and cause the Seal of the City of Sonoma to be affixed this 1st day of June 2015.

David Cook, Mayor

City of Sonoma
City Council
Agenda Item Summary

City Council Agenda Item: **3B**

Meeting Date: **06/01/2015**

Department	**Staff Contact**
Public Works	Stormwater Compliance Specialist, Chris Pegg

Agenda Item Title

Presentation of annual stormwater report and update on stormwater program activities.

Summary

The City of Sonoma's stormwater program has grown significantly in the past 2 years in response to state regulations protecting surface waters from pollution. Stormwater program activities include public education regarding pollution, public involvement in cleanups and program development, spill-response, illegal dumping remediation, mitigation of adverse impacts on surface waters from construction and development, and surface water quality monitoring.

A presentation of the annual report and an update on these program activities to City Council promotes public awareness of stormwater issues, creates opportunities for public involvement in the stormwater program, and enhances Council's understanding of issues that may affect constituents and the resources available to address those issues.

Recommended Council Action

Receive presentation

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:

1. Supplemental Report

cc:

SUPPLEMENTAL REPORT

PRESENTATION OF ANNUAL STORMWATER REPORT AND UPDATE ON STORMWATER PROGRAM ACTIVITIES.

For the City Council Meeting of June 1, 2015

PURPOSE

A presentation of the annual stormwater report and an update on City of Sonoma's stormwater program activities promotes public awareness of stormwater issues, creates opportunities for public involvement in the stormwater program, and enhances Council's understanding of issues that may affect constituents and the resources available to address those issues.

BACKGROUND

The City of Sonoma operates a storm drain system that collects stormwater during rain events and discharges it to Nathanson, Fryer, and Sonoma creeks. This storm drain system protects the public safety and reduces flood-related property damage; however, discharges from urban storm drain systems are generally known to contain pollutants such as sediment, pesticides, heavy-metals, pathogens, and motor oil. The Federal Clean Water Act prohibits discharges of these and other pollutants to a broad class of waterbodies known as Waters of the United States, which includes Nathanson, Fryer, and Sonoma creeks.

In California, the State Water Resources Control Board authorizes operators of storm drain systems to discharge stormwater to Waters of the United States only after a permit has been issued ensuring that the operator has limited the quantity of pollutants in the discharge to the maximum extent practicable. The State Water Resources Control Board issued such a permit ('stormwater permit') to the City of Sonoma in 2013.

The City of Sonoma's stormwater program has grown significantly in response to the requirements of the stormwater permit in the 2 years since it was issued. Program focuses include public education, public involvement, spill-response, illegal dumping remediation, mitigation of adverse impacts on surface waters from construction and development, and surface water quality monitoring.

SUMMARY

Program highlights within each of the program focuses above have included:

1) Public Education
   a) Educational materials provided by the City of Sonoma regarding less-toxic pest control methods are available in the garden section at Friedman's Home Improvement store at 1360 Broadway Ave.
   b) Temporary signage regarding the risk of pathogen exposure from abandoned pet-waste has been deployed at three sites in Sonoma known to have pet-waste cleanup issues.
   c) New materials are available at City Hall to assist residents maintain chlorinated swimming pools without causing pollution in nearby creeks.

2) Public Involvement
   a) The City is an active member in the North Bay Watershed Association. Regional collaboration organized through the Bay Area Stormwater Management Agencies Association and funded through the North Bay Watershed Association have included the development and publication of *Bay Area Stormwater Agencies Association Post-Construction Manual: Design Guidance for Stormwater Treatment and Control for Projects in Marin, Sonoma, Napa, and Solano Counties* as well as the development of the *Stormwater Program Effectiveness Assessment and Improvement Plan for Marin, Napa, Solano and Sonoma Counties*.
   b) The City is an active partner in the City Watersheds project, a project organized through Sonoma County Water Agency, which aims to identify and complete a project that will reduce flooding by capturing rainwater and using it to recharge groundwater. Although limited recharge opportunities have been found within the City of Sonoma, the project has fostered broad public dialogue surrounding stormwater management.
3) Spill-response and Illegal Dumping Remediation
   a) City staff has completed the second and final phase of a survey of all of the storm drain outfalls. Outfalls exist where storm drains discharge to a surface water body such as a local creek and represent the first line-of defense for identifying illegal dumping and polluted discharges.
   b) While conducting the outfalls survey, City staff sampled outfalls found to be flowing during dry weather conditions (indicating dumping or a leak upstream) and tested samples for common pollutants. Roughly 10% of surveyed outfalls were found flowing during dry-weather conditions; however, all sample results were free of pollutants indicating that groundwater intrusion into the storm drain system was the most likely cause of dry –weather flow.
   c) City staff responded to and resolved 49 illegal dumping complaints. The largest effort involved collaboration with Sonoma County Police Department and The Haven shelter to clean up encampments along Sonoma Creek.
4) Mitigation of adverse impacts on surface waters from construction and development
   a) City staff inspected 222 construction sites in Sonoma for adequate erosion and sediment controls to prevent excess sedimentation in the storm drain system and creeks.
   b) City staff prepared to begin implementing new regulations in July of 2015 that regulate the increases in stormwater runoff from new developments when pervious/natural surfaces are exchanged for impervious/hardscape surfaces.
5) Surface water quality monitoring
   a) The City of Sonoma has partnered with the County of Sonoma and the Sonoma Ecology Center to monitor surface water quality in the Sonoma Creek watershed and has been awarded a grant by the Environmental Protection Agency Bay Area Water Quality Improvement Fund Program totaling over $900,000 to complete this monitoring.

STAFF RECOMMENDATION

Receive presentation.

ALTERNATIVES

None

CONCLUSION

The Stormwater Compliance Specialist can be reached at (707) 933-2245 or at cpegg@sonomacity.org with questions or concerns.

CITY OF SONOMA
City Council
Agenda Item Summary

City Council Agenda Item: **4B**

Meeting Date: **06/01/2015**

Department	**Staff Contact**
Administration	Gay Johann, Assistant City Manager/City Clerk

Agenda Item Title

Approval of the Minutes of the May 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	**Status**
☐ Environmental Impact Report	☐ Approved/Certified
☐ Negative Declaration	☐ No Action Required
☐ Exempt	☐ Action Requested
☒ Not Applicable	

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

Monday, May 18, 2015
5:00 p.m. Closed Session (Special Meeting)
6:00 p.m. Regular Meeting
****

MINUTES

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

SPECIAL MEETING - CLOSED SESSION

1. CALL TO ORDER

Mayor Cook called the meeting to order at 5:00 p.m. There was no public testimony regarding the closed session items. The Council recessed into closed session with all members present. City Manager Giovanatto and City Attorney Walter were also present. Planning Director Goodison was present for the Real Property Negotiation item.

2. CLOSED SESSION

CONFERENCE WITH REAL PROPERTY NEGOTIATORS, Pursuant to Cal Gov't Code section 54956.9(d)(1). Property: Sebastiani Theater. Agency negotiators: Carol Giovanatto, City Manager, Jeff Walter, City Attorney, David Goodison, Planning Director. Negotiating parties: Ryan Snow, Michael Woods, Darryl Bellach. Under negotiations: Lease, payment, terms of payment

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION, Pursuant to Cal Gov't Code section 54956.9(d)(2)-significant exposure to litigation: Number of potential cases: one. Pursuant to Cal Gov't Code section 54956.9(d)(4)-initiation of litigation: Number of potential cases: one.

PUBLIC EMPLOYMENT. Title: City Manager. Pursuant to Cal Gov't Code 54957.

CONFERENCE WITH LABOR NEGOTIATORS, Pursuant to Cal Gov't Code 54957.6. Agency designated representative: Mayor David Cook. Unrepresented employee: City Manager.

REGULAR MEETING OPENING

Mayor Cook called the meeting to order at 6:00 p.m. Jack Wagner led the Pledge of Allegiance.

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, Planning Director Goodison, and Public Works Director/City Engineer Takasugi.

REPORT ON CLOSED SESSION

Mayor Cook announced that while in closed session the City Council had provided direction to staff.

1. COMMENTS FROM THE PUBLIC

Barbara Holly, Ann Colichidas, Gary Hermes and John Kyle spoke regarding the importance of maintaining affordable housing and the City's mobilehome park rent control ordinance.

Robert Demler requested a proclamation in observation of the June 24 180th anniversary of the founding of the Pueblo "City" of Sonoma.

2. MEETING DEDICATIONS

Mayor Cook dedicated the meeting in the memory of Clm. Gallian's mother, Mrs. Helen Kizer.

3. PRESENTATIONS

Item 3A: Presentation of the Cultural and Fine Arts Commission's 2015 Student Creative Arts Award to Jeffrey Peterson

Kate Schertz, Cultural and Fine Arts Commissioner, presented a framed certificate and award check to Jeffrey Peterson, recipient of the 2015 Student Creative Arts Award.

Item 3B: Buena Vista Historic Wine Tool Museum Proclamation

Mayor Cook read aloud the proclamation recognizing the grand opening of the Buena Vista Historic Wine Tool Museum and presented it to Mr. Tom Blackwood.

Item 3C: Proclamation of the Council of the City of Sonoma Endorsing the Community Resilience Challenge

Mayor Cook announced that because the Daily Acts' representative could not be present at the meeting, the proclamation would be mailed.

4. CONSENT CALENDAR/AGENDA ORDER – CITY COUNCIL

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

Item 4B: Approval of the Minutes of May 4, 2015 City Council Meeting. (removed from consent, see below)

Item 4C: Consideration and possible action to Rescind Resolution 13-2015 and accompanying agreement with the Sonoma Valley Chamber of Commerce for Business and Economic Vitality Partnership Services and Reissue Agreement. (Res. No. 17-2015)

Item 4D: Adoption of an amendment to the Development Code identifying vacation rentals as a conditionally- allowed use in the "Park" zone. (Ord. No. 03-2015)

Clm. Hundley removed Consent Item 4B. The public comment period was opened and closed with none received. It was moved by Clm. Agrimonti, seconded by Clm. Hundley, to approve the items remaining on the consent calendar. The motion carried unanimously.

Item 4B: Approval of the Minutes of May 4, 2015 City Council Meeting.

Clm. Hundley requested a minor revision to the minutes. The public comment period was opened and closed with none received. It was moved by Clm. Hundley, seconded by Clm. Gallian, to approve the minutes as revised. The motion carried unanimously.

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

Item 5A: **Approval of the Portion of the Minutes of May 4, 2015 City Council Meeting pertaining to the Successor Agency.**

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

6. PUBLIC HEARING

Item 6A: **Discussion, consideration and possible action to conduct the first reading of an Ordinance of the City of Sonoma Requiring the Licensure of Tobacco Retailers and Amending Chapter 7.25 of the Municipal Code.**

Mayor Cook opened the public hearing. City Manager Giovanatto reported that staff had incorporated the modifications requested by the Council at the March 16, 2015 meeting and had added an appeal process relating to denial of a license. Associate City Attorney Pistole summarized the provisions of the ordinance as shown below.

Sec. 7.25.020. REQUIREMENTS AND PROHIBITIONS
(a) TOBACCO RETAILER'S LICENSE REQUIRED. It shall be unlawful for any Person to act as a Tobacco Retailer in the City without first obtaining and maintaining a valid Tobacco Retailer's license pursuant to this chapter for each location at which that activity is to occur. Tobacco Retailing without a valid Tobacco Retailer's license is a nuisance as a matter of law.
(b) LAWFUL BUSINESS OPERATION. In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this chapter for a licensee, or any of the licensee's agents or employees, to violate any local, state, or federal law applicable to Tobacco Products, or Tobacco Retailing.
(c) DISPLAY OF LICENSE. Each Tobacco Retailer license shall be prominently displayed in a publicly visible location at the licensed location.
(d) POSITIVE IDENTIFICATION REQUIRED. No Person engaged in Tobacco Retailing shall sell or transfer a Tobacco Product to another Person who appears to be under the age of twenty-seven (27) years without first examining the photo identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the Tobacco Product or Tobacco Paraphernalia.
(e) MINIMUM AGE FOR PERSONS SELLING TOBACCO. No Person who is younger than the minimum age established by state law for the purchase or possession of Tobacco Products shall engage in Tobacco Retailing.
(f) SELF-SERVICE DISPLAYS PROHIBITED. Tobacco Retailing by means of a Self-Service Display is prohibited.
(g) FALSE AND MISLEADING ADVERTISING PROHIBITED. A Tobacco Retailer without a valid Tobacco Retailer license or a Proprietor without a valid Tobacco Retailer license, including, for example, a Person whose license has been suspended or revoked:
(1) Shall keep all Tobacco Products out of public view. The public display of Tobacco Products in violation of this provision shall constitute Tobacco Retailing without a license under Section 7.025.120; and

(2) Shall not display any advertisement relating to Tobacco Products that promotes the sale or distribution of such products from the Tobacco Retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

(h) Flavored Tobacco Products. No Tobacco Retailer shall sell a Tobacco Product containing, as a constituent or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the Tobacco Product or smoke produced by the Tobacco Product unless (1) the Tobacco Product consists of package of Cigars contains at least five Cigars or more, or (2) a single Cigar for which the retail price exceeds five dollars ($5.00), or (3) the Tobacco Product consisting of pipe tobacco, or (4) the package of chewing tobacco or snuff contains at least five units or more.

(i) MINIMUM PACK SIZE FOR CIGARS. Notwithstanding any other provision of this chapter, it shall be a violation of this chapter for any licensee or any of the licensee's agents or employees to sell, offer for sale, or exchange for any form of consideration:

(1) any single Cigar, whether or not packaged for individual sale;

(2) any number of Cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer;

(3) any package of Cigars containing fewer than five Cigars.

(4) this section does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds five dollars ($5.00).

Sec. 7.25.030. LIMITS ON ELIGIBILITY FOR A TOBACCO RETAILER LICENSE.

(a) Eligible Locations: The following locations are eligible to apply for a Tobacco Retailer license: No license may be issued to authorize Tobacco Retailing except at the following locations where Tobacco Products are sold, offered for sale, or exchanged:

(1) 482 1st Street East, Sonoma, CA 95476
(2) 19205 Sonoma Hwy., Sonoma, CA 95476
(3) 477 W. Napa St., Sonoma, CA 95476
(4) 465 1st Street West, Suite 100, Sonoma, CA 95476
(5) 540 W. Napa St., Sonoma, CA 95476
(6) 1325 Broadway, Sonoma, CA 95476
(7) 194 W. Napa St., Sonoma, CA 95476
(8) 19181 Sonoma Hwy., Sonoma, CA 95476
(9) 464 1st Street East, Suite H, Sonoma, CA 95476
(10) 19210 Sonoma Hwy., Sonoma, CA 95476
(11) 19249 Sonoma Hwy., Sonoma, CA 95476
(12) 616 Broadway, Sonoma, CA 95476
(13) 573 5th Street West, Sonoma, CA 95476
(14) 925 Broadway, Sonoma, CA 95476
(15) 865 W. Napa St., Sonoma, CA 95476

(b) A Tobacco Retailer operating lawfully on the effective date of this ordinance that would otherwise be eligible for a Tobacco Retailer license for any of the above locations for which a license is sought may receive or renew a license for that location so long as: (i) the license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension); (ii) the Tobacco Retailer is not closed for business or otherwise suspends Tobacco Retailing for more than sixty (60) consecutive days; (iii) the Tobacco Retailer does not substantially change the business premises or business operation; and (iv) the Tobacco Retailer retains the right to operate under other applicable laws, including without limitation, the zoning ordinance, building codes, or other applicable codes.

Associate City Attorney Pistole explained that the ordinance also contained provisions relating to the license application, issuance and renewal process; transfer restrictions, compliance monitoring, suspension or revocation of license, and remedies for violation of the ordinance.

Mayor Cook invited comments from the public. Brian Vaughn, Director of Sonoma County Health Policy and Evaluation, stated their support for the ordinance and stated that they would work with the City on implementation. He said that they would be interested in working jointly when the County's ordinance was ready to be moved along especially regarding the issues of pricing and minimum pack size.

Joewad Homran, Discount Cigarettes owner, stated that he wanted to cooperate with the City and would be willing to provide industry feedback in order to make it a better ordinance.

Ling Garcia, Vacaville, urged the Council not to ban e-cigarettes. He stated the vapor industry did not target children and the e-cigarettes provided an alternative to regular cigarettes and help people quit.

Stephen _____ stated that vapor products were a safer alternative to cigarettes and he urged the Council to work with those in the industry to come up with a better ordinance.

The following persons spoke in support of the ordinance: Peggy Batress, Janet Erickson, Tiffany Knaff, Mary Jo Williams, Michelle McGarry, Laurie Bremner, and Elizabeth Emerson.

The following persons also stated their opposition to the ordinance particularly the ban on e-cigarettes: Ed Wolff, Carrie Hess, Jeff Hess, Erick Beall, Lawrence Wilbur, and Jonathon Mosblech.

Greg Taylor, Taylor and Norton Wine Merchants, noted the ban on self-serve displays and stated concern about the ability of his customers to enter his walk-in humidor to view cigars.

Mike Scott, 7 Eleven Field Representative, stated his willingness to cooperate with the City.

Mayor Cook closed the public hearing. Clm. Hundley stated that e-cigarettes deliver nicotine, a highly addictive substance, in a way that was attractive to children. She supported the ordinance and viewed it as a way to protect children but she also wanted to include a provision that would allow the businesses to unload their stock on hand. She would also consider an amendment to the self-service display provision.

Clm. Edwards agreed he would like to discuss the humidor issue raised by Mr. Taylor and stated his continued support for organic food products. He stated that when asked, students at the high school reported that the thing they liked the least at the school was the number of students that were vaping.

At the request of Mayor Cook Attorney Pistole read the section of the ordinance relating to self-service displays.

Clm. Agrimonti stated that the purpose of the ordinance was to protect the children.

Clm. Gallian commented that e-cigarettes delivered nicotine and that was a cause for concern. She stated that adoption of the ordinance was 50% of the solution and the other 50% was in education. She supported the ordinance and would agree to change its effective date to allow the merchants to sell the products they have on their shelves.

Mayor Cook stated his full support of the ordinance and agreement with changing the effective date and making an accommodation for the humidor.

At the request of Clm. Edwards, Mr. Taylor described the store setup and how entry was gained to the humidor. A discussion ensued with Attorney Walter weighing in and a consensus was reached that the ban on self-service displays did not apply to the humidor at Mr. Taylor's store.

Council briefly discussed a change to the effective date of the ordinance and a recess was called to allow the City Attorney time to draft the language.

RECESS: The meeting recessed from 7:38 to 7:45 p.m.

Mayor Cook called the meeting back to order and Attorney Pistole stated that staff needed to know the date Council wished the ordinance to be effective. Discussion ensued and Council reached consensus on an effective date of September 1, 2015. Attorney Walter stated that the following would be inserted into the ordinance: Sec. 7.25.140. ENFORCEMENT. This chapter shall not be enforced by the City until September 1, 2015.

It was moved by Clm. Gallian, seconded by Clm. Hundley, to introduce the ordinance as revised entitled AN ORDINANCE OF THE CITY OF SONOMA REQUIRING THE LICENSURE OF TOBACCO RETAILERS AND AMENDING CHAPTER 7.25 OF THE MUNICIPAL CODE. The motion carried unanimously.

7. REGULAR CALENDAR – CITY COUNCIL

Item 7A: Discussion, consideration, and possible action to approve a new Street Name Signage Replacement program.

Public Works Director / City Engineer Takasugi reported that pursuant to prior Council direction the Design Review and Historic Preservation Commission (DRHPC) considered the proposed designs for the street signage replacement program. The design option they selected was the one which included a golden bear and stars at the top. He added that the Sonoma League for Historic Preservation (SLHP) had recommended a dual name design that would include the historic original street name in Spanish.

Clm. Edwards suggested a larger sign that could include the original street name and pointed out the dual name signs would only be installed at the five intersections surrounding the Plaza. A brief discussion ensued regarding the dual name proposal and if the explanatory words "circa" and "historic" should be added. Mayor Cook suggested the original name be in italics.

Mayor Cook invited comments from the public. Robert Demler, SLHP, spoke in support of adding the dual names to the signs. He pointed out the dual names would be in a smaller font and were intended to be noticed by pedestrians not those in vehicles.

Joe Costello spoke in support of adding the dual names.

It was moved by Clm. Hundley, seconded by Clm. Edwards, to approve the new street signage replacement program with the addition of the historic names and the city founding date with the final design to be reviewed prior to production by the DRHPC. The motion carried unanimously.

Item 7B: Discussion, consideration and possible action to approve the 2015-2016 City Council Goals.

City Manager Giovanatto presented, in detail, a compilation of the City Council goals that were established at the March 25, 2015 goal setting workshop. The public comment period was opened

and closed with none received. Councilmembers praised Ms. Giovanatto for a great job in compiling and presenting the goals.

8. REGULAR CALENDAR – CITY COUNCIL AS THE SUCCESSOR AGENCY

9. COUNCILMEMBERS' REPORTS AND COMMENTS

Clm. Agrimonti commented on the April 15 Table Talk sponsored by the Chamber regarding downtown parking and stated that although she did not attend it looked to be a very interesting discussion. She also reported learning at the North Bay Watershed Association meeting that society's investment in stormwater was minimal compared to other household expenses.

Clm. Gallian thanked the Council for recognizing her mother that passed away at the age of ninety-two.

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

City Manager Giovanatto reported attendance at a housing summit sponsored by the North Bay Leadership Council and a meeting with Supervisor Gorin and County Administrator Ferguson regarding Measure A.

11. COMMENTS FROM THE PUBLIC

Robert Demler congratulated the Council for accomplishing their goals and thanked them for including a historical aspect.

12. ADJOURNMENT

The meeting was adjourned at 8:55 p.m. in the memory of Mrs. Helen Kizer.

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: 06/01/2015

Department	**Staff Contact**
Administration	Carol Giovanatto, City Manager

Agenda Item Title

Adoption of Ordinance No. 04-2015 entitled AN ORDINANCE OF THE CITY OF SONOMA REQUIRING THE LICENSURE OF TOBACCO RETAILERS AND AMENDING CHAPTER 7.25 OF THE MUNICIPAL CODE.

Summary

In mid-2014, the Council opened the discussion of establishing a Tobacco Retailers Licensing (TRL) program within the City limits of Sonoma. This was an outcome of a presentation by the American Lung Association on the potential options and impacts related to the regulation of smoking in Sonoma. The regulation of tobacco retailers is the first step in an effort to reduce the sales of tobacco and smoking paraphernalia to minors.

A draft ordinance was brought before the Council on February 2, 2015 at which time staff and the Associate City Attorney presented optional language sections (referenced as “plug-ins) which had been incorporated into the ordinance for discussion. Following public comment and input and Council deliberations, the Council directed certain changes to the draft ordinance as presented. Staff returned on March 16 and presented the Ordinance for first reading which was delayed due to further refinements needed as directed by the Council. On May 18, 2015, the Council conducted the first reading of the ordinance which amended Chapter 7.25 of the Municipal Code and established the Tobacco Retailers Licensing Program. The ordinance is returned for second reading and adoption.

Recommended Council Action

Adopt the ordinance.

Alternative Actions

1. Direct staff to bring the ordinance back for further modifications/amendments
2. Do not adopt ordinance.

Financial Impact

Income derived from the licensing program will be utilized to off-set the costs related to the administration and enforcement of the tobacco retailer’s compliance program.

Environmental Review	**Status**
☐ Environmental Impact Report	☐ Approved/Certified
☐ Negative Declaration	☐ No Action Required
☐ Exempt	☐ Action Requested
☒ Not Applicable	

Attachments:

1. Ordinance
2. Map
3. List of Retailers
4. TRL Application

Alignment with Council Goals:

Supports the youth and enhances public safety priorities.

cc via email: Elizabeth Emerson

CITY OF SONOMA

ORDINANCE NO. 04 - 2015

AN ORDINANCE OF THE CITY OF SONOMA REQUIRING THE LICENSURE OF TOBACCO RETAILERS AND AMENDING CHAPTER 7.25 OF THE MUNICIPAL CODE

The City Council of the City of Sonoma does ordain as follows:

SECTION I. FINDINGS. The City of Sonoma hereby finds and declares as follows:

WHEREAS, based in part on the information contained in this section, the City Council finds that the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare of the residents of the City of Sonoma; and

WHEREAS, the City Council finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City, to protect the health, safety, and welfare of our residents; and

WHEREAS, approximately 480,000 people die in the United States from tobacco-related diseases every year, making tobacco use the nation's leading cause of preventable death; and

WHEREAS, the World Health Organization (WHO) estimates that by 2030, tobacco will account for 8.3 million deaths per year and will be responsible for 10 percent of all deaths worldwide; and

WHEREAS, 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness; and

WHEREAS, the California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority, as evidenced by the fact that:

- The Legislature has declared that smoking is the single most important source of preventable disease and premature death in California (Cal. Health & Safety Code §118950);
- State law prohibits the sale or furnishing of cigarettes, tobacco products, and tobacco paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Cal. Pen. Code §308);

- State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Cal. Bus. & Prof. Code §22956) and provides procedures for using minors to conduct onsite compliance checks of tobacco retailers (Cal. Bus. & Prof. Code §22952);
- State law prohibits the sale of tobacco products and paraphernalia through self-service displays with limited exceptions for tobacco stores (Cal. Bus. & Prof. Code §§22960 and 22962);
- State law prohibits the sale or furnishing of electronic cigarettes to minors (Cal. Health & Safety Code §119405);
- State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of "roll-your-own" tobacco in packages containing less than 0.60 ounces of tobacco (Cal. Pen. Code §308.3); and

WHEREAS, state law requires all tobacco retailers to be licensed by the Board of Equalization primarily to curb the illegal sale and distribution of cigarettes due to tax evasion and counterfeiting (Cal. Bus. & Prof. Code §§22970.1 and 22972); and

WHEREAS, state law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code §22971.3); and

WHEREAS, California courts have affirmed the power of the City to regulate business activity to discourage violations of law. See, e.g., *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985); *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993); *Prime Gas, Inc. v. City of Sacramento*, 184 Cal. App. 4th 697 (2010); and

WHEREAS, despite the State's and City's efforts to limit youth access to tobacco, minors are still able to access cigarettes, as evidenced by the fact that:

- In California, 36.8 percent of high school students have smoked a whole cigarette by 14 years of age;
- In California, 64 percent of adult smokers started by the age of 18;
- Among middle school students who were current cigarette users in 2004, 70.6 percent were not asked to show proof of age when they purchased or attempted to purchase cigarettes from a store, and 66.4 percent were not refused purchase because of their age;
- In 2002, youth smoked approximately 540 million packs of cigarettes, generating nearly $1.2 billion in tobacco industry revenue;
- In Sonoma County, 70 percent of 11th graders and 52 percent of 9th graders report that it is "fairly" or "very" easy to obtain cigarettes;

WHEREAS, California retailers continue to sell tobacco to underage consumers, evidenced by the following:

- 7.6 percent of all tobacco retailers were witnessed unlawfully selling to minors in 2013;
- Among the 14.2 percent of minors nationwide who smoked cigarettes in 2011, 14.0 percent had usually obtained their own cigarettes by buying them in a store or gas station;

WHEREAS, research demonstrates that local tobacco retail ordinances dramatically reduce youth access to cigarettes. For example:

- A review of 33 California communities with strong tobacco retailer licensing ordinances shows that the youth sales rate declined in 31 of these communities after the ordinances were enacted, with an average decrease of 26 percent in the youth sales rate;
- Over 90 percent of enforcement agencies surveyed in 2000 rated license suspension or revocation after repeated violations as an effective strategy to reduce youth access to tobacco; and
- A study found that odds of daily smoking were reduced by 2% for each 1% increase in merchant compliance with youth access laws; and
- A study of the effect of licensing and enforcement methods used in the Philadelphia area revealed a decrease in sales to minors from 85 percent in 1994 to 43 percent in 1998;
- A study of several Minnesota cities found that an increased licensing fee in conjunction with strict enforcement of youth access laws led to a decrease from 39.8 percent to 4.9 percent in the number of youth able to purchase tobacco; and

WHEREAS, over 100 cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop minors from using tobacco; and

WHEREAS, a requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the City to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws; and

WHEREAS, the City has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

NOW THEREFORE, it is the intent of the City Council, in enacting this ordinance, to ensure compliance with the business standards and practices of the City and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

SECTION II. Chapter 7.25 of the Sonoma Municipal Code is hereby amended to read as follows:

Sec. 7.25.010. DEFINITIONS. The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

(a) "Arm's Length Transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale for which a significant purpose is avoiding the effect of the violations of this ordinance is not an Arm's Length Transaction.

(b) "Cigar" means (i) any roll of tobacco wrapped entirely or in part in tobacco or in any substance containing tobacco; or (ii) any paper or wrapper that contains tobacco and is designed for smoking or ingestion of tobacco products. For the purposes of this subsection, "Cigar" includes, but is not limited to, Tobacco Products known or labeled as "cigar," "cigarillo," "tiparillo," "little cigar," "blunt wrap," or "cigar wrap."

(c) "City" means the City of Sonoma, State of California.

(d) "Department" means City Manager, and any agency or Person designated by the Department to enforce or administer the provisions of this chapter.

(e) "Electronic Smoking Device" means an electronic device which can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic Smoking Device" includes any such electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

(f) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(g) "Proprietor" means a Person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a Person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a Person can or does have or share ultimate control over the day-to-day operations of a business.

(h) "Self-Service Display" means the open display or storage of Tobacco Products or Tobacco Paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of Self-Service Display.

(i) "Smoking" means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, Electronic Smoking Device, or any plant product intended for human inhalation.

(j) "Tobacco Paraphernalia" means any item designed for the consumption, use, or preparation of Tobacco Products.

(k) "Tobacco Product" means:

(1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including but not limited to, cigarettes, cigars, little cigars, chewing tobacco, snuff;

(2) any electronic device that delivers nicotine or other substances to the person inhaling from the device, including but not limited to, an electronic cigarette, cigar, pipe, or hookah;

(3) Notwithstanding any provision of subsections (a) and (b) to the contrary, "tobacco product" includes any component, part, or accessory of a tobacco product, whether or not sold separately. "Tobacco product" does not include (i) any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose, or (ii) flavored tobacco intended to be smoked by means of a pipe ("pipe tobacco").

(l) "Tobacco Retailer" means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products or Tobacco Paraphernalia. "Tobacco Retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

Sec. 7.25.020. REQUIREMENTS AND PROHIBITIONS

(a) TOBACCO RETAILER'S LICENSE REQUIRED. It shall be unlawful for any Person to act as a Tobacco Retailer in the City without first obtaining and maintaining a valid Tobacco Retailer's license pursuant to this chapter for each location at which that activity is to occur. Tobacco Retailing without a valid Tobacco Retailer's license is a nuisance as a matter of law.

(b) LAWFUL BUSINESS OPERATION. In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this chapter for a licensee, or any of the licensee's agents or employees, to violate any local, state, or federal law applicable to Tobacco Products, or Tobacco Retailing.

(c) DISPLAY OF LICENSE. Each Tobacco Retailer license shall be prominently displayed in a publicly visible location at the licensed location.

(d) POSITIVE IDENTIFICATION REQUIRED. No Person engaged in Tobacco Retailing shall sell or transfer a Tobacco Product to another Person who appears to be under the age of twenty-seven (27) years without first examining the photo identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the Tobacco Product or Tobacco Paraphernalia.

(e) MINIMUM AGE FOR PERSONS SELLING TOBACCO. No Person who is younger than the minimum age established by state law for the purchase or possession of Tobacco Products shall engage in Tobacco Retailing.

(f) SELF-SERVICE DISPLAYS PROHIBITED. Tobacco Retailing by means of a Self-Service Display is prohibited.

(g) FALSE AND MISLEADING ADVERTISING PROHIBITED. A Tobacco Retailer without a valid Tobacco Retailer license or a Proprietor without a valid Tobacco Retailer license, including, for example, a Person whose license has been suspended or revoked:

(1) Shall keep all Tobacco Products out of public view. The public display of Tobacco Products in violation of this provision shall constitute Tobacco Retailing without a license under Section 7.025.120; and

(2) Shall not display any advertisement relating to Tobacco Products that promotes the sale or distribution of such products from the Tobacco Retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

(h) Flavored Tobacco Products. No Tobacco Retailer shall sell a Tobacco Product containing, as a constituent or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the Tobacco Product or smoke produced by the Tobacco Product unless (1) the Tobacco Product consists of package of Cigars contains at least five Cigars or more, or (2) a single Cigar for which the retail price exceeds five dollars ($5.00), or (3) the Tobacco Product consisting of pipe tobacco, or (4) the package of chewing tobacco or snuff contains at least five units or more.

(i) MINIMUM PACK SIZE FOR CIGARS. Notwithstanding any other provision of this chapter, it shall be a violation of this chapter for any licensee or any of the licensee's agents or employees to sell, offer for sale, or exchange for any form of consideration:

(1) any single Cigar, whether or not packaged for individual sale;
(2) any number of Cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer;
(3) any package of Cigars containing fewer than five Cigars.
(4) this section does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds five dollars ($5.00).

Sec. 7.25.030. LIMITS ON ELIGIBILITY FOR A TOBACCO RETAILER LICENSE.

(a) Eligible Locations: The following locations are eligible to apply for a Tobacco Retailer license:

No license may be issued to authorize Tobacco Retailing except at the following locations where Tobacco Products are sold, offered for sale, or exchanged:

(1) 482 1st Street East, Sonoma, CA 95476
(2) 19205 Sonoma Hwy., Sonoma, CA 95476
(3) 477 W. Napa St., Sonoma, CA 95476
(4) 465 1st Street West, Suite 100, Sonoma, CA 95476
(5) 540 W. Napa St., Sonoma, CA 95476
(6) 1325 Broadway, Sonoma, CA 95476
(7) 194 W. Napa St., Sonoma, CA 95476
(8) 19181 Sonoma Hwy., Sonoma, CA 95476
(9) 464 1st Street East, Suite H, Sonoma, CA 95476
(10) 19210 Sonoma Hwy., Sonoma, CA 95476
(11) 19249 Sonoma Hwy., Sonoma, CA 95476
(12) 616 Broadway, Sonoma, CA 95476
(13) 573 5th Street West, Sonoma, CA 95476
(14) 925 Broadway, Sonoma, CA 95476
(15) 865 W. Napa St., Sonoma, CA 95476

(b) A Tobacco Retailer operating lawfully on the effective date of this ordinance that would otherwise be eligible for a Tobacco Retailer license for any of the above locations for which a license is sought may receive or renew a license for that location so long as: (i) the license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension); (ii) the Tobacco Retailer is not closed for business or otherwise suspends Tobacco Retailing for more than sixty (60) consecutive days; (iii) the Tobacco Retailer does not substantially change the business premises or business operation; and (iv) the Tobacco Retailer retains the right to operate under other applicable laws, including without limitation, the zoning ordinance, building codes, or other applicable codes.

Sec. 7.25.040. APPLICATION PROCEDURE.

(a) Application for a Tobacco Retailer's license shall be submitted in the name of each Proprietor proposing to conduct or conducting retail tobacco sales, and shall be signed by each Proprietor or an authorized agent thereof.

It is the responsibility of each Proprietor to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's license. No Proprietor may rely on the issuance of a license as a determination by the City that the Proprietor has complied with all laws applicable to Tobacco Retailing. A license issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor shall be revoked pursuant to Section 7.025.110(c) of this chapter. Nothing in this chapter shall

be construed to vest in any Person obtaining and maintaining a Tobacco Retailer's license any status or right to act as a Tobacco Retailer in contravention of any provision of law.

All applications shall be submitted on a form supplied by the Department and shall contain the following information:

(1) The name, address, and telephone number of each Proprietor of the business seeking a license.

(2) The business name, address, and telephone number of the single fixed location for which a license is sought.

(3) A single name and mailing address authorized by each Proprietor to receive all communications and notices (the "Authorized Person and Address") required by, authorized by, or convenient to the enforcement of this chapter. If an Authorized Person and Address is not supplied, each Proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph (2) above.

(4) Proof that the location for which a Tobacco Retailer's license is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization.

(5) Such other information as the Department deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section.

(b) A licensed Tobacco Retailer shall inform the Department in writing of any change in the information submitted on an application for a Tobacco Retailer's license within ten (10) business days of a change.

(c) All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code §6250 *et seq*.) or any other applicable law, subject to the laws' exemptions.

Sec. 7.25.050. ISSUANCE OF LICENSE.

(a) BASES FOR DENIAL. Upon the receipt of a complete application for a Tobacco Retailer's license and the license fee required by this chapter, the Department shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

(1) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter.

(2) The application seeks authorization for Tobacco Retailing at a location for which this chapter prohibits issuance of Tobacco Retailer licenses. However, this subparagraph shall not constitute a basis for denial of a license if the applicant provides the City with documentation demonstrating by clear and convincing evidence that the applicant has acquired or is acquiring the location or business in an Arm's Length Transaction.

(3) The application seeks authorization for Tobacco Retailing for a Proprietor to whom this chapter prohibits a license to be issued.

(4) The application seeks authorization for Tobacco Retailing at a location other than the one listed in Section 7.25.030, that is unlawful pursuant to this Code, including without limitation, zoning ordinance and building code, or that is unlawful pursuant to any other law.

(b) APPEAL OF DENIAL.
Subject to Section 7.25.110(c), a decision of the Department to deny a license is appealable to the City Council and any appeal must be filed in writing with the City Clerk within fifteen (15) days of the Department's denial of the issuance of the license and the applicable appeal fee must be paid.

Sec. 7.25.060. LICENSE RENEWAL AND EXPIRATION.

(a) RENEWAL OF LICENSE. A Tobacco Retailer's license is invalid if the appropriate license fee has not been timely paid in full or if the term of the license has expired. The term of a Tobacco Retailer license is one calendar year. Each Tobacco Retailer shall apply for the renewal of his or her Tobacco Retailer's license and submit the license fee no later than November 30 of each year, commencing November 30, 2015, and annually thereafter.

(b) EXPIRATION OF LICENSE. A Tobacco Retailer's license that is not timely renewed shall expire on December 31 of each year. To renew a license not timely renewed pursuant to subparagraph (a), the Proprietor must:

(1) Submit the license fee and the renewal form; and

(2) Submit a signed affidavit affirming that the Proprietor has not sold and will not sell any Tobacco Product or Tobacco Paraphernalia after the license expiration date and before the license is renewed.

Sec. 7.25.070. TRANSFER RESTRICTIONS.

(a) A Tobacco Retailer's license may not be transferred from one location to another. A new Tobacco Retailer's license is required whenever a Tobacco Retailing location has a change in Proprietor(s).

(b) Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless: the new Proprietor(s) provide the Department with clear and convincing evidence that the new Proprietor(s) have acquired or are acquiring the location in an Arm's Length Transaction.

Sec. 7.25.080. LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE.

Nothing in this chapter shall be construed to grant any Person obtaining and maintaining a Tobacco Retailer's license any status or right other than the limited conditional privilege to act as a Tobacco Retailer at the location in the City identified on the face of the license. For example, nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including but not limited to, any provision of this Code including without limitation, the zoning ordinance and building codes, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code section 6404.5. For example, obtaining a Tobacco Retailer's license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code section 6404.5.

Sec. 7.25.090. FEE FOR LICENSE. The fee to issue or to renew a Tobacco Retailer's license shall be established from time to time by resolution of the City. The fee shall be calculated so as to recover the cost of administration and enforcement of this chapter, including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this chapter. Fees are nonrefundable except as may be required by law.

Sec. 7.25.100. COMPLIANCE MONITORING.

(a) Compliance with this chapter shall be monitored by the Department. In addition, any peace officer may enforce the penal provisions of this chapter. The Department may

designate any number of additional Persons to monitor compliance with this chapter.

(b) The Department shall inspect each Tobacco Retailer at least one (1) time per twelve (12) month period. Nothing in this paragraph shall create a right of action in any licensee or other Person against the City or its agents.

(c) The Department shall not enforce any law establishing a minimum age for Tobacco purchases or possession against a Person who otherwise might be in violation of such law because of the Person's age (hereinafter "Youth Decoy") if the potential violation occurs when:

(1) the Youth Decoy is participating in an inspection supervised by a peace officer, code enforcement official, or the Person designated by the City to monitor compliance with this chapter;

(2) the Youth Decoy is acting as an agent of a Person designated by the City to monitor compliance with this chapter; or

(3) the Youth Decoy is participating in an inspection funded in part, either directly or indirectly through subcontracting, by the County of Sonoma Department of Health Services or the California Department of Health Services.

Sec. 7.25.110. SUSPENSION OR REVOCATION OF LICENSE.

(a) SUSPENSION OR REVOCATION OF LICENSE FOR VIOLATION. In addition to any other penalty authorized by law, a Tobacco Retailer's license shall be suspended or revoked if any court of competent jurisdiction determines, or the Department finds based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this chapter or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in Section 7.025.020 above.

(1) Upon a finding by the Department of a first violation of this chapter at a location within any sixty (60)-month period, the license shall be suspended for thirty (30) days.

(2) Upon a finding by the Department of a second violation of this chapter at a location within any sixty (60)-month period, the license shall be suspended for ninety (90) days.

(3) Upon a finding by the Department of a third violation of this chapter at a location within any sixty (60)-month period, the license shall be suspended for one (1) year.

(4) Upon a finding by the Department of four or more violations of this chapter at a location within any sixty (60)-month period, the license shall be revoked.

(b) APPEAL OF SUSPENSION OR REVOCATION. A decision of the Department to suspend or revoke a license is appealable to the City Council and any appeal must be filed in writing with the City Clerk within fifteen (15) days of mailing of the Department's decision and the applicable appeal fee must be paid. If such an appeal is timely made, it shall stay enforcement of the appealed action. An appeal to the City Council is not available for a revocation made pursuant to subsection (c) below.

(c) REVOCATION OF LICENSE WRONGLY ISSUED. A Tobacco Retailer's license shall be revoked if the City Council finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section 7.025.050 existed at the time application was made or at any time before the license issued. The decision by the City Council shall be the final decision of the City. Such a revocation shall be without prejudice to the filing of a new license application.

Sec. 7.25.120. TOBACCO RETAILING WITHOUT A VALID LICENSE.

(a) In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the City Council finds based on a preponderance of evidence, after notice and an opportunity to be heard, that any Person has engaged in Tobacco Retailing at a location without a valid Tobacco Retailer's license, either directly or through the Person's agents or employees, the Person shall be ineligible to apply for, or to be issued, a Tobacco Retailer's license as follows:

(1) After a first violation of this section at a location within any sixty (60)-month period, no new license may issue for the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until thirty (30) days have passed from the date of the violation.

(2) After a second violation of this section at a location within any sixty (60)-month period, no new license may issue for the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until ninety (90) days have passed from the date of the violation.

(3) After of a third or subsequent violation of this section at a location within any sixty

(60)-month period, no new license may issue for the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until sixty (60) months have passed from the date of the violation.

(b) Tobacco Products and Tobacco Paraphernalia offered for sale or exchange in violation of this section are subject to seizure by the Department or any peace officer and shall be forfeited after the licensee and any other owner of the Tobacco Products and Tobacco Paraphernalia seized is given reasonable notice and an opportunity to demonstrate that the Tobacco Products and Tobacco Paraphernalia were not offered for sale or exchange in violation of this chapter. The decision by the Department may be appealed pursuant to the procedures set forth in Section 7.025.110(b). Forfeited Tobacco Products and Tobacco Paraphernalia shall be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

(c) For the purposes of the civil remedies provided in this chapter, each of the following constitutes a separate violation of this chapter:

(1) each day on which a Tobacco Product or Tobacco Paraphernalia is offered for sale in violation of this chapter; or

(2) each individual retail Tobacco Product and each individual retail item of Tobacco Paraphernalia that is distributed, sold, or offered for sale in violation of this chapter;

Sec. 7.25.130. ADDITIONAL REMEDIES.

(a) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

(b) Whenever evidence of a violation of this chapter is obtained in any part through the participation of a Person under the age of eighteen (18) years old, such a Person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

(c) Violations of this chapter are subject to a civil action brought by the City Attorney, punishable by a civil fine not less than Two Hundred Fifty Dollars ($250.00) and not exceeding One Thousand Dollars ($1,000.00) per violation.

(d) Violations of this chapter may, in the discretion of the City Attorney, may be prosecuted as infractions or misdemeanors when the interests of justice so require.

(e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.

(f) Violations of this chapter are hereby declared to be public nuisances.

(g) In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the City Attorney, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

Sec. 7.25.140. ENFORCEMENT.

This chapter shall not be enforced by the City until September 1, 2015.

SECTION III. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Sonoma hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION IV. EFFECTIVE DATE. This Ordinance shall become effective thirty (30) days from and after the date of its passage.

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

_____

David Cook, Mayor

ATTEST:

_____

Gay Johann, Assistant City Manager/City Clerk

State of California)
County of Sonoma)
City of Sonoma)

I, Gay Johann, Assistant City Manager/City Clerk of the City of Sonoma, do hereby certify that the foregoing ordinance was adopted on _____, ___, by the following vote:

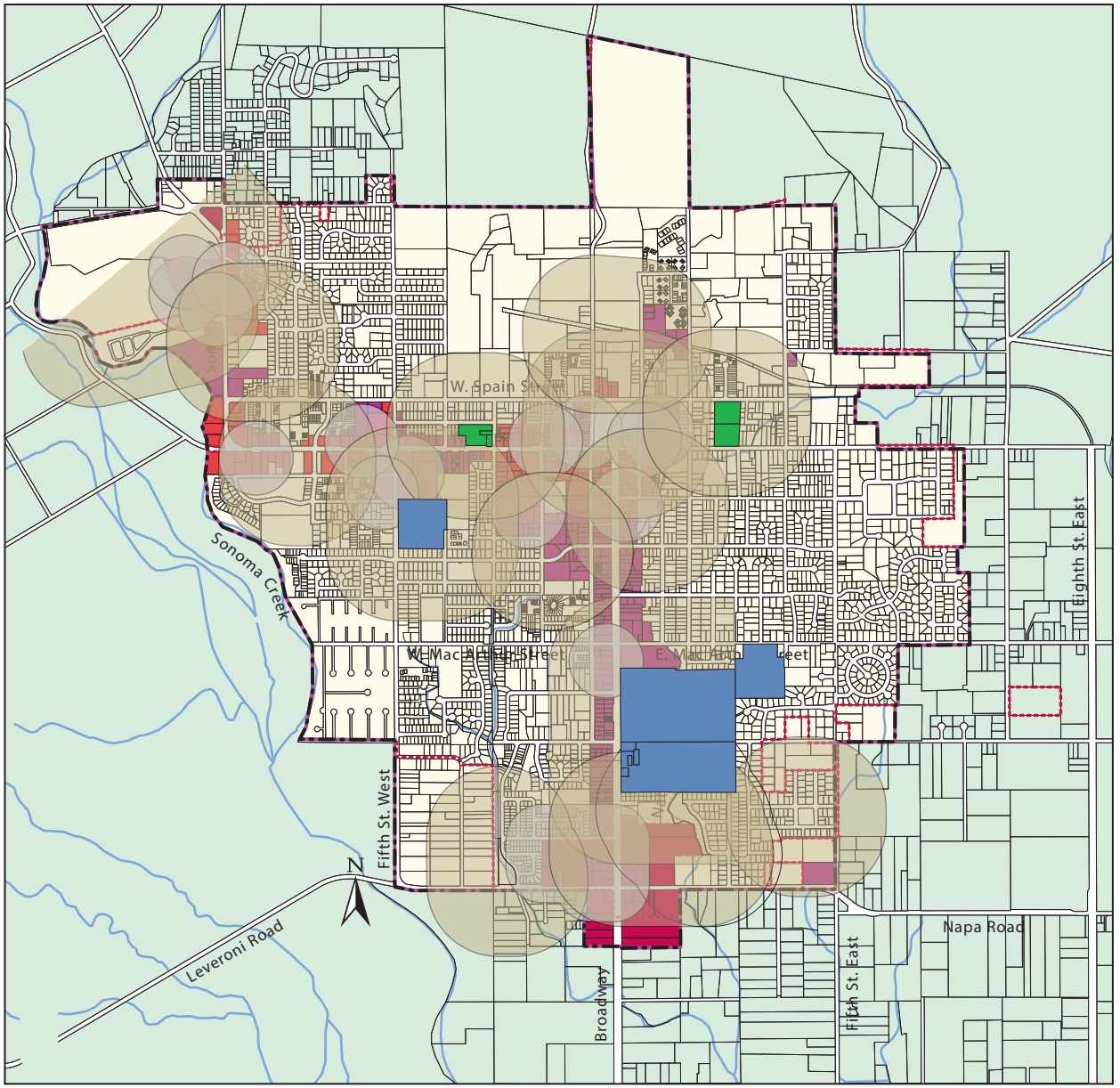
AYES:

NOES:

ABSENT:

_____
Gay Johann, Assistant City Manager/City Clerk

Tobacco Retailer Ordinance Exclusion Zones



Commercial Zoning Designations

- Mixed Use
- Commercial
- Gateway Commercial

Exclusion Zones

- Tobacco Retailer
- School/Youth

Schools

- Public School
- Private School

0 .25 mi. .5 mi. .75 mi

City Limits

Sphere of Influence/UGB

Source: City of Sonoma, September 2014.

Cigarette and Tobacco Licensing Report
City of Sonoma - August 2014

	A	B	C	D	E	F	G	H	I
1	**TOBACCO RETAILERS**								
2									
3	**License #**	**Taxpayer**	**DBA**	**Licensed Location**	**City**	**State**	**Zip**	**+4**	**Area Code**
4	91274355	PAPADA CORP	THE TOWN SQUARE	482 1ST ST E	SONOMA	CA	95476	6702	49006
5	91206590	THRIFTY PAYLESS, INC.	RITE AID #6032	19205 SONOMA HWY	SONOMA	CA	95476	5413	49006
6	91238683	SAFEWAY, INC.	SAFEWAY STORE 911	477 W NAPA ST	SONOMA	CA	95476	6551	49006
7	91259131	SPADO'S INCORPORATED	STEINER'S TAVERN	465 1ST ST W STE 100	SONOMA	CA	95476	6600	49006
8	91260496	CHEVRON STATIONS INC	CHEVRON #1755	540 W NAPA ST	SONOMA	CA	95476	6521	49006
9	91265052	DIAMOND ROCK SONOMA OWNER, LLC.	THE LODGE AT SONOMA	1325 BROADWAY	SONOMA	CA	95476	7505	49006
10	91287146	MOHAMMAD IOBAL LODHI	7-ELEVEN STORE 2232-16268	194 W NAPA ST	SONOMA	CA	95476	6625	49006
11	91287919	SAVE MART SUPERMARKETS	LUCKYS #778	19181 SONOMA HWY	SONOMA	CA	95476	5449	49006
12	91292822	TERESE MARIE SPINGOLA	THE BRIAR PATCH	464 1ST ST E STE H	SONOMA	CA	95476	6747	49006
13	91310882	LONGS DRUG STORES	CVS/PHARMACY #09152	201 W NAPA ST STE 35	SONOMA	CA	95476	6643	49006
14	91316987	TAYLOR & NORTON, INC.	TAYLOR & NORTON WINE MERCHANTS	19210 SONOMA HWY	SONOMA	CA	95476	5414	49006
15	91320105	CACHITA, LLC	JOLLY WASHER SERVICE	19249 SONOMA HWY	SONOMA	CA	95476	5413	49006
16	91321880	AU ENERGY LLC	BROADWAY SHELL	616 BROADWAY	SONOMA	CA	95476	7002	49006
17	91352916	HOMRAN BROTHERS	DISCOUNT CIGARETTES	573 5TH ST W	SONOMA	CA	95476	6831	49006
18	91360680	BARJINDER S KALOYA	EASY STOP MARKET	925 BROADWAY	SONOMA	CA	95476	7403	49006
19	91347849	MEADOWBROOKE FOOD & BEVERAGE, LLC	THE ANNEX	865 W NAPA ST	SONOMA	CA	95476	6414	49006

CITY OF SONOMA

TOBACCO RETAILER LICENSE APPLICATION

Sonoma Municipal Code 7.25

"It shall be unlawful for any Person to act as a Tobacco Retailer in the City without first obtaining and maintaining a valid Tobacco Retailer's license pursuant to this chapter for each location at which that activity is to occur."

Tobacco Retail License Fee is $246.00 Annually

Type of Application: ____ New License ____ Renewal

Name of Business/DBA (where tobacco to be sold): _____

Type of Business (check one): □ Sole Proprietor □ Partnership □ Corporation □ Other _____

Name of Owner(s): _____ _____

Business Address: _____

Mailing Address (if different from above): _____

Phone (____) _____ Fax (____) _____ Email: _____

Name and Mailing Address of Authorized Person to whom all notices and communications shall be sent:

_____

CA State Board of Equalization Cigarette & Tobacco License # _____
***(You must submit a copy of your State License with this application form)

City of Sonoma Business License #:_____ Expiration Date: _____

Has applicant previously been issued a tobacco retailer license under the above retail business name or any other name pursuant to Sonoma Municipal Code Chapter 7.25? □ Yes □ No

If yes, list the names and addresses on all previously issued tobacco retailer licenses:

_____

Were any of the licenses identified above ever suspended or revoked? □ Yes □ No

If yes, please give the licensee name(s), reason for suspension or revocation and date(s) of suspension period or revocation:

_____

I declare under penalty of perjury under the laws of the State of California that the information I have provided in this application is true and correct and that I agree that I will not violate any federal, state or city laws relating to youth and tobacco products/paraphernalia.

Name:_____ Signature: _____

Title: _____ Date: _____

Mail or Deliver the completed application form, a copy of your State Tobacco License and a check or money order payable to "City of Sonoma" in the amount of $246.00 to:

City of Sonoma
Attn: Tobacco Retailer License Program
City Administration
No. 1 the Plaza
Sonoma, CA 95476

INSTRUCTIONS

The City Council enacted the Tobacco Retailer's Licensing Program to discourage the sale and distribution of tobacco products to minors. "Tobacco Retailer" means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products or Smoking Paraphernalia. "Tobacco Retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, Tobacco Products, or Smoking Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

As part of the program, code compliance staff will conduct annual inspections of tobacco retailer establishments, respond to complaints, and coordinate decoy operations with the Sonoma Police Department. More information about the city code establishing the program may be obtained from the City's website (www.sonomacity.org) or by calling Gay Johann, Assistant City Manager at (707) 933-2216.

To apply for the Tobacco Retailer License submit the following to the address shown above:

- Completed Tobacco Retailer License Application
- Check or money order in the amount of $246.00 payable to the City of Sonoma
- Copy of your State Tobacco License

Upon approval by the City a Tobacco Retailer's License will be issued and mailed to the licensee.

Display of License: Each Tobacco Retailer license shall be prominently displayed in a publicly visible location at the licensed location.

Issuance of a Tobacco Retailer's License shall not be construed to grant any Person any status or right other than the limited conditional privilege to act as a Tobacco Retailer at the location in the City identified on the face of the permit. It also shall not be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including but not limited to, any provision of the Municipal Code including without limitation, the zoning ordinance, and building codes, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code section 6404.5. For example, obtaining a Tobacco Retailer's license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code section 6404.5.

Annual renewal required: The term of a Tobacco Retailer license is one year. Each Tobacco Retailer shall apply for the renewal of his or her Tobacco Retailer's license and submit the license fee no later than thirty (30) days prior to expiration of the term. Current tobacco retailers will be mailed a renewal application and invoice about 60 days prior to license expiration. The fee and renewal application must either be mailed or dropped off per the instructions above.

FOR OFFICE USE ONLY
Approved _____ Denied _____ Date: _____ By: _____

Comments: _____

_____

CITY OF SONOMA
City Council
Agenda Item Summary

City Council Agenda Item: **4D**

Meeting Date: **06/01/2015**

Department	**Staff Contact**
Administration	Carol E. Giovanatto, City Manager

Agenda Item Title

Approval of Successor Employment Agreement between the City of Sonoma and Carol Giovanatto as City Manager

Summary

On February 18, 2015 the Council authorized the Mayor to initiate discussions with City Manager and open negotiations for a successor agreement to be effective July 1, 2015. The Mayor again met in closed session to discuss the results of negotiations on May 18th and received final direction from Council. Agreement has been reached on a Successor Employment Agreement with City Manager Carol Giovanatto effective July 1, 2015 through June 30, 2017. The terms and conditions of employment are consistent with standard terms and conditions of City Manager employment agreements implemented by the City in the past.

Recommended Council Action

Approve agreement and authorize the Mayor to execute the agreement on behalf of the City.

Alternative Actions

Do not approve agreement.

Financial Impact

Total fiscal impact of agreement: $9,560 net cost to the General Fund; $2,390 net cost in all other fund over life of the contract.

Environmental Review	**Status**
☐ Environmental Impact Report	☐ Approved/Certified
☐ Negative Declaration	☐ No Action Required
☐ Exempt	☐ Action Requested
☒ Not Applicable	

Attachments:

City Manager agreement.

Alignment with Council Goals:

cc:

EMPLOYMENT AGREEMENT

THIS AGREEMENT is between the CITY OF SONOMA ["City"] and CAROL GIOVANATTO ["Employee"] and is dated for convenience this 1st day of June, 2015.

RECITALS:

CAROL GIOVANATTO ("Employee") was appointed as the City Manager for the City of Sonoma on December 13, 2012 and the City desires to continue employment of CAROL GIOVANATTO as City Manager of the City of Sonoma beginning July 1, 2015 and continuing through June 30, 2017.

The City Council as appointing power agrees to employ Employee as the City's City Manager, and CAROL GIOVANATTO agrees to be employed as the City's City Manager under the following terms and conditions.

AGREEMENT:

1. DUTIES.

[a] City agrees to continue employment of CAROL GIOVANATTO as City Manager of the City of Sonoma to perform the functions and duties specified in the ordinances and resolutions of City, and to perform other legally permissible and proper duties and functions as the City Council may from time to time assign.

[b] Employee shall perform her duties to the best of her ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by the City, including the City of Sonoma's Code of Ethics.

[c] Employee shall not engage in any activity which is, or may become, a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Prior to performing any services under this Agreement and annually thereafter, the Employee must complete disclosure forms required by law. However, Employee may engage in charitable endeavors not involving employment or activities related to the business of the City so long as such outside activities do not interfere with Employee's duties under this Agreement.

2. TERM.

[a] The term of this Agreement shall be for the period commencing on July 1, 2015 and continuing through June 30, 2017 unless terminated by either party in accordance with the provisions set forth in Paragraph 3 or until terminated by the event of the death or permanent

disability of Employee. The term may be extended or revised by mutual, written agreement of the parties.

[b] At least thirty (30) days prior to the end of the term of this Agreement, the City Council shall give Employee written notice stating whether the City Council intends to allow this Agreement to expire without renewing its term or to extend the term of this Agreement. If the City Council states that it desires to extend or renew the term of this Agreement, it shall do so conditionally, stating that any such extension or renewal shall be subject to the parties reaching agreement on the terms and conditions of any such extension or renewal, and inviting Employee to discuss any such terms and conditions with the Mayor as soon as is practicable, with the objective of reaching an agreement, if one can be reached, prior to the end of the term of this Agreement. If no such agreement can be timely reached, then this Agreement shall expire at the end of its term.

[c] Employee agrees to remain in the exclusive employ of the City during the term of this Agreement.

3. RESIGNATION AND TERMINATION.

[a] Employee may resign at any time and agrees to give City at least ninety [90] days advance written notice.

[b] City may at any time terminate Employee upon ninety [90] days advance written notice.

[c] The parties recognize and affirm that: 1) Employee is an "at will" Employee whose employment may be terminated by the City without cause, and 2) there is no express or implied promise to Employee for any form of continued employment. This Agreement is the sole and exclusive basis for an employment relationship between Employee and City.

[d] For the ninety-[90] day period immediately following a general or special election at which a Council member is elected to office, the City Council agrees not to terminate the services of Employee without cause; provided, however, that the City Council may give to Employee the 90-day notice described in Paragraph 3(b) during said 90-day period as long as the effective date of Employee's termination specified in said 90-day notice is not any sooner than the day after said 90-day period.

4. SEVERANCE PAY.

If the City Council terminates Employee by giving Employee the 90-day notice of termination specified in Paragraph 3(b), then the City agrees to pay Employee a cash payment equal to the lesser of (a) three (3) months' aggregate salary, based on the salary in effect on the date of termination, or (b) the Employee's monthly salary (in effect on the date of termination) multiplied by the number of months left on the unexpired term of this Agreement. This cash payment may be paid, at the option of the Employee, in 1) lump sum upon the date of termination; 2) lump sum on January of the calendar year following termination, or 3) three (3) equal monthly installments. Any said payment shall be reduced by the amount of any mandatory withholdings. Such payment by the City will release the City from any further obligations or liabilities under this Agreement. Notwithstanding the foregoing to the contrary, the Employee shall not be entitled to be paid severance pay in the event (a) this Agreement expires and is not renewed, or (b) Employee's employment is terminated due to her death or permanent disability.

5. COMPENSATION.

[a] City agrees to pay Employee One hundred sixty-six thousand one hundred sixty-six dollars [$166,166] in salary per annum for her services, payable in installments at the same time as other employees of the City are paid and subject to customary withholding.

[b] The salary compensation provided in this paragraph shall not be decreased unless the same percentage decrease is applied to all management employees. Employee agrees to the total 1% salary deduction as payment towards the Employer share of the California Public Employee Retirement System in the same terms and conditions as outlined in the Management Employees' Memorandum of Understanding 2014-2017.

[c] In addition, Council wishes to provide performance bonus of $6,000 payable in December 2015, with an additional bonus of $6,000 payable in December 2016 (upon a review of Council in June 2016).

6. AUTOMOBILE.

Employee's duties require that she shall have the use of an automobile at all times during her employment with the City. City shall reimburse Employee Five Hundred Dollars [$500.00] per month for the expenses of owning, maintaining, and insuring a personal automobile. The amount of reimbursement shall be evaluated each fiscal year and, if appropriate, adjusted to reflect increased

costs. The auto allowance shall appear on Employee's payroll stub as ordinary income and as part of her salary, but it shall not be considered part of Employee's base salary for purposes of this Agreement. Employee shall be responsible for all operation expenses, maintenance expenses, replacement costs, and insurance for the automobile. Employee shall at all times maintain insurance for the automobile in an amount and with coverages acceptable to the City, name the City as an additional insured thereon, provide the City evidence of such insurance and shall inform her insurer that the automobile is used for personal and business purposes.

7. BUSINESS EXPENSES.

City shall pay for or provide Employee reimbursement of all actual business expenses incurred in the performance of her duties under this Agreement. Without prior written approval from the City Council, Employee shall not incur business expenses in excess of the amount annually budgeted and approved by the City Council for this item. Employee shall provide written documentation verifying the incurring of each expense and the necessity therefor, which said documentation shall be permanently maintained by the City in accordance with its records retention policies. Notwithstanding the foregoing, mileage shall not be reimbursed to Employee.

8. SUPPLEMENTAL BENEFITS.

The City shall also provide the Employee the same benefits and increases in same as provided to management employees and as they may be amended from time to time, except that

[1] in any event City shall provide One Hundred Percent [100%] of the cost of medical, vision and dental benefits . Employee may opt to decline medical, vision or dental benefits for spouse and in exchange, employee shall receive payment in-lieu of benefits equal to 50% of premium of the benefit(s) which Employee declines. Payments by the City to Employee in-lieu of the benefit(s) she declines shall appear on Employee's payroll stub as ordinary income and as part of her salary, but it shall not be considered part of Employee's base salary for purposes of this Agreement.

All actions taken by the City relating to benefits for such management employees shall be considered actions granting the same benefits to Employee. As used herein, benefits include but are not limited to holidays, administrative leave, sick leave, retirement benefits and payments, health insurance, vision insurance, dental insurance, and life insurance.

9. LEAVE BENEFITS.

[a] Vacation Leave. Employee shall be entitled to twenty five [25] vacation days each year,

[b] Sick Leave. Employee shall be entitled to twelve [12] days of sick leave each year.

[c] Administrative Leave. Employee shall be entitled to twelve [12] days of administrative leave annually.

10. RELOCATION ASSISTANCE.

This section not applicable.

11. PERFORMANCE EVALUATION.

The City Council shall evaluate Employee's performance in June 2016 in conjunction with bonus provision described in section 5 (Compensation).

12. RESIDENCY REQUIREMENT WAIVED

The City Council agrees to waive the provisions of Municipal Code 2.08.020 requiring that employee shall reside within the boundaries of the Sonoma Valley School district during the term of this agreement.

13. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

The City Council, by resolution, shall fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with provisions of this Agreement or law.

14. NOTICES.

Any notices required by this Agreement shall be in writing and either given in person or by first class mail with the postage prepaid and addressed as follows:

TO CITY: City Council
Attn: Mayor
City of Sonoma
No. 1 the City
Sonoma, CA 95476

TO EMPLOYEE: Carol Giovanatto
City Manager
City of Sonoma
c/o 533 Port Circle
Cloverdale, CA 95425

15. GOVERNMENT CODE SECTION 53243.2

Pursuant to Cal. Gov't Code section 53243.2, Employee agrees that if this Agreement is terminated, Employee shall reimburse the City the full amount of any cash settlement Employee received from the City relating to that termination if the Employee is convicted of a crime involving an abuse of her office or position.

This Agreement is executed on the date above stated.

CITY OF SONOMA

_____
David Cook, Mayor

Date:_____

CAROL GIOVANATTO

_____

Date:_____

ATTEST:

_____
Gay Johann, Assistant City Manager/City Clerk

APPROVED AS TO FORM:

_____
Jeffrey Walter, City Attorney

CITY OF SONOMA
City Council
Agenda Item Summary

City Council Agenda Item: 4E

Meeting Date: 06/01/2015

Department	Staff Contact
Administration	Mark Freeman, Fire Chief Carol E. Giovanatto, City Manager

Agenda Item Title

Approval of Participation in the Intergovernmental Transfer with Partnership HealthPlan of California (PHC) and Authorization for the City Manager to Sign Agreements.

Summary

Since 2006, the California Department of Health Care Services (DHCS) has offered local governments that provide health care (including ambulance/emergency medical services) the opportunity to secure additional Medi-Cal revenues by participating in a voluntary Intergovernmental Transfer (IGT) program with their local Medi-Cal managed care plan. Participation in IGTs represents an opportunity for local government providers of Medi-Cal services to re-coup a share of their costs for serving PHC patients. Using the IGT mechanism, PHC will be able to pay the providers a lump sum Medi-Cal payment to cover costs that were previously subsidized by the local government entity.

The proposed IGT will allow public ambulance service providers, such as Sonoma Fire Ambulance, to receive additional Medi-Cal payments to more fully compensate it for providing EMS transport services to PHC members during the previous fiscal year. As a result of receiving these additional revenues, Sonoma Fire will have the resources to support emergency medical services or other health care programs, as approved by the City and/or City Council. These new funds will benefit Medi-Cal plan enrollees, other underserved populations and residents in general.

Recommended Council Action

It is recommended that the City Council adopt the attached Resolution Authorizing the City Manager to Execute an Agreement for Intergovernmental Transfer with Partnership HealthPlan of California.

Alternative Actions

Request additional information.

Do not approve program.

Financial Impact

PHC has determined that the City of Sonoma needs to transfer funds equal to $113,746 from the General Fund ambulance revenue to DHCS, pursuant to sections 14164 and 14301.4 of the Welfare and Institutions Code. In turn, the City will receive net new funds totaling $89,521 in the form of a lump sum payment amount of $203,267 in supplemental Medi-Cal revenues. These figures were derived from research completed by PHC based on documentation provided by Sonoma Fire.

Environmental Review

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

Status

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

Attachments:

Supplemental Report
Resolution
a. Exhibit A to the Resolution: Intergovernmental Agreement Regarding Transfer of Public Funds
b. Exhibit B to the Resolution: Intergovernmental Transfer Assessment Fee

Alignment with Council Goals:

FISCAL MANAGEMENT: Continue to seek opportunities for new revenue sources and/or grant revenues

cc:

SUPPLEMENTAL REPORT

Consideration and Possible Action to Approve Participation in the Intergovernmental Transfer with Partnership HealthPlan of California (PHC) and Authorization for the City Manager to Sign Agreements

For the Meeting of June 1, 2015

BACKGROUND

Since 2006, the California Department of Health Care Services (DHCS) has offered local governments that provide health care (including ambulance/emergency medical services) the opportunity to secure additional Medi-Cal revenues by participating in a voluntary Intergovernmental Transfer (IGT) program with their local Medi-Cal managed care plan. Partnership HealthPlan of California (PHC) is a non-profit community-based healthcare organization that contracts with the State to administer Medi-Cal benefits through local care providers to ensure Medi-Cal recipients have access to high-quality comprehensive cost-effective health care. City of Sonoma Fire through the SVFRA is already in contract with PHC since it bills and receives payments for PHC's covered Medi-Cal patients who are treated and transported by Sonoma ambulances. IGTs offer a way for Sonoma to receive additional Medi-Cal funds for ambulance services provided to PHC beneficiaries from FY 13/14 and moving forward. PHC collects data on each provider's costs, charges and revenues for Plan services and recommends to DHCS which entities should be allowed to participate and at what dollar amount. DHCS reviews PHC's recommendations and approves a specific dollar amount for each entity. Local governments volunteer to participate in these IGTS; no entity is required to participate. Currently, the following local entities that do participate include: Novato Fire District, San Rafael Fire, Southern Marin Fire, Petaluma Fire, Bodega Bay Fire and Cloverdale Hospital District.

The IGT process will result in PHC paying public ambulance providers additional Medi-Cal revenues to offset previously unreimbursed costs for serving Medi-Cal plan members. The payment amounts will be determined by: (1) the provider's unreimbursed costs (and/or charges); (2) the number of other local governments participating in the IGTs in that county or region; (3) PHC's recommendations; and (4) DHCS's formulas.

DISCUSSION

In a rate range IGT, the local government entity transfers funds to the State (the "intergovernmental transfer") which are used to increase the actuarially sound rates the State pays the health plan and to reimburse the State for its administrative costs. The Plan then pays the local provider the IGT-funded proceeds that the local government transfer made possible. Because the local transfer is matched with Federal funds, the participating government provider receives the amount of the transfer plus new funds as well. For every dollar transferred, the provider receives a one-time Plan payment of approximately $1.60.

These rate range IGTs have been approved by the Federal government and are referenced in California state law. They are similar to other types of IGTs and cost-sharing arrangements that California uses to finance Medi-Cal payments to local governments providing services to Medi-Cal patients.

The rate range IGT is implemented through three contracts: two with DHCS (attached to the Resolution as Exhibits A and B) and one with PHC. These documents spell out the obligations of each entity with regard to the transfer of local government funds, the use of the funds by DHCS, the payment of funds to the provider and the treatment of the payments by the provider. Before any funds are transferred, all contracts are signed by the participants and IGTs. Any Plan rate increases are approved by the Federal government.

Participation in IGTs represents an opportunity for local government providers of Medi-Cal services to re-coup a share of their costs for serving PHC patients. Using the IGT mechanism, PHC will be able to pay the providers a lump sum Medi-Cal payment to cover costs that were previously subsidized by the local government entity.

This approach is similar to the GEMT reimbursement program that Sonoma Fire joined last year with a few minor differences. The first difference is that GEMT is for medical fee for service Medi-Cal patients or Medi-Cal patients not managed by an HMO; reimbursement funds are received directly from the Federal government. The IGT program is for Medi-Cal patients who have Medi-Cal coverage that is managed specifically through Partnership HealthPlan HMO – equal to approximately 80% of HMO-managed Medi-Cal patients. The second difference is that this is a matching program requiring money up front to demonstrate what has been "spent" on Medi-Cal patients; the GEMT money is a reimbursement program that provides money for uncovered service expenses already incurred. Both programs are based on what the Federal and State government agencies determine to be an actuarially sound rate for Medi-Cal patient costs. Since this is a match and not a reimbursement, it is handled through Intergovernmental Transfers (IGTs).

A Medi-Cal IGT is a transfer of matchable funds from a unit of local government (whether it be a County, District or City, etc.) to the State for use in funding the Medi-Cal program. The Federal government pays half of the State's allowable Medi-Cal spending and requires all managed care Plans to be paid at an actuarially sound rate. California tends to pay Plans at the lower end of the actuarially sound rate range, leaving potential Federal matches unclaimed. In a Rate Range IGT, the State uses transferred funds from local governments to increase the monthly capitation rates it paid Medi-Cal managed care Plans in the prior fiscal year. As long as the rate increase does not exceed the upper range of what is actuarially sound, the Federal government will match the transferred funds and pay half the Plan's rate increases. The Medi-Cal Managed Care Plan pays most of its IGT-funded rate increases to the local government provider that transferred the funds; the local entity receives its own funding, plus the federal match.

DHCS starts the process by directing PHC to submit its proposal for which entities will participate in the IGTs and at what amounts. DHCS controls the timing of each step in the process. PHC staff and its consultant (who provided the following detailed language) will assist the local government entities in the IGT process, as outlined below in chronological order:

1. **Cost and Service Data Collection:** PHC will collect and submit data to DHCS on each entity participating in the IGT. The data includes the cost of Medi-Cal services provided to Plan members, the provider's billings to PHC, PHC revenues to the provider and the volume of services provided. The data pertains to Fiscal Year 2013/14, which is the year to which the State rate increased for PHC.
2. **Letter of Interest:** Each participating entity will submit a non-binding letter to PHC using a DHCS provided template, to express interest in participating in the IGTs. Sonoma Fire has completed this task.

3. **Submission of PHC Proposal:** PHC will submit an IGT proposal to DHCS approximately three weeks after DHCS officially begins the process. The proposal will include the Plan's recommendations regarding which entities will participate in the IGTs and how much they will contribute to DHCS. Along with the proposal, PHC will submit the providers' data and their signed letters of interest.

4. **DHCS Approval of IGT Amounts:** DHCS will review PHC's proposal and the data for each participant and will decide if the recommended local contribution amount is reasonable and considered appropriate payments to the providers. If DHCS agrees with PHC's proposed amounts, they will send IGT document templates to each local government interested in participating in the IGT (see Ex. A). DHCS also requires each entity participating in the IGT to pay a 20% administrative fee to cover state administrative costs and to support the Medi-Cal program (see Ex. B).

5. **Final Approval of Documents:** DHCS will review and approve the completed *draft* documents and ensure they conform to the Federal and State templates. Sonoma Fire has completed this task. DHCS will ask the public entities to sign and submit the documents, at which point they become legally binding contracts.

6. **DHCS/PHC Rate Increase Contract:** Based on the signed contracts to transfer local funds to DHCS, the State will amend its contracts with PHC to increase per member, per month capitation rates for Fiscal Year 2013/14 (the term of the PHC's most recent contracts with DHCS). If there are sufficient public entity contributions, DHCS will increase PHC's rates to the top of the rate range, the highest actuarially sound rate that qualifies for Federal matching funds.

Wiring of Funds to DHCS: Once the Federal Centers for Medicare and Medicaid Services (CMS) has approved the entire IGT transaction, and the PHC rate amendments have been signed, DHCS will send each local government entity fully signed original copies of their IGT contracts and will request that the local government wire its funds to the State within seven days.

7. **State Payment to the Plan:** Six to eight weeks after receiving the wired funds, DHCS will pay PHC its rate increase amounts in a lump sum deposited at the same time that it pays the Plan its usual monthly capitation payments (the first week of the month).

8. **Payment to the Provider:** Upon receipt of the IGT-funded rate increases, PHC will pay required State taxes of approximately 4%, retain an additional 3% as the Plan administrative fee and pay out the remainder of the fee increase pursuant to the Plan Provider Agreement that it previously entered into with the local government. PHC has a maximum of thirty days from receipt of the rate increase to pay the providers. As a result of the IGT, the provider will receive a lump sum Medi-Cal payment from PHC that will cover some or all of its unreimbursed cost for services previously provided to Plan members.

9. **Rate of Return:** For example, if the provider had $50,000 of unreimbursed costs for EMS services to Plan members, DHCS would approve a maximum contribution from the local government entity of approximately $81,000 (inclusive of the DHCS fee). The Plan payment to the provider would be around $135,000, of which $50,000 would be net new funds.

10. **Use of Funds:** The total amount of PHC's payment to the provider is considered Medi-Cal revenue. Pursuant to the terms of the Plan Provider Agreement, any revenue in excess of the provider's uncompensated cost of care for Plan members must be used for health care services. The definition of health care services is broad and the services can be provided to the general population; they do not need to be Medi-Cal services provided exclusively to Medi-Cal patients. Funds do not have to be expended in the year received and there is no

maintenance of effort requirement. Revenues in excess of costs may be used to operate existing EMS services or to support new or improved health care programs and services.

The proposed IGT will allow public ambulance service providers, such as Sonoma Fire Ambulance, to receive additional Medi-Cal payments to more fully compensate it for providing EMS transport services to PHC members during the previous fiscal year. As a result of receiving these additional revenues, Sonoma Fire will have the resources to support emergency medical services or other health care programs, as approved by the City and/or City Council. These new funds will benefit Medi-Cal plan enrollees, other underserved populations and residents in general.

FINANCIAL IMPACTS

PHC has determined that the City of Sonoma needs to transfer funds equal to $113,746 from the General Fund ambulance revenue to DHCS, pursuant to sections 14164 and 14301.4 of the Welfare and Institutions Code. In turn, the City will receive net new funds totaling $89,521 in the form of a lump sum payment amount of $203,267 in supplemental Medi-Cal revenues. These figures were derived from research completed by PHC based on documentation provided by Sonoma Fire. PHC's payment to each EMS provider will occur six to eight weeks after the wiring of the originating funds, and an amount equal to the originating payment, plus any interest that would have been earned on it during the period, will be returned to fund balance. Net funds in excess of the originating payment will be budgeted for the SVFRA contract. Medi-Cal is a major source of payment for locally provided ambulance services; receiving reimbursement for the true cost of that care will be beneficial for local government providers of ambulance services.

RECOMMENDATION

It is recommended that the City Council adopt the attached Resolution Authorizing the City Manager to Execute an Agreement for Intergovernmental Transfer with Partnership HealthPlan of California.

ATTACHMENTS

1. Resolution
    a. Exhibit A to the Resolution: Intergovernmental Agreement Regarding Transfer of Public Funds
    b. Exhibit B to the Resolution: Intergovernmental Transfer Assessment Fee

CITY OF SONOMA

RESOLUTION NO. XX – 2015

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SONOMA AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR INTERGOVERNMENTAL TRANSFER WITH PARTNERSHIP HEALTHPLAN OF CALIFORNIA

WHEREAS, since 2006, the California Department of Health Care Services (DHCS) has offered local governments that provide health care the opportunity to secure additional Medi-Cal revenues by participating in a voluntary Intergovernmental Transfer (IGT) program with their local Medi-Cal managed care plan; and

WHEREAS, Partnership HealthPlan of California (PHC), is a non-profit community-based healthcare organization that contracts with the State to administer additional Medi-Cal revenues to public ambulance providers (i.e., Sonoma Fire Department) to offset previously unreimbursed costs for serving Medi-Cal plan members; and

WHEREAS, Partnership HealthPlan of California covers members who currently make up approximately 80% of HMO-managed Medi-Cal patients and, although the City incurs significant costs for these types of ambulance transports, it can only contractually bill and expect payment for a certain amount (i.e., a fixed rate of approximately $150 is received per Medi-Cal patient whiles costs incurred equal approximately $1,200 per patient); and

WHEREAS, participation in an Intergovernmental Transfer Program represents an opportunity for local government providers of Medi-Cal services to re-coup a share of their costs for serving PHC patients, most notably because California tends to pay Plans at the lower end of the actuarially sound rate range and the Federal government, tapping potentially unclaimed Federal matches, works to make up the difference by requiring all managed care Plans to be paid at an actuarially sound rate; and

WHEREAS, an IGT program of this type is a matching program, not a reimbursement program and, therefore, the Federal government will match the transferred funds, pay half of the Plan's rate increases and, in the end, the local entity receives its own funding plus the Federal match in return; and

WHEREAS, PHC's role is to collect and submit data to DHCS on each entity interested in participating in the IGT and to assist each participating entity with the terms governing the Program and use of newly received revenue; and

WHEREAS, PHC, as the agent for DHCS, has determined that the City of Sonoma shall transfer funds equal to $104,921 to DHCS pursuant to section 14164 and 14301.4 of the Welfare and Institutions Code in order to receive net new funds totaling $89,521 in the form of a lump sum amount of supplemental Medi-Cal revenues (or $203,267 back in return); and

WHEREAS, the up-front funds required from the City of Sonoma can be garnered from general tax revenues, patient fees or agency reserves made up of a combination of sources and while the total amount of PHC's payment back to the provider is considered Medi-Cal revenue and must be used for health care services, the funds do not need to be Medi-Cal services provided exclusively to Medi-Cal patients and funds do not have to be expended in the year received.

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

1. The proposed agreement with the California Department of Health Care Services (DHCS) for Intergovernmental Transfer (IGT) in order to increase Medi-Cal reimbursement for EMS ambulance transport services previously provided to Partnership Health Plan's members in FY 2013-14 and which will result in transfer of local matchable funds to the State in the summer of 2015, attached to this resolution as Exhibit A, is hereby approved and the City Manager is authorized to sign the agreement on behalf of the City.

2. The proposed agreement with the California Department of Health Care Services (DHCS) for Intergovernmental Transfer Assessment Fee will result in payment of a 20% fee to DHCS which is a condition of participating in the IGT, attached to this resolution as Exhibit B, is hereby approved and the City Manager is authorized to sign the agreement on behalf of the City.

PASSED, APPROVED AND ADOPTED this 1st day of June 2015 by the following vote:

AYES:
NOES:
ABSENT:

_____
David Cook, Mayor

ATTEST:

_____
Gay Johann
Assistant City Manager/City Clerk

Exhibit A

INTERGOVERNMENTAL AGREEMENT REGARDING TRANSFER OF PUBLIC FUNDS

This Agreement is entered into between the CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES ("DHCS") and the CITY OF SONOMA with respect to the matters set forth below.

RECITALS

A. This Agreement is made pursuant to the authority of Welfare & Institutions Code, section 14164 and 14301.4.

B. The Partnership HealthPlan of California is a County Organized Health System formed pursuant to Welfare and Institutions Code section 14087.54 and County Code Chapter 7.58, County Code Chapter 2.45, County Code Chapter 2, Title 2, and County Code Chapter 34. Partnership HealthPlan of California is a party to a Medi-Cal managed care contract with DHCS, entered into pursuant to Welfare and Institutions Code section 14087.3, under which Partnership HealthPlan of California arranges and pays for the provision of covered Medi-Cal health care services to eligible Medi-Cal members residing in the County.

THEREFORE, the parties agree as follows:

AGREEMENT

1. Transfer of Public Funds

1.1 The CITY OF SONOMA shall transfer funds to DHCS pursuant to section 14164 and 14301.4 of the Welfare and Institutions Code, up to a maximum total amount of ONE HUNDRED THIRTEEN THOUSAND, SEVEN HUNDRED FORTY-SIX DOLLARS ($113,746), to be used solely as a portion of the nonfederal share of actuarially sound Medi-Cal managed care capitation rate increases for Partnership HealthPlan of California for the period July 1, 2013 through June 30, 2014 as described in

section 2.2 below. The funds shall be transferred in accordance with a mutually agreed upon schedule between the CITY OF SONOMA and DHCS, in the amounts specified therein.

1.2 The CITY OF SONOMA shall certify that the funds transferred qualify for federal financial participation pursuant to 42 C.F.R. part 433 subpart B, and are not derived from impermissible sources such as recycled Medicaid payments, federal money excluded from use as State match, impermissible taxes, and non-bona fide provider-related donations. For transferring units of government that are also direct service providers, impermissible sources do not include patient care or other revenue received from programs such as Medicare or Medicaid to the extent that the program revenue is not obligated to the State as the source of funding.

2. Acceptance and Use of Transferred Funds by DHCS

2.1 DHCS shall exercise its authority under section 14164 of the Welfare and Institutions Code to accept funds transferred by the CITY OF SONOMA pursuant to this Agreement as intergovernmental transfers ("IGTs"), to use for the purpose set forth in section 2.2 below.

2.2 The funds transferred by the CITY OF SONOMA pursuant to this Agreement shall be used to fund a portion of the nonfederal share of increases in Medi-Cal managed care actuarially sound capitation rates described in paragraph (4) of subdivision (b) of section 14301.4 of the Welfare and Institutions Code and shall be paid, together with the related federal financial participation, by DHCS to Partnership HealthPlan of California as part of Partnership HealthPlan of California's capitation rates for the period July 1, 2013 through June 30, 2014. The rate increases paid under section 2.2 shall be used for payments related to Medi-Cal services rendered to Medi-Cal beneficiaries. The rate increases paid under this section 2.2 shall be in addition to, and shall not replace or supplant, all other amounts paid or payable by DHCS or other State agencies to Partnership HealthPlan of California.

2.3 DHCS shall seek federal financial participation for the rate increases specified in section 2.2 to the full extent permitted by federal law.

2.4 The parties acknowledge the State DHCS will obtain any necessary approvals from the Centers for Medicare and Medicaid Services prior to the payment of any rate increase pursuant to section 2.2.

2.5 The parties agree that none of these funds, either CITY OF SONOMA or federal matching funds will be recycled back to the City of Sonoma's general fund, the State, or any other intermediary organization. Payments made by the health plan to providers under the terms of this Agreement and their provider agreement constitute patient care revenues.

2.6 Within One Hundred Twenty (120) calendar days of the execution of this Agreement, DHCS shall advise the CITY OF SONOMA and Partnership HealthPlan of California of the amount of the Medi-Cal managed care capitation rate increases that DHCS paid to Partnership HealthPlan of California during the applicable rate year involving any funding under the terms of this Agreement.

2.7 If any portion of the funds transferred by the CITY OF SONOMA pursuant to this Agreement is not expended for the specified rate increases under Section 2.2, DHCS shall return the unexpended funds to the CITY OF SONOMA.

3. Amendments

3.1 No amendment or modification to this Agreement shall be binding on either party unless made in writing and executed by both parties.

3.2 The parties shall negotiate in good faith to amend this Agreement as necessary and appropriate to implement the requirements set forth in section 2 of this Agreement.

4. Notices. Any and all notices required, permitted or desired to be given hereunder by one party to the other shall be in writing and shall be delivered to the other party personally or by United

States first class, certified or registered mail with postage prepaid, addressed to the other party at the address set forth below:

To the CITY OF SONOMA:

Carol Giovanatto, City Manager
City of Sonoma
#1 The Plaza
Sonoma, CA 95476

With copies to:

Mark Freeman, Fire Chief
Sonoma Valley Fire & Rescue Authority
630 2nd Street West
Sonoma, CA 95476-6901

To DHCS:

Sandra Dixon
California Department of Health Care Services
Capitated Rates Development Division
1501 Capitol Ave., Suite 71-4002
MS 4413
Sacramento, CA 95814

5. Other Provisions

5.1 This Agreement contains the entire Agreement between the parties with respect to the Medi-Cal rate increases for Partnership HealthPlan of California described in section 2.2 that are funded by the CITY OF SONOMA and supersedes any previous or contemporaneous oral or written proposals, statements, discussions, negotiations or other agreements between the CITY OF SONOMA and DHCS. This Agreement is not, however, intended to be the sole agreement between the parties on matters relating to the funding and administration of the Medi-Cal program. One or more other agreements already exist between the parties regarding such other matters, and other agreements may be

entered into in the future. This Agreement shall not modify the terms of any other agreement between the parties.

5.2 The nonenforcement or other waiver of any provision of this Agreement shall not be construed as a continuing waiver or as a waiver of any other provision of this Agreement.

5.3 Section 2 of this Agreement shall survive the expiration or termination of this Agreement.

5.4 Nothing in this Agreement is intended to confer any rights or remedies on any third party, including, without limitation, any provider(s) or groups of providers, or any right to medical services for any individual(s) or groups of individuals; accordingly, there shall be no third party beneficiary of this Agreement.

5.5 Time is of the essence in this Agreement.

5.6 Each party hereby represents that the person(s) executing this Agreement on its behalf is duly authorized to do so.

6. State Authority. Except as expressly provided herein, nothing in this Agreement shall be construed to limit, restrict, or modify the DHCS' powers, authorities, and duties under federal and state law and regulations.

7. Approval. This Agreement is of no force and effect until signed by the parties.

8. Term. This Agreement shall be effective as of July 1, 2013 and shall expire as of June 30, 2016 unless terminated earlier by mutual agreement of the parties.

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date of the last signature below.

CITY OF SONOMA

By: _____ Date: _____

Carol Giovanatto, City Manager

THE STATE OF CALIFORNIA, DEPARTMENT OF HEALTH CARE SERVICES:

By: _____ Date: _____

Meredith Wurden, Assistant Deputy Director, Health Care Financing

Exhibit B

INTERGOVERNMENTAL TRANSFER ASSESSMENT FEE

This Agreement is entered into between the CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES ("State DHCS") and the CITY OF SONOMA with respect to the matters set forth below.

RECITALS

A. This Agreement is made pursuant to the authority of Welfare & Institutions Code, section 14301.4.

THEREFORE, the parties agree as follows:

AGREEMENT

1. Transfer of Public Funds

1.1 CITY OF SONOMA shall make Intergovernmental Transfer(s) ("IGTs") to State DHCS pursuant to section 14164 of the Welfare and Institutions Code and paragraph 1.1 of the Intergovernmental Agreement(s) Regarding the Transfer of Public Funds contract number 13-90530, to be used as a portion of the non-federal share of actuarially sound Medi-Cal managed care rate range capitation increases ("non-federal share IGT") to Partnership HealthPlan of California ("PHC") for the period of July 1, 2013 through June 30, 2014.

1.2 The parties acknowledge that State DHCS will obtain any necessary approvals from the Centers for Medicare and Medicaid Services ("CMS") pertaining to the acceptance of non-federal share IGTs and the payment of non-federal share IGT related rate range capitation increases to PHC.

2. Intergovernmental Transfer Assessment Fee

2.1 The State DHCS shall, upon acceptance of non-federal share IGTs pursuant to the Intergovernmental Agreement(s) Regarding the Transfer of Public Funds, and as described in paragraph 1 of this Agreement, exercise its authority under section 14301.4 of the Welfare and Institutions Code to assess a 20-percent assessment fee on the entire amount of the non-federal share IGTs to reimburse State DHCS for the administrative costs of operating the IGT program pursuant to this section and for the support of the Medi-Cal program.

2.2 The funds subject to the 20-percent assessment fee shall be limited to non-federal share IGTs made by the transferring entity, CITY OF SONOMA, pursuant to the Intergovernmental Agreement(s) Regarding the Transfer of Public Funds, and as described in paragraph 1 of this Agreement.

2.3 The 20-percent fee will be assessed on the entire amount of the non-federal share IGTs pursuant to the Intergovernmental Agreement(s) Regarding the Transfer of Public Funds, and as described in paragraph 1 of this Agreement, and will be made in addition to, and transferred separately from, the transfer of funds pursuant to the Intergovernmental Agreement(s) Regarding the Transfer of Public Funds.

2.4 The 20-percent assessment fee pursuant to this Agreement is non-refundable and shall be wired to State DHCS separately from, and simultaneous to, the non-federal share IGTs pursuant to the Intergovernmental Agreement(s) Regarding the Transfer of Public Funds, and as described in paragraph 1 of this Agreement. However, if any portion of the non-federal share IGTs is not expended for the specified rate increases stated in paragraph 2.2 of the Intergovernmental Agreement(s) Regarding the Transfer of Public Funds, DHCS shall return a proportionate amount of the 20-percent assessment fee to CITY OF SONOMA.

3. <u>Other Provisions</u>

3.1 This Agreement contains the entire Agreement between the parties with respect to the 20-percent assessment fee on non-federal share IGTs pursuant to the Intergovernmental Agreement(s) Regarding the Transfer of Public Funds, and as described in paragraph 1, and supersedes any previous or contemporaneous oral or written proposals, statements, discussions, negotiations or other agreements between the transferring entity and State DHCS. This Agreement is not, however, intended to be the sole agreement between the parties on matters relating to the funding and administration of the Medi-Cal program. One or more other agreements may exist between the parties regarding such other matters, and other agreements may be entered into in the future. This Agreement shall not modify the terms of any other agreement between the parties.

3.2 Time is of the essence in this Agreement.

3.3 Each party hereby represents that the person(s) executing this Agreement on its behalf is duly authorized to do so.

4. State Authority. Except as expressly provided herein, nothing in this Agreement shall be construed to limit, restrict, or modify State DHCS' powers, authorities, and duties under federal and state law and regulations.

5. Approval. This Agreement is of no force and effect until signed by the parties.

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date of the last signature below.

CITY OF SONOMA:

By: _____ Date: _____
Carol Giovanatto, City Manager

THE STATE OF CALIFORNIA, DEPARTMENT OF HEALTH CARE SERVICES:

By: _____ Date: _____
Meredith Wurden, Assistant Deputy Director, Health Care Financing

CITY OF SONOMA
City Council/Successor Agency
Agenda Item Summary

City Council Agenda Item: **5A**

Meeting Date: **06/01/2015**

Department	**Staff Contact**
Administration	Gay Johann, Assistant City Manager/City Clerk

Agenda Item Title

Approval of the Portions of the Minutes of May 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: **6A**

Meeting Date: **06/01/2015**

Department	**Staff Contact**
Public Works	Stormwater Compliance Specialist, Chris Pegg

Agenda Item Title

Discussion, consideration, and possible action to conduct the first reading of an Ordinance of The City Council of the City of Sonoma amending Titles 13, 14, and 19 of the Sonoma Municipal Code by Amending the Stormwater and Development Regulations as they Pertain to the City's Legal Authority and Ability to Comply with NPDES Permit No. 2013-0001-DWQ

Summary

The City of Sonoma operates a storm drain system that collects stormwater during rain events and discharges it to Nathanson, Fryer, and Sonoma creeks. Stormwater discharges from urban drainage systems often contain pollutants such as sediment, pesticides, and pathogens. The Federal Clean Water Act prohibits discharges of these and other pollutants to a broad class of waterbodies known as Waters of the United States, which includes Nathanson, Fryer, and Sonoma creeks.

In California, the State Water Resources Control Board authorizes operators of storm drain systems to discharge stormwater to Waters of the United States only when a National Pollutant Discharge Elimination System (NPDES) permit has been issued ensuring that the operator has limited the quantity of pollutants in the discharge to the maximum extent practicable.

The State Water Resources Control Board issued NPDES Permit No. 2013-0001-DWQ to the City of Sonoma in 2013. NPDES Permit No. 2013-0001-DWQ requires that City of Sonoma establish legal authority to implement all requirements therein and update relevant ordinances to remove gaps or impediments to full permit compliance.

Recommended Council Action

Conduct the first reading of ordinance Amending the Stormwater and Development Regulations as they Pertain to the City's Legal Authority and Ability to Comply with NPDES Permit No. 2013-0001-DWQ

Alternative Actions

1. Direct staff to bring the ordinance back for further modifications/amendments
2. Do not introduce the ordinance

Financial Impact

Although achieving compliance with NPDES Permit 2013-0001-DWQ has significant costs, amending the Municipal Code to remove gaps and impediments to compliance with NPDES Permit No. 2013-0001-DWQ should have no financial impact and help the City avoid state-imposed fines or settlements for non-compliance with NPDES Permit No. 2013-0001-DWQ.

Environmental Review

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

Status

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

Attachments:

1. Supplemental Report
2. Proposed Ordinance Amendments

SUPPLEMENTAL REPORT

DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION TO CONDUCT THE FIRST READING OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SONOMA AMENDING TITLES 13, 14, AND 19 OF THE SONOMA MUNICIPAL CODE BY AMENDING THE STORMWATER AND DEVELOPMENT REGULATIONS AS THEY PERTAIN TO THE CITY'S LEGAL AUTHORITY AND ABILITY TO COMPLY WITH NPDES PERMIT NO. 2013-0001-DWQ

For the City Council Meeting of June 1, 2015

PURPOSE

The City of Sonoma must amend sections of the Sonoma Municipal Code to remove gaps and impediments to full compliance with National Pollutant Discharge Elimination System (NPDES) Permit No. 2013-0001-DWQ. NPDES Permit No. 2013-0001-DWQ authorizes the City to discharge stormwater from its storm drain system without violating the 1972 Clean Water Act.

BACKGROUND

The City of Sonoma operates a storm drain system that collects stormwater during rain events and discharges it to Nathanson, Fryer, and Sonoma creeks. This storm drain system protects the public safety and reduces flood-related property damage; however, discharges from urban storm drain systems are generally known to contain pollutants such as sediment, pesticides, heavy-metals, pathogens, and motor oil. The Federal Clean Water Act prohibits discharges of these and other pollutants to a broad class of waterbodies known as Waters of the United States, which includes Nathanson, Fryer, and Sonoma creeks.

In California, the State Water Resources Control Board is authorized to implement Section 402 of the Federal Clean Water Act, also known as the National Pollutant Discharge Elimination System (NPDES). NPDES rules allow operators of storm drain systems to discharge stormwater to Waters of the United States when a permit has been issued ensuring that the operator has limited the quantity of pollutants in the discharge to the maximum extent practicable.

The State Water Resources Control Board issued NPDES Permit 2013-0001-DWQ to the City of Sonoma in 2013. NPDES Permit 2013-0001-DWQ requires City of Sonoma to establish legal authority to implement all requirements therein and update relevant ordinances to remove gaps or impediments to full permit compliance.

SUMMARY

A comprehensive review of the Sonoma Municipal Code revealed a number of minor gaps and impediments to full permit compliance. Staff has crafted an amendment to the Sonoma Municipal Code that resolves these gaps and impediments.

The amendment to the Sonoma Municipal Code would:

1) Update the definition of “Enforcement Official” to reflect changes in staff position titles. (SMC 13.32.030)
2) Add a definition of “Erosion and Sediment Control Plan” with different professional credential requirements than those found in SMC 14.20. (SMC 13.32.030)
3) Add a definition of incidental runoff to support prohibition of discharges in excess of incidental runoff (SMC 13.32.030)
4) Modify the definition of “noncommercial vehicle washing” to exclude fundraiser car washes to support discharge prohibitions. (SMC 13.32.030)
5) Add a definition of “non-point source” to support enforcement procedures in SMC 13.32.130. (SMC 13.32.030)
6) Add a definition of “point source” to support enforcement procedures in SMC 13.32.130. (SMC 13.32.030)
7) Update the definition of “Public works administrator” to reflect changes in staff position titles. (SMC 13.32.030)
8) Modify the definition of “Stormwater conveyance system” to reflect the geographic boundaries within which the City possesses authority to regulate storm drainage infrastructure. (SMC 13.32.030)
9) Modify the discharge prohibitions to exempt incidental runoff. (SMC 13.32.050)
10) Modify the exceptions to discharge prohibitions to include exceptions for incidental runoff, pumped foundation drains, and pressure-release devices. (SMC 13.32.060)
11) Add “grading permit” to the list of development approvals which the City may withhold if statewide requirements for stormwater controls and permitting are not demonstrated. (SMC 13.32.070)
12) Add activities which increase volumes or rates of stormwater runoff to the scope of activities regulated under SMC 13.32. (SMC 13.32.100)
13) Modify the stormwater requirements for new development and adopt a technical manual for compliance. (SMC 13.32.100)
14) Modify the stormwater requirements for construction activities. (SMC 13.32.100)
15) Modify the inspection-related authorities to exempt inspectors from collecting classified or sensitive information. (SMC 13.32.120)
16) Modify the definition of violations and the relationship between violations and public nuisances for the purposes of SMC 13.32. (SMC 13.32.130)
17) Modify enforcement timelines. (SMC 13.32.130)
18) Add new authorities for issuing stop orders. (SMC 13.32.140)
19) Expand the definition of “Erosion and sediment control plan”. (SMC 14.20.020)
20) Modify code language referring to erosion and sediment control plans for consistency. (SMC 14.20.035)
21) Clarify that the rainy season limitations for construction activities contained in SMC 14.20 apply only to grading permit activities. (SMC 14.20.050)
22) Modify language that may preclude on-site detention or retention of stormwater. (14.20.100)
23) Clarify and expand erosion and sediment control plan requirements for grading permits. (SMC 14.20.200)
24) Require that applicable calculations or other rationales support selection of Best Management Practices specified in erosion and sediment control plans prepared for grading permits. (SMC 14.20.210)

25) Modify open space requirements to promote development that provides open spaces with beneficial stormwater and groundwater recharge impacts. (SMC 19.38.010 & 19.40.080)
26) Modify screening requirements for trash enclosures to better prevent stormwater pollution. (SMC 19.40.100)
27) Modify off-site parking requirements to close a loophole that may be exploited to reduce stormwater mitigation requirements for some development projects. (SMC 19.48.030)
28) Modify discretionary review requirements for wheel stops in parking lots when parking areas are adjacent to landscaped areas and drainage is directed to the landscaped area. (SMC 19.48.070)
29) Modify subdivision requirements to protect natural channels from a process called "hydromodification" whereby the shape and size of a natural channel is altered when it conveys increased flows due to storm drain improvements. (SMC 19.62.140)
30) Modify subdivision requirements to require off-site improvements if off-site stormwater impacts to abutting properties cannot be mitigated on-site. (SMC 19.62.140)

STAFF RECOMMENDATION

Conduct the first reading of ordinance Amending the Stormwater and Development Regulations as they Pertain to the City's Legal Authority and Ability to Comply with NPDES Permit No. 2013-0001-DWQ

ALTERNATIVES

1. Direct staff to bring the ordinance back for further modifications/amendments

2. Do not introduce the ordinance

CONCLUSION

Adopting the Proposed Ordinance Amendment represents the best method of meeting water quality standards and complying with NPDES Permit No. 2013-0001-DWQ.

The Stormwater Compliance Specialist can be reached at (707) 933-2245 or at cpegg@sonomacity.org with questions or concerns.

CITY OF SONOMA

ORDINANCE NO. __ - 2015

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SONOMA AMENDING TITLES 13, 14, AND 19 OF THE SONOMA MUNICIPAL CODE BY AMENDING THE STORMWATER AND DEVELOPMENT REGULATIONS AS THEY PERTAIN TO THE CITY'S LEGAL AUTHORITY AND ABILITY TO COMPLY WITH NPDES PERMIT 2013-0001-DWQ

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

Section 1. Sections 13.32.030 through 13.32.170 of Chapter 13.32 (Stormwater Management and Discharge Control) of Title 13 of the Sonoma Municipal Code is hereby amended to read as follows (revisions indicated through the use of strikeouts and underlining):

13.32.030 Definitions.

The following words, when used in this chapter, shall have the following meanings:

"Best management practices (BMPs)" means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

"Clean Water Act" or "CWA" refers to the Federal Water Pollution Control Act (33 U.S.C. Section 1251, et seq.) and acts amendatory thereof or supplementary thereto.

"Development" means any activity that moves soils or substantially alters the preexisting vegetated or manmade cover of any land. This includes, but is not limited to, grading, digging, cutting, scraping, stockpiling or excavating of soil, placement of fill materials, paving, pavement removal, exterior construction, substantial removal of vegetation where soils are disturbed including but not limited to removal by clearing or grubbing, or any activity which bares soil or rock or involves streambed alterations or the diversion or piping of any watercourse. Development does not include routine maintenance to maintain original line and grade, hydraulic capacity, or the original purpose of the facility, nor does it include emergency construction activities (i.e., land disturbances) required to protect public health and safety.

"Discharge" shall mean the release, addition or deposit of any fluid, liquid, solid, flowing substance, or any other material or substance to the stormwater conveyance system.

"Employee training program" means a documented employee training program which may be required to be implemented by a business pursuant to a stormwater pollution prevention plan for the purpose of educating its employees on methods of reducing discharge of pollutants to the stormwater conveyance system.

"Enforcement agency" means city of Sonoma.

"Enforcement official" means the public works ~~administrator~~ director, or his or her designee or any agent of the city authorized to enforce compliance with this chapter.

"Erosion and sediment control plan" is a set of plans and/or specifications prepared by, or under the direction of, a licensed professional engineer or other qualified person indicating the specific measures and sequencing to be used to control erosion and sedimentation on a development site during and after construction.

“Food establishment” means any premises, restaurant, soda fountain, cafe, diner, grocery store, fruit stand, vegetable stand, bakery, abattoir, meat processing or packing plant, dairy, ice cream parlor, and any other place where food or drink is sold or offered for sale, processed, stored, prepared or otherwise handled for sale or distribution within the city. Such term shall include any vehicle or mobile unit, shed, stand, building or structure used for the purposes of selling, distribution, processing, preparing or otherwise handling food or drink. This term shall also include frozen desserts retail preparation establishments, mobile food service units, mobile frozen dessert units, prepackaged food establishments, supermarkets, and temporary food establishments.

“Hazardous materials business plan” means a document containing detailed information on the storage of hazardous materials at a facility. Chapter 6.95 of the California Health and Safety Code requires that facilities which use or store such materials at or above reporting thresholds submit this information.

“Illicit connection” means a pipe, facility, or other device, whether on the surface or subsurface, which allows an illicit discharge to enter the stormwater conveyance system regardless of whether said drain or connection had been previously allowed, permitted, or approved by a government agency.

“Illicit discharge” means any discharge to a stormwater conveyance system that is not composed entirely of stormwater except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

“Incidental runoff” means illicit discharges of trivial volume except where the discharge is due to facility design, excessive application, intentional overflow, intentional over-application, or negligence.

“Maximum extent practicable (MEP)” means a technology-based standard established by Congress in the Clean Water Act Section 402(p)(3)(B)(iii) for stormwater discharge that municipalities must meet. MEP is generally the result of emphasizing pollution prevention and source control best management practices (BMPs) primarily (as the first line of defense) and in combination with treatment methods serving as backup (additional line of defense). The MEP approach is an ever evolving, flexible and advancing concept, which considers technical and economic feasibility. As knowledge about controlling urban runoff continues to evolve, so does what constitutes MEP.

“National Pollutant Discharge Elimination System (NPDES)” means a permit issued by the U.S. Environmental Protection Agency, State Water Resources Control Board, or the California Regional Water Quality Control Board pursuant to the Clean Water Act, 33 U.S.C. Section 1251 et seq., (CWA) that authorizes discharges to waters of the United States and requires the reduction of pollutants in the discharge.

“Noncommercial vehicle washing” means the washing and rinsing of passenger vehicles on private property in which no commercial enterprise or fundraising is being conducted in the washing of those vehicles.

“Nonpoint source” means any source of water pollution that does not meet the definition of "point source" as set forth in the most current version of Section 502(14) of the Clean Water Act and incorporated into California Water Code Section 13373.

“Nonstormwater discharge” means any discharge to the stormwater conveyance system that is not entirely composed of stormwater.

“Plan standard” means any and/or all applicable requirements of the Water Quality Control Plan for Basin 2, adopted by the Regional Water Quality Control Board, San Francisco Bay Region in 1995, and all subsequent amendments.

“Point source” means any source defined in the most current version of Section 502(14) of the Clean Water Act and incorporated into California Water Code Section 13373. Point sources include any discernible, confined and discrete conveyance, including but not limited to any pipe,

ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Point sources do not include any agricultural stormwater discharges or return flows from irrigated agriculture.

"Pollutant" means any "pollutant" defined in the most current version of Section 502(6) of the CWA and incorporated into California Water Code Section 13373. Pollutants may include, but are not limited to, the following:

A. Residential, commercial and industrial waste (such as trash, litter, fuels, solvents, detergents, plastic pellets, hazardous substances, fertilizers, pesticides, slag, ash, and sludge);

B. Metals such as cadmium, lead, zinc, silver, nickel, chromium, copper and nonmetals such as phosphorous and arsenic;

C. Petroleum hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants, and grease);

D. Excessive eroded soil, sediment, and particulate materials in amounts that may adversely affect the beneficial use of the receiving waters, flora or fauna of the state;

E. Animal wastes (such as discharge from confinement facilities, kennels, pens, recreational facilities, stables, and show facilities); and

F. Substances having characteristics such as pH less than six or greater than nine, or unusual coloration or turbidity, or excessive levels of fecal coliform, or fecal streptococcus, or enterococcus.

"Premises" means any building, lot, parcel, land or portion of land whether improved or unimproved.

"Public works ~~administrator~~ director" or ~~administrator~~ "director" means the ~~administrator~~ director of the city of Sonoma public works department.

"Receiving waters" means all waters that are "waters of the state" within the scope of the California Water Code, including but not limited to natural streams, creeks, rivers, reservoirs, lakes, ponds, water in vernal pools, lagoons, estuaries, bays, the Pacific Ocean, and ground water.

"Regional Water Quality Control Board" means the California Regional Water Quality Control Board, for the San Francisco Bay Region or the designated state agency required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.

"Stormwater" means surface runoff and drainage associated with storm events, which is free of pollutants to the maximum extent practicable.

"Stormwater conveyance system" means those artificial and natural facilities within the ~~unincorporated area~~ corporate limits of the City of Sonoma, whether publicly or privately owned, by which stormwater may be conveyed to a watercourse or waters of the state, including any roads with drainage systems, streets, catch basins, natural and artificial channels, aqueducts, stream beds, gullies, curbs, gutters, ditches, and natural and artificial channels or storm drains.

"Stormwater pollution prevention plan" means a document which describes the best management practices to be implemented by the owner or operator of a business or construction site to eliminate illicit discharges and/or reduce to the maximum extent practicable pollutant discharges to the stormwater conveyance system.

"Watercourse" means any natural stream, whether flowing continuously or not, that is fed from permanent or natural sources, and includes, without limitation, rivers, creeks, runs, and rivulets.

Any term(s) defined in the Federal Clean Water Act, as amended, and/or defined in the regulations for the stormwater discharge permitting program issued by the Environmental Protection Agency, as amended, and which are not specifically defined above shall, when used

in this chapter, have the same meaning as set forth in said act or regulation. (Ord. 02-2006 § 1, 2006).

13.32.040 Conflicts with other laws.
In the event of any conflict between this chapter and any federal or state law or regulation, that requirement which establishes the higher standard for public health or safety shall govern. To the extent permitted by law, nothing in this chapter shall preclude enforcement of any other applicable law, regulation, order, or permit. (Ord. 02-2006 § 1, 2006).

13.32.050 Discharge prohibitions.
A. Illicit Discharges. Except as provided in SMC 13.32.060, it is unlawful and a public nuisance for any person to make or cause to be made any illicit discharge into the stormwater conveyance system in excess of incidental runoff. Notwithstanding the exemptions provided by SMC 13.32.060(A) and (B), if the Regional Water Quality Control Board or the enforcement official determines that any otherwise exempt discharge causes or significantly contributes to violations of any plan standard, or conveys significant quantities of pollutants to surface water(s) or watercourse(s), or is a danger to public health or safety, such discharge shall be prohibited from entering the stormwater conveyance system.
B. Illicit Connection. The construction, use, maintenance or continued existence of illicit connections is prohibited. This prohibition includes illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of the connection.
C. Litter, Dumps, and Stockpiles. Throwing, depositing, leaving, abandoning, maintaining or keeping materials or wastes on public or private lands in a manner and place where they may result in an illicit discharge is prohibited. (Ord. 02-2006 § 1, 2006).

13.32.060 Exceptions to discharge prohibition.
Subject to the authority granted to the Regional Water Quality Control Board and the enforcement official, the following discharges to the stormwater conveyance system are exempt from the prohibition set forth in SMC 13.32.050.
A. Any discharge or connection regulated under a NPDES permit issued to the discharger and administered by the state of California pursuant to Division 7, Chapter 5.5 of the California Water Code; provided, that the discharger is in compliance with all requirements of the permit and all other applicable laws and regulations;
B. Discharges from the following activities, which do not cause or contribute to the violation of any plan standard:
1. Water line flushing and other discharges from potable water sources,
2. Incidental runoff ~~due to irrigation and lawn watering~~,
3. Rising ground waters or springs,
4. ~~Passive~~ Foundation and footing drains,
5. Water from crawl space pumps and basement pumps,
6. Air conditioning condensate and hot water temperature and pressure release drains,
7. Noncommercial vehicle washing,
8. Natural flows from riparian habitats and wetlands,
9. Dechlorinated swimming pool discharges,
10. Flows from fire suppression activities, including fire hydrant flows,
11. Waters not otherwise containing wastes as defined in California Water Code Section 13050(d) and California Health and Safety Code Section 25117,
12. Diverted stream flows,
13. Uncontaminated ground water infiltration (as defined at 40 Code of Federal Regulations Section 35.2005(b)(20)) to separate storm sewers,

14. Uncontaminated pumped ground water;
C. Any discharge, which the enforcement official, the local health officer, or the Regional Water Quality Control Board determines in writing, is necessary for the protection of the public health and safety;
D. Any discharge caused by flooding or other natural disaster, which could not have been reasonably foreseen or mitigated for in advance by the discharger, as determined by the enforcement official. (Ord. 02-2006 § 1, 2006).

13.32.070 Discharge in violation of permit.
Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the enforcement official prior to or as a condition of a subdivision map, site plan, grading permit, building permit, or development or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable cause. (Ord. 02-2006 § 1, 2006).

13.32.080 Concealment and abetting.
Causing, permitting, aiding, abetting or concealing a violation of any provision of this chapter shall constitute a violation. (Ord. 02-2006 § 1, 2006).

13.32.090 Acts potentially resulting in violation of Federal Clean Water Act and/or Porter-Cologne Act.
Any person who violates any provision of this chapter, any provision of any permit issued pursuant to this chapter, or who discharges waste or wastewater which causes pollution, or who violates any stop order, prohibition, or effluent limitation, may also be in violation of the CWA and/or Porter-Cologne Water Quality Control Act (California Water Code Section 13020 et seq.) and may be subject to the sanctions of those Acts including civil and criminal penalties. (Ord. 02-2006 § 1, 2006).

13.32.100 Reduction of pollutants in stormwater.
Any person engaged in activities which may result in pollutants or increased volumes or rates of stormwater runoff entering the stormwater conveyance system shall, to the maximum extent practicable, undertake the measures set forth below to reduce the risk of illicit discharge and/or pollutant discharge.
A. Business Related Activities – Stormwater Pollution Prevention Plan. The enforcement official may require any business in the city that is engaged in activities which may result in pollutant discharges to develop and implement a stormwater pollution prevention plan, which shall, without limitation, include an employee training program. Business activities which may require a stormwater pollution prevention plan include, but are not limited to, maintenance, storage, manufacturing, assembly, equipment operations, vehicle loading or fueling, or cleanup procedures which are carried out partially or wholly out of doors.
B. Development. ~~The city may adopt by resolution requirements identifying appropriate best management practices to control the volume, rate, and potential pollutant load of stormwater runoff from new development and redevelopment projects as may be appropriate to minimize the generation, transport and discharge of pollutants.~~ All development shall incorporate best management practices to control the volume, rate and potential pollutant load of stormwater runoff to comply with all applicable provisions of the City's current NPDES Permit. The city shall ~~endeavor to~~ incorporate ~~such~~ the requirements therein as conditions in any land use entitlement and construction or building-related permit to be issued relative to such development. All development projects subject to such requirements shall submit sufficient evidence to demonstrate the adequacy of proposed best management practices prior to issuance of any

associated land use entitlement or construction or building-related permit. Applicants are required to utilize the latest version of the Bay Area Stormwater Management Agencies Association Post-Construction Manual to design and document applicable best management practices. The owner and developer shall remain in compliance at all times with the terms, provisions, and conditions required by this chapter that are incorporated into the terms and conditions of such land use entitlements and building permits. .

C. Construction Activity. Every construction activity for which a building or grading permit is required, and which will result in soil disturbance due to clearing, excavation, or filling shall submit an Erosion and Sediment Control Plan which meets the following criteria:

1.) Where a building permit is required, the Erosion and Sediment Control Plan shall comply with all applicable provisions of the City's current NPDES Permit. Where coverage under the California NPDES Construction General Permit is obtained in addition to a building permit, the Stormwater Pollution Prevention Plan prepared prior to obtaining coverage may be submitted in lieu of an Erosion and Sediment Control Plan.

2.) Where a grading permit is required, the Erosion and Sediment Control Plan shall meet the applicable requirements set forth in SMC 14.20.205 in addition to all applicable provisions of the City's current NPDES Permit. Where coverage under the California NPDES Construction General Permit is obtained in addition to a grading permit, the Stormwater Pollution Prevention Plan prepared prior to obtaining coverage may be submitted in lieu of an Erosion and Sediment Control Plan if the Stormwater Pollution Prevention Plan satisfies all applicable requirements set forth in SMC 14.20.205.

~~Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the enforcement official prior to or as a condition of a subdivision map, site plan, building permit, or development or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable cause.~~

D. Compliance with Best Management Practices. Every person undertaking any activity or use of a premises which may cause or contribute to stormwater pollution or contamination, illicit discharges, or nonstormwater discharges shall comply with best management practices guidelines or pollution control requirements as may be reasonably established by the enforcement official. (Ord. 02-2006 § 1, 2006).

13.32.110 Containment and notification of spills.

Any person owning or occupying a premises who has knowledge of any release of pollutants or illicit discharge from or across those premises which might enter the stormwater conveyance system, other than a release or discharge that is permitted by this chapter, shall immediately take all reasonable action to contain and abate the release of pollutants or illicit discharge, and shall notify the enforcement agency within 24 hours of the release of pollutants or illicit discharge. (Ord. 02-2006 § 1, 2006).

13.32.120 Inspections.

Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever an authorized enforcement official has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a violation of this chapter, the enforcement official may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the officer by this chapter. Any request for entry shall state that the property owner or occupant has the right to refuse entry and that in the event such entry is refused, inspection may be made upon issuance of a warrant issued by a court of competent jurisdiction. In the event the owner or occupant refuses entry after such request has been made, the enforcement official is empowered to seek assistance from any court of

competent jurisdiction in obtaining such entry. Inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this chapter, including but not limited to random sampling and/or sampling in areas with evidence of stormwater contamination, illicit discharge, nonstormwater discharge to the stormwater conveyance system, or similar factors.

A. Sampling Authority. During any inspection, the enforcement official may take samples as necessary in order to implement and enforce the provisions of this chapter. This authority may include the installation of sampling and metering devices on private property, or requiring the person owning or occupying the premises to supply samples.

B. Monitoring, Analysis and Reporting Authority. The enforcement official may require monitoring, analysis and reporting of discharges from any premises to the stormwater conveyance system. Upon service of written notice by the enforcement official, the burden, including cost, of these activities, analyses and reports incurred in complying with the requirement shall, to the extent permitted by law, be borne by the property owner or occupant of the facility or activity for which testing and monitoring has been requested.

C. Compliance Inspection Authority. In accordance herewith, the enforcement official may conduct site visits and inspections upon knowledge of discharges from any premises to the stormwater conveyance system.

D. Fee Authority. The city has the authority to conduct inspections and collect fees for the purpose of ensuring compliance with this chapter from any person, firm, corporation or business. A fee schedule for the purpose of recovering the costs to enforce this chapter may be adopted by city council resolution and may, from time to time, be amended by resolution. (Ord. 04-2011 § 1, 2011; Ord. 02-2006 § 1, 2006).

E. Classified or sensitive information. The enforcement official shall only require classified or sensitive information in compliance with the Homeland Security Act or any other federal law that concerns security in the United States.

13.32.130 Enforcement.

Enforcement of this chapter shall be by the enforcement official.

A. Violations. It shall be a violation for any person to ~~violate or cause any other person to violate any of the provisions of this chapter which are declared to be unlawful or a public nuisance~~ fail to comply with, violate, or cause any other person to fail to comply with, or violate any of the provisions of this chapter. Any violation of this chapter shall be deemed a public nuisance and shall be enforceable as described by this this chapter.

B. Procedures for Enforcement.

1. Initial Site Visit. The enforcement official, upon receiving notice or other complaint of a potential stormwater violation, will conduct a site visit to determine whether a violation exists. If the enforcement official determines a violation exists, he/she will communicate with the property owner or occupant of the property upon which the violation has occurred and/or the person causing the violation and provide to said person a verbal warning of the violation and description of the corrective action to be taken by said person. The enforcement official shall require said person to complete corrective actions as soon as possible, but no later than 72 hours following issuance of said verbal warning for point-source discharges and no later than 30 days following issuance of said verbal warning for non-point source discharges that could pose an environmental threat.

2. Confirmation that Violation has Ceased. The enforcement official, at his/her discretion, will conduct a follow-up site visit to determine if the violation has been corrected. If the violation has not been corrected, the enforcement official will send a written notice of violation in a letter to the property owner or occupant of the property upon which the violation has occurred and/or the person causing the violation. The notice of violation will state that a violation has occurred, a

description of the violation, when the violations were observed, and a general description of the actions or measures that must be taken in order to correct the violation and a revised timeframe within which corrective actions must be completed.
C. General Penalty. The penalty for violation of this chapter is provided for under Chapter 1.12 SMC.
D. Civil Actions – Injunctive Relief. The city may elect to proceed with a civil action, including seeking injunctive relief, rather than proceed with criminal enforcement actions. Any person, firm or corporation, whether acting as principal, agent, employer or otherwise, who willfully violates any provision of this chapter, or the terms and/or conditions of any permit issued pursuant to this chapter, shall be liable for a civil penalty not to exceed $1,000 for each day or portion thereof that the violation continues to exist. Any person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any such violation is committed, continued, or permitted. In determining the amount of the civil penalty to impose, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting the violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the violator, whether corporate or individual, and any corrective action taken by the violator.
E. Additional Remedy. If it is necessary for the city to perform cleanup of the public right-of-way or public property that is affected by the violation, the cost of the cleanup shall be borne by the property owner or occupant of the property upon which the violation occurs or the person causing the violation. (Ord. 04-2011 § 2, 2011; Ord. 02-2006 § 1, 2006).

13.32.140 Stop orders.
The enforcement official is hereby authorized to issue stop orders ~~to prohibit further construction of buildings or structures~~ against a corporation, limited liability company, partnership, sole proprietorship, or individual where the activities of said entity cause or contribute to violations of this title, and such stop orders shall remain in effect until such violations have been resolved. (Ord. 02-2006 § 1, 2006).

13.32.150 Remedies not exclusive.
Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive. (Ord. 02-2006 § 1, 2006).

13.32.160 Disclaimer of liability.
The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering, and other relevant technical considerations. The standards set forth herein are minimum standards and this chapter does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the state. This chapter shall not create liability on the part of the city, any officer or employee thereof for any damages that result from reliance on the code or any administrative decision lawfully made thereunder. (Ord. 02-2006 § 1, 2006).

13.32.170 City authority.
The enforcement official is authorized to make any decision on behalf of the city required or called for by this chapter. (Ord. 02-2006 § 1, 2006).

Section 2. Sections 14.20.020 through 14.20.210 of Chapter 14.20 (Excavations, Grading and Fills) of Title 14 of the Sonoma Municipal Code is hereby amended to read as follows (revisions indicated through the use of strikeouts and underlining):

14.20.020 Definitions.

The terms used in this chapter shall have the following meanings:

"As-graded" means the actual surface conditions present on completion of grading.

"Bench" means a relatively level step excavated into earth material on which fill is to be placed, or within a cut or fill slope.

"Best management practices (BMPs)" are construction site controls used to protect water quality.

"Certification" means a written engineering or geologist opinion concerning the progress and completion of the work.

"City engineer" means the city engineer of the city or his/her authorized representative.

"Clearing" is any activity that removes the vegetative surface cover.

"Compaction" is the densification of earth material by mechanical means.

"Contour rounding" means the rounding of cut and fill slopes in the horizontal plane to blend with existing contours or to provide horizontal variation, to eliminate the artificial appearance of slopes.

"Drainage channel or course" means a natural or artificial channel or depression of the ground that, due to its topology, periodically or continuously contains flowing storm water on its surface, including, but not limited to, slopes, swales, ditches, channels, creeks, streams, rivers and similar waterways that carry storm water.

"Drip line" means a line extending around a tree directly underneath the outermost branches of the tree.

"Earth material" is any rock, natural soil or fill and/or any combination thereof.

"Engineered grading" means grading in excess of 5,000 cubic yards or with cuts or fills with any part greater than four feet in cross sectional height or depth or when otherwise designated as such by the city engineer when he/she deems necessary due to hydraulic, geologic or other site conditions or factors.

"Engineering geologist" means a professional engineering geologist registered by the state to practice in the field of engineering geology.

"Erosion and sediment control plan" is a set of plans <u>and/or specifications</u> prepared by, or under the direction of, a licensed professional engineer indicating the specific measures and sequencing to be used to control erosion and sedimentation on a development site during and after construction.

"Erosion control" is a measure that prevents erosion or the wearing away of the ground surface as a result of the movement of wind, water, and/or ice.

"Excavation" means the mechanical removal of earth material.

"Fill" means a deposit of earth material placed by artificial means.

"Grade" means the vertical location of the ground surface. "Existing grade" is the grade prior to grading; "rough grade" is the stage at which the grade approximately conforms to the approved plan; and "finish grade" is the final grade of the site which conforms to the approved plan.

"Grading" means any excavating, filling, or combination thereof.

"Grading inspector" means the city representative authorized to inspect grading activities, as designated by the public works director.

"Key" means the designed compacted fill placed in a trench excavated in earth material beneath the toe of a proposed fill slope.

"Permittee" is the person who is issued the permit. The permittee may also be the applicant but under all circumstances must either be the owner or an authorized representative of the owner of the property where the grading is being done.

"Phasing" is clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

“Public works director” means the director of the city of Sonoma public works department.
“Rainy season” means that period of time when rains begin or October 15, whichever comes first, and ending on the following April 15 or when rains cease, whichever occurs last.
“Sediment control measures” are measures that prevent eroded sediment from leaving a construction site.
“Sensitive area” refers to the limits of impervious area that will be located less than 200 feet away from a natural water quality resource including a wetland, stream, pond, spring or river.
“Site” is a parcel of land or a contiguous combination thereof.
“Soils engineer” means a civil engineer experienced and knowledgeable in the practice of soil engineering.
“Start of construction” is the first land-disturbing activity associated with a work of improvement, including clearing and grading.
“Terrace” means a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes.
“Variable slope” means the variation in steepness of a cut or fill slope in either a combination of the horizontal or vertical plans of the slope. (Ord. 04-2010 § 1, 2010).

14.20.025 Permits required.
No person, firm or corporation shall perform any grading without first having obtained a written grading permit from the building official or his/her designee. The exceptions outlined in this section shall not apply to grading within or immediately adjacent to drainage channels or courses.
A. Exceptions. A grading permit shall not be required for the following:
1. Excavations below finished grade for basements and footings of a building, retaining wall, swimming pool, or other structure authorized by a valid building permit. This subsection shall not exempt from permit requirements any excavation having an unsupported height greater than five feet after the completion of such structure;
2. Cemetery graves;
3. Refuse disposal sites controlled by other regulations;
4. Excavations for wells or underground storage tanks no greater than 10,000 gallons in size when work is being done under the authority of a valid county well permit or city building permit;
5. Excavation for utilities when performed by a public utility;
6. Stockpiling of dirt, rock, sand, gravel, aggregate or clay of 50 cubic yards or less for a period of 60 days or less; provided, that the stockpile does not obstruct a drainage course or alter the drainage of neighboring properties;
7. Exploratory excavations of 50 cubic yards or less under the direction of a soils engineer or engineering geologist;
8. An excavation of 50 cubic yards or less which is:
a. Less than two feet in depth at any given point; or
b. Does not create a cut slope greater than five feet in height and steeper than two horizontal to one vertical;
c. Outside of the special flood hazard area and does not obstruct a drainage course or alter the drainage of neighboring properties. (Ord. 04-2010 § 1, 2010).

14.20.030 Fees.[1]
A. Plan Check Fee. Before accepting a set of plans and specifications for checking, a plan check fee or deposit shall be paid by the applicant.
B. Grading Permit Fee. A grading permit fee shall be paid by the applicant prior to issuance of a grading permit.
C. Fees set forth in this section shall be established and may, from time to time, be amended by city council resolution. (Ord. 04-2010 § 1, 2010).

14.20.035 Application contents.

A. Applications for a grading permit shall be accompanied by plans 24 inches by 36 inches in size prepared at a scale of no smaller than one inch equals 40 feet or at another scale acceptable to the city engineer.

1. Title page shall identify owner's name, owner's mailing address, owner's phone number, site address, assessor's parcel number, planning application number (if any), cubic yards of cut and cubic yards of fill.

2. A vicinity sketch showing roads, adjoining subdivisions and other data to adequately indicate the site location and show its relation to the community.

3. Property lines of the property on which the work is to be performed. The widths, location and identity of all easements.

4. Location of any buildings, structures, drainage devices or public improvements within 50 feet of the proposed grading work.

5. Date, north arrow, scale and accurate contours showing the topography of the existing ground of the proposed site and at least 50 feet beyond its boundary. Indicate source and date of existing contours. Show all drainage courses, channels and creeks.

6. Elevations, dimensions, location, extent and slopes of all proposed grading shown by contours and/or other means. Contours shall be shown at intervals of not greater than five feet, and of not greater than two feet if slope of land is less than ten percent.

7. Details of all surface and subsurface drainage devices, walls or other protective devices to be constructed in connection with, or as part of, the proposed work.

8. A statement indicating the approximate amount and location of any material to be imported from or exported to areas other than that shown on the plans. Proof of permit to dispose of material to another site outside of the city may be required at the discretion of the public works director.

9. Type, circumference and drip line of existing trees with a trunk diameter of six inches or more, measured 24 inches above existing grade. Any trees or vegetation proposed to be removed shall be so indicated including protective fencing as required.

10. Estimated schedule of the grading work.

11. Specify if the property is located in a special flood hazard area as defined in Chapter 14.25 SMC.

12. Erosion and sediment control plan in accordance with SMC 14.20.205.

B. Additional Application Requirements for Engineered Grading. In addition to meeting the requirements under subsection (A) of this section, projects defined as engineered grading shall also contain the following documentation:

1. A map prepared by a civil engineer showing the location of all areas subject to storm water runoff to and from the site and adjacent areas. A complete hydraulic analysis including the location, width, direction and quantity of flow of each watercourse shall accompany the map.

2. A soils engineering report prepared by a soils engineer, including data regarding the nature, distribution and strength of existing soils, conclusions, and recommendations for grading procedures and design criteria.

3. A geologist report, prepared by an engineering geologist, including an adequate description of the geology of the site and conclusions and recommendations regarding the effect of geologic conditions on the proposed work.

4. A letter from a soils engineer or engineering geologist verifying that he/she has been employed by the applicant and agrees to provide inspection, furnish as-built grading plans and submit final approval statement in accordance with this chapter.

5. The erosion and sediment control plan as provided for in SMC 14.20.205 shall be submitted to the city engineer and shall include the placement of structural and nonstructural storm water pollution prevention controls that prevent erosion during construction and post construction.

Erosion and sediment control plans for large-scale projects or when directed by the city engineer in sensitive areas shall be prepared by a certified erosion control specialist.
The city engineer, at his/her sole discretion, may allow waivers or deviations from the requirements specified in this section, depending on the site-specific conditions and the complexity of the work. Specific waivers or deviations from these requirements shall be made by written request by the applicant to the city engineer prior to submittal of the plans and specifications. (Ord. 04-2010 § 1, 2010).

14.20.040 Issuance of permit – Prerequisites.
A. No grading permit shall be issued until all required data has been approved by the planning director for conformance with CEQA, project entitlements, conditions of approval and/or zoning codes.
B. No grading permit shall be issued until all required plans and required documentation have been approved by the city engineer and all required fees have been paid.
C. In addition to the requirements of subsections (A) and (B) of this section, no grading permit shall be issued for a subdivision until:
1. All required grading bonds, subdivision improvement agreements and deeds (if applicable) have been received and approved; and
2. The planning commission and/or city council has approved the tentative map. (Ord. 04-2010 § 1, 2010).

14.20.045 Bonds.
A. Posting of Bond Required. A grading permit shall not be issued for a subdivision of five lots or more or for engineered grading unless the applicant has posted a bond executed by the applicant and a corporate surety authorized to do business in the state as a surety in an amount sufficient to cover the cost of corrective work necessary to clean up and remove all debris, to eliminate all hazards or to return the land to its natural condition as much as is possible should the project be abandoned and to ensure the installation of erosion control measures in accordance with an approved erosion and sediment control plan. The bond amount shall be based upon an engineer's cost estimate furnished by the applicant and approved by the city engineer. In lieu of a surety bond, the city may consider at the discretion of city engineer and city attorney cash bond, certificate of deposit, or instrument of credit in an amount equal to that which would be required in the surety bond. Every bond or other surety shall:
1. Comply with all of the provisions of the applicable laws, ordinances and requirements of the city attorney; and
2. Comply with all terms and conditions of the grading permit to the satisfaction of the public works director; and
3. Include conditions that the applicant shall complete all of the work under the permit within the time limit specified in the permit. The public works director may, for sufficient cause, extend the time specified in the permit, but no such extension shall release the surety.
B. Term. The term of each bond shall begin upon the date of issuance of the grading permit and shall remain in effect until released by the public works director upon acceptance of completed grading improvements.
C. Failure to Complete Work. In the event of failure to complete the work and failure to comply with all of the conditions and terms of the permit, the public works director may order the work required by the permit to be completed to his/her satisfaction. The surety executing such bond or deposit shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred or expended by the governing agency in causing any and all such required work to be done. If the work is not completed within the time period specified in SMC 14.20.050, the permittee shall be deemed to have abandoned the project and the public works director may, in his/her discretion, order the land to be returned as

much as possible to its natural condition and the surety shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred or expended by the governing agency in causing such restoration work to be done. In the case of cash deposit, said deposit or any unused portion thereof shall be refunded to the permittee in whatever amount is not necessary to complete the work described. (Ord. 04-2010 § 1, 2010).

14.20.050 Permit commencement, duration and expiration.
The grading permit under this chapter shall be subject to the following conditions:
A. Commencement. Grading, erosion control and sediment control work may commence upon issuance of the grading permit by the public works director. During the rainy season, as defined in SMC 14.20.020, grading work may not commence or recommence if erosion and sediment control measures required by SMC 14.20.205 have not been installed, implemented and maintained on the site to the satisfaction of the public works director or his/her representative. Regardless of whether a grading permit has been issued, grading shall not commence or recommence within an area that is adjacent to and/or within 50 feet of a drainage channel or course during the rainy season without specific written authorization from the public works director.
B. Duration and Expiration. If the work authorized by any grading permit under this chapter is not commenced within 180 days of the date of issuance, or as otherwise indicated on the permit, or if the work is not completed within one year of the date of issuance, or sooner if indicated on the permit, the permit shall expire and become null and void. Any permittee holding an unexpired grading permit may apply for a one-time extension of the time within which grading must be completed and approved. The public works director may extend the expiration date of the permit for a period not exceeding 180 days. (Ord. 04-2010 § 1, 2010).

14.20.100 Excavating, grading and filling requirements.
A. General. The following shall apply to all grading work covered by a grading permit:
1. One copy of the approved plans and approved revisions thereof, the storm water pollution prevention plan as required by the California Regional Water Quality Control Board, and grading permit shall be kept on the site at all times during the progress of the grading and shall be made available during inspections.
2. All grading and noise therefrom, including but not limited to, warming of equipment motors, shall be subject to the city's noise regulations and limited to the hours stated in Chapter 9.56 SMC.
3. All graded surfaces and materials, whether filled, excavated, transported or stockpiled, shall be wetted, protected, covered or contained in such a manner as to prevent any nuisance from dust, sediment, site runoff, or spillage onto adjoining property or streets. Best management practices in accordance with SMC 14.20.205 shall be incorporated in the grading activities.
4. No grading shall be conducted so as to encroach upon or alter the established gradient and riparian habitat of drainage courses except when a valid permit and other necessary approvals are obtained from the appropriate state and federal authorities and the necessary environmental review and approvals are received.
5. Whenever any portion of the work requires entry onto adjacent property for any reason, the permittee shall obtain a right of entry from the adjacent property owner in a form acceptable to the city attorney.
6. Grading shall be designed so that lot lines are at the top of slope and with adequate property line setback from the slope to provide for required vertical slope rounding. The tops and toes of cut lines and structures shall be designed to provide for:
a. Safety of adjacent property; and
b. Safety of pedestrians and vehicular traffic; and

c. Required slope rounding for adequate foundation support; and
d. Required swales, berms and drainage facilities; and
e. Sufficient setbacks to meet applicable zoning requirements.
7. The permittee and the grading contractor shall be responsible for the protection of adjacent properties during grading operations. Prior to commencing any grading of the site, the exterior boundaries shall be marked or staked as required by the grading inspector. Boundary markers shall be maintained throughout the grading operation. Temporary barriers and/or protective fencing shall be used when necessary to protect trees and adjacent properties.
8. Soil stabilization is required for all graded areas. Slopes, both cut and fill, shall be provided with subsurface drainage as necessary for stability.
9. Slopes, both cut and fill, shall not be steeper than two horizontal to one vertical (2:1), unless special circumstances applicable to the property, including size, shape, topography, location or surroundings, would cause the strict application of the standard to deprive such property of reasonable use. If these conditions exist, a geological and engineering analysis shall verify that steeper slopes are safe and appropriate erosion control measures are specified.
10. Cut and fill slopes shall be contour-rounded unless the city engineer finds special circumstances applicable to the property that would require deviation from this requirement.
11. Variable slopes shall be used to mitigate environmental and visual impacts of grading unless the city engineer finds special circumstances applicable to the property that would require deviation from this requirement.
12. Terraces at least six feet in width shall be established at not more than 30-foot vertical intervals, subject to maximum height limitations, to control surface drainage and debris on cut or fill slopes. Suitable access shall be provided to permit proper cleaning and maintenance.
13. All drainage facilities shall be designed to carry waters to the nearest practical drainage way approved by the city and/or the Sonoma County water agency and/or other appropriate jurisdiction as a safe place to deposit such waters <u>after all applicable on-site stormwater runoff management, detention, and/or infiltration requirements have been met</u>. If drainage facilities discharge on natural ground, riprap, energy dissipaters or other devices approved by the city engineer shall be constructed.
14. All building sites shall be graded and sloped away from the building foundation with a minimum slope of two percent for a distance of 10 feet on all sides of every building. If physical obstructions or lot lines prohibit 10 feet of horizontal distance, a five percent slope shall be provided to an alternative method of diverting water away from the foundation as approved by the city engineer. Swales used for this purpose shall be sloped a minimum of two percent where located within 10 feet of the building foundation. Impervious surfaces within 10 feet of the building foundation shall be sloped a minimum of two percent away from the building. Lot surface drainage shall be directed toward approved drainage facilities at a minimum gradient of one-half percent and shall not cross property lines without the appropriate drainage facilities and/or easement.
15. No cut or fill may intrude closer than the drip line of any tree to be retained on the site unless otherwise recommended, in writing, by an arborist and approved by the city engineer.
B. Fills. Unless otherwise recommended in the approved soils report, fills shall conform to the following provisions:
1. The ground surface shall be prepared to receive fill by removing vegetation, non-complying fill, topsoil and other unsuitable materials, then scarifying surface to provide a bond with new fill.
2. Fill on slopes steeper than five horizontal to one vertical (20 percent) and higher than five feet shall require benching into sound bedrock or other competent material as determined by the soils engineer. Bench shall be a minimum width of 10 feet. The area beyond the top of fill shall be sloped for sheet overflow or an approved drainage facility provided.

3. When fill is placed over a cut, the bench under the top of fill shall be at least 10 feet wide and the cut shall be made before placement of the fill and acceptance by the soils engineer or engineering geologist as a suitable foundation for fill.
4. Detrimental amounts of organic material shall not be permitted in fills. No rocks or similar irreducible material with a minimum dimension greater than 12 inches shall be buried or placed in fills. The city engineer may permit placement of larger rock only upon receipt and approval of a method of placement prepared by a soils engineer and under his/her direction. The following conditions shall also apply:
a. Rock disposal areas shall be delineated on grading plan.
b. Rock sizes greater than 12 inches in maximum dimension shall be 10 feet or more below finished grade, measured vertically.
c. Rocks shall be placed so as to assure filling of all voids with fines.
5. All fills shall be compacted to a minimum 90 percent of maximum density. (Ord. 04-2010 § 1, 2010).

14.20.200 Erosion and sediment control regulations – Intent.
The intent of these erosion and sediment control requirements is to regulate construction activities on public and private property in order to control erosion and sedimentation and to protect storm water quality. (Ord. 04-2010 § 1, 2010).

14.20.205 Erosion and sediment control plans.
A. An erosion and sediment control plan, prepared by a civil engineer or other professional who is qualified to prepare such a plan, shall be submitted as part of every grading permit application and shall delineate measures to appropriately and effectively minimize soil erosion and sedimentation~~,~~ and comply with the design standards and construction site control measures contained in this chapter. The erosion and sediment control plan shall be submitted to the city engineer and shall include the placement of structural and nonstructural storm water pollution prevention controls that prevent erosion during construction. Erosion control plans for engineered grading projects or when directed by the city engineer in sensitive areas shall be prepared by a certified erosion control specialist. The erosion and sediment control plan shall include all of the following as applicable to the proposed grading activity:
1. A description and delineation of the vegetative measures to be taken to minimize erosion and sedimentation;
2. A description and delineation of the temporary and permanent measures to be taken to protect manufactured or disturbed slopes from erosion by mechanical means, such as with mulches, diversion dikes, etc.;
3. The delineation of the drainage control measures to be taken;
4. The extent and manner of the cutting of trees and the clearing of vegetation, the disposal of same, and the measures to be taken for the protection of undisturbed trees and vegetation;
5. The methods to be used for the disposal of excess materials;
6. The methods to be used for the control of dust;
7. A description and delineation of the temporary and permanent measures to be taken to retain sediment on the site;
8. A description of the measures to be taken and the associated best management practices (BMP) inspection schedule to maintain the devices shown on the plan during grading operations and construction on the site;
9. The extent of disturbed ground that will exist, what streets will be paved, and what drainage devices will be installed prior to the start of each rainy season;
10. Locations of at-grade or above-ground drainage facilities and channels;

11. Seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application, and kind and quantity of mulching for both temporary and permanent vegetative control measures; and
12. A list of applicable permits directly associated with the grading or building activity, including, but not limited to the State Water Board's Construction General Permit, State Water Board 401 Water Quality Certification, U.S. Army Corps 404 permit, and California Department of Fish and Game 1600 Agreement.
1~~2~~3. Any other information required by the city engineer.
B. Exemptions. An erosion and sediment control plan, as defined in this Chapter, shall not be required for construction activities that do not require a grading permit; however, the property owner and contractor shall be subject to applicable best management practices for preventing and controlling erosion, sedimentation, and other storm water impacts associated with the work, including any BMP's or plan submission requirements in SMC 13.32. (Ord. 04-2010 § 1, 2010).

14.20.210 Design criteria for erosion and sediment control plans.
A. Technical Guidance. Grading, erosion control practices, sediment control practices, and waterway crossings shall meet the design criteria set forth in the most recent version of the California Stormwater Quality Association Best Management Practice Handbook, or other handbook authorized for use by the public works director, and shall be adequate to prevent transportation of sediment from the site to any off-site area. A rationale, including any applicable supporting engineering calculations, should be provided for all BMP's included in the Erosion and Sediment Control Plan.
B. Clearing. Clearing techniques that retain natural vegetation and drainage patterns, as described in the California Stormwater Quality Association Best Management Practice Handbook, shall be used to the satisfaction of the city engineer. Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and have been stabilized.
C. Grading, erosion and sediment control and waterway crossings. Grading, erosion control practices, sediment control practices, and waterway crossings shall meet the design criteria set forth in the most recent version of the California Stormwater Quality Association Best Management Practice Handbook, or other handbook authorized for use by the public works director, and shall be adequate to prevent transportation of sediment from the site to any off-site area to the satisfaction of the city engineer.
D. General Housekeeping. The following general site and good housekeeping requirements shall be implemented and are special provisions of any grading permit issued:
1. Sufficient erosion and sediment control supplies shall be available on site during the rainy season to protect areas susceptible to erosion during rain events. Contractors shall be prepared year-round to deploy erosion and sediment treatment control practices.
2. Soil disturbance work shall be conducted during dry weather whenever possible.
3. The contractor shall provide adequate materials management, including covering, securing, and segregating potentially toxic materials (asphalt, herbicides, pesticides, fertilizer, grease, oils, fuel, paints, stains, solvents, wood preservatives, etc.), and providing secondary containment for hazardous materials.
4. The contractor shall provide training and equipment to contain spills of oil and other hazardous materials.
5. Designated concrete washout areas shall be established at least 50 feet away from storm drain inlets or drainage facilities and away from the concrete truck access area so that construction traffic will not drive through wash waters. The wash out area shall have a contained area of sufficient volume to completely contain all liquid and waste concrete material plus a sufficient freeboard for rainwater.

6. Paving operations shall control run on and prevent runoff from areas being paved and be conducted in a manner that properly disposes of wastes.
7. Sanitary facilities of sufficient number and size to accommodate construction crews shall be located away from storm drain inlets and drainage facilities, and anchored to prevent being blown over or tipped by vandals. The facilities shall be maintained in good working order and emptied at regular intervals by a licensed sanitary waste hauler.
E. Erosion Control Requirements. The following erosion control requirements shall be incorporated in the erosion and sediment control plans:
1. Projects shall be designed to avoid disturbing land in sensitive areas and to preserve existing vegetation wherever possible.
2. Engineered grading operations shall be scheduled during dry months when practical, and shall allow adequate time before rainfall begins to stabilize the soil with erosion control materials.
3. Seeding and mulching shall be done as soon as grading is complete.
4. If seeding or another vegetative erosion control method is used, the vegetative cover shall become established within a time frame approved by the city engineer, or the city engineer may require the site to be reseeded or a nonvegetative option employed.
5. Special techniques that meet the design criteria outlined in the California Stormwater Quality Association Best Management Practice Handbook on steep slopes or in drainage ways shall be used to ensure stabilization.
6. Soil stockpiles must be stabilized and/or securely covered upon forecast of rain.
7. In areas where permanent re-seeding and planting is not established at the close of the construction season, additional control measures shall be used, such as a heavy mulch layer or another method that does not require germination, to ensure soil stabilization at the site.
8. Where runoff needs to be diverted from one area and conveyed to another, earth dikes, drainage swales, slope drains or other suitable practice shall be constructed in accordance with the design criteria set forth in the most recent version of the California Stormwater Quality Association Best Management Practice Handbook.
9. Techniques shall be employed to prevent the blowing of dust or sediment from the site.
10. Techniques that deliver upland runoff past disturbed slopes shall be employed when determined necessary by the city engineer.
F. Sediment Control Requirements. The following sediment control requirements shall be incorporated in the sediment and erosion control plan:
1. Linear sediment barriers shall be placed below the toe of exposed and erodible slopes, down-slope of exposed soil areas, around soil stockpiles, and at other appropriate locations along the site perimeter.
2. Street sweeping shall be conducted on an as-needed basis to remove sediment from streets and roadways and to prevent the sediment from entering storm drains or receiving waters.
3. Every storm drain inlet with the potential to receive sediment-laden runoff shall be protected in accordance with the design criteria set forth in the most recent version of the California Stormwater Quality Association Best Management Practice Handbook. Inlet protection shall be inspected and maintained frequently.
4. Sediment basins or sediment traps shall be installed on projects where sediment-laden water may enter the drainage system or watercourses and in association with dikes, temporary channels, and pipes used to convey runoff from disturbed areas.
5. Protection for adjacent properties by the use of a vegetated buffer strip in combination with other perimeter controls or other appropriate method, as described in the most recent version of the California Stormwater Quality Association Best Management Practice Handbook or other manual as approved by the public works director.

G. Waterway and Watercourse Protection Requirements. The following waterway and watercourse protection requirements shall be incorporated in the erosion and sediment control plans and implemented when applicable:
1. A temporary stream crossing installed and approved by the appropriate regulatory agencies if a wet watercourse will be crossed regularly during construction.
2. Stabilization of the watercourse channel before, during, and after any in-channel work.
3. All on-site stormwater conveyance channels shall be designed according to the criteria outlined in the California Stormwater Quality Association Best Management Practice Handbook.
4. Stabilization adequate to prevent erosion located at the outlets of all pipes and paved channels.
H. Site Access Requirements. The following construction site access requirements shall be incorporated in the erosion and sediment control plans and implemented when applicable:
1. A temporary access road provided at all sites.
2. Other measures, such as track-out prevention devices, or as required by the grading inspector in order to ensure that sediment is not tracked onto public streets by construction vehicles or washed into storm drains. (Ord. 04-2010 § 1, 2010).

Section 3. Section 19.38.010 of Chapter 19.38 (Open Space Districts) of Title 19 of the Sonoma Municipal Code is hereby amended to read as follows (revisions indicated through the use of strikeouts and underlining):

19.38.010 Existing conditions, desired future, potential changes.
A. Existing Conditions. The three open space districts are characterized by large areas of land in public ownership devoted to open space and recreational uses. The Maxwell district has an area of approximately 89 acres, all of which is owned by Sonoma County and dedicated to use as a regional park. The Maxwell Farms Regional Park encompasses a range of recreational uses, including playing fields, a Boys and Girls Club, and natural hiking areas.
The Vallejo district is dominated by the 57-acre Vallejo Home State Park. The historic buildings within this park are set off by expansive vistas. North of the park are several large, vacant parcels, currently used for grazing but having a zoning of Hillside Residential. Other uses within the district include a complex of city buildings (the police station and the city council chambers) and playing fields, a church, and a small amount of residential development.
The third open space district is comprised of the Mountain Cemetery. This city-owned property, which has an area of approximately 60 acres, has been developed with a historic public cemetery on the lower portion, with the remainder devoted to oak woodlands. The property is a key part of the hillside backdrop north of the city.
B. Desired Future. The general objective for the three districts is to preserve and enhance their value as public open space and recreational resources. A secondary objective for these districts is to maintain significant areas within the city with non-hardscape groundcovers to minimize increased quantities of urban runoff and downstream flooding.
C. Intended Changes. Maxwell Farms Regional Park will continue to be managed by the county department of parks and recreation. The city will maintain its partnership with the county to ensure that future improvements address valley recreational needs while preserving the unique environmental features of the park. Similarly, the city will continue to work with the State Parks Department to ensure that historic resources and open space values associated with the Vallejo Home State Park are preserved. If the privately owned hillside properties behind the park cannot be acquired as open space, the city will need to carefully monitor their development through its hillside regulations in order to minimize visual impacts on the backdrop.

Within the Cemetery district, the Old Mountain Cemetery will continue to be operated as a public cemetery and has recently been expanded to include a veterans' component. The portion of the property that had been used as a landfill will be restored to a natural condition. Within the property, off of Norrbom Road, the development of a water tank has recently been completed. The tank site has been carefully selected to minimize visual impacts. It is intended that the upper portion of the property, which encompasses approximately 60 acres, will be preserved in its natural condition as an oak woodland, with public access provided through a hiking trail. Portions of this area which have been damaged by illegal four-wheel drive activity will be restored over time. (Ord. 2003-02 § 3, 2003).

Section 4. Section 19.40.080 of Chapter 19.40 (General Property Development and Use Standards) of Title 19 of the Sonoma Municipal Code is hereby amended to read as follows (revisions indicated through the use of strikeouts and underlining):

19.40.080 Open space for commercial and mixed use projects.
This section provides requirements and guidelines for the provision of open spaces and related amenities for newly developed or redeveloped commercial uses, including mixed use and live-work development, throughout the city. The intent is to make commercial and mixed use environments more livable, pedestrian-oriented, and humane through the provision of public and private open spaces, including plazas, courtyards, and outdoor dining and seating areas.
A. Open Space Required. All commercial and mixed use projects shall provide permanently maintained outdoor open space, except as provided for in subsection (F) of this section, Exemptions. Unless different standards are applied through planning area regulations found in Division III, Project Design, usable outdoor open space shall be provided as set forth in Table 4-2, below:

Table 4-2 Minimum Open Space Requirements for Commercial and Mixed Use Development	
Type	Area Required
Commercial	
Change in use, with no increase in building area	N.A.
New development, on site <10,000 sq. ft.	7%
New development, on site 10,000 to 20,000 sq. ft.	9%
New development, on site >20,000 sq. ft.	11%
Mixed Use	
New development	300 sq. ft. per unit, any combination public and private
Live-Work1	
New development	250 sq. ft. per unit, any combination public and

Table 4-2 Minimum Open Space Requirements for Commercial and Mixed Use Development	
Type	Area Required
	private
Notes: 1. See SMC 19.50.050 for specific regulations pertaining to live/work development.	

Project proponents are encouraged to provide open space areas that exceed the minimum amount required. The city may offer incentives in compliance with subsection (E) of this section.

B. Configuration of Open Space. To ensure that required open space is well-designed, usable, and accessible, the review authority shall employ the following standards and guidelines in evaluating proposed open space:

1. Required open space shall be located on-site.

2. Open space should be provided as continuous, usable site elements that reinforce or enhance other aspects of the site plan, such as pedestrian networks, view corridors, and environmental features.

3. Common open space areas should be oriented to pedestrian circulation and should incorporate seating, enhanced paving materials, lighting, shade trees and/or trellises, and landscaping. Fountains, works of art, and similar features are also encouraged.

4. Private open space for residential and live-work units should be immediately accessible from a kitchen, dining room, family room or master bedroom within the unit it serves.

5. Open space areas intended for residents shall be of sufficient size to be usable by residents:

a. Private open space areas should have a minimum dimension of seven feet and a configuration that would accommodate a rectangle of at least 100 square feet;

b. Common open space areas should have a minimum dimension of 15 feet.

6. The orientation of private and common open space should take advantage of natural sunlight and should be sheltered from incompatible uses.

C. Allowed Uses. Required open space shall not include driveways, public or private streets, utility easements where the ground surface cannot be appropriately used for open space, parking spaces, or other areas primarily intended for other functions, except for stormwater detention and infiltration functions where the ground surface can be appropriately used for open space during dry weather.

D. Maintenance. Required common open space shall be controlled and permanently maintained by the owner of the property or by multiple project owners through a condominium association or maintenance agreement.

E. Open Space Incentives. Development incentive bonuses to encourage pedestrian-oriented open spaces, open spaces which preserve areas in a pristine natural condition, intensive green roofs that reduce stormwater runoff while providing accessible open space for pedestrians, and open spaces that reduce stormwater runoff through detention or infiltration that exceed the above requirements may be granted at the discretion of the planning commission. The types of bonus incentives that may be available to eligible projects include:

1. Reduced parking requirements (for pedestrian-oriented open space and amenities of an especially high quality);

2. Increased lot coverage;

3. Reduced setbacks.

F. Exemptions. The provision of required open space may be reduced or waived by the review authority (planning commission or design review and historic preservation commission) under the following circumstances:

1. Minor commercial development or additions involving less than 500 square feet of new building area;
2. Infill or replacement development in the Downtown district. (Ord. 06-2013 § 3, 2013; amended during June 2011 supplement; Ord. 2003-02 § 3, 2003).

Section 5. Section 19.40.100 of Chapter 19.40 (General Property Development and Use Standards) of Title 19 of the Sonoma Municipal Code is hereby amended to read as follows (revisions indicated through the use of strikeouts and underlining):

19.40.100 Screening and buffering.
This section provides standards for the screening and buffering of adjoining land uses, equipment and outdoor storage areas, and trash storage areas.
A. Screening Between Different Land Uses. Fences and walls shall be provided and maintained between different zoning districts in the following manner:
1. Wall Height. An opaque screen consisting of plant material and a solid masonry wall or wooden fence, a minimum of six feet in height, shall be installed along parcel boundaries whenever a commercial or industrial development adjoins a residential zoning district and whenever a multifamily zoning district adjoins a single-family residential zoning district. The maximum height of the walls shall comply with the provisions of Chapter 19.46 SMC, Fences, Hedges and Walls.
2. Wall Treatment. The walls or fences shall be architecturally treated on both sides, subject to the approval of the city planner or the design review and historic preservation commission, as applicable.
3. Pedestrian Access. Pedestrian access may be provided between the commercial properties and adjoining common open area(s) within residential developments.
4. Waiver by Planning Commission. The planning commission may waive or modify the requirements for screening walls or fences if one or more of the following findings can be made:
a. The development plan adequately provides for the integration of different land uses (e.g., shared parking areas) in such a way that conflicts between the different uses will be avoided;
b. An existing wall or fence is in place that meets or would be modified to conform to the intent of this section;
c. A lesser level of screening is appropriate due to the nature of the adjoining uses.
B. Mechanical Equipment.
1. Screened from Public View. Roof- or ground-mounted mechanical equipment (e.g., air conditioning, heating, ventilation ducts and exhaust, water heaters, etc.), loading docks, service yards, storage and waste areas, and utility services shall be screened from public view from adjoining public rights-of-way, and adjoining area(s) zoned for residential or open space uses, including views from above the subject project.
2. Architectural Compatibility. The method of screening shall be architecturally compatible with other on-site development in terms of colors, materials, architectural style, and shall include appropriately installed and maintained landscaping subject to SMC 19.40.060, Landscape standards, and the approval of the city planner or the design review and historic preservation commission, as applicable.
C. Solar Equipment. The placement of solar heating or electrical generation equipment shall be regulated as follows:
1. Roof-Mounted Equipment. Roof-mounted solar collector panels shall be flat, matching the roof pitch, and placed as close as possible to the surface of the roof. All plumbing, piping, and other connections shall be suitably covered with metal flashing painted to match the color of the roof.

2. Ground-Mounted Equipment. Ground-mounted solar collector panels and related equipment shall be placed no closer than five feet to any property line and shall be screened from public view. The height of ground-mounted structures, including collector panels, shall not exceed seven feet.
3. Appurtenant Equipment. Appurtenant equipment and fixtures shall be screened from public view.
4. Use Permit Requirements. The placement of solar equipment shall be subject to design review as set forth in SMC 19.54.080 under the following circumstances:
a. Roof-mounted solar panels proposed for any structure located in the Historic Overlay district.
b. Roof-mounted solar panels with an area of greater than 200 square feet.
c. The proposed placement of solar equipment that does not comply with the provisions set forth in subsections (C)(1) or (C)(2) of this section.
D. Outdoor Storage and Work Yards. Uses with outdoor storage of materials or operations shall comply with the following:
1. Solid Sight-Obscuring Wall and Gate(s). Outside uses shall have a solid sight-obscuring masonry wall or wooden fence not less than six feet, or more than eight feet in height, of a type and design approved by the review authority. The wall shall include sight-obscuring gates. The wall and gate(s) shall be maintained to continuously conform to the satisfaction of the city planner; and
2. All Operations Within Walled Area. Site operations in conjunction with the outdoor uses, including the loading and unloading of materials and equipment, shall be conducted entirely within a walled area.
E. Outdoor Building Supply Area(s). Outdoor building supply areas shall be screened with walls, fencing, meshing, landscaping, or similar material to minimize visibility of the storage area(s), subject to the approval of the review authority.
F. Trash Enclosures. Any outdoor storage of garbage cans, dumpsters, recycling bins or other similar containers shall be enclosed by a solid wooden fence, masonry wall, or other similar enclosure. The enclosure shall be located on the site so as to minimize potential noise, odor, and visual impacts on adjacent properties and prevent the transport of trash, spilled materials or leaks outside of the designated trash area either by wind or stormwater runon. (Ord. 06-2013 § 3, 2013; amended during June 2011 supplement; Ord. 2003-02 § 3, 2003).]

Section 6. Section 19.48.030 of Chapter 19.48 (Parking and Loading Standards) of Title 19 of the Sonoma Municipal Code is hereby amended to read as follows (revisions indicated through the use of strikeouts and underlining).

19.48.030 General parking regulations.
A. Parking and Loading Spaces to Be Permanent. Required parking and loading spaces shall be permanently available, marked, and maintained for parking or loading purposes and shall be located on the site they are intended to serve unless otherwise approved by the planning commission. Parking facilities approved to be located off-site shall be located within 300 feet of the use they are intended to serve. Where stormwater runoff management, detention, or infiltration is a requirement, parking facilities approved to be located off-site shall be included in all associated runoff calculations.
B. Parking and Loading to Be Unrestricted. Owners, lessees, tenants, or persons having control of operation of a premises for which parking or loading spaces are required by this chapter shall not prevent, prohibit, or restrict authorized persons from using those spaces, except that temporary restrictions may be allowed subject to the approval of the city planner.

C. Existing Parking. Existing parking or loading spaces shall not be reduced to an amount below that which is required by this chapter. The city planner may approve the temporary reduction of parking or loading spaces in conjunction with a seasonal or intermittent use for a period of not more than 30 days. Longer periods may be allowed with the approval of a temporary use permit (SMC 19.54.030).
D. Maintenance. Parking spaces, driveways, maneuvering aisles, turnaround areas, and landscaped areas shall be kept free of dust, graffiti, and litter; and striping, paving, walls, light standards, and all other facilities shall be permanently maintained.
E. Use of Commercial Parking. Parking developed under this chapter for commercial uses shall be available for use by the general public during business hours without charge and without reservation by individual tenant space, unless otherwise authorized by the planning commission. (Ord. 2003-02 § 3, 2003).

Section 7. Section 19.48.070 of Chapter 19.48 (Parking and Loading Standards) of Title 19 of the Sonoma Municipal Code is hereby amended to read as follows (revisions indicated through the use of strikeouts and underlining):

19.48.070 Development standards for parking facilities.
Parking facilities shall be provided in the following manner:
A. Access. Access to off-street parking areas shall be provided in the following manner:
1. Parking areas shall provide suitable maneuvering room so that vehicles enter an abutting street or alley in a forward direction. The review authority may approve exceptions for single-family homes and duplexes, and for nonresidential uses where parking areas immediately adjoin a public alley.
2. A minimum unobstructed clearance height of 14 feet shall be maintained above vehicle lanes and parking spaces.
B. Parking Space and Driveway Dimensions. Parking spaces and access driveways shall be dimensioned in compliance with current city standards on file with the city clerk and made a part hereof. Two-way traffic aisles shall have a minimum width of 20 feet.
C. Drainage.
1. Surface water from parking lots shall not drain over sidewalks or adjacent parcels.
2. Parking lots shall be designed in compliance with the storm water quality and quantity standards of the city's best management practices.
D. Directional Arrows and Signs.
1. Parking spaces, driveways, circulation aisles, and maneuvering areas shall be clearly marked with directional arrows and lines to ensure the safe and efficient flow of vehicles.
2. The city planner may require the installation of the traffic signs in addition to directional arrows to ensure the safe and efficient flow of vehicles in a parking facility.
E. Location. Off-street parking areas shall be located as follows:
1. Required parking shall be located on the same parcel as the uses served, except that parking may be located on a parcel adjacent to, or within 300 feet of, the use served subject to approval of the commission and the recording of a covenant with the county recorder guaranteeing that the required parking will be maintained exclusively for the use served. The agreement shall be approved by the city attorney and a copy shall be filed with the planning division.
2. Uncovered parking spaces shall be set back from any street a minimum distance of five feet. The setback area shall be fully landscaped.

3. Parking facilities shall be separated from buildings by either a raised walkway, landscape strip, or preferably a combination of both. Situations where parking aisles or spaces directly abut the building are prohibited.
4. Parking for multifamily uses shall be located within 200 feet of the units they are intended to serve.
5. Bicycle spaces shall be situated so that they do not obstruct the flow of pedestrians at entrances or sidewalks.
F. Striping and Identification. Parking spaces shall be clearly outlined with four-inch wide lines painted on the surface of the parking facility. Parking spaces for the disabled shall be striped and marked according to the applicable state and federal standards.
G. Surfacing. Parking spaces and maneuvering areas shall be paved and permanently maintained with asphalt, concrete, or other all-weather surfacing in compliance with city standards. Alternative surfaces may be allowed subject to the review and approval of the planning commission.
H. Wheel Stops/Curbing. In parking lots of more than 10 spaces, continuous concrete curbing at least six inches high and six inches wide shall be provided for parking spaces located adjacent to fences, walls, property lines, landscaped areas, and structures. Individual wheel stops or a continuous curb with periodic depressions to the level of the adjacent parking surface may be provided in lieu of continuous curbing when the parking is adjacent to a landscaped area, and the drainage is directed to the landscaped area. ~~subject to the approval of the design review and historic preservation commission.~~ Wheel stops shall be placed to allow for two feet of vehicle overhang area within the dimension of the parking space. (Ord. 06-2013 § 3, 2013; amended during June 2011 supplement; Ord. 2003-02 § 3, 2003).

Section 8. Section 19.62.140 of Chapter 19.62 (Subdivision Design and Improvement Requirements) of Title 19 of the Sonoma Municipal Code is hereby amended to read as follows (revisions indicated through the use of strikeouts and underlining):

19.62.140 Storm drainage.
Storm water runoff from the subdivision shall be collected and conveyed by an approved storm drain system. The storm drain system shall be designed for ultimate development of the drainage area. The storm drain system shall provide for the protection of abutting and off-site properties that would be adversely affected by any increase in runoff attributed to the development, including natural channel morphology that may be modified as a result of increased stormwater runoff from the subdivision; off-site storm drain improvements including stormwater runoff detention and/or infiltration may be required to satisfy this requirement. Any easement for drainage or flood control shall be improved as specified by the city engineer. All storm drainage facilities shall be designed in accordance with the Sonoma County water agency "flood control design criteria." (Ord. 2003-02 § 3, 2003).

Section 9. CEQA Determination.

This action to adopt an ordinance amending titles 13, 14, and 19 of the Sonoma Municipal Code by amending the stormwater and development regulations as they pertain to the City's legal authority and ability to comply with NPDES Permit 2013-0001-DWQ is exempt from the provisions of the California Environmental Quality Act in accordance with California Code of Regulations §15307.

Section 10. Severability.

If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 11. Effective Date.

This ordinance shall become effective thirty (30) days from and after the date of its passage.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Sonoma this __th day of ____ 2015.

_____
David Cook, Mayor

ATTEST:

_____
Gay Johann
Assistant City Manager / City Clerk

State of California)
County of Sonoma)
City of Sonoma)

I, Gay Johann, City Clerk of the City of Sonoma, do hereby certify that the foregoing ordinance was adopted on the __th day of ____ 2015 by the following vote:

AYES:
NOES:
ABSENT:

_____
Gay Johann
Assistant City Manager / City Clerk

CITY OF SONOMA
City Council
Agenda Item Summary

City Council Agenda Item: 7A

Meeting Date: 06/01/2015

Department	**Staff Contact**
Administration	Carol E. Giovanatto, City Manager

Agenda Item Title

Discussion, consideration and possible action to provide comments and consensus agreement on issues related to the Sonoma County Waste Management Agency (SCWMA)

Summary

The Sonoma County Waste Management Agency (SCWMA) JPA agreement has a fixed term which is due to expire in 2017. Renewal has gained urgency due to consequences to construction of a new compost facility, and time deadlines contained in a Zero Discharge Plan to achieve regulatory compliance. The SCWMA Board sees the need to bring the decision on the SCWMA future to resolution, and has requested all member jurisdictions schedule discussion on the topic.

SCWMA has assembled proposed Agreement changes into a "Matrix of Issues" intended to be used to evaluate and record the opinions of all member jurisdictions. The "Matrix" lists the issues and provides space for commentary. City staff will be facilitating a discussion on each of the 11 questions in an effort to provide feedback to the SCWMA Board. Councilmember Agrimonti sits as Sonoma's representative on the Agency Board; City Manager Giovanatto is the Alternate.

Recommended Council Action

Provide comments and consensus agreement on specific issues related to the SCWMA.

Alternative Actions

Provide limited or no response.

Financial Impact

N/A

Environmental Review	**Status**
☐ Environmental Impact Report	☐ Approved/Certified
☐ Negative Declaration	☐ No Action Required
☐ Exempt	☐ Action Requested
☐ Not Applicable	

Attachments:

Supplemental Report
Matrix of SCWMA Issues

Alignment with Council Goals:

POLICY & LEADERSHIP: Provide continuing leadership as elected officials of the community; respond to County, State and Federal legislative issues with a focus on retaining local control.

cc:

SUPPLEMENTAL REPORT

Discussion, consideration and possible action to provide comments on
Issues related to the Sonoma County Waste Management Agency

For the meeting of June 1, 2015

The Sonoma County Waste Management Agency (SCWMA) JPA agreement has a fixed term which is due to expire in 2017. Renewal has gained urgency due to consequences to construction of a new compost facility, and time deadlines contained in a Zero Discharge Plan to achieve regulatory compliance. The SCWMA Board sees the need to bring the decision on the SCWMA future to resolution, and has requested all member jurisdictions schedule discussion on the topic.

BACKGROUND

By way of background, the SCWMA was formed in 1992 as a Joint Powers Authority (JPA) of the nine incorporated cities/town, and the County of Sonoma for the unincorporated areas, to provide programs with regional consistency and efficiency to comply with State legislation known as AB939 setting waste diversion standards. Core SCWMA programs are composting/organics, household hazardous waste (HHW) collection and disposal, education and outreach, and regional planning and reporting. SCWMA is funded entirely by user fees, and some grants. The composting program is paid for by a tip fee on inbound green and yard waste, while the HHW program plus the education and planning/reporting functions' costs are covered by a tip fee surcharge on trash. SCWMA has a governing Board made up of one representative from each member jurisdiction; Board members can be elected officials or staff at the members' discretion.

The initial term for SCWMA was set at 25 years; thus without a decision to extend, SCWMA would cease in 2017. The decision regarding the future of SCWMA, and the best way to continue implementation of its four core programs, has taken on some urgency. The North Coast Regional Water Quality Control Board (NCRWQCB) recently imposed a "zero discharge" standard for the compost facility such that rain water that contacts compost materials must be controlled to no longer drain off site. SCWMA prepared a Zero Discharge Plan that outlines steps to achieve this requirement which has concurrence from the Regional Water Quality Board. Among several parallel plan pathways, the optimum result would be to construct an entirely new compost site that is properly designed to deal with storm water. The Plan target is the end of 2016 for completion of construction. However, due to the cost of a new facility, SCWMA must be able to contract for a sufficiently long period of time in order to amortize the facility costs to make the rate impacts affordable; this time frame is expected to be 25 years. But, without a JPA extension, SCWMA would not be able to contract for financing beyond the 2017 end date. In order to build the site during 2016, the procurement process would occur beginning fall 2015. For that to happen, the SCWMA would require that the ability to contract long-term be in place by the same time, fall 2015. If the time schedules in the Zero Discharge Plan are not met, the current facility will have to close, requiring materials to be hauled to facilities out of county at added expense (estimated to be $2-$2.5 M per year extra) which would have to be supported by a rate increase. If SCWMA is not renewed, the compost facility could also possibly close; plus, some other entity would have to build and operate a new facility.

FEEDBACK REQUESTED BY SCWMA BOARD

In order to aid the discussion regarding the SCWMA future, in early 2014 the Board commissioned R3 Consultants to use the listing of current SCWMA activities and determine which of these were “essential to health/safety”, or “required by law or regulation”, or might “potentially have negative effects if shut down or curtailed”. The R3 report recommended that “the Agency (and Member Jurisdictions) continue to provide the Agency’s current four core services on a regional basis.” The report concluded that “it does not appear that the Member Jurisdictions could realize an overall net cost savings by pursuing alternative services to the four core programs provided by the Agency” and that “On an individual basis, the Agency’s current programs appear to be more cost effective than the identified alternatives in almost all cases”. The R3 work looked at these alternatives to SCWMA continuing to provide the four core programs: having the tasks provided entirely by contract, or the members taking on the tasks themselves. Due to the situation at the time, Sonoma County was not considered as an alternate service provider. However, that possibility is now open to consideration.

Because the original JPA Agreement is over twenty years old, and based on the SCWMA Board’s experience during this time frame, several changes to the Agreement have been put forth for discussion as suggested by the majority of the SCWMA Board during two facilitated strategy work sessions.

Currently a “Unanimous Vote” criterion exists for three categories of voting: approval of a major program expansion, capital expenditures greater than $50,000, and the adoption of the annual budget. One proposal is to replace the “Unanimous Vote” with a “Super-Majority Vote”, either set at 8 of 10 or 7 of 10 members. A related, second proposal is to alter the list of categories subject to more than a majority vote. The suggested new list would be purchase of real property, incurring debt greater than $250,000 from public or private lenders, adoption of an annual budget, adoption of additional core programs, expenditure of funds greater than $250,000, and approval of future amendments to the JPA Agreement.

Another area with suggested changes is the Board’s structure. There is some sentiment to have the Board composition be entirely elected officials. Another suggestion has been a tiered structure with a governing Board of elected officials with a Technical Advisory Committee of member jurisdictions’ staff that reports to the Board.

SCWMA has assembled these proposed Agreement changes into a “Matrix of Issues” (attached), intended to be used to evaluate and record the opinions of all member jurisdictions. The “Matrix” lists the issues and provides space for commentary. City staff will be facilitating a discussion on each of the 11 questions in an effort to provide feedback to the SCWMA Board. Councilmember Agrimonti sits as Sonoma’s representative on the Agency Board.

RECOMMENDATION

Provide comments on SCWMA Matrix.

Board Consensus at June 2014 Strategy Discussion (9 members present)	Questions Please respond to the degree of preference (e.g., no preference, slight preference, must have/showstopper)	Date: Sonoma
9 yes	**1. Do you want to continue a regional approach for dealing with the following programs?**	
Consensus - yes	**a. Composting**	
Consensus - yes	**b. Household Hazardous Waste**	
Consensus - yes	**c. Education**	
Consensus - yes	**d. Planning and Reporting**	
	2. What is your preference on who performs those services? (Agency, County, Mix)	

Consensus Agency until Feb. 2017, but re-evaluate post Feb. 2017	**a. Composting**	
Consensus - Agency	**b. Household Hazardous Waste**	
Consensus - Agency	**c. Education**	
Consensus - Agency	**d. Planning and Reporting**	
Majority preferred no fixed term	**3. If there is a preference for responsibilities remaining with the Agency, what is your preference on the term of the Agency?** **(25 Years, No Fixed Term)**	
No consensus reached; many different opinions	**4. Do you wish to have a mechanism for members to opt out of some Agency programs?**	
2 yes	**5. Do you want a unanimous vote requirement on the following items: Budget Approval, Capital Expenditure greater than $50,000, Major Program Expansion?**	

7 yes	**6. Would you prefer a supermajority approval of the items?**	
	a. Purchase of Real Property	
	b. Incur Debt Greater than $250,000	
	c. Adopt Annual Budget	
	d. Adopt Additional Core Programs	
	e. Expenditure of Funds Greater than $250,000	
	f. Amendments of the New JPA Agreement	
	7. What do you want to comprise a supermajority?	
1 yes	**a. Library JPA (7/10)**	

6 yes	**b. 8/10 Vote**	
No consensus reached; many different opinions	**8. Would you prefer a governance model which allows for a mixture of jurisdiction staff and elected offficials or one which only allows elected officials?**	
Majority - tiered structure	**9. Would you prefer a tiered structure of governance which includes a policy-making board and a technical advisory committee?**	
Majortity - elected	**a. Would the policy-making board be composed of elected officials, staff, or a combination?**	
Majority - staff	**b. Would the techical advisory committee be composed of elected officials, staff, or a combination?**	

	10. Does your City/County Attorney have issues with specific language included in the current JPA and amendments? If so, please describe.	
	11. Does your City/County Attorney have issues with specific language included in the proposed Third Amendment to the JPA? If so, please describe.	

CITY OF SONOMA
City Council
Agenda Item Summary

City Council Agenda Item: **7B**

Meeting Date: **06/01/2015**

Department	**Staff Contact**
Administration	Carol E. Giovanatto, City Manager

Agenda Item Title

Discussion, consideration and possible action of a resolution establishing procedures pertaining to appointments to City boards and commissions.

Summary

During the past several months, there have been multiple appointments come forward from various Boards and Commissions. Due to this unprecedented high volume of activity, a review of the existing process has been directed by Council.

Background

The current process for appointment of citizens to City boards and commissions has been in place since 2002 as established by Resolution No. 77-2002 which "established guidelines pertaining to expired terms and reappointments to City boards and commissions". Since 2002, according to City agenda records, the process was reviewed by various City Councils in 2005, 2009 and 2013 with no changes enacted.

The most recent review in June 2013 included a draft of a resolution prepared by the City Attorney which encompassed the direction of the Council's discussion in late 2012. The major points of the resolution under consideration at that time included:

1. Retaining the existing concept that the appointment of alternates to fill a vacancy is not automatic, but discretionary with the mayor, subject to ratification by the council.
2. Continuing the policy of authorizing the mayor to nominate candidates for vacant/open positions, subject to ratification by the council. This procedure means, then, that only the mayor may nominate candidates to fill open/vacant positions. Individual councilmembers are divested of this opportunity to make nominations – an opportunity that they otherwise possess under state law. In order to change this policy, the Sonoma Municipal Code will need to be amended.
3. Making the appointment process somewhat more transparent, at least to the council by making changes to existing practice. Those changes include: (a) the City Clerk is required to give the mayor *and* councilmembers notice of the expiration of a commissioner's term of office; and (b) a mayor's determination that she/he will not consider re-appointing an incumbent must be noticed to the other councilmembers. It retains the existing practice of permitting the mayor to unilaterally determine that an incumbent will not be re-appointed and unilaterally determine that the existing applications on file are sufficient (or not) to choose from and that advertising the opening/vacancy is unnecessary (or necessary).
4. It also offered two alternatives to the interview process:

   [Alternative One] retains the existing practice of authorizing the mayor to appoint one other councilmember to join the mayor in interviewing the candidates. The resolution changes the existing practice (not policy) by mandating that the interviews be conducted by two councilmembers in attendance; or

   [Alternative Two] does away with the subcommittee concept entirely, and gives to the full council the opportunity and right to interview all candidates during the public portion of an agendized council meeting. Several options were included for the resulting vote sequence.

Ultimately after Council discussion and vetting, the resolution was not adopted and the current processremained unchanged.

Appointment of Alternates:

In a separate previous discussion, the Council reviewed issues on whether the appointment of a commission alternate should be automatic instead of being at the discretion of the Mayor. The automatic appointment provision would require further review due to the potential conflict of filling a City commissioner seat with a City resident as one seat on the commission is reserved for an out of City resident. Making the appointment of an alternate automatic would require an amendment to the Municipal Code. Should Council desire to make any changes to the appointment of alternates it could direct staff to prepare an ordinance enacting the change or changes for future Council consideration.

Survey of other Sonoma County Cities:

As a part of the review, staff conducted a survey of processes used by other cities in Sonoma County which is summarized and included on a matrix provided as an attachment to this report.

Recommended Council Action

Council direction to staff.

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:

1. Existing Resolution No. 77-2002
2. Redlined version of the prior resolution [draft Resolution 2012]
3. Matrix of processes from other cities

CITY OF SONOMA

RESOLUTION NO. 77 - 2002

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SONOMA ESTABLISHING GUIDELINES PERTAINING TO EXPIRED TERMS AND REAPPOINTMENTS TO CITY BOARDS AND COMMISSIONS

WHEREAS, the City Council of the City of Sonoma encourages citizen participation on its many boards and commissions; and

WHEREAS, Chapter 2.40 of the Sonoma Municipal Code Chapter provides general provisions for boards and commissions including how appointments are made and the total number of years that may be served; and

WHEREAS, California Government Code §54972 requires preparation and posting of a Local Appointments List on or before December 31 of each year; and

WHEREAS, California Government Code §54974 requires posting of a special vacancy notice whenever an unscheduled vacancy occurs on any board or commission; and

WHEREAS, the City Council desires to provide written guidelines pertaining to the procedure for advertisement, appointment and reappointment of board or commission members.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Sonoma hereby establishes the following guidelines regarding advertisement, appointment and reappointment of board or commission members:

1. Whenever an unscheduled vacancy (due to resignation, death, termination, or other) occurs on any board or commission, the City Clerk shall: A) Post a vacancy notice pursuant to the provisions of G.C. 54974; and B) Publish a Vacancy Notice at least one time, no later than ten days prior to the deadline to submit applications, in a newspaper of general circulation published and circulated in the city.

2. Six weeks prior to expiration of a board or commission member's term, the City Clerk shall provide written notification to the Mayor. The notification shall include the name of the member, the board or commission to which they are appointed, the date of the original appointment, and whether they are eligible for a four year or two year appointment pursuant to Municipal Code section 2.40.070.

3 The Mayor shall consider the reappointment of the member whose term is expiring.

4. If the Mayor determines that reappointment of the member is advisable, then he/she shall contact the member to ask if they are willing to accept appointment to another term. If the member is willing, the Mayor shall notify the City Clerk to place the reappointment on a future City Council agenda.

5. If the Mayor determines that reappointment of the member is not advisable, he/she shall notify the committee member and the City Clerk of that determination no later than four weeks prior to the expiration of the member's term.

6. Upon receipt of the notification from the Mayor that a member will not be reappointed to a position, the City Clerk shall advertise the vacancy pursuant to Section 1 above.

The foregoing Resolution was duly adopted this 9th day of October 2002, by the following vote:

AYES: (4) Brown, Barnett, Ashford, Mazza
NOES: (0) None
ABSENT: (1) Costello

Albert C Mazza
ALBERT C. MAZZA, MAYOR

ATTEST:

Gay Rainsbarger
GAY RAINSBARGER, CITY CLERK

CITY OF SONOMA

RESOLUTION NO. xx - 2013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SONOMA
ESTABLISHING PROCEDURES PERTAINING TO APPOINTMENTS AND
REAPPOINTMENTS TO CITY BOARDS AND COMMISSIONS AND
RESCINDING RES. NO. 77-2002

WHEREAS, the City Council of the City of Sonoma encourages citizen participation on its many boards and commissions; and

WHEREAS, Chapter 2.40 of the Sonoma Municipal Code Chapter provides general provisions for boards and commissions including how appointments are made and the total number of years that may be served; and

WHEREAS, California Government Code §54972 requires preparation and posting of a Local Appointments List on or before December 31 of each year; and

WHEREAS, California Government Code §54974 requires posting of a special vacancy notice whenever an unscheduled vacancy occurs on any board or commission; and

WHEREAS, the City Council desires to establish written guidelines pertaining to the procedure for advertisement, appointment and reappointment of board or commission members for which the City Council has the appointing authority; and

WHEREAS, for purposes of this Resolution, all boards, commissions and committees appointed using the guidelines set forth below shall be referred to as "commission". A member of a board, commission, or committee shall be referred to as a "commissioner"; and

WHEREAS, all commission appointments shall be by nomination of the Mayor and ratification by the City Council. (SMC 2.40.100)

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Sonoma hereby establishes the following procedures regarding advertisement, appointment and reappointment of commissioners:

Section 1. Definitions

"Open position" shall mean a position made available due to the expiration of a term of office or due to the creation of a new position on a commission. An "open position" shall include both regular member positions and alternate member positions.

"Unscheduled Vacancy" shall mean a position made available prior to the expiration of the applicable term of office due to resignation, incapacitation, ineligibility, death or other reason. An "unscheduled vacancy" may occur with respect to both regular member positions and alternate member positions.

"Eligible Alternate" shall mean an appointed commission alternate who meets the residency requirement of the vacancy to be filled by the Eligible Alternate.

Section 2. Reappointment of Commissioners
Commissioners may serve up to a total of eight years. They are first appointed to a two-year term and may be reappointed for a second term of four years and a third term of two years. (SMC2.40.070)

A.. Six weeks prior to expiration of a commission member's first or second term, the City Clerk shall provide written notification to the Mayor and the other Councilmembers. The notification shall include the name of the member, the board or commission to which she/he is appointed, the date of the original appointment, and whether she/he is eligible for a four-year or two-year appointment pursuant to Municipal Code section 2.40.070.

B. The Mayor shall consider the reappointment of the member whose term is expiring. C. If the Mayor determines that reappointment of the member is advisable, then he/she shall contact the member to ask if she/he is willing to accept appointment to another term. If the member is willing, the Mayor shall notify the City Clerk to place the reappointment on the Consent Calendar of a future City Council agenda.

D. If the Mayor determines that reappointment of the member is not advisable, he/she shall notify the commission member and the City Clerk of that determination no later than four weeks prior to the expiration of the

member's term. Upon receipt of such determination, the City Clerk shall promptly notify the other Councilmembers of same.

Section 3. Filling an open position or unscheduled vacancy

A. Whenever an Unscheduled Vacancy occurs on a commission, the City Clerk shall, no later than twenty days after the vacancy occurs: A) Post a special vacancy notice on the City Hall bulletin board;2) Post a special vacancy notice on the City's website and 3) Send a copy of the special vacancy notice to the Sonoma Valley Library. The City Council is precluded from making an appointment to fill the vacancy for at least ten days after the posting of the special vacancy notice unless an emergency exists in which case it may fill the vacancy on an acting basis until the final appointment is made; pursuant to the provisions of G.C. 54974.

B. Appointment of an Alternate. Open Positions and Unscheduled Vacancies may be filled by the appointment of an Eligible Alternate. An Eligible Alternate may be appointed to fill the position without further recruitment for a replacement upon nomination by the Mayor and ratification by the City Council. (SMC 2.40.110 D) In the case of an Unscheduled Vacancy, the appointment may not occur less than ten days after the posting of the special vacancy notice.

C. Consideration of Applications on file. The City Clerk shall retain all commission applications on file and they shall be considered active for a period of one year after receipt. The Mayor may determine that an adequate number of applications on file are sufficient from which to draw from and no further advertisement of the vacancy is necessary.

D. Advertisement. Open Positions or Unscheduled Vacancies which are not filled by the appointment of an Eligible Alternate or from the applications on file shall be advertised by the publication of a vacancy notice at least one time, no later than ten days prior to the deadline to submit applications, in a newspaper of general circulation published and circulated in the City of Sonoma. The City Clerk may also disseminate the advertisement by other methods commonly used to distribute public information such as posting it on the City website, issuance of a press release, etc. The notice shall include the statement that should the position not be filled as a result of the advertisement; the application period will remain open until the position is filled.

Section 4. Applicant Interviews

[Alternative One]

At the close of the advertised application period or upon the Mayor's determination that the applications on file are sufficient, as the case may be, a two-member City Council subcommittee consisting of the Mayor and one other Councilmember of the Mayor's choosing, shall interview all applicants or review the on-file applications, respectively. Every interview shall be conducted with two elected officials in attendance. Following conclusion of the interviews or the subcommittee's review of the on-file applications, the subcommittee will make a recommendation, which shall be brought forth as a nomination by the Mayor as a Consent Calendar item on a future City Council agenda. **[What happens if the mayor and other subcommittee member cannot agree?]**

[Alternative Two]

At the close of the advertised application period or upon the Mayor's determination that the applications on file are sufficient, as the case may be, the City Clerk shall agendize a council meeting for the purpose of the full council interviewing all of the applicants during the public portion of such meeting. These interviews may be scheduled as part of a regular council meeting. At the close of the interviews and the public comment portion pertaining thereto, one of the following actions may be taken: (1) the Mayor may nominate one of the candidates for appointment to the position and said candidate shall be appointed to the position provided that the council ratifies the nomination pursuant to Sonoma Municipal Code (SMC) section 2.40.100; or (2) the Mayor may decline to nominate any candidate for the position, in which case the council shall determine whether or not to continue advertising the vacancy, advertise the vacancy for the first time, or decline to fill the position for the time being under terms and conditions specified by the council consistent with this Resolution; or (3) the council, by 4/5ths vote of the members of the council, may require that the vacancy be re-advertised or advertised for the first time and the position filled under terms and conditions consistent with this Resolution; or (4) if none of the Mayor's nominations garner sufficient votes to ratify same, then the vacancy shall be re-advertised or advertised for the first time for no less than 90 days, upon the conclusion of which the City Clerk shall re-agendize the interviews and selection of the candidates at which time the council shall interview the candidates who submitted applications within said 90 day advertisement period, and, at the conclusion of which, one of the four actions described above may take place.

Section 5. Commission Applications

Individuals desiring to serve on a City commission must complete a Commission Application Form. The completed application form must be filed with the City Clerk prior to the close of the application period. Applications received after the application deadline will not be considered for current vacancies but will be placed on file for a period of one year for consideration in the event of future vacancies. All applications shall be deemed to be public documents and shall be available for public inspection.

Section 6. Resolution Number 77-2002 is hereby rescinded in its entirety.

The foregoing Resolution was duly adopted this ___day of _____ 2013, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
KEN BROWN, MAYOR

ATTEST:

_____
GAY JOHANN, CITY CLERK

	A	B	C	D
1	**City**	**Interviews conducted by:**	**Nomination / Approval**	**Written Policy?**
2	Cloverdale	Subcommittee of Council, City Manager, and Community Development Director	Nomination by Mayor, ratification by Council	No
3	Cotati		Nomination by a Councilmember, ratification by Council	Yes, muni code
4	Healdsburg		Planning Commissioners: Interviews by a Council subcommittee, appointment by Council	Yes, muni code
5	Petaluma	Applicants may speak at the Council meeting	Appointments made by the entire City Council	
6	Rohnert Park	Clerk said no interviews.	For five member boards, each Councilmember may appoint a member, For boards with more than 5 members, the additional appointments are made by a majority vote of the Council	Yes
7	Santa Rosa	For appointmenst made by individual Councilmembers, they conduct their own interviews. For appointments made by the full Council, the full Council conducts the interviews	Most advisory body members are selected by individual Council members per City Charter. For those that are appointed by the full Council, the full Council interviews the applicants and makes the appointment through a ballot process.	Yes
8	Sebastopol	Applicants may speak at the Council meeting	Appointments made by the entire City Council	No
9	Windsor			

CITY OF SONOMA
City Council
Agenda Item Summary

Agenda Item: 9
Meeting Date: 06/01/2015

Department	**Staff Contact**
Administration	Gay Johann, Assistant City Manager/City Clerk

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