



"The City With a Heart"

Jim Ruane, Mayor
Marty Medina, Vice Mayor
Ken Ibarra, Councilmember
Rico E. Medina, Councilmember
Irene O'Connell, Councilmember

AGENDA – SPECIAL MEETING (CLOSED SESSION)

SAN BRUNO CITY COUNCIL

November 22, 2016

6:00 p.m.

Meeting Location: San Bruno Senior Center, 1555 Crystal Springs Road, San Bruno, CA

City Council meetings are conducted in accordance with Roberts Rules of Order Newly Revised and City Council Rules of Procedure. You may address any agenda item by standing at the microphone until recognized by the Council. All regular Council meetings are recorded and televised on CATV Channel 1 and replayed the following Thursday, at 2:00 pm. You may listen to recordings in the City Clerk's Office, purchase CD's, access our web site at www.sanbruno.ca.gov or check out copies at the Library. We welcome your participation. In compliance with the Americans with Disabilities Act, individuals requiring reasonable accommodations or appropriate alternative formats for notices, agendas and records for this meeting should notify us 48 hours prior to meeting. Please call the City Clerk's Office 650-616-7058.

1. CALL TO ORDER:

2. ROLL CALL:

3. PUBLIC COMMENT ON ITEMS NOT ON AGENDA: Individuals allowed three minutes, groups in attendance, five minutes. If you are unable to remain at the meeting, ask the City Clerk to request that the Council consider your comments earlier. It is the Council's policy to refer matters raised in this forum to staff for investigation and/or action where appropriate. The Brown Act prohibits the Council from discussing or acting upon any matter not agendized pursuant to State Law.

4. CLOSED SESSION:

Conference with Labor Negotiators Pursuant to Gov't Code Section 54957.6: Agency Designated Representatives: City Manager, Assistant City Manager, Employee Organizations: Public Safety Mid-Management Bargaining Unit, Miscellaneous Bargaining Unit and Mid Management Bargaining Unit.

5. ADJOURNMENT:

The next Regular City Council Meeting will be held on November 22, 2016 at 7:00 p.m. at the Senior Center, 1555 Crystal Springs Road, San Bruno.



“The City With a Heart”

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AGENDA SAN BRUNO CITY COUNCIL

November 22, 2016

7:00 p.m.

Music Performance by the Capuchino High School Chamber Strings Preceding the Regular City Council Meeting in the Senior Center Lobby

Meeting Location: San Bruno Senior Center, 1555 Crystal Springs Road, San Bruno, CA

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1. CALL TO ORDER:

2. ROLL CALL/PLEDGE OF ALLEGIANCE:

3. ANNOUNCEMENTS:

- a. There will be no City Council Meeting on Tuesday, December 27, 2016.
- b. The Annual Tree Lighting Ceremony will take place on Thursday, December 1, 2016 at 5:30 p.m. at the Veterans Memorial Recreation Center in San Bruno City Park, 251 City Parkway.

4. PRESENTATIONS:

Receive a Performance by the Capuchino High School Chamber Strings.

5. REVIEW OF AGENDA:

6. APPROVAL OF MINUTES of Special Closed Session Council Meeting of November 9, 2016 and Regular Council Meeting of November 9, 2016.

7. CONSENT CALENDAR: All items are considered routine or implement an earlier Council action and may be enacted by one motion; there will be no separate discussion, unless requested.

- a. **Approve:** Accounts Payable of November 7 and 14, 2016.
- b. **Approve:** Payroll of November 4, 2016.
- c. **Waive:** Second Reading, and Adopt Ordinance Regulating Exposure to Secondhand Smoke.
- d. **Waive:** Second Reading and Adopt Ordinance Amending and Replacing Chapter 12.230 Establishing an Affordable Housing Program and Affordable Housing Impact Fees, to Title 12 (Land Use) of the San Bruno Municipal Code.
- e. **Waive:** Second Reading and Adopt an Ordinance Adding Chapter 10.15 to the Municipal Code to Include Water Supply Cross-Connection and Backflow Prevention Standards.

- f. **Accept:** Resignation from Bicycle & Pedestrian Advisory Committee Member. Declare Vacancy and Direct the City Clerk to Initiate the Process for Appointment of a New Member.
- g. **Adopt:** Resolution Approving Revisions to the City's Conflict of Interest Code Appendix.
- h. **Adopt:** Resolution Authorizing Temporary Closure of the 1900 Block of Glen Avenue for the Annual Santa Arrival on Sunday, December 11, 2016 from 5:00 p.m. to 9:00 p.m.
- i. **Adopt:** Resolution Ratifying San Bruno Community Foundation Officers for 2017.
- j. **Adopt:** Resolution Approving an Agreement between the City of San Bruno and the San Bruno Professional Firefighters Association, Represented by Teamsters Union Local 856, and Authorizing its Execution by the City Manager.

8. PUBLIC HEARING:

Hold Public Hearing and Extend Interim Urgency Ordinance Regulating Cultivation and Prohibiting the Manufacture, Processing, Laboratory Testing, Labeling, Storing, Wholesale, and Retail Distribution of Non-Medical Marijuana Pursuant to Government Code Section 65858(a)

- 9. PUBLIC COMMENT ON ITEMS NOT ON AGENDA:** Individuals allowed three minutes, groups in attendance, five minutes. If you are unable to remain at the meeting, ask the City Clerk to request that the Council consider your comments earlier. It is the Council's policy to refer matters raised in this forum to staff for investigation and/or action where appropriate. The Brown Act prohibits the Council from discussing or acting upon any matter not agendaized pursuant to State Law.

10. CONDUCT OF BUSINESS:

Adopt Resolution Authorizing Filing of Rubberized Pavement Grant Program Application for TRP7 Fiscal Year 2016-17 with the California Department of Resources Recycling and Recovery (CalRecycle.)

11. REPORT OF COMMISSIONS, BOARDS & COMMITTEES:

Receive Annual Report from the Parks and Recreation Commission

12. COMMENTS FROM COUNCIL MEMBERS:

13. CLOSED SESSION:

14. STUDY SESSION:

Conduct Study Session Regarding the New California Voter Participation Rights Act (SB 415) that Mandates Changes to the Years in which Municipal Elections Must be Held.

15. ADJOURNMENT:

The next Regular City Council Meeting will be held on December 13, 2016 at 7:00 p.m. at the Senior Center, 1555 Crystal Springs Road, San Bruno.



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MINUTES
SAN BRUNO CITY COUNCIL – SPECIAL MEETING – CLOSED
SESSION

November 9, 2016

6:00 p.m.

1. CALL TO ORDER: THIS IS TO CERTIFY THAT the San Bruno City Council met on November 9, 2016 at San Bruno’s Senior Center, 1555 Crystal Springs Road, San Bruno, CA. The Council meeting was called to order at 6:00 p.m.

2. ROLL CALL: Presiding was Mayor Ruane, Vice Mayor Marty Medina, Councilmembers Ibarra, Rico Medina and O’Connell. Recording by City Clerk Bonner.

3. PUBLIC COMMENT: None.

4. CLOSED SESSION:

Mayor Ruane said they would be going into closed session with no reportable action.

a. Closed Session, Conference With Legal Counsel, Existing Litigation Pursuant to Government Code Section 54956.9(d)(1): Rebutas v. City of San Bruno.

b. Conference with Labor Negotiators Pursuant to Gov’t Code Section 54957.6: Agency Designated Representatives: City Manager, Assistant City Manager, Employee Organizations: San Bruno Professional Fire Fighters Association, Public Safety Mid-Management Bargaining Unit, Miscellaneous Bargaining Unit and Mid Management Bargaining Unit.

5. ADJOURNMENT:

Mayor Ruane closed the meeting at 6:55 p.m. and said they would continue following the regular City Council Meeting. The next City Council Meeting will be held on November 9, 2016 at 7:00 p.m. at the Senior Center, 1555 Crystal Springs Road, San Bruno. The special meeting resumed at 10:00 p.m. and ended at 10:25 p.m.

Respectfully submitted for approval
at the Special City Council Meeting of
November 22, 2016

Carol Bonner, City Clerk

Jim Ruane, Mayor

6.



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MINUTES SAN BRUNO CITY COUNCIL – SPECIAL MEETING

November 9, 2016

7:00 p.m.

1. CALL TO ORDER: THIS IS TO CERTIFY THAT the San Bruno City Council met on November 9, 2016 at San Bruno's Senior Center, 1555 Crystal Springs Road, San Bruno, CA. The Council meeting was called to order at 7:00 p.m.

2. ROLL CALL/PLEDGE OF ALLEGIANCE: Presiding was Mayor Ruane, Vice Mayor Marty Medina, Councilmembers Ibarra, Rico Medina and O'Connell. Recording by City Clerk Bonner.

3. ANNOUNCEMENTS:

Mayor Ruane announced there will be no City Council Meeting on Tuesday, December 27, 2016.

4. PRESENTATIONS:

a. **Mayor Ruane** Presented a Proclamation Recognizing Artichoke Joe's on their 100th Year Anniversary to Owner Dennis Sammut who thanked the City.

b. **Mayor Ruane** said they would Receive a Presentation on Recology Solid Waste Services by the General Manager of Recology San Bruno, Kirsten Pinochi. She gave the history of the organic program, talked about the outreach they have done. She talked about the new garbage cans that will be placed on San Mateo Ave. In an effort to help the City of San Bruno, Recology is picking up abandoned garbage that is allowable (per City staff) to pick-up.

5. REVIEW OF AGENDA: No changes.

6. APPROVAL OF MINUTES of Special Closed Session Council Meeting of October 25, 2016 and Regular Council Meeting of October 25, 2016 and Special Council Meeting of November 1, 2016.

Vice Mayor Marty Medina asked the minutes from November 1 reflect that he asked for the beginning and the end of the streetscape project and the parking study. He said there are 20 store fronts that are under construction or transition. He said he challenged staff to develop an incentive plan for the businesses to be able to come into San Bruno and expedite their business faster and asked if there could be a reduced fee or a payment plan for those having an issue with cash flow. He said there could be more code enforcement downtown. These notes reflect what Vice Mayor Marty Medina said he observed on the walking tour; however, the City Clerk was not present to record such, approved as submitted.

7. CONSENT CALENDAR:

a. **Approve:** Accounts Payable of October 24 and 31, 2016.

b. **Approve:** Payroll of October 21, 2016.

c. **Adopt:** Reconciliation of General Ledger to Bank Reports and the Investment Reports Dated September 30, 2016.

d. **Adopt:** Resolution Authorizing the City Manager to Execute a Comprehensive Agreement with the Peninsula Corridor Joint Powers Board for the Caltrain Electrification Project.

Vice Mayor Marty Medina pulled item 7.d.

M/S O’Connell/Rico Medina to approve the balance of the Consent Calendar and passed with all ayes.

City Attorney Zafferano said there was an agreement made today that is satisfactory to the City regarding Item 7.d.

M/S O’Connell/Ibarra to approve Item 7.d. and passed with a unanimous vote.

8. PUBLIC HEARING:

a. Hold Public Hearing, Waive First Reading, and Introduce Ordinance Regulating Exposure to Secondhand Smoke.

City Attorney Zafferano gave the background on the staff report and asked for questions.

Mayor Ruane opened the Public Hearing. No one wished to speak.

M/S Rico Medina/O’Connell to close the Public Hearing and passed with all ayes.

Councilmember Ibarra said the cooperation from Shelter Creek was great and he said the need to educate will help people to understand.

M/S Ibarra/Rico Medina to waive the first reading and passed with all ayes.

Councilmember Ibarra introduced the ordinance and passed with a unanimous vote.

b. Hold Public Hearing, Waive First Reading and Introduce Ordinance Amending and Replacing Chapter 12.230 Establishing an Affordable Housing Program and Affordable Housing Impact Fees, to Title 12 (Land Use) of the San Bruno Municipal Code; and a Resolution Establishing Affordable Housing Impact Fees for Residential and Nonresidential Development Projects.

Long Range Planning Manager Sullivan gave an overview of the staff report and asked for questions.

Councilmember Ibarra asked for the reasoning on \$5.00 across the board. **Sullivan** said the Council is free to have a higher fee. **Councilmember Ibarra** asked what type of commercial projects. **Sullivan** said this is meant to cover all types of projects.

Vice Marty Medina said if we are ever going to have enough money to build affordable housing we need to get the revenue and asked for a recommendation of what that can be increased to. He also asked why the limit is five units. **Community Development Director Woltering** said the analysis to come up with a \$5.00 fee was done particularly for San Bruno and established a recommended fee based on feasibility here and Mark has done additional research and contacted 21 elements consultant staff to find out what the procedure would be to consider a higher fee.

Sullivan said some cities have started low and have increased it over time. He said the City can adopt a higher fee than the \$5.00. He said these fees should be revisited every few years with a technical study to make sure they are in line with what the local economy is doing.

Councilmember O’Connell asked if this is only for affordable housing. She said we also have the opportunity to assess other impacts especially on commercial. She said we could start with this and maybe revisit it when the other impact fee is finished and then we could adjust it. **Sullivan** said by resolution.

Councilmember Rico Medina said the \$5.00 is low. He talked about prevailing wages not being for unions it is for a developer to choose to have a standard area wage or prevailing wage.

Mayor Ruane opened the Public Hearing.

Barbara Christensen representing the college district said she appreciates the adjustments that have been made.

Leora Tanjuatco from the Housing Leadership Council of San Mateo County said they support the fees and ordinance.

Mr. Ghandi said the impact fee at 500 3rd Ave. would add about \$200,000. to his project, which was not planned. He said it would add about 10% to his cost which would be reflected in rent increase. He also said the City has a big problem regarding homeless. He suggested part of the money collected be used to help the homeless problem.

M/S Rico Medina/Ibarra to close the Public hearing and passed with all ayes.

Councilmember Ibarra asked staff to answer the perceived contradiction of doing residential/ rental development and actually having to pay to do that. He said in some cases for development there is some negotiation as far as reducing that fee if there is an arrangement for affordability. **Woltering** said as far as the analysis that was done, the table looked at rental housing. It looked at housing as created, what are the needs in terms of services, products and employment to provide those services and products and the affordable housing need that is generated. That analysis resulted in a recommendation to each one of the participating agencies as to what the fees could or should be. He said rental housing came in at \$20.00 per square foot. He said these fees could be collected and put in a fund and used for a variety of affordable housing opportunities here in San Bruno over time. He said, as an example, Mr. Ghandi could dedicate a unit within the project that would be restricted over time at a certain income level, which could be an option; i.e., in lieu of instead of paying the fee. **Councilmember Ibarra** said we could go a little higher.

Councilmember Rico Medina said he would like to see the prevailing wage standard placed in there at least for the first year.

Vice Mayor Marty Medina said if we are ever going to raise the funds for affordable housing, we need to raise the funds. He didn't believe we should provide the reduction and should go along with staff's report for raising the office space to a different level. Mayor Ruane clarified he was talking about the reduction in prevailing wage.

Mayor Ruane said he was not in favor of the reduction either, he felt it was pretty well baked into the nexus study. He said he would be in favor of an increase on the office.

Woltering suggested increasing the fees from \$5.00 to \$10.00, all categories.

Councilmember O'Connell said she would like to leave retail at \$5.00, office at \$10.00, hotel at \$10.00, leave the rest the same, keep the staff's recommendation about prevailing wage and keep the language about being flexible, doing a unit that you could rent at a lower rate.

Councilmember Rico Medina agreed on the cost, not on the prevailing. **Councilmember O'Connell** said maybe something else could be done. She said perhaps staff could look at that portion and come back with a recommendation.

Councilmember Ibarra said there is an option, staff recommends reducing the percentage of affordable units required, rather than reducing the impact fees, in lieu of the 25% reduction.

Woltering said there could be an option where we can move forward with the ordinance this evening in terms of waiving first reading. This would give staff time to come back at the second meeting with a resolution. **Sullivan** said the amount of the fee is determined in the resolution and the reduction for prevailing wages can also be incorporated into the resolution.

M/S O'Connell/Rico Medina to waive the first reading and passed with all ayes.

Councilmember O'Connell introduced the ordinance and passed with a unanimous vote.

9. PUBLIC COMMENT ON ITEMS NOT ON AGENDA:

Steve Mahoney, Santa Clara Ave. said his issue was parking. He suggested permits. He said where he lives there is nowhere to park.

Jose, Milton Ave. said there are a lot of repairs that need to be done on the sidewalk. He was talking about the area on Huntington. At Huntington by 7/11 there are large light poles that take up most of the sidewalk.

10. CONDUCT OF BUSINESS:

a. Adopt a Resolution Authorizing the City Manager to Submit a One Bay Area Grant (OBAG2) Bicycle/Pedestrian Improvement Program Application to City/County Association of Governments for San Mateo County for the Huntington Transit Corridor Bicycle/Pedestrian and Related Improvements Project.

Community Development Director Woltering gave an overview of the staff report and asked for questions.

Councilmember Rico Medina said we have two lanes of traffic and we will go one lane. Have we considered what it is going to do to traffic? **Woltering** said part of the application request is a traffic study.

Vice Mayor Marty Medina said the bike plan is great.

Councilmembers O'Connell and Ibarra were in support of the project.

Councilmember O'Connell introduced the resolution for adoption and passed with a unanimous vote.

b. Adopt Resolution Authorizing the City Manager to Submit an Application to the City/County Association of Governments for San Mateo County for Street Rehabilitation on Pine, 2nd, 4th, 5th, and 6th Streets for the One Bay Area Local Streets and Roads Grant Program.

Public Services Director Tan gave an overview of the staff report and asked for questions.

Councilmember O'Connell asked about Sneath Lane North and San Antonio and Huntington on the South side in front of the post office from Angus to the Southern border. She said they didn't see them on the map. **Tan** said this map is current. **City Manager Jackson** said they would revisit those areas and make a comparative evaluation. **Councilmember O'Connell** said if this goes under budget, staff indicated they would look at the other streets. She questioned why those sections of San Antonio and Huntington were not in red. **Tan** said they are only showing the two sections that failed in the PDA area.

Vice Mayor Marty Medina asked how many streets are going to be done? **Tan** said they are proposing the ones that are clouded. **City Manager Jackson** said the other streets are marked as information so they are not proposing any streets that would create a conflict for **Vice Mayor Marty Medina**.

Vice Mayor Marty Medina asked if the list could be put on the City's website so citizens can look at their own street and figure out how their street compares to other streets.

Councilmember O'Connell introduced the resolution for adoption and passed with a unanimous vote.

c. Adopt Resolution Authorizing the City Manager to Reject All Bids and Execute a Four Year Contract Pursuant to Public Contracts Code Section 20167 with West Valley Construction for Water Main Repairs in an Amount Not to Exceed First Year Budget of \$200,000.

Public Services Director Tan gave an overview of the staff report and asked for questions.

Vice Mayor Marty Medina asked if someone will be tracking the costs for each water main break and going back afterwards and looking it over to see if it is reasonable. **Tan** said staff has done that before West Valley gets paid.

Councilmember O'Connell introduced the resolution for adoption and passed with a unanimous vote.

d. Receive the First Quarter Financial Report as of September 30, 2016, and Adopt Resolution Amending the Fiscal Year 2016-17 Operating and Capital Improvement Program Budgets to Re-Appropriate Fiscal Year 2015-16 Carryover Encumbrances.

Finance Director Kraetsch gave the first financial quarter report and asked for questions.

Councilmember Ibarra introduced the resolution for adoption and passed with a unanimous vote.

e. Receive Report and Provide Direction Regarding the Implementation of Body-Worn Camera Program Consistent with the San Mateo County Civil Grand Jury Report "Body Cameras-The Reel Truth" Recommendations.

Police Chief Barberini gave an overview of the staff report and asked for direction from Council.

Councilmember Ibarra asked how much body cameras are. **Barberini** said most vendors sell the body cameras as a program. It depends on the vendor and our RFP would articulate our specific needs but there are options where the hardware is not very expensive on the front end. They are pretty willing to sell the cameras at a reasonable cost but then they get you on the back end with the storage and managing the program. There are also high end cameras they will sell at a significant cost and staff would be left on their own for maintenance and storage. The DA's office just advised us they are looking at managing their digital evidence where right now we burn cd's and submit them to the DA's office and they are trying to get away from that. We need to be compatible in order to move this information to the DA's office.

Councilmember Ibarra asked if there is talk with the County jurisdictions. **Barberini** said there are two reasons why they have taken their time looking at the body cameras. One is law enforcement within the County knew they were going to be nudged in this direction. He said they didn't know if it would be a State mandate and were hopeful there would be some funding available. The police agencies have different needs.

Council felt it was a good idea and asked the Chief to proceed.

f. Adopt Resolution Establishing an Environmentally Preferable Procurement (EPP) Policy.

Finance Director Kraetsch gave an overview of the staff report and asked for questions.

Councilmember Medina introduced the resolution for adoption and passed with a unanimous vote.

11. REPORT OF COMMISSIONS, BOARDS & COMMITTEES:

12. COMMENTS FROM COUNCIL MEMBERS:

Receive Report from Councilmember O'Connell on her Attendance at the League of California Cities Annual Conference, October 5-7, 2016.

Councilmember O'Connell gave an overview of her attendance at the conference. She gave a brief summary of the classes she attended. She talked about a new patching substance, aqua patch.

Councilmember Ibarra said Friday is Veteran's Day. At Golden Gate Cemetery there will be a celebration put on by the Avenue of the Flags of which Carolyn Livengood is involved. The festivities start at 11:00 a.m. and go for about an hour. Music starts at 10:30 with refreshments provided by the San Bruno Lions and Leo Club.

Councilmember Ibarra said Relay for Life will be joining Daly City and South San Francisco and is going to become North San Mateo County Relay for Life. The event will take place at San Bruno City Park on April 29 and 30.

Vice Mayor Medina said Carolyn Livengood will be receiving an award from Warren Slocum for honoring veterans. He acknowledged the Finance Director gave her last report this evening as she will be leaving the City for other employment.

Mayor Ruane asked about the water leaking at Elm and Kains, and while it is a San Francisco PUC situation he would like staff to update them on this. **City Manager Jackson** said this is a PUC pipeline and questions regarding this can be made to the PUC directly. **Public Services Director Tan** said there was a leaking valve at the intersection of Kains and Elm which resulted in the water coming out of the manhole. They were initially unable to access the valve so further excavation was necessary. The residents have been notified.

Vice Mayor Marty Medina thanked staff for the Halloween event at Tanforan.

City Attorney Zafferano said voters signed a referendum petition attempting to place the Purchase and Sale Agreement with OTO on the ballot. The City has now prevailed in two separate court decisions. State law says while voters are free to sign any petition they wish, not all petitions are allowed to be placed on the ballot. The only ones that can be placed on the ballot are those that challenge the civic legislative acts. He said Local 2 and several residents sued the City. In the first ruling for the City prevailed in the trial court. Local 2 appealed that decision to an appellate court and Local 2 went further to ask the appellate court for an initial stay of the close of escrow. They filed a motion to attempt to stop the City and OTO from performing the contract they had entered into. That motion and appeal has been assigned to a three-judge panel and late last week those judges issued a unanimous ruling that escrow can proceed to close. The City and OTO can now proceed to close escrow.

13. CLOSED SESSION:

14. STUDY SESSION:

15. ADJOURNMENT:

Mayor Ruane closed the meeting at 9:59 p.m. The next Regular City Council Meeting will be held on November 22, 2016 at 7:00 p.m. at the Senior Center, 1555 Crystal Springs Road, San Bruno.

Respectfully submitted for approval
at the Special City Council Meeting of
November 22, 2016

Carol Bonner, City Clerk

Jim Ruane, Mayor

11/07/16

CITY OF SAN BRUNO
WARRANT REGISTER
TOTAL FUND RECAP

FUND	FUND NAME	AMOUNT
001	GENERAL FUND	\$218,785.32
132	AGENCY ON AGING	\$3,655.63
133	RESTRICTED DONATIONS	\$22,669.84
190	DISASTER RECOVERY FUND	\$7,092.00
201	PARKS AND FACILITIES CAPITAL	\$2,500.00
203	STREET IMPROVE PROJECTS	\$2,218.79
207	TECHNOLOGY CAPITAL	\$1,625.00
611	WATER FUND	\$59,235.77
621	STORMWATER FUND	\$519.59
631	WASTEWATER FUND	\$127,306.96
641	CABLE TV FUND	\$134,782.86
701	CENTRAL GARAGE	\$19.13
702	FACILITY MAINT. FUND	\$1,428.53
703	GENERAL EQUIPMENT REVOLVING	\$12,808.24
707	TECHNOLOGY DEVELOPMENT	\$21,852.30
711	SELF INSURANCE	\$89,377.68
TOTAL FOR APPROVAL		\$705,877.64

HONORABLE MAYOR AND CITY COUNCIL:

THIS IS TO CERTIFY THAT THE CLAIMS LISTED ON PAGES NUMBERED FROM 1 THROUGH 3 INCLUSIVE, AND/OR CLAIMS NUMBERED FROM 165023 THROUGH 165136 INCLUSIVE, TOTALING IN THE AMOUNT OF \$705,877.64 HAVE BEEN CHECKED IN DETAIL AND APPROVED BY THE PROPER OFFICIALS, AND IN MY OPINION REPRESENT FAIR AND JUST CHARGES AGAINST THE CITY IN ACCORDANCE WITH THEIR RESPECTIVE AMOUNTS AS INDICATED THEREON.

RESPECTFULLY SUBMITTED,


FINANCE DIRECTOR 11/08/16
DATE

T.A.

Document group: komalley Bank: apbank 05507660

Vendor Code & Name	Check #	Check Date	Amount
0106587 AGS QUALITY LINENS	165023	11/7/2016	62.00
0001170 AIRGAS USA, LLC	165024	11/7/2016	379.64
0106411 ANDERSON BRULE ARCHITECTS	165026	11/7/2016	16,204.43
0106576 ANNA ISKIKIAN	165071	11/7/2016	4,200.00
0001965 ARISTA BUSINESS	165027	11/7/2016	230.81
0014617 AT&T	165028	11/7/2016	13.44
0016123 AT&T	165029	11/7/2016	1,223.83
0017191 AT&T	165030	11/7/2016	619.70
0018583 AT&T MOBILITY	165031	11/7/2016	63.32
0099606 BEHYDELIN MUTUC	165092	11/7/2016	144.70
0017331 BUDCO INC.	165034	11/7/2016	1,468.92
0096798 BUSINESS PRODUCTS & SUPPLIES	165035	11/7/2016	3,193.97
0105324 CAINE COMPUTER CONSULTING, LLC	165036	11/7/2016	5,167.50
0014739 CAL-STEAM	165037	11/7/2016	170.73
0017679 CDW GOVERNMENT, INC	165038	11/7/2016	2,256.52
0017843 CENTRAL COUNTY FIRE DEPT.	165039	11/7/2016	35,916.75
0106577 CHEN & WONG CONSTRUCTION	165040	11/7/2016	276.00
0016324 CINTAS CORPORATION	165041	11/7/2016	112.30
0016324 CINTAS CORPORATION	165042	11/7/2016	101.96
0098588 CITY OF BURLINGAME	165043	11/7/2016	500.00
0017105 COLMA POLICE DEPARTMENT	165044	11/7/2016	450.00
0018911 COMCAST CABLE COMMUNICATIONS	165045	11/7/2016	27,061.80
0104508 COMCAST SPORTSNET CALIFORNIA	165046	11/7/2016	22,527.12
0106468 COMMUNICATION NETWORK RESOURCE	165047	11/7/2016	34,833.25
0015857 COUNTY OF SAN MATEO	165049	11/7/2016	76.00
0105811 CSAC EXCESS INSURANCE AUTHORITY	165058	11/7/2016	13,020.38
0018331 CSG CONSULTANTS INC.	165051	11/7/2016	51,035.00
0099473 DANA LEE	165083	11/7/2016	169.83
0106080 DATALINK CORPORATION	165052	11/7/2016	682.74
0104871 DAVID CLARK COMPANY, INC	165053	11/7/2016	285.60
0106584 DAVID NIGEL	165094	11/7/2016	469.36
0018169 DELL MARKETING L.P.	165054	11/7/2016	1,493.23
0100599 DI ZHANG	165136	11/7/2016	26.03
0101178 DISCOUNT PLUMBING	165055	11/7/2016	7,180.00
0018799 ECONOMIC&PLANNING SYSTEMS INC.	165056	11/7/2016	3,327.50
0099668 ERIC BOATWRIGHT	165033	11/7/2016	50.00
0013714 FIRST NATIONAL BANK	165059	11/7/2016	23,328.06
0018117 FLYERS ENERGY, LLC	165060	11/7/2016	7,229.51
0102869 FRANCHISE TAX BOARD	165061	11/7/2016	310.88
0099477 FRANK LAU	165080	11/7/2016	47.64
0016861 GAMETIME	165062	11/7/2016	662.43
0100247 GEORGE PAYNE	165098	11/7/2016	50.00
0099098 GERARD CORBETT	165048	11/7/2016	90.83
0105554 GLOBAL SUN LANDSCAPE	165063	11/7/2016	2,892.00
0104135 GLOBAL TRACKING COMMUNICATIONS, INC.	165120	11/7/2016	89.97
0099585 GRACIELA ALEMAN	165025	11/7/2016	48.40
0000162 GRAINGER	165064	11/7/2016	814.96
0017900 GREAT LAKES DATA SYSTEMS INC	165065	11/7/2016	2,100.00
0095966 GREATAMERICA FINANCIAL SVCS.	165066	11/7/2016	404.33
0096178 HYLAND SOFTWARE INC.	165068	11/7/2016	6,334.89
0099960 IN & OUT PLUMBING	165069	11/7/2016	3,400.00
0000291 IRENE M. O'CONNELL	165070	11/7/2016	1,348.96
0100199 JOHN DAVID	165072	11/7/2016	76.28

Document group: komalley Bank: apbank 05507660

Vendor Code & Name	Check #	Check Date	Amount
0000771 JT2 INTEGRATED RESOURCES	165073	11/7/2016	50,292.23
0000771 JT2 INTEGRATED RESOURCES	165074	11/7/2016	33,047.18
0018376 JT2 INTEGRATED RESOURCES	165075	11/7/2016	6,038.27
0018050 KAISER FOUNDATION HEALTH PLAN	165076	11/7/2016	4,505.62
0104994 KRON 4/BAY AREA NEWS STATION	165077	11/7/2016	18,664.25
0000317 L.N. CURTIS & SONS	165078	11/7/2016	660.51
0105923 LATITUDE GEOGRAPHICS GROUP LTD	165079	11/7/2016	3,700.00
0103049 LAURETTA PRINTING© CENTER	165081	11/7/2016	320.81
0105940 LEADS ONLINE	165082	11/7/2016	2,238.00
0017026 LYNX TECHNOLOGIES, INC.	165084	11/7/2016	1,625.00
0102770 METLIFE	165086	11/7/2016	350.46
0016041 METROMOBILE COMMUNICATIONS	165087	11/7/2016	226.25
0015875 MG MEDIA S.A.R.L	165088	11/7/2016	148.78
0018397 MICHAEL KU	165089	11/7/2016	250.00
0104481 MICHAEL W. MATTIAS, JR.	165085	11/7/2016	160.00
0104730 MUNICIPAL EMERGENCY SERVICES	165090	11/7/2016	19,007.44
0017289 MUNISERVICES, LLC	165091	11/7/2016	1,000.00
0000357 NATIONAL CABLE TV CO-OP, INC.	165093	11/7/2016	7,104.53
0000522 NORTH COAST COUNTY WATER DISTRICT(NCCWD)	165050	11/7/2016	23,957.65
0092263 OFFICE DEPOT INC	165095	11/7/2016	518.20
0000012 PACIFIC GAS & ELECTRIC	165096	11/7/2016	54,653.56
0000101 PACIFIC NURSERIES	165097	11/7/2016	136.25
0106229 PET FOOD EXPRESS	165099	11/7/2016	59.93
0000294 PITNEY BOWES	165100	11/7/2016	249.93
0102915 PRECISE PRINTING & MAILING	165101	11/7/2016	2,581.09
0106477 PRI MANAGEMENT GROUP	165102	11/7/2016	390.00
0106402 QUICK PC SUPPORT LLC	165103	11/7/2016	7,388.26
0090749 RED WING SHOE STORE	165104	11/7/2016	760.77
0106539 RICKY MAC MASONRY	165105	11/7/2016	630.00
0103531 RICOH USA, INC.	165106	11/7/2016	3,469.13
0016213 ROZZI REPRODUCTION&SUPPLY INC.	165107	11/7/2016	259.02
0013918 SAN MATEO COUNTY TAX COLLECTOR	165108	11/7/2016	1,962.72
0017145 SAN MATEO LAWN MOWER SHOP	165109	11/7/2016	71.76
0106582 SAVANT SOLUTIONS, INC.	165110	11/7/2016	1,852.25
0106354 SEWER RAT PLUMBING	165111	11/7/2016	1,690.45
0106034 SHAWN GREATHOUSE	165067	11/7/2016	307.36
0001225 SIERRA PACIFIC TURF SUPPLY,INC	165112	11/7/2016	340.25
0105745 SMELLY MEL'S PLUMBING	165113	11/7/2016	1,200.00
0102909 SMITH-EMERY COMPANY	165114	11/7/2016	248.42
0017802 SUPPLYWORKS	165115	11/7/2016	12.69
0018073 TEAMSTERS LOCAL 350	165116	11/7/2016	2,908.00
0002025 TELECOMMUNICATIONS ENGINEERING ASSOCIATE	165057	11/7/2016	774.85
0106583 TELEPATH CORPORATION	165117	11/7/2016	2,974.24
0018898 TJKM TRANSPORTATION CONSULTANT	165118	11/7/2016	1,928.77
0000831 TONER CARTRIDGE&INKJET EXPRESS	165119	11/7/2016	1,703.56
0000665 TSQ SOLUTIONS INC.	165121	11/7/2016	325.00
0001362 TV GUIDE MAGAZINE, LLC	165122	11/7/2016	216.18
0000462 TVC COMMUNICATIONS L.L.C.	165123	11/7/2016	499.86
0000019 U.S. POSTMASTER	165124	11/7/2016	3,800.00
0000019 U.S. POSTMASTER	165125	11/7/2016	3,716.04
0098625 UPS	165126	11/7/2016	26.40
0105133 UTILITY TELECOM, INC.	165127	11/7/2016	421.85
0102988 VANTAGEPOINT TRANSFER AGENTS	165128	11/7/2016	11,776.97
0093445 VINCE AND LU BARR	165032	11/7/2016	50.00

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Vendor Code & Name	Check #	Check Date	Amount
0098556 VINCENT WANG	165129	11/7/2016	38.18
0104233 WAVE	165130	11/7/2016	8,822.50
0104660 WEST YOST ASSOCIATES, INC.	165131	11/7/2016	3,461.50
0000612 WESTVALLEY CONSTRUCTION CO.INC	165132	11/7/2016	121,667.22
0096893 WILSEY HAM	165133	11/7/2016	1,688.00
0100891 WNGS CONSTRUCTION	165134	11/7/2016	276.00
0098085 WORKS PLUMBING	165135	11/7/2016	2,500.00
		GrandTotal:	705,877.64
		Total count:	114

11/14/16

CITY OF SAN BRUNO
WARRANT REGISTER
TOTAL FUND RECAP

FUND	FUND NAME	AMOUNT
001	GENERAL FUND	\$117,328.64
132	AGENCY ON AGING	\$4,199.80
133	RESTRICTED DONATIONS	\$913.73
203	STREET IMPROVE. PROJECTS	\$345.00
611	WATER FUND	\$99.00
621	STORMWATER FUND	\$1,764.00
641	CABLE TV FUND	\$18,104.95
701	CENTRAL GARAGE	\$3,654.46
702	FACILITY MAINT. FUND	\$11,101.82
707	TECHNOLOGY DEVELOPMENT	\$148.98
711	SELF INSURANCE	\$8,859.04
TOTAL FOR APPROVAL		\$166,519.42

HONORABLE MAYOR AND CITY COUNCIL:

THIS IS TO CERTIFY THAT THE CLAIMS LISTED ON PAGES NUMBERED FROM 1 THROUGH 3 INCLUSIVE, AND/OR CLAIMS NUMBERED FROM 165137 THROUGH 165243 INCLUSIVE, TOTALING IN THE AMOUNT OF \$166,519.42 HAVE BEEN CHECKED IN DETAIL AND APPROVED BY THE PROPER OFFICIALS, AND IN MY OPINION REPRESENT FAIR AND JUST CHARGES AGAINST THE CITY IN ACCORDANCE WITH THEIR RESPECTIVE AMOUNTS AS INDICATED THEREON.

RESPECTFULLY SUBMITTED,


FINANCE DIRECTOR 11/15/16
DATE

Document group: komalley Bank: apbank 05507660

Vendor Code & Name	Check #	Check Date	Amount
0096852 ABAG PLAN CORPORATION	165137	11/14/2016	8,859.04
0098933 ADIL ASSLAM	165146	11/14/2016	47.78
0001170 AIRGAS USA, LLC	165138	11/14/2016	186.86
0000163 AIRPORT AUTO PARTS INC.	165139	11/14/2016	576.34
0095130 ALAMEDA COUNTY SHERIFF'S DEPT.	165140	11/14/2016	800.00
0000372 ALLIED SECURITY ALARMS	165141	11/14/2016	345.00
0096700 ANDY'S WHEELS & TIRES	165144	11/14/2016	733.64
0106199 ARAGON VETERINARY CLINIC	165145	11/14/2016	126.78
0106569 ARTHUR F. HURRELL	165178	11/14/2016	50.00
0016123 AT&T	165147	11/14/2016	2,196.49
0105649 ATLAS PLUMBING AND ROOTER	165148	11/14/2016	3,776.00
0000345 BAKER & TAYLOR BOOKS	165150	11/14/2016	1,332.44
0018567 BATTERY SYSTEMS	165151	11/14/2016	599.32
0106597 BEE VEERASEATI	165235	11/14/2016	38.18
0017624 BKF ENGINEERS	165152	11/14/2016	345.00
0017361 BOETHING TREELAND FARMS, INC.	165153	11/14/2016	106.82
0000378 BROADMOOR LANDSCAPE SUPPLY	165155	11/14/2016	908.54
0102737 BURKE, WILLIAMS & SORENSEN,LLP	165156	11/14/2016	5,449.45
0018650 CALIFORNIA PARK& RECREATION SOCIETY(CPRS)	165215	11/14/2016	394.12
0017843 CENTRAL COUNTY FIRE DEPT.	165158	11/14/2016	1,685.58
0106166 CHANGWEI YU-SCOTT	165243	11/14/2016	2,208.02
0016324 CINTAS CORPORATION	165160	11/14/2016	101.96
0106048 CIT	165161	11/14/2016	426.88
0000227 CITY OF SAN BRUNO	165162	11/14/2016	4,967.60
0106589 CONTENT WATCH HOLDINGS, INC.	165163	11/14/2016	659.67
0106160 DANIEL RONCO	165218	11/14/2016	382.20
0018188 DAU PRODUCTS	165165	11/14/2016	59.50
0093479 DEPARTMENT OF JUSTICE	165167	11/14/2016	1,128.00
0101178 DISCOUNT PLUMBING	165168	11/14/2016	12,000.00
0000383 DWAN ELEVATOR CO.	165170	11/14/2016	980.00
0105820 EAST BAY TIRE CO	165171	11/14/2016	496.41
0018804 ECMS, INC.	165172	11/14/2016	115.28
0106602 ERIN RULLHAUSEN	165219	11/14/2016	56.06
0102627 FASTRK VIOLATION PROCESSING DEPT.	165240	11/14/2016	30.00
0001782 FLOWERS ELECTRIC & SVC.CO.INC.	165173	11/14/2016	230.00
0018117 FLYERS ENERGY, LLC	165174	11/14/2016	8,570.57
0105475 G. PANAGIOTOPOULOS	165175	11/14/2016	23.69
0097658 GREG BAILEY	165149	11/14/2016	20.83
0106593 HARRY REDLICK	165216	11/14/2016	13.88
0105378 HOME MAID RAVIOLI COMPANY INC.	165177	11/14/2016	406.50
0018838 INFOSEND, INC.	165179	11/14/2016	4,434.48
0000836 INTOXIMETERS INC	165181	11/14/2016	219.12
0000581 IRVINE & JACHENS INC.	165182	11/14/2016	306.48
0105874 JAMES MIRANDA	165195	11/14/2016	99.00
0105875 JETMULCH INC.	165183	11/14/2016	12,079.37
0106594 JOHN & JOANNE VELLA	165236	11/14/2016	28.18
0106600 JULIE LING	165189	11/14/2016	13.88
0096379 KAREN OJAKIAN	165201	11/14/2016	210.10
0000132 KELLY-MOORE PAINT CO INC.	165184	11/14/2016	95.88
0106595 LARRY MAO	165191	11/14/2016	38.37
0103799 LDVALI LLC	165186	11/14/2016	152.75
0018777 LEXISNEXIS RISK DATA MANAGEMENT	165217	11/14/2016	101.25
0104424 LIDIA'S ITALIAN DELICACIES	165187	11/14/2016	3,400.00

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Vendor Code & Name	Check #	Check Date	Amount
0093274 LINDSTROM CO	165188	11/14/2016	1,000.00
0018177 LOWE'S	165190	11/14/2016	163.32
0106568 MAGDA LAMPROS	165185	11/14/2016	50.00
0106596 MARK PIPINICH	165209	11/14/2016	22.56
0002106 MASATOSHI MORITA	165196	11/14/2016	68.00
0000389 MATRISHA PERSON	165207	11/14/2016	1,715.35
0106044 MAYCROFT INVESTIGATION AGENCY	165192	11/14/2016	400.00
0106599 MCERVIN ROY DELA ROCA	165166	11/14/2016	18.78
0096549 MICHAEL PALMERTREE, MFT	165206	11/14/2016	240.00
0001709 MILLBRAE LOCK	165193	11/14/2016	17.22
0000333 MOSS RUBBER & EQUIP. CORP.	165197	11/14/2016	156.28
0097142 MYERS TIRE-OAKLAND #17	165198	11/14/2016	168.58
0092263 OFFICE DEPOT INC	165199	11/14/2016	1,038.46
0095432 OFS FITEL, LLC	165200	11/14/2016	1,942.73
0000210 OLE'S CARBURETOR &ELECTRIC INC	165202	11/14/2016	938.49
0018701 ORKIN PEST CONTROL	165203	11/14/2016	311.71
0000012 PACIFIC GAS & ELECTRIC	165204	11/14/2016	75.94
0103900 PACIFIC LIBRARY PARTNERSHIP	165205	11/14/2016	30.00
0106566 PAUL AND MAUREEN BONITZ	165154	11/14/2016	50.00
0104173 PAUL VELLA	165237	11/14/2016	148.98
0015163 PENINSULA SPORTS OFFICIALS ASSOC.INC.	165226	11/14/2016	660.00
0096705 PHASE2CAREERS	165208	11/14/2016	250.00
0102915 PRECISE PRINTING & MAILING	165211	11/14/2016	248.35
0105836 PRIMETIME PAPER & PROMOTIONS	165212	11/14/2016	383.68
0018810 Q-STAR TECHNOLOGY	165213	11/14/2016	17,037.00
0000175 RECOLOGY SAN BRUNO	165214	11/14/2016	806.91
0106270 RICKY POLICARPIO	165210	11/14/2016	85.00
0106567 ROBERT GLASS	165176	11/14/2016	50.00
0101154 RODRIGO CAYABYAB	165157	11/14/2016	8.53
0104691 SAN FRANCISCO FENCERS CLUB	165220	11/14/2016	206.40
0018597 SAN MATEO DAILY JOURNAL	165221	11/14/2016	1,764.00
0018461 SERRAMONTE FORD, INC.	165222	11/14/2016	78.02
0106354 SEWER RAT PLUMBING	165223	11/14/2016	7,000.00
0101667 SHELL DOOR SERVICE	165224	11/14/2016	4,522.72
0106601 SHICHAO AN	165142	11/14/2016	27.24
0093543 SMPCSA	165225	11/14/2016	600.00
0102921 ST. FRANCIS ELECTRIC, LLC	165227	11/14/2016	13,773.32
0106592 STEVE AND TINA MILTNER	165194	11/14/2016	50.00
0105796 SUNRISE FOOD DISTRIBUTOR INC.	165229	11/14/2016	393.30
0017802 SUPPLYWORKS	165230	11/14/2016	4,942.05
0000241 THE ADAM-HILL COMPANY	165231	11/14/2016	33.66
0000036 THOMSON WEST	165232	11/14/2016	486.68
0097449 THYSSENKRUPP ELEVATOR CORP.	165233	11/14/2016	417.81
0106598 TINA M. INGRANDE	165180	11/14/2016	28.23
0096003 TRACI DOS SANTOS	165169	11/14/2016	483.60
0000462 TVC COMMUNICATIONS L.L.C.	165234	11/14/2016	14,719.62
0106008 TYLER CHARLES	165159	11/14/2016	200.00
0096757 VERDICTSEARCH	165238	11/14/2016	589.00
0095749 VERIZON WIRELESS	165239	11/14/2016	1,017.27
0106591 VICTORIA SUAREZ	165228	11/14/2016	50.00
0018580 WILEY PRICE & RADULOVICH LLP	165241	11/14/2016	3,068.00
0103866 WILL ANDERSON	165143	11/14/2016	498.54
0013841 WITMER-TYSON IMPORTS INC	165242	11/14/2016	650.00
0098628 YENIS COTUA	165164	11/14/2016	220.80

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GrandTotal: 166,519.42

Total count: 107



**City Council Agenda Item
Staff Report**

CITY OF SAN BRUNO

DATE: November 22, 2016
TO: Honorable Mayor and Members of the City Council
FROM: Darlene Wong, Accounting Manager
SUBJECT: Payroll Approval

City Council approval of the City payroll distributed November 4, 2016 is recommended. The Labor Summary report reflecting the total payroll amount of \$1,472,507.47 for bi-weekly pay period ending October 30, 2016 is attached.

LABOR SUMMARY FOR PAY PERIOD ENDING : OCTOBER 30, 2016

pyLaborDist	11/04/17
Fund: 001 - GENERAL FUND	1,110,021.73
Fund: 121 - FEDERAL/STATE GRANTS	423.42
Fund: 122 - SOLID WASTE/RECYCL.	2,360.01
Fund: 190 - EMERGENCY DISASTER FUND	10,774.33
Fund: 203 - STREET IMPROVE. PROJECTS	6,172.24
Fund: 611 - WATER FUND	89,248.96
Fund: 621 - STORMWATER FUND	12,302.52
Fund: 631 - WASTEWATER FUND	79,974.71
Fund: 641 - CABLE TV FUND	97,488.56
Fund: 701 - CENTRAL GARAGE	11,792.13
Fund: 702 - FACILITY MAINT.FUND	30,678.71
Fund: 707 - TECHNOLOGY DEVELOPMENT	16,128.85
Fund: 711 - SELF INSURANCE	5,141.30
Total	<hr/> 1,472,507.47



City Council Agenda Item Staff Report

CITY OF SAN BRUNO

DATE: November 22, 2016
TO: Honorable Mayor and Members of the City Council
FROM: Marc Zafferano, City Attorney
SUBJECT: Waive Second Reading and Adopt Ordinance Regulating Exposure to Secondhand Smoke

BACKGROUND:

Earlier this year, residents requested that the City consider prohibiting smoking in multi-unit housing. After discussion, the City Council appointed a subcommittee consisting of Vice-Mayor Medina and Councilmember Ibarra to meet with staff, residents, and property owner representatives to obtain input and report back with recommendations.

The subcommittee first met with representatives and several residents of Shelter Creek who had attended and spoken at the City Council meeting to obtain input about exposure to secondhand smoke in their units as well as cigarette butts around common areas that have designated cigarette trash receptacles. In late June, the subcommittee convened a second meeting with a broad group of representatives from many of the largest multi-unit housing complexes in the City, including Peninsula Place, Crystal Springs Terrace, Acappella, Archstone, Village Senior Apartments, Paragon Apartments, and Shelter Creek.

Representatives of San Mateo County as well as approximately six members of the public were present and participated in an informal discussion. Those who attended the meeting were generally (though not unanimously) in favor of restricting smoking in multi-unit residences and creating designated outdoor smoking areas for the residents to use. The County representatives offered their ongoing assistance in fielding calls and responding to complaints of drifting secondhand smoke.

The subcommittee then met with staff to review the input received at these meetings, and the subcommittee recommended bringing the matter back to the full City Council for discussion and direction. The subcommittee considered the following topics:

1. An indoor ban on smoking that would:
 - a. Apply to all multi-unit complexes, defined as two or more units that share a common floor, wall, or ceiling;
 - b. Cover attached patios and balconies;
 - c. Include vaping and use of marijuana;
 - d. Include indoor workplaces if not otherwise covered by state law;
 - e. Include 90% of hotel/motel rooms;
 - f. Provide a grace period for multi-unit residences of no more than 14 months before enforcement;

J.C.

2. An outdoor ban that would:
 - a. Apply to common areas of multi-unit residences, except for designated outdoor smoking areas;
 - b. Apply to public places such as parks, service lines, outdoor eating areas, and sidewalks (unless actively moving to another destination);
 - c. Include outdoor workplaces such as construction sites.

The subcommittee was generally in favor of the above-listed provisions of an indoor ban and subsection (a) of the outdoor ban, but suggested additional discussion among the full council about subsections (b) and (c) of the outdoor ban.

On August 23, 2016, the City Council received a staff report that outlined the features of a draft ordinance. After hearing from the subcommittee and the public, and discussing the issues, the City Council provided direction to return with an ordinance for introduction that incorporated the recommendations of the subcommittee.

On November 9, 2016, the City Council held a public hearing and introduced the draft ordinance with minor amendments to reflect updated findings and capitalization, a somewhat broader definition of smoking that includes e-cigarettes regardless of whether they include nicotine, and a clarification that the "no smoking" signs landlords are required to post need not be posted in each individual unit. Those changes are shown in redline in the attached ordinance for adoption.

DISCUSSION:

Private Regulation

It should be noted that all private property owners, including those who own individual units in multi-unit complexes, are free to prohibit smoking in their units, such as Pacific Bay Vistas has done. For condominium and townhouses, the homeowner's association could prohibit smoking in all units and enforce the restriction against both individual property owners and their tenants, but most associations require a vote of the members to amend the CC&Rs. In 2012, the state adopted SB 332, which restated existing law that landlords are free to prohibit smoking in their apartment complexes without risk of liability to tenants. Attachment 1, prepared by San Mateo County, illustrates the benefits of smoke-free housing for landlords.

Summary of State Law

Since 1995, state law has prohibited smoking in all enclosed "places of employment," which could include indoor common areas of multi-unit residences if the complex has an on-site employee. However, there are numerous exceptions for certain businesses, such as sole proprietorships and certain other small businesses with fewer than five full-time employees, up to 65% of hotel/motel guest rooms, 25-50% of hotel/motel lobbies (excluding the bar area), and employee break rooms if certain criteria are met.

Health and Safety Code section 118910, also adopted in 1995, specifically authorizes local agencies to adopt more stringent regulations than adopted by the state, or to ban smoking outright in any location. While tobacco products are legal to purchase and consume for those 21 or older, there is no constitutional or other legally-recognized right to smoke, whether in a public place or in a privately owned location, including one's own residence. Federal and state disability laws do not confer a legal right to smoke on those who may be addicted, because nicotine dependency or addiction is not a "disability" as defined under those laws. Conversely,

individuals with recognized respiratory disabilities may be legally protected from exposure to secondhand smoke in the workplace.

In 2004, a state law was enacted that prohibited smoking in the following places: inside state, county, and city buildings; tot lots and playgrounds; schools; day care facilities; in vehicles when children are present; and on public transit. Smoking was also prohibited within 20' of main entrances, exits, and operable windows of public buildings.

Summary of Local Regulations

Local regulation of smoking in San Mateo County can be traced back to the early to mid-1990's, when most cities adopted ordinances prohibiting smoking in indoor (and in some cases outdoor) common areas of multi-unit housing, and established smoking restrictions in some indoor areas of commercial establishments. However, San Bruno did not choose to regulate smoking at that time, and the City does not currently regulate smoking in any locations (indoor or outdoor) beyond the restrictions in state law, with one exception for tobacco retailer shops (San Bruno Municipal Code section 6.54, adopted in 2010).

In 2006, responding in part to the accumulating scientific evidence that exposure to secondhand smoke was a health hazard, especially to children and those with respiratory and heart problems, the City of Dublin adopted an ordinance declaring secondhand smoke to be a "nuisance." While the ordinance did not ban smoking in any particular location, its purpose was to provide a private right of legal action for individuals exposed to secondhand smoke. The ordinance explicitly disavowed any City enforcement or involvement in such litigation.

Also in 2006, the City of Calabasas adopted an ordinance prohibiting smoking in most indoor and outdoor public places, including on sidewalks and around commercial establishments, providing for City educational efforts and complaint-driven enforcement. The ordinance did not ban smoking in any housing units.

In October 2006, the City of Belmont began consideration of a comprehensive smoking ordinance that would prohibit smoking virtually everywhere in the City, except in single-family homes. After a series of eight public meetings at which hundreds of people expressed their support for and opposition to the ordinance, in late 2007 the City Council adopted the first ordinance in the nation to ban smoking in individual units of multi-unit residences, including on balconies and patios of such units. The ban went into effect 14 months after the ordinance was adopted to provide time for existing one-year leases to expire, thus giving landlords an opportunity to provide new non-smoking leases to their existing and future tenants. The ordinance was widely recognized as the most restrictive local smoking law ever adopted. Prior to and after adoption of the ordinance, the City conducted extensive and ongoing public outreach and education with all interested community groups, including trade associations that represent realtors, property owners, apartment managers, and homeowner's associations. All inquiries about smoking, including all complaints, were directed to code enforcement staff, who tracked each contact, including the action taken and resolution. Staff met individually with the involved parties, often multiple times, and in many cases to identify and establish suitable outdoor smoking areas in multi-unit residential complexes. As a result of these efforts, the City has not issued a single citation for smoking in violation of the ordinance, all complaints have been resolved, and the city did not become involved in any litigation.

Soon after Belmont adopted its ordinance, other cities followed to varying degrees. Most cities initially stopped short of a complete ban in multi-unit residences, and grandfathered either all

existing units, or the smoking residents of those units, or provided a grace period of many years, while applying the ban only to newly-constructed units. More recently, some cities, notably Burlingame, Daly City, Foster City, San Mateo, and San Mateo County have all adopted ordinances that prohibit smoking in some or all existing units of multi-unit residences. Foster City's ordinance is different than the others in that if the City declines to take enforcement action within 45 days of the complaint, the affected party may enforce their rights in a civil suit.

Proposed Ordinance for Adoption

Staff has prepared an ordinance for adoption that includes all of the provisions discussed by the subcommittee, as well as the comments raised at the public hearing on November 9, 2016 (Attachment 1). The key provisions, which reflect similar ordinances adopted in other jurisdictions, are as follows:

1. Smoking would be broadly defined to include any lighted tobacco or nicotine product, weed or plant; and hookah and marijuana; whether delivered by cigarette, pipe, cigar, or any electronic device;
2. Smoking would be prohibited:
 - a. In multi-unit residences (including attached patios and balconies), defined as including more than one dwelling unit;
 - b. In multi-unit residence common areas, such as halls, stairwells, paths, lobbies, laundry rooms, common cooking areas, outdoor eating areas, play areas, swimming pools, and parking areas;
 - c. In 90% of all hotel and motel guest rooms;
 - d. In most places of employment, including indoor and outdoor areas, such as construction sites, taxis, employee lounges and break rooms, conference and banquet rooms, bingo and gaming facilities, health facilities, warehouses, retail and wholesale tobacco shops, and child care facilities;
 - e. In most public places, such as plazas, parking lots, malls, stadiums, parks, playgrounds, farmer's markets, and fairs;
 - f. In service areas, such as ATMs, bank teller windows, ticket lines, bus stops, and cab stands.
3. Smoking would be allowed:
 - a. In single family homes, rooms for rent in single family homes, and detached in-law units;
 - b. In designated outdoor smoking areas that are at least 20' from operable doors or windows;

- c. On streets, sidewalks, and other outdoor areas that are at least 20' from operable doors and windows or locations where smoking is prohibited, or if the person is actively moving to another destination.
4. There would be a 14-month grace period before the ban goes into effect in multi-unit residences to allow renters on a one-year lease sufficient time to adjust their living circumstances if necessary. All other provisions of the ordinance would become effective 30 days after adoption.

Outreach and Education:

To ensure that residents, property owners, and businesses are aware of the new ordinance, and to assist them in achieving voluntary compliance, the City Council has directed staff to consider a variety of measures:

1. Prepare a tri-fold flyer explaining the ordinance that would be available at City facilities and for distribution to multi-unit residential complexes, businesses, and community organizations;
2. Encourage homeowner's associations to meet with staff well before the 14-month grace period expires to establish designated outdoor smoking areas;
3. Develop an announcement for display on the City's cable TV channel;
4. Post information about the ordinance and available resources on the City's website.

Enforcement:

The City will enforce this ordinance on a strictly complaint-driven basis. Because smoking is often a transitory activity, City staff cannot be expected to arrive at the scene of each alleged violation to observe the conduct as it occurs or issue a citation, especially after business hours. The most effective way to enforce the ordinance is by working with individuals, property owners, and businesses to adjust their behavior over time. While initially time-consuming, this approach reduces the long-term impact of ongoing enforcement efforts.

The County of San Mateo has offered to be an initial point of contact for individuals who wish to report a violation or who have a question or concern about how to comply with the ordinance. If the County cannot successfully address the issue, City code enforcement staff would respond, with the assistance of the City Attorney's office. The goal would be to talk and/or meet with the affected resident to determine the best way to address the issue, before issuing a formal citation.

FISCAL IMPACT:

None at this time. However, enforcement of this ordinance after the 14-month grace period for multi-unit residences could be time-consuming and divert limited staff resources from other pressing code enforcement issues.

ALTERNATIVES:

1. Direct staff to discontinue its efforts regarding this issue.

2. Request additional information before adopting the ordinance.
3. Propose modifications to the ordinance and request that staff return with an amended ordinance for introduction.

RECOMMENDATION:

Waive Second Reading and Adopt Ordinance Regulating Exposure to Secondhand Smoke

ATTACHMENTS:

1. Ordinance for Adoption

DATE PREPARED:

November 14, 2016

REVIEWED BY:

_____ CM

ORDINANCE NUMBER _____

AN ORDINANCE OF THE CITY OF SAN BRUNO REGULATING SECONDHAND SMOKE AND ADDING CHAPTER 6.56 OF THE SAN BRUNO MUNICIPAL CODE

The City Council of the City of San Bruno does hereby ordain as follows:

SECTION I. FINDINGS. The City Council of the City of San Bruno hereby finds and declares as follows:¹

WHEREAS, the City Council finds that this ordinance is exempt from the requirements of CEQA as it is not a “project” because it has no potential to result in a direct or reasonably foreseeable indirect change to the environment (14 Cal. Code Regs. Section 15378(a); and the ordinance is exempt from CEQA because it is an action taken for the protection of the environment (Cal. Code Regs. Section 15308), and;

WHEREAS, tobacco use and exposure to secondhand smoke cause death and disease and impose great social and economic costs, as evidenced by the following:

- more than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation’s leading cause of preventable death;² and
- secondhand smoke is responsible for an estimated 38,000 deaths among non-smokers each year in the United States, which includes 3,000 lung cancer deaths and 35,000 deaths due to heart disease;³ and
- secondhand smoke exposure adversely affects fetal growth with elevated risk of low birth weight and increased risk of Sudden Infant Death Syndrome (SIDS) in infants of mothers who smoke;⁴ and
- secondhand smoke exposure causes as many as 300,000 children in the United States under the age of 18 months to suffer lower respiratory tract infections, such as pneumonia and bronchitis;⁵ exacerbates childhood asthma; and increases the risk of

¹ Each of the authorities identified in this draft ordinance is available on-line or may be obtained from the Technical Assistance Legal Center.

² U.S. Dep’t of Health and Human Servs., Centers for Disease Control and Prevention, *Annual Smoking – Attributable Mortality, Years of Potential Life Lost, and Economic Costs – United States 1995-1999* MORBIDITY AND MORTALITY WEEKLY REPORT, 51(14), at 300-303 (2002), available at <http://www.cdc.gov/mmwr/PDF/wk/mm5114.pdf> (last accessed March 23, 2005).

³ Nat’l Cancer Inst., *NCI Health Information Tip Sheet for Writers: Secondhand smoke*, available at <http://www.cancer.gov/newscenter/tip-sheet-secondhand-smoke> (last accessed February 28, 2005).

⁴ Cal. Env’tl. Prot. Agency, Office of Env’tl Health Hazard Assessment, *Health Effects of Exposure to Environmental Tobacco Smoke, Final Report ES-5* (1997), available at <http://www.oehha.org/pdf/chapter4.pdf> (last accessed December 21, 2006).

⁵ U.S. Dep’t of Health and Human Servs., Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation’s Leading Cause of Death 2002*, at 2 (2004), available at http://www.cdc.gov/nccdphp/aag/aag_osh.htm (last accessed October 18, 2006).

acute, chronic, middle-ear infections in children;⁶ and

- the medical and economic costs to nonsmokers suffering from lung cancer or heart disease caused by secondhand smoke are nearly \$6 billion per year in the United States;⁷ and
- the total annual cost of smoking in California was estimated at \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone;⁸ and

WHEREAS, secondhand smoke is consistently identified as an extremely dangerous substance, as evidenced by the following:

- the United States Environmental Protection Agency has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen;⁹ and
- the U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke;¹⁰ and
- the California Air Resources Board has put secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;¹¹ and
- the California Environmental Protection Agency has included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm;¹² and

⁶ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Exposure to Environmental Tobacco Smoke and Cotinine Levels — Fact Sheet* (2004), available at http://www.cdc.gov/tobacco/research_data/environmental/factsheet_ets.htm (last accessed October 18, 2006).

⁷ American Academy of Actuaries, *Costs Associated with Secondhand Smoke*, October, 2006, available at http://www.actuary.org/pdf/health/smoking_oct06.pdf (last accessed October 11, 2006).

⁸ Wendy Max, Dorothy P. Rice, Xiulan Zhang, Hai-Yen Sung, Leonard Miller, Cal. Dept. of Health Servs., *The Cost of Smoking in California, 1999*, at 76 (2002), available at <http://www.dhs.ca.gov/tobacco/documents/pubs/CostOfSmoking1999.pdf> (last accessed October 18, 2006).

⁹ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Exposure to Environmental Tobacco Smoke and Cotinine Levels — Fact Sheet* (2004), available at http://www.cdc.gov/tobacco/research_data/environmental/factsheet_ets.htm (last accessed October 18, 2006).

¹⁰ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* 11 (2006), available at <http://www.surgeongeneral.gov/library/secondhandsmoke/report/chapter1.pdf> (last accessed Sept. 19, 2006).

¹¹ Cal. Air Resources Bd., Resolution 06-01, at 5 (Jan. 26, 2006), available at <http://www.arb.ca.gov/regact/ets2006/res0601.pdf> (last accessed Oct. 6, 2006).

¹² Cal. Envtl. Prot. Agency, Office of Envtl. Health Hazard Assessment, *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity*, at 8 and 17 (Aug. 11, 2006), available at http://www.oehha.ca.gov/prop65/prop65_list/files/P65single081106.pdf (last accessed Oct. 6, 2006).

- only 5 minutes of exposure to secondhand smoke causes the main artery carrying blood from the heart to the body, the aorta, to stiffen as much as if the person had actually smoked a cigarette, thereby causing the heart to work harder to pump blood;¹³ and
- 30 minutes of exposure to secondhand smoke reduces the arterial function of a nonsmoker's circulatory system to that of an active smoker's, increasing the nonsmoker's risk of heart disease;¹⁴ and
- Exposure to outdoor secondhand smoke may present a hazard under certain conditions of wind and smoker proximity.¹⁵

WHEREAS, state law prohibits smoking in virtually all indoor places of employment reflecting the state policy to protect against the dangers of exposure to secondhand smoke;¹⁶ and

WHEREAS, conventional air cleaning systems can remove large particles, but not the smaller particles or the gases found in secondhand smoke; and¹⁷

WHEREAS, state law prohibits smoking in playgrounds and tot lots and within 20 feet of the main entrances and exits of public buildings while expressly authorizing local communities to enact additional restrictions;¹⁸ and

WHEREAS, cigarette butts pose a health threat to young children, as evidenced by the following:

- in 2004, American poison control centers received nearly 8,000 reports of children poisoned by the ingestion of cigarette butts;¹⁹ and

¹³ C. Stefanadis et al., *Unfavorable Effects of Passive Smoking on Aortic Function in Men*, ANNALS OF INTERNAL MEDICINE 128(6), 426-34 (Mar. 15, 1998).

¹⁴ Terry F. Pechacek & Stephen Babb, *How Acute and Reversible are the Cardiovascular Risks of Secondhand Smoke?*, BRITISH MEDICAL JOURNAL (April 24, 2004), available at <http://www.bmj.com/cgi/content/full/328/7446/980#REF21>. Ryo Otsuka, MD et al., *Acute Effects of Passive Smoking on the Coronary Circulation in Healthy Young Adults*, JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 284 (4), 436-441 (July 25, 2001), available at http://jama.ama-assn.org/cgi/content/abstract/286/4/436?ijkey=bb98316bf9d977d6204b0330f4ecc2f8cae6ac6e&keytype2=tf_ipsecsha

¹⁵ Neil E. Klepeis, Wayne R. Ott, and Paul Switzer, *Real-Time Measurement of Outdoor Tobacco Smoke Particles*, AIR & WASTE MANAGEMENT ASSOCIATION, VOLUME 57 (May 1, 2007)

¹⁶ Cal. Lab. Code § 6404.5 (West 2003).

¹⁷ U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. Atlanta, Georgia: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006. Available at http://www.cdc.gov/tobacco/sgr/sgr_2006/index.htm

¹⁸ Cal. Health & Safety Code § 104495 (West 2003) and Cal. Gov't Code § 7596 (West 2004).

¹⁹ Am. Ass'n of Poison Control Ctr. *Annual Report of the Toxic Exposure Surveillance System* at 645 (2004), available at <http://www.aapcc.org/Annual%20Reports/04report/AJEM%20->

- children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging;²⁰ and

WHEREAS, cigarette butts are a major and persistent source of litter, as evidenced by the following:

- it is estimated that over two billion cigarette butts are discarded every day worldwide, and that Americans alone discard more than 175 million pounds of cigarette butts every year;²¹ and
- cigarette butts are often cast onto sidewalk and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons and ultimately the ocean;²² and
- cigarette butts, made of plastic cellulose acetate, take approximately 15 years to decompose;²³ and

WHEREAS, creating smokefree areas helps protect the 86% of Californians who are non-smokers;²⁴ and

WHEREAS, a majority of Californians favor limitations on smoking in multi-unit residences, as evidenced by the following:

- 67% of apartment renters, apartment owners, and managers favor limiting smoking in outdoor common areas of apartment buildings;²⁵ and
- 69% of apartment renters approve of apartment complexes offering non-smoking sections;²⁶ and
- 57% of apartment owners and managers favor a law mandating non-smoking units in

[%20AAPCC%20Annual%20Report%202004.pdf](#) (last accessed October 23, 2006).

²⁰ U.S. Dep't of Health and Human Servs., Center for Disease Control and Prevention, *Ingestion of Cigarettes and Cigarette Butts by Children – Rhode Island, January 1994-July 1996*, MORBIDITY AND MORTALITY WEEKLY REPORT at 125-128 (1997), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/00046181.htm> (last accessed October 18, 2006).

²¹ Surfrider Foundation, San Diego Chapter, *Hold on to Your Butt!: Our Beaches and Streets are Not Your Ashtray*, at <http://www.surfridersd.org/hotyb.php> (last accessed October 18, 2006).

²² Surfrider Foundation, San Diego Chapter, *Hold on to Your Butt!: Our Beaches and Streets are Not Your Ashtray*, at <http://www.surfridersd.org/hotyb.php> (last accessed October 18, 2006).

²³ Surfrider Foundation, San Diego Chapter, *Hold on to Your Butt!: Our Beaches and Streets are Not Your Ashtray*, at <http://www.surfridersd.org/hotyb.php> (last accessed October 18, 2006).

²⁴ Tobacco Control Section, Cal. Dep't of Health Servs., *Adult Smoking Prevalence*, at 1, available at <http://www.dhs.ca.gov/tobacco/documents/pubs/AdultSmoking06.pdf> (last accessed October 18, 2006).

²⁵ Ctr. For Tobacco Policy and Org., Am. Lung Ass'n of Cal., *Statewide Tobacco Renter Study* (2004), available at http://www.californialung.org/thecenter/community/documents/SFH-Survey-Data_001.doc (last accessed March 4, 2005).

²⁶ Tobacco Control Section, Cal. Dep't of Health Servs., *2004 Field Research Poll Results* at 16 (2004), available at <http://www.dhs.ca.gov/tobacco/documents/2004TCSupdate.pdf> (last accessed March 4, 2005).

- every building;²⁷ and
- 46% of apartment renters have experienced secondhand smoke drifting into their units;²⁸ and

WHEREAS, a local ordinance that authorizes residential rental agreements to include a prohibition on smoking of tobacco products within rental units is not prohibited by state law;²⁹ and

WHEREAS, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), the preeminent U.S. standard-setting body on ventilations issues, has concluded that ventilation systems cannot remove secondhand smoke from indoor environments;³⁰

WHEREAS, lighted tobacco products caused an estimated 14,450 residential fires in the United States in 2002 resulting in 520 deaths, 1,330 injuries, and \$371 million in residential property damage;³¹ and

WHEREAS, electronic smoking devices and other nicotine delivery devices have a high appeal to youth due to their high-tech design and availability in child-friendly flavors such as cotton candy, bubble gum, chocolate chip cookie dough and cookies and cream milkshake, resulting in a more than doubling in the percentage of high school students who had tried e-cigarettes from 2011 to 2012; and

WHEREAS, California law declares that anything which is injurious to health or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance;³² and

WHEREAS, local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance;³³ and

²⁷ Ctr. For Tobacco Policy and Org., Am. Lung Ass'n of Cal., *Statewide Survey of California Apartment Owners and Managers* (2005), available at <http://www.californialung.org/thecenter/documents/CenterSmokefreeApartmentsOwnersSurveyJune2005.doc> (last accessed December 21, 2006).

²⁸ Ctr. For Tobacco Policy and Org., Am. Lung Ass'n of Cal., *Statewide Tobacco Renter Study* (2004), available at http://www.californialung.org/thecenter/community/documents/SFH-Survey-Data_001.doc (last accessed March 4, 2005).

²⁹ Cal. Legislative Counsel Op., 21547, *Secondhand Smoke in Multi-Unit Housing (Apartments & Condos) Smoking Bans: Residential Rental Property*, (September 23, 1999).

³⁰ American Society of Heating, Refrigerating and Air-Conditioning Engineers. *Environmental Tobacco Smoke: Position Document*. Atlanta, Georgia: American Society of Heating, Refrigerating and Air-Conditioning Engineers, 2005.

³¹ U.S. FIRE ADMINISTRATION/NATIONAL FIRE DATA CENTER, U.S. DEPT. OF HOMELAND SECURITY, *RESIDENTIAL SMOKING FIRES AND CASUALTIES, TOPICAL FIRE RESEARCH SERIES, VOLUME 5 – ISSUE 5*, at 1 (June 2005), available at <http://www.usfa.dhs.gov/downloads/pdf/tfrs/v5i5.pdf> (last accessed Jan. 30, 2007).

³² Cal. Civil Code § 3479 (Deerings 2005).

³³ *In Re Jones*, 56 Cal.App.2d 658, 663 (1943). See also, Cal. Const., art. XI, § 7 and Cal. Gov. Code § 38771 (Deerings 2005).

WHEREAS, there is no Constitutional right to smoke;³⁴ and

NOW THEREFORE, it is the intent of the City Council, in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around non-smoking individuals, especially children; by protecting the public from nonconsensual exposure to secondhand smoke where they live, work, and play; by lessening smoking-related litter; by reducing the potential for children to wrongly associate smoking with a healthy lifestyle; and by affirming and promoting the family atmosphere of the City's public places.

SECTION II. Chapter 6.54 (Smoking Regulations) of the City of San Bruno Municipal Code is hereby repealed.

SECTION III. Chapter 6.56 of the City of San Bruno's Municipal Code is hereby added to read as follows:

Sec. 1. 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) "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an Employee, as defined in this section.

(b) A "Common Interest Development" means a development as defined in California Civil Code Section 1351(c), which includes condominium projects (including projects commonly known as townhomes or townhouses), community apartment projects, a planned development, or a stock cooperative.

(c) "Employee" means any person who is employed; retained as an independent contractor by any Employer, as defined in this section; or any person who volunteers his or her services for an Employer, association, nonprofit, or volunteer entity.

(d) "Employer" means any person, partnership, corporation, association, nonprofit or other entity who employs or retains the service of one or more persons, or supervises volunteers.

(e) "Landlord" means any Person who owns real property leased as residential property, any Person who lets residential property, or any Person who manages such property, except that "Landlord" does not include sublessors.

(f) "Multi-Unit Residence" means a building or portion thereof that contains more than one dwelling Unit including but not limited to apartments, Common Interest Development, senior citizen housing, nursing homes, and single room occupancy hotels.

³⁴ Technical Assistance Legal Ctr., Pub. Health Inst., *There Is No Constitutional Right to Smoke* (2004), available at http://talc.phlaw.org/pdf_files/0051.pdf (last accessed April 8, 2005).

(g) “Multi-Unit Residence Common Area” means any indoor or outdoor area of a Multi-Unit Residence accessible to and usable by residents of different Units, including but not limited to halls and stairwells, paths, lobbies, laundry rooms, common cooking areas, outdoor eating areas, play areas, swimming pools, and parking areas.

(h) “Nonprofit Entity” means any entity that meets the requirements of California Corporations Code section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this section.

(i) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity except the City of San Bruno.

(j) “Place of Employment” means any area under the legal or de facto control of an Employer, Business or Nonprofit Entity that an Employee or the general public may have cause to enter in the normal course of operations, but regardless of the hours of operation, including, but not limited to: construction sites, taxis, employee lounges and breakrooms, conference and banquet rooms, bingo and gaming facilities, long-term health facilities, warehouses, retail and wholesale tobacco shops, and private residences that are used as child care or health care facilities subject to licensing requirements.

(k) “Public Place” means any place, public or private, open to members of the general public regardless of any fee or age requirement, including, for example, plazas, parking lots, malls, stadiums, parks, playgrounds, farmers markets, fairs, and taxis.

(l) “Service Area” means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction whether or not such service includes the exchange of money, including but not limited to ATMs, bank teller windows, telephones, ticket lines, bus stops, and cab stands.

(m) “Significant Tobacco Retailer” means any tobacco retailer required to obtain a permit pursuant to Chapter 6.52 of the San Bruno Municipal Code and that derives seventy-five percent (75%) or more of gross sales receipts from the sale or exchange of Tobacco Products and Tobacco paraphernalia.

(n) “Smoking” or to “Smoke” means possessing a lighted tobacco or nicotine product, lighted tobacco or nicotine paraphernalia, or any other lighted weed or plant (including but not limited to, a lighted pipe, lighted hookah pipe, lighted cigar, marijuana, electronic devices that vaporize a solution ~~containing nicotine~~ commonly known as e-cigarettes, e-cigars, e-cigarillos, e-pipes, and e-hookas), or the lighting of a tobacco or nicotine product, tobacco or nicotine paraphernalia, or any other weed or plant (including but not limited to, a lighted pipe, lighted hookah pipe, lighted cigar, marijuana,

electronic devices that vaporize a solution ~~containing nicotine~~ commonly known as e-cigarettes, e-cigars, e-cigarillos, e-pipes, and e-hookas), or lighted cigarette of any kind).

(o) “Tobacco Product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco; and any electronic cigarette or other electronic device used to generate smoke; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

(p) “Unit” means: (1) a dwelling space consisting of essentially complete independent living facilities for one or more persons, including, for example, permanent provisions for living and sleeping, and any private outdoor spaces such as balconies, decks, and patios; and (2) senior citizen housing and single room occupancy hotels, as defined in California Health and Safety Code section 50519(b)(1), even where lacking private cooking facilities or private plumbing facilities. “Unit” does not include lodging in a hotel or motel that meets the requirements set forth in California Civil Code section 1940(b)(2).

Sec. 2. SECONDHAND SMOKE GENERALLY

For all purposes within the City of San Bruno, nonconsensual exposure to secondhand ~~S~~smoke is a nuisance, and the uninvited presence of secondhand ~~S~~smoke on property is a nuisance and a trespass.

Sec. 3. SMOKING PROHIBITIONS

(a) Smoking shall be prohibited in the following indoor and outdoor places within the City of San Bruno:

(1) Public Places;

(2) Places of Employment; and

(3) Multi-Unit Residence Common Areas; except that a Landlord or Common Interest Development may designate a portion of the outdoor area a Smoking area. A designated Smoking area:

(i) must be located at least 20 feet from any operable window or door used by the public of an indoor area of a Multi-Unit Residence where Smoking is prohibited;

(ii) must not include, and must be at least 20 feet from, outdoor areas primarily used by children including, but not limited to, areas

improved or designated for play or swimming;

(iii) must be no more than twenty-five percent (25%) of the total outdoor area of the premises for which it is designated;

(iv) must have a clearly marked perimeter;

(v) must be identified by conspicuous signs and include receptacles designed for and primarily used for disposal of Tobacco waste and shall be maintained free of Tobacco related litter including but not limited to cigarette butts; and

(vi) must not overlap with any area in which Smoking is otherwise prohibited by this chapter or other provisions of this Code, state law, or federal law.

(4) Individual Units of Multi-Unit Residences, if such Units share at least one common floor, wall, or ceiling with another such Unit.

(5) Service Areas;

(b) Unless otherwise prohibited by law, Smoking is not restricted by this chapter in the following places:

(1) By performers during theatrical productions, if Ssmoking is an integral part of the story in the theatrical production;

(2) Detached single-family homes and the lots they are sited on, except those used as a child care or health care facility subject to licensing requirements;

(3) Up to ten percent (10%) of hotel and motel guest rooms, if the hotel or motel permanently designates particular guest rooms as nonsmoking rooms such that ninety percent (90%) or more of its guest rooms are nonsmoking and ashtrays and matches are permanently removed from such nonsmoking rooms. Permanent "no smoking" signage shall be posted in nonsmoking rooms;

(4) Significant tobacco retailers, if at all times minors are prohibited from entering the store;

(5) Individual Units of Multi-Unit Residences which do not share any common floors, walls, or ceilings with any other such Unit;

(6) Any City-designated outdoor Smoking areas;

(7) Automobiles (unless prohibited by state law);

(8) On streets and sidewalks, unless being used as outdoor workplaces or at City-sponsored events such as parades and fairs, and subject to the limitations in Section 6.

(c) Nothing in this chapter shall be construed to prohibit Smoking in any area in which such Smoking is already prohibited by state or federal law unless the applicable state or federal law does not preempt additional local regulation.

Sec. 4. PHASE-IN PERIOD FOR NON-SMOKING UNITS IN MULTI-UNIT RESIDENCES

A Unit shall not be subject to the Smoking restrictions in Section 3(a)(4) until fourteen (14) months after the effective date of this chapter, or until the legal occupants on the effective date of this chapter vacate the Unit, whichever occurs first.

Sec. 5. REQUIRED LEASE TERMS

(a) For legal occupants on the effective date of this chapter, lease or rental agreement renewals for the occupancy of a Unit in a Multi-Unit Residence in which Ssmoking is prohibited shall include:

(1) a clause stating that Smoking is prohibited in the Unit if the Unit has been designated as a non-smoking Unit ;

(2) a clause stating that it is a material breach of the lease or agreement to (i) violate any law regulating Smoking while on the premises; (ii) Smoke in violation of a non-smoking lease term, such as Ssmoking in a non-smoking Unit; or (iii) Smoke in any Multi-Unit Residence Common Area in which Smoking is prohibited by the Landlord; and

(3) a clause stating that all lawful occupants of the Multi-Unit Residence are express third-party beneficiaries of the above required clauses.

(4) a clause stating that terms 1 – 3 become effective fourteen (14) months after the effective date of this chapter, unless the Landlord specifies an earlier effective date;

(b) For new tenants not in occupancy on the effective date of this chapter, every lease or other rental agreement for the occupancy of a Unit in a Multi-Unit Residence in which Ssmoking is prohibited shall include:

(1) a clause stating that Smoking is prohibited in the Unit if the Unit has been designated as a non-smoking Unit;

(2) a clause stating that it is a material breach of the lease or agreement to (i) violate any law regulating Smoking while on the premises; (ii) Smoke in violation of a non-smoking lease term, such as smoking in a non-smoking Unit; or (iii) Smoke in any Multi-Unit Residence Common Area in which Smoking is prohibited by the

Landlord; and

(3) a clause stating that all lawful occupants of the Multi-Unit Residence are express third-party beneficiaries of the above required clauses.

(c) The lease or agreement terms required by subsection (a) or (b) are hereby incorporated by force of law into any lease or other agreement for the occupancy of a Unit in a Multi-Unit Residence made on or after the effective date of the ordinance which adopted this section and which does not fully comply with subsection (a) or (b).

(d) A tenant who breaches the Smoking regulations of a lease or knowingly allows another person to do so shall be liable to: (i) the Landlord; and (ii) to any lawful occupant of the Multi-Unit Residence who is exposed to secondhand smoke as a result of that breach. A Landlord shall not be liable to any person for a tenant's breach of Smoking regulations if the Landlord has fully complied with subsection (a).

(e) Failure to enforce any Smoking regulation of a lease or agreement on one or more occasions shall not constitute a waiver of the lease or agreement provisions required by this ordinance and shall not prevent future enforcement of any such Smoking regulation on another occasion.

Sec. 6. REASONABLE SMOKING DISTANCE REQUIRED—20 FEET

(a) Smoking in outdoor areas shall be prohibited within 20 feet of an entrance or exit used by the public, or operable window of an indoor area in which smoking is prohibited, except while actively passing on the way to another destination and so long as Ssmoke does not enter any indoor area in which Ssmoking is prohibited.

(b) Smoking in outdoor areas shall be prohibited within 20 feet from any outdoor area in which Ssmoking is prohibited by this chapter except while actively passing on the way to another destination.

Sec. 7. PROHIBITIONS AND DUTIES GENERALLY

(a) No Person, Employer, Business, Nonprofit Entity, Landlord, or Common Interest Development shall knowingly permit the Smoking of Tobacco Products in an area which is under the legal or de facto control of the Person, Employer, Business, Nonprofit Entity, Landlord, or Common Interest Development and in which Smoking is prohibited by law and the Person, Employer, Business, Nonprofit Entity, Landlord, or Common Interest Development is not otherwise compelled to act under state or federal law.

(b) No Person, Employer, Business, Nonprofit Entity, Landlord, or Common Interest Development shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area which is under the legal or de facto control of the Person, Employer, Business, Nonprofit Entity, Landlord, or Common Interest Development and in which Smoking is prohibited, including, without

limitation, inside the perimeter of any Reasonable Distance required by this chapter.

(c) Notwithstanding any other provision of this chapter, any owner, Employer, Business, Nonprofit Entity, Landlord, Common Interest Development or other Person who controls any property, establishment, Place of Employment, Public Place, or Multi-Unit Residence regulated by this chapter may declare any part of such area in which Smoking would otherwise be permitted to be a nonsmoking area.

(d) "No Smoking" signs, with letters of no less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a red bar) shall be clearly, sufficiently, and conspicuously posted in every indoor and outdoor place in which Smoking is prohibited by this chapter, by the Person, Employer, Business, Nonprofit Entity, Landlord, or Common Interest Development that has legal or de facto control of such place (except that signs need not be posted in each individual Unit in which Smoking is prohibited). For purposes of this chapter, the City Manager or designee shall be responsible for the posting of signs in regulated facilities owned or leased in part by the City of San Bruno. Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this chapter.

Sec. 8. PENALTIES AND ENFORCEMENT

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

(b) Each violation of this chapter by a Person because of the Person's Smoking is an infraction subject to a one hundred dollar (\$100) fine. Other violations of this chapter constitute misdemeanors punishable as provided in the San Bruno Municipal Code or may, in the discretion of the City Attorney, be prosecuted as infractions if the interests of justice so require. Any peace officer or code enforcement official may enforce this chapter.

(c) Violations of this chapter are subject to a civil action brought by the City, punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.

(d) No Person shall intimidate, harass, or otherwise retaliate against any Person who seeks to attain compliance with this chapter. Moreover, no Person shall intentionally or recklessly expose another Person to secondhand Ssmoke in response to that Person's effort to achieve compliance with this chapter. Violation of this subsection shall constitute a misdemeanor.

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

(f) Any violation of this chapter is hereby declared to be a nuisance.

(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, but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

SECTION IV. STATUTORY CONSTRUCTION & SEVERABILITY. It is the intent of the City Council of the City of San Bruno to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. 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 San Bruno 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 V. Pursuant to Section 36937 of the Government Code of the State of California, this Ordinance shall take effect and be in full force and effect thirty (30) days after its final passage.

SECTION VI. The City Clerk shall cause this Ordinance to be published and posted in accordance with the requirements of Section 36933 of the Government Code of the State of California.

Adopted this _____ day of _____, 2016.

* * * * *

PASSED AND ADOPTED as an Ordinance of the City of San Bruno at a regular meeting thereof held on the _____ day of _____, 2016.

AYES, COUNCILMEMBERS: _____

NOES, COUNCILMEMBERS: _____

ABSENT, COUNCILMEMBERS: _____

ABSTAIN, COUNCILMEMBERS: _____

Mayor of the City of San Bruno

ATTEST:

Clerk of the City of San Bruno



**City Council Agenda Item
Staff Report**

CITY OF SAN BRUNO

DATE: November 22, 2016
TO: Honorable Mayor and Members of the City Council
FROM: David Woltering, Community Development Director
SUBJECT: Waive Second Reading and Adopt Ordinance Amending and Replacing Chapter 12.230 Establishing an Affordable Housing Program and Affordable Housing Impact Fees, to Title 12 (Land Use) of the San Bruno Municipal Code

BACKGROUND

On November 9, 2016, the City Council held a public hearing, waived the first reading and introduced the attached ordinance amending and replacing Section 12.230 of the Municipal Code to establish an affordable housing program, including residential impact fees and commercial linkage fees. The ordinance is presented now for second reading and adoption. Should the Council waive the second reading and adopt the ordinance at this meeting, the ordinance would go into effect 60 days after the second reading on January 22, 2017.

A draft resolution stating the amount of the fees and method of calculation was also considered at the meeting on November 9th. The City Council determined that the recommended linkage fees for office and hotel development projects should be increased and directed staff to conduct further research including evaluating several fee scenarios. Staff will present the additional analysis and a modified fee resolution for City Council consideration at a Public Hearing on December 13, 2016.

The ordinance would replace the existing Below Market Rate (BMR) Housing program with more effective tools to help mitigate the impacts of nonresidential development and new market-rate housing on the need for affordable housing. The proposed ordinance would impose affordable housing impact fees and rules for construction of affordable units, alternatives to comply with the ordinance, and the use of the fees. The ordinance would apply to residential ownership or rental developments of five (5) units or more, and all nonresidential developments throughout the City, except public uses such as hospitals and community facilities and quasi-public uses such as child care centers, community facilities, churches and schools.

Residential rental and commercial projects would be required to pay impact fees, with the possibility of an alternative compliance method, such as the provision of affordable units on- or off-site, with the approval of the City Council. Residential for-sale projects would be required to include affordable units within the project, with the possibility of an

alternative compliance method, such as the payment of residential impact fees, with the approval of the City Council.

The complete analysis of the proposed affordable housing ordinance and impact fee resolution is contained in the November 9, 2016 City Council staff report and attachments.

DISCUSSION

The City Council accepted all of staff's recommendations pertaining to the ordinance that were presented at the November 9, 2016 Public Hearing. The attached ordinance remains unchanged from the draft ordinance introduced by the City Council at the first reading on November 9, 2016.

Adoption of the ordinance at this meeting would occur before the City Council considers adoption of the resolution setting the fee amounts. Separating the two approvals is permitted by state law and will have no effect on either the ordinance or resolution adopted by the City Council. Staff recommends adoption of the ordinance now because it must be in effect before the fees set by the resolution can be imposed. Moving the approval process forward expeditiously will ensure that the fees are in place for several development applications that are anticipated in the next few months. If the City Council adopts the ordinance at this meeting and the fee resolution is adopted on December 13, 2016, the fees would take effect on February 11, 2017.

The adoption of an affordable housing ordinance is not a project under the California Environmental Quality Act (CEQA) as it creates a governmental funding mechanism that does not involve any commitment to a specific project, which may result in a potentially significant effect on the environment (CEQA Guidelines Section 15378(b)(4)). Furthermore, even if this approval were a project, it would be exempt from CEQA because it can be seen with certainty that there is no possibility that the fees may have a significant effect on the environment, given that the ordinance contains no provisions modifying the physical design, development, or construction of residences or nonresidential structures (CEQA Guidelines Section 15061(b)(3)).

FISCAL IMPACT

The adoption of the ordinance does not set the specific dollar amounts of the impact fees. The fees will be established by a separate resolution to be considered at a future meeting. The exact amount of the fiscal impact is unknown due to the fact that it is dependent on the fee amounts and type of development projects that are brought forward. The City could receive several million dollars in affordable housing impact fees per year in the current economic cycle; however, these amounts will vary widely over time based on the level of development activity.

ALTERNATIVES

1. Do not adopt the ordinance and resolution and provide direction to staff
2. Direct staff to revise the Affordable Housing Ordinance and schedule for additional review and discussion at a future meeting

RECOMMENDATION

Waive Second Reading and Adopt Ordinance Amending and Replacing Chapter 12.230
Establishing an Affordable Housing Program and Affordable Housing Impact Fees, to
Title 12 (Land Use) of the San Bruno Municipal Code

DISTRIBUTION

None

ATTACHMENTS

1. Affordable Housing Ordinance and related information at:
www.sanbruno.ca.gov/gov/city_departments/commdev/housing/default.htm

DATE PREPARED

November 15, 2016

REVIEWED BY

_____ CM

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN BRUNO AMENDING AND REPLACING CHAPTER 12.230, THEREBY UPDATING AND ESTABLISHING AN AFFORDABLE HOUSING PROGRAM AND AFFORDABLE HOUSING IMPACT FEES, IN TITLE 12 (LAND USE) OF THE SAN BRUNO MUNICIPAL CODE

Section 1. Chapter 12.230 of Title 12 of the City of San Bruno Municipal Code is hereby repealed in its entirety.

Section 2. City Council makes the following findings:

A. The provision of safe and stable housing for households at all income levels is essential for the public welfare of the city. Housing in San Bruno has become steadily more expensive and housing costs have gone up faster than incomes. Federal and state government programs do not provide enough affordable housing to satisfy the needs of very low, low, or moderate income households. As a result, there is a severe shortage of adequate, affordable housing for extremely low, very low, lower, and moderate income households, as evidenced by the following findings in the City's 2015-2023 Housing Element:

1. Almost half of San Bruno's households are lower income (see Housing Element Figure 2.3-2).

2. Households of any size earning less than the median income cannot afford the average home purchase price or the average rents in San Bruno.

3. More than 90 percent of San Bruno renter households and two thirds of owner households earning under \$35,000 annually are overpaying for housing. Over half the households earning between \$35,000 and \$75,000 per year are overpaying as well. Without choices and availability of affordable housing in San Bruno, lower income people may choose to live elsewhere and commute to work. Or, lower income households may live in overcrowded homes, and have limited money to dedicate towards other necessities such as food, transportation and medical care.

B. As provided in the Housing Element of the General Plan, the City aims to meet the housing needs of the citizens of San Bruno, including the creation and retention of housing for lower income households and households with special needs, given the limitations imposed by current political, economic, and social conditions, and availability of State and federal funding.

1. Housing Element Goal 5 is to ensure the continued availability of affordable housing for very-low, low, and moderate income households, seniors, persons with disabilities, single-parent households, large families, and other special needs groups.

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2. Housing Element Goal 2 is to accommodate regional housing needs through a community-wide variety of residential uses by size, type, tenure, affordability, and location.

3. Housing Element Goal 3 is to expand the variety of construction and financing techniques available to achieve new affordable housing and maintain it over time. Housing Element Program 3-J calls for the City to adopt an Affordable Housing Impact Fee, including an implementation action to participate in a countywide nexus study to estimate the increase in demand for affordable housing associated with new residential and nonresidential development and to determine permissible and reasonable impact fees for both residential and nonresidential development based on local conditions that will not discourage development.

C. The City adopted the Below Market Rate (BMR) Housing Ordinance establishing inclusionary housing requirements for new construction for for-sale and rental development projects in 2008. The 2009 Palmer vs the City of Los Angeles court decision invalidated inclusionary requirements for rental developments, but not for for-sale developments.

D. Because the City's first preference is for the actual construction of new affordable units to ensure that affordable housing is actually provided within residential projects, the City intends to retain the BMR requirements for "for-sale" units.

E. New residents of market rate housing purchase goods and utilize services in the community, increasing local employment and attracting employees, of whom a quantifiable number will have very low, low, or moderate incomes and cannot afford market-rate housing.

F. New housing construction that does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land.

G. Because nonresidential development also attracts employees, of whom a quantifiable number will have very low, low, or moderate incomes, new nonresidential developments similarly increase the demand for and exacerbate the shortage of housing available for people at these income levels while also reducing the supply of land potentially available for housing development.

H. Based on the findings above and the findings from the Residential Impact Fee and Commercial Linkage Fee Nexus Studies prepared for San Bruno, dated October 2015, the City desires to further the public health, safety and welfare by requiring residential and nonresidential development projects in the City to help mitigate their impact on the need for affordable housing in the City.

Section 3. A replacement Chapter 12.230 (Affordable Housing Program) is hereby added to Title 12 (Land Use) of the San Bruno Municipal Code to achieve the purpose in Section 12.230.010 of this Chapter, based on the Findings in Section 2 of this Chapter, to read as follows:

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CHAPTER 12.230

AFFORDABLE HOUSING PROGRAM

Sections:

- 12.230.010 Purpose
- 12.230.020 Definitions
- 12.230.030 Affordable Housing Requirements
- 12.230.040 Affordable Housing Impact Fees
- 12.230.050 Exemptions
- 12.230.060 Alternatives
- 12.230.070 Compliance Procedures
- 12.230.080 Affordable Housing Unit Standards
- 12.230.090 Owner-Occupied Units
- 12.230.100 Rental Units
- 12.230.110 Administrative Relief
- 12.230.120 Affordable Housing Fund
- 12.230.130 Enforcement

12.230.010 Purpose

The purpose of this Chapter is to:

A. Encourage the development and availability of housing affordable to a broad range of Households with varying income levels within the City as mandated by State Law, California Government Code Sections 65580 et seq.

B. Promote Housing Element Goal 2 to accommodate regional housing needs through a community-wide variety of residential uses by size, type, tenure, affordability, and location.

C. Implement the Housing Element by creating a mechanism to provide benefits to the community from new development in the form of affordable housing, thereby, helping to meet the housing needs of all socioeconomic segments of the community as provided in the Housing Element.

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D. Promote Housing Element Goal 5 to ensure the continued availability of affordable housing for very low, low, and moderate income households, seniors, and persons with disabilities, single-parent households, large families, and other special needs groups.

E. Implement Housing Element Program 3-J to adopt permissible and reasonable impact fees for both residential and nonresidential development based on impact fee nexus studies.

F. Implement Housing Element Program 5-A to support the Affordable Housing Ordinance (BMR Program, adopted in 2008) and to modify the BMR program as appropriate to maximize efforts to achieve affordable housing objectives in San Bruno.

G. Enhance the public welfare by imposing affordable housing impact fees for residential and nonresidential development projects whereby developers of residential and nonresidential development projects will help mitigate the impacts of their projects on the need for affordable housing by contributing to the supply of housing for households with very low, low, and moderate incomes.

12.230.020 Definitions

As used in this Chapter, the following terms shall have the following meanings:

A. "Affordable housing agreement" means a written agreement between the City and the developer as provided in Section 12.230.070 of this Chapter.

B. "Affordable housing fund" means a fund for the deposit of fees established under this Chapter as provided in Section 12.230.120 of this Chapter.

C. "Affordable housing impact fee" means the fee paid by developers of residential or nonresidential development projects to help mitigate the impacts that such developments have on the demand for affordable housing in the City and to support affordable housing development and operation.

D. "Affordable housing plan" means a plan required for any residential or nonresidential development project which includes the provision of affordable housing units that demonstrates how the project complies with Section 12.230.070 of this Chapter.

E. "Affordable housing unit" means a dwelling unit that shall be offered at an affordable rent or affordable ownership cost to very low, low and moderate income households.

F. "Affordable ownership cost" means the sales price of a for-sale affordable unit resulting in projected average monthly housing payments, during the first calendar year of a household's occupancy, including interest, principal, mortgage insurance, property taxes, homeowners insurance, homeowners' association dues, if any, and a

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reasonable allowance for utilities, property maintenance, and repairs, not exceeding the sales prices specified by Section 50052.5 of the California Health and Safety Code and California Code of Regulations Title 25, Sections 6910-6924.

G. "Affordable rent" means the total monthly housing expenses for a rental affordable unit not exceeding the rents specified by Section 50053 of the California Health and Safety Code and California Code of Regulations Title 25, Sections 6910-6924. As used in this Chapter, "affordable rent" shall include the total of monthly payments by the tenant for all of the following: (1) use and occupancy of the affordable unit and land and all facilities associated with the affordable unit, including but not limited to parking, bicycle storage, storage lockers, and use of all common areas; (2) any additional separately charged fees or service charges assessed by the owner, other than security deposits; (3) an allowance for utilities paid by the tenant as established by the San Mateo County Housing Authority, including garbage collection, sewer, water, electricity, gas, and other heating, cooking, and refrigeration fuel, but not telephone service or cable TV; and (4) any other interest, taxes, fees or charges for use of the land or affordable unit or associated facilities and assessed by a public or private entity other than the owner, and paid by the tenant.

H. "Building permit" includes full structural building permits as well as partial permits such as foundation-only permits

I. "City" means the City of San Bruno.

J. "City Council" means the City Council of the City of San Bruno.

K. "City Manager" means the City Manager of the City or his or her designee.

L. "Commercial linkage fee" means a fee or charge imposed on commercial developers to pay for the development's impact on the need for affordable housing. The fee is based on projected household incomes of new employees that will work in newly created space.

M. "Decision-making body" means the City staff person or body authorized to approve or deny an application for a planning or building permit for a residential or nonresidential development project.

N. "Developer" means the person(s) or legal entity(ies), who also may be the property owner seeking real property development permits or approvals from the City or developing a particular project in the City.

O. "For-sale unit" means a residential dwelling unit that may be sold individually in conformance with the Subdivision Map Act. For-sale units also include units that are converted from rental units to for-sale units.

P. "Household" means one person living alone or two or more persons sharing residency in one dwelling unit.

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- Q. "Inclusionary unit" has the same meaning as affordable housing unit.
- R. "Low income households" means households with incomes no greater than the maximum income for low income households, as published annually by the City for each household size, based on United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD) income limits for San Mateo County.
- S. "Market-rate unit" means a new dwelling unit in a residential development project that is not an affordable unit.
- T. "Median income" means the median income applicable to San Mateo County, as published annually by the City for each household size, based on median income data for San Mateo County published by the United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD).
- U. "Moderate income households" means households with incomes no greater than the maximum income for moderate income households, as published annually by the City for each household size, based on United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD) income limits for San Mateo County.
- V. "Nonresidential development project" means an application for a planning permit or building permit that includes the new construction of gross square feet of nonresidential space or the conversion of a residential use to a nonresidential use.
- W. "Planning permit" means any discretionary approval of a residential or nonresidential development project, including, but not limited to, a general or specific plan adoption or amendment, rezoning, tentative map, conditional use permit, variances, or design review.
- X. "Rental unit" means a dwelling unit that is intended to be offered for rent or lease and that cannot be sold individually in conformance with the Subdivision Map Act.
- Y. "Residential impact fee" means a fee or charge imposed on residential development to pay for a development's impact on the need for affordable housing. The fee is based on the projected incomes of new employees associated with the new market rate developments.
- Z. "Residential development project" means an application for a planning permit or building permit at one location to create one or more additional dwelling units, convert nonresidential uses to dwelling units, subdivide a parcel to create one or more separately transferable parcels intended for residential development, or implement a condominium conversion, including development constructed at one time and in phases. "One location" includes all adjacent parcels of land under common ownership or control, the property lines of which are contiguous at any point, or the property lines

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of which are separated only by a public or private street, road, or other public or private right-of-way, or separated only by the lands owned or controlled by the developer.

AA. "Very low income households" means households with incomes no greater than the maximum income for very low income households, as published annually by the City for each household size, based on United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD) income limits for San Mateo County.

12.230.030 Affordable Housing Requirements

A. For-sale residential development projects. All new for-sale residential development projects of five (5) or more units shall either include at least fifteen percent (15%) of the total units as affordable housing units restricted for occupancy by low and moderate income households, unless an alternative is proposed by the developer and approved by the City Council, as provided in Section 12.230.060.B.

1. For purposes of this Chapter, the number of units in a residential development whose development includes the demolition or removal of existing residential units and the construction of new residential units shall be the difference between the new units constructed and the existing units demolished or removed.

2. Total units shall not include any units granted pursuant to density bonuses provided under state density bonus law.

3. For "for-sale" residential development projects, forty percent (40%) of the affordable housing units (or six percent (6%) of the total development) shall be restricted to occupancy by Low Income Households, and sixty percent (60%) of the affordable housing units (or nine percent (9%) of the total development) shall be restricted to occupancy by Moderate Income Households.

4. In determining the number of affordable housing units required, any decimal fraction of less than 0.5 shall be rounded down to the nearest whole number, and any decimal fraction of 0.5 or more shall be rounded up to the nearest whole number.

5. In determining the number of affordable housing units required for decimal fractions of less than 0.5, the developer shall be required to either construct one additional affordable unit or to pay the partial unit payment set forth in Subsection 12.230.040.C below.

B. Rental residential development projects. A residential impact fee is hereby imposed on all developers of rental residential development projects as required under Section 12.230.040 of this Chapter, unless an alternative is proposed by the developer and approved by the City Council. No application for a rezoning, tentative map, conditional use permit, design review, or building permit shall be approved, nor shall any such rental project be constructed or condominium conversion approved without compliance with this Chapter.

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C. Nonresidential development projects. A Commercial Linkage Fee is hereby imposed on all developers of nonresidential development projects, as required under Section 12.230.040 of this Chapter, unless an alternative is proposed by the developer and approved by the City Manager.

D. Mixed-use development projects. Mixed use developments must comply with the requirements for nonresidential developments in the nonresidential portion of the development and must comply with the requirements for residential developments for the residential portion of the development.

12.230.040 Affordable Housing Impact Fees

A. Affordable Housing Impact Fees are hereby established for all residential and nonresidential development projects, including residential impact fees for residential development projects and Commercial Linkage Fees for nonresidential development projects. The amount of the affordable housing impact fees shall be established and adjusted from time to time by resolution of the City Council. The impact fees shall not exceed the cost of mitigating the impact of residential or nonresidential development projects on the need for affordable housing in the City.

1. Residential Impact Fees for Rental Residential Projects. As provided in Section 12.230.030.B, all rental residential projects of five (5) or more units shall pay a Residential Impact Fee, unless an alternative is proposed by the developer and approved by the City Council as described in Section 12.230.060.

2. Commercial Linkage Fees. As provided in Section 12.230.030, all nonresidential development projects shall pay a Commercial Linkage Fee, unless an alternative is proposed by the developer and approved by the City Council as described in Section 12.230.060.

3. Residential Impact Fees for "For Sale Residential Projects." As provided in Section 12.230.060.B, and with the approval of the City Council, for-sale residential projects may pay a Residential Impact Fee rather than provide onsite units.

B. Payment of the impact fees shall be due at the issuance of the building permit for the development. The fees shall be calculated based on the fee schedule in effect at the time the building permit is issued.

C. For for-sale development projects that trigger an affordable unit requirement with a decimal fraction of less than 0.5, the developer shall either build one additional affordable unit or pay an impact fee equal to the decimal fraction multiplied by the residential impact fee for the for-sale residential project.

12.230.050 Exemptions

The requirements of this Chapter do not apply to:

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A. Residential development projects of four (4) or fewer new housing units, the creation of four or fewer parcels, provided that no more than four dwelling units are allowed; or accessory dwellings created under Section 12.92.031 of the San Bruno Municipal Code.

B. Replacement construction that results in a net increase of four (4) or fewer new housing units.

C. Residential developments that already have more deed-restricted units that are affordable to very low, low and moderate income households than this Chapter requires, for the period required under this Chapter.

D. Residential or nonresidential development projects which fall within one or more of the following categories:

1. Nonresidential development projects located on property owned by the state of California, the United States of America, or any of its agencies and used exclusively for governmental or educational purposes.

2. Any structure proposed to repair or replace a building that was damaged or destroyed by fire or other calamity, so long as the square footage and use of the building remains the same, and construction of the replacement building begins within one year of the damage's occurrence.

3. Residential or nonresidential development projects to the extent they have received a vested right to proceed without payment of Affordable Housing Impact Fees pursuant to state law, including those that are the subject of development agreements currently in effect with the City, if such development agreements were approved prior to the effective date of this Chapter and where such agreements expressly preclude the city from requiring payment of the Affordable Housing Impact Fee.

4. Residential or nonresidential development projects for which applications have been deemed complete prior to the effective date of this chapter.

5. Other uses that may be specified by resolution of the City Council.

12.230.060 Alternatives

A. Notwithstanding any contrary provisions of this Chapter, the City may determine that alternatives to the requirements in Section 12.230.030 of this Chapter as proposed by the developer in the affordable housing plan required by Section 12.230.070 of this Chapter, provided that the City Council makes the findings in Section 12.230.070.D E, or F as appropriate.

B. For-sale residential projects. As an alternative to construction of affordable housing units on-site or payment of an Residential Impact Fee, if approved by the City Council, developers of for-sale residential development projects may propose to

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mitigate affordable housing impacts of such housing through alternative means, including but not limited to:

1. Payment of Residential Impact Fees in accordance with Section 12.230.040.
2. Provision of affordable units off site.
3. Dedication of land to the City suitable for construction of affordable units.
4. Purchase of existing units for conversion to affordable units.
5. Acquisition and rehabilitation of affordable units.
6. Increase in the total number of affordable housing bedrooms.
7. Provision of greater level of affordability.
8. Construction of second dwelling units.
9. Providing rental affordable units rather than for-sale affordable units.

C. Rental residential development projects. As an alternative to payment of housing impact fees, developers of rental residential development projects may propose to help mitigate the affordable housing impacts of such developments through an alternative mitigation program, including but not limited to:

1. Construction of affordable housing units on site or through an alternative mitigation program, such as the provision of off-site affordable units, donation of land for the construction of affordable units, or purchase of existing units for conversion to affordable units.

2. For rental residential developments proposing this alternative, six percent (6%) of the total development shall be restricted to occupancy by very low income households, and nine percent (9%) of the total development shall be restricted to occupancy by low and moderate income households.

3. If a developer proposes to provide affordable rental units, then, to ensure compliance with the Costa-Hawkins Rental Housing Act (Chapter 2.7 of Title 5 of Part 4 of Division 3 of the Civil Code), the City may only approve such a proposal if, as required by Civil Code Sections 1954.52(b) and 1954.53(a)(2), the developer agrees in a contract with the City to limit rents in accordance with Section 12.260.070 of this Chapter in consideration for a direct financial contribution from the City or a form of assistance specified in the State's Density Bonus Law (Chapter 4.3, commencing with

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Section 65915, of Division 1 of Title 7 of the Government Code). The developer may request that the City waive the Residential Impact Fee as a direct financial contribution to the rental residential development project.

D. Nonresidential development projects. As an alternative to payment of the Commercial Linkage Fees, developers of nonresidential development projects may propose to mitigate the affordable housing impacts of such development through the construction of affordable housing units on site or through an alternative mitigation program, as provided in subsections B or D of this section.

1. The City Council may adopt by resolution the percentage of affordable units needed to help mitigate the impact of nonresidential development projects on the need for affordable housing.

E. Any affordable rental or for-sale units proposed as an alternative shall be subject to the requirements described in Section 12.230.080 of this Chapter.

12.230.070 Compliance Procedures

A. General. Approval of an Affordable Housing Plan and execution, recordation and implementation of an Affordable Housing Agreement shall be conditions of any approval of a residential or nonresidential development project, which includes the provision of affordable housing units as provided in Section 12.230.030 or 12.230.060. No Affordable Housing Plan is required if the developer proposes only to pay the Residential Impact Fee or commercial linkage fee.

B. Affordable Housing Plan. No application for approval of a residential or nonresidential development project which includes the provision of affordable housing units may be deemed complete until an Affordable Housing Plan containing all the elements identified below is submitted to the Community Development Department. The Affordable Housing Plan shall include:

1. The number, location, number of bedrooms and size of the proposed market rate and affordable housing units and the basis for calculating the number of affordable housing units;

2. The City may approve an increase in the number of units per acre in a residential development if the increase is consistent with state density bonus law per Section 65915 of the State Government Code. If the applicant is proposing to apply for a density bonus, the Affordable Housing Plan must include an analysis of the density bonus request;

3. A site plan depicting the proposed location of the initial affordable housing units;

4. A floor plan depicting the proposed location of the initial affordable housing units within a residential development;

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5. The income levels to which each affordable housing unit will be made affordable;

6. The mechanisms that will be used to assure that the units remain affordable for the desired term, such as resale and rental restrictions, deeds of trust, and City's option to purchase and other documents;

7. For a phased residential development proposing any change to the phasing requirements specified in Section 12.230.080.B, a phasing plan that provides for the timely development of affordable housing units in each proposed phase of development;

8. The conceptual plan for initial sales or rental by Developer of the affordable housing units; and

9. Any proposed Alternative as provided in Section 12.230.060 along with information necessary to support the findings required in Section 12.230.070.E. for approval of such alternatives.

10. The City Manager may request additional information as reasonably needed to assist with evaluation of the Affordable Housing Plan under the standards of this Chapter.

C. The Affordable Housing Plan shall be processed concurrently with all other permits required for the residential or nonresidential development project. Before approving the Affordable Housing Plan, the City Council shall find that the Affordable Housing Plan conforms to this Chapter. A condition shall be attached to the first approval of any residential or nonresidential development project to require recordation of an affordable housing agreement, as described in this subsection, prior to the approval of any final or building permit for the residential or nonresidential development project.

D. Findings – all alternatives. The City Council may or conditionally approve an alternative contained in an affordable housing plan if the City Council determines, based on substantial evidence, that the proposed alternative supports adopted Housing Element policies and goals and assists the City in meeting state housing requirements.

E. Findings – alternative proposing on-site affordable units. The City Council may approve or conditionally approve an affordable housing plan that proposes on-site construction of affordable units if the City Council determines, based on substantial evidence, that:

1. The proposed affordable units comply with the standards in Section 12.230.080, including without limitation compliance with Section 12.230.080.B requiring that the affordable units be made available for occupancy concurrently with the market-rate units; and

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2. The affordable units will help mitigate the impact of the project on the need for affordable housing.

F. Findings – alternative proposing off-site affordable units. If a developer proposes off-site affordable housing units or any other alternative in the Affordable Housing Plan, the City Manager may approve, conditionally approve or reject any alternative proposed by a developer subject to final approval by the City Council in its discretion. Any approval or conditional approval shall be based on a finding that:

1. Financing or a viable financing plan, which may include public funding sources, is in place for the proposed affordable housing units;

2. The proposed location is suitable for the proposed affordable housing, is consistent with the Housing Element, General Plan, and Zoning Ordinance, and will not tend to cause residential segregation; and

3. The net cost of the alternative is at least equal to the net cost to provide affordable housing units;

4. The alternative does not detract from the City's program to meet its housing goals and obligations under California Housing Law (Government Code Section 65580 and following) and California Community Redevelopment Law (Health and Safety Code Section 33000 and following).

G. Affordable Housing Agreement. To ensure compliance with the approved Affordable Housing Plan, an affordable housing agreement acceptable to the City Manager or designee shall be recorded against the residential or nonresidential development project prior to approval of any final, or issuance of any building permit, whichever occurs first. The affordable housing agreement shall specify the number, type, location, size, phasing, and terms of affordability of all affordable units, provisions for income certification and screening of potential purchasers or renters of units, and resale control mechanisms, including the financing of ongoing administrative and monitoring costs, consistent with the approved Affordable Housing Plan, and subject to final approval by the City Council.

H. The City Manager may adopt affordable housing guidelines consistent with this Chapter and the Housing Element for the purpose of carrying out the administration of this Chapter and may update those guidelines periodically as required.

12.230.080 Affordable Housing Unit Standards

A. All affordable units provided pursuant to Sections 12.230.030 and 12.230.060 shall be comparable to the overall quality of construction to market-rate units in the same housing development as follows:

1. The exterior appearance of the affordable units shall be compatible with that of market-rate units.

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2. Interior finishes and amenities may not differ from those provided in the base model market rate units.

3. The number of bedrooms in the affordable units shall be comparable to the average number of bedrooms in the market-rate units, and the affordable units shall be reasonably dispersed within the residential development, with unit locations comparable to those of the market-rate units, subject to review and approval by the Community Development Director.

4. The affordable units shall have the same amenities as the market rate units, including the same access to and enjoyment of common open space, parking, storage, and other facilities in the residential development, provided at an affordable rent as defined in Section 12.230.010 or at affordable ownership cost as defined in Section 12.230.010.

B. Affordable units provided pursuant to Sections 12.230.030 and 12.230.060 shall be made available for occupancy concurrently with the market-rate units. For the purposes of this subsection, "concurrently" means that the City may not issue building permits for more percent (50%) of the market-rate units until it has issued building permits for all of the affordable units, and the City may not approve any final inspections or certificates of occupancy for more than fifty percent (50%) of the market-rate units until it has issued final inspections or certificates of occupancy for all of the affordable units. However, the City Council may modify the timing requirements for construction and occupancy of market-rate units to accommodate phasing schedules, model variations, or other factors, if the City Council determines this will provide greater public benefit.

C. All affordable units provided pursuant to Sections 12.230.030 and 12.230.060 shall be subject to a resale restriction, deed of trust, and/ or regulatory agreement recorded against the property for execution by the City Manager, in a form approved by the City Attorney, to ensure the continued affordability of the affordable units.

1. Affordable housing units produced under this Chapter shall be legally restricted to occupancy by Households of the income levels for which the units were designated for a period of not less than fifty-five (55) years for rental units and forty-five (45) years for owner-occupied units.

2. To the extent permitted by state and federal law, preferences will be given to those Households where at least one member in the Household lives or works in San Bruno or works for a school district serving the residents living in the City, except for those deemed ineligible due to conflict of interest noted below.

3. Conflict of Interest. The following individuals are ineligible to purchase or rent certain affordable housing units: (i) Elected or appointed City officials (including their spouse and dependents) who participated in the approval process for a project that included the affordable housing units (ii) the project applicant and its officers

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and employees (and their spouse and dependents), and (iii) the project owner and its officers and employees (and their spouse and dependents). However, employees of the project applicant and project owner may purchase or rent affordable housing units if the units were designed and intended to be occupied by employees of the applicant or owner, with approval of the City Council. Officials, employees, or consultants of the City and members of City boards and commissions shall comply with all applicable laws, regulations, and policies relating to conflicts of interest as to their eligibility to develop, construct, sell, rent, lease, occupy, or purchase an affordable unit.

4. Any household that occupies an affordable unit must occupy that unit as its principal residence, unless otherwise approved in writing for rental to a third party for a limited period of time due to household hardship, as determined by the City.

5. No household may begin occupancy of an affordable unit until the household has been determined to be eligible to occupy that unit by the community development director or designee. The City Manager or designee may from time to time adopt guidelines for determining household income and affordable housing cost, determining buyer eligibility, monitoring, and relevant administrative provisions.

12.230.090 Affordable Owner-Occupied Units

A. Sale to Eligible Households. Owner-occupied units will be offered to eligible households at a sales price set so that the eligible household will pay an affordable ownership cost. The developer shall certify each prospective purchaser's Income to the City or City's designee and obtain approval of the household prior to close of escrow. The developer must obtain and review documents that demonstrate the prospective owner's total income and assets and submit such information on a form approved by the City.

B. Initial Sales Price. The initial sales price of the affordable housing unit shall be set by the City so that the eligible household will pay an affordable ownership Cost. The City shall respond to a written request by developer and provide developer with a good-faith estimate of the initial sales price during pre-development.

C. Deed Restrictions. Deed restrictions provided by the City, recorded against title to the affordable housing unit, and secured by a deed of trust shall be required as condition of sale for all owner-occupied affordable housing units and will include, but are not limited to, the City's or its designee's option to purchase, resale restrictions, occupancy requirements, payment of penalty for any default, and procedures and policies regarding changes in title. Deed restrictions must be approved by the City Attorney prior to close of escrow.

D. Administration. The Developer or subsequent seller shall pay all administrative costs associated with the sale of the for sale affordable housing units, including for buyer review and qualification, and the review and processing of documents associated with the transaction.

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12.230.100 Affordable Rental Units

A. Non-Discrimination. When selecting tenants, the owners of Affordable housing units shall comply with all fair-housing laws, rules, regulations, and guidelines. The owner shall apply the same rental terms and conditions to tenants of affordable housing units as are applied to all other tenants, except as required to comply with this Chapter or with other applicable government programs.

B. Annual Report. The owner shall submit an annual report summarizing the occupancy of each affordable housing unit for the year and demonstrating the income-eligibility of the tenant. The City Manager may require additional information to confirm household income and rental price of the unit if he or she deems necessary. The City Council may establish and charge the owner or operator of the rental residential development an annual fee to cover the costs of this monitoring. The fee will be added to the Master Fee Schedule by City Council resolution.

C. Periodic Audit. The City shall have the right to periodically audit the information supplied to the City for the annual report if deemed necessary to ensure compliance with this Chapter. In addition, owners of affordable housing units shall cooperate with any audits conducted by the City, State agencies, Federal agencies, or their designees.

D. Change in Income. If, after moving into an affordable rental housing unit, a tenant's household income exceeds the limit for that unit, the tenant household may remain in the unit as long as his or her household income does not exceed 120 percent of the income limit, but the tenant's rent shall be increased to 30 percent of monthly income upon expiration of the tenant's lease. Once the tenant's income exceeds 120 percent of the income limit, the tenant shall be given one year's notice to vacate the unit, or the next available market rate unit in the residential development shall be offered as an affordable housing unit. The owners of the residential development are responsible for notifying the City of such changes in income and documenting the process by which the existing tenant will be removed or the next available unit shall be offered as an affordable housing unit.

12.230.110 Administrative Relief

A. As part of an application for the first approval of a residential or nonresidential development project, a developer may request that the requirements of this Chapter be waived or modified by the City Council, based upon a showing that applying the requirements of this Chapter would result in an unconstitutional taking of property or would result in any other unconstitutional result, or because there is no reasonable relationship between the impact of the development and the need for affordable housing. concurrently

1. Any request for a waiver or modification shall be submitted with the project application. The developer shall set forth in detail the factual and legal basis for the claim, including all supporting technical documentation.

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2. Any request for a waiver or modification based on this Section shall be reviewed and considered at the same time as the project application. The City Council may from time to time establish by resolution a processing fee for review of any request for a waiver or modification.

B. The waiver or modification may be approved only to the extent necessary to avoid an unconstitutional result, based upon legal advice provided by or at the behest of the City Attorney, after adoption of written findings, based on legal analysis and the evidence. If a waiver or modification is granted, any change in the project shall invalidate the waiver or modification, and a new application shall be required for a waiver or modification pursuant to this Section.

12.230.120 Affordable Housing Fund

A. There is hereby established in the City of San Bruno a separate "Affordable Housing Fund," pursuant to Section 66006 of the California Government Code. All Affordable Housing Impact Fees or other funds collected under this Chapter shall be deposited into the City's Affordable Housing Fund.

B. The monies in the Affordable Housing Fund and all earnings from investment of the moneys in the Fund shall be expended exclusively to provide housing affordable to extremely low income, very low income, lower income, and moderate income households in the City, consistent with the goals and policies contained in the City's Housing Element and the purposes for which the fees were collected, and for administration and compliance monitoring of the affordable housing program.

C. The City Council may, from time to time, adopt guidelines for expenditure of monies in the affordable housing fund.

12.230.130 Enforcement

A. Payment of the Affordable Housing Impact Fee is the obligation of the developer for a residential or nonresidential development project. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including, but not limited to, actions to revoke, deny, or suspend any permit or development approval.

B. The City Attorney shall be authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, and all other covenants or restrictions placed on affordable units, by civil action and any other proceeding or method permitted by law.

C. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any developer or owner from the requirements of this Chapter. No permit, license, map, or other approval or entitlement for a residential development shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this Chapter have been satisfied.

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D. The remedies provided for in this Section shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

Section 4. Adoption of this ordinance is found to be categorically exempt from the California Environmental Quality Act because the adoption of this resolution is not a project, in that it is a government funding mechanism which does not involve any commitment to any specific project (CEQA Guidelines Section 15378(b)(4)), and because it can be seen with certainty that there is no possibility that the fees may have a significant effect on the environment, in that this ordinance contains no provisions modifying the physical design, development, or construction of residences or nonresidential structures CEQA Guidelines Section 15061(b)(3)).

Section 5. If any section, subsection, sentence, clause or phrase of the ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it should have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 6. The City Clerk shall publish this ordinance in accordance with applicable law.

Section 7. Effective date. This ordinance shall take effect sixty (60) days from the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance shall be published in the San Mateo Daily Journal, a newspaper of general circulation published and printed in the County of San Mateo and circulated in the City of San Bruno.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM

City Attorney

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I hereby certify that the foregoing Ordinance No. _____ was introduced on _____, and adopted at a regular meeting of the San Bruno City Council on _____, by the following vote:

AYES: COUNCILMEMBERS: _____

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NOES: COUNCILMEMBERS: _____

ABSENT: COUNCILMEMBERS: _____

City Clerk: _____



City Council Agenda Item Staff Report

CITY OF SAN BRUNO

DATE: November 22, 2016

TO: Honorable Mayor and City Council

FROM: Jimmy Tan, Public Services Director/City Engineer
Jim Burch, Deputy Public Services Director

SUBJECT: Waive Second Reading, and Adopt an Ordinance Adding Chapter 10.15 to the Municipal Code to Include Water Supply Cross-Connection and Backflow Prevention Standards

BACKGROUND:

A new ordinance adding Chapter 10.15 to the Municipal Code to include Water Supply Cross-Connection and Backflow Prevention Standards was introduced at the City Council meeting on October 25, 2016 for a first reading and public hearing. There were no public comments on the water supply cross-connection and backflow prevention standards at the City Council meeting.

Following the October 25, 2016 City Council meeting, staff received City Councilmember questions inquiring about the number of backflow devices citywide which require inspection, and the costs associated with those inspections. There are approximately 315 backflow devices installed throughout San Bruno out of nearly 12,000 water customers. The City works with San Mateo County Environmental Health Services to conduct inspections of approximately 50 of the 315 backflow devices annually. County annual costs are allocated to agencies based on the total number of service connections and not the number of backflow assemblies as the number of service connections relate more closely to the risk to the system and to the County's inspection costs. The cost for inspection services in 2015-16 was \$39,000 and staff anticipates expenditures of \$42,500 for similar work in 2016-17.

The State of California and San Mateo County Environmental Health Services require water purveyors such as the City of San Bruno to protect their public water supply systems from potential and actual contamination. To prevent contamination, backflow prevention assembly devices are installed where the public water system connects to the customer's residence or business. While modern plumbing fixtures have some built-in backflow protection measures such as air gaps in toilet fill valves, dishwashers, and other appliances, a certified backflow device is usually necessary for businesses and manufacturing facilities. Backflow devices have internal check valves that close if the water pressure from the City's supply lines should drop, which then prevents potentially contaminated water from flowing back into the City's system from the property. For example, a backflow assembly system would prevent water from swimming pools, irrigation, restaurants, and fire sprinkler systems that may contain contaminants to enter the City's drinking water system. Backflow devices need to be routinely inspected, and repaired or replaced if needed, to prevent a device failure, which could allow contaminants from the property into the drinking water system.

T.e.

The conditions likely to create a backflow event are common, such as a property owner or worker draining down a house or building to make a plumbing repair; a broken water main or distribution pipe; power outages; fire fighters using large quantities of water to extinguish a fire, or; any piece of equipment or process creating water pressures greater than the pressure in water distribution system. A single failed cross connection can contaminate the entire water supply in a distribution zone. If the City's water system were to become contaminated, the water in the area would need to be isolated, and the affected zone would be flushed out, treated, and tested. It can take crews several days or weeks to complete repairs, and then test and treat the water after an incident. During a repair, water service would be limited or halted dependent on the severity of the contamination. Water service would only be restored to the area after the Department of Health certifies the water to be safe.

The City initially determines when a cross connection backflow device is required when a property owner requests a building permit. The City's determination is primarily based on the operations of the facility and if the building requires a separate water line for fire sprinklers or irrigation. In general, cross-connection devices are required at most commercial, industrial, or manufacturing facilities that use chemicals, or generate potentially toxic or hazardous waste, as well as at large multi-unit residential buildings. Examples of facilities required to install cross-connection devices include nail salons, dry cleaners, medical and dental facilities, schools, prisons, restaurants, hotels, cemeteries, mortuaries, and properties with swimming pools.

The State Water Resources Control Board requires water agencies to complete annual inspections of every backflow device in their systems. At the May 10, 1976 City Council meeting, the City Council approved an agreement with between the City of San Bruno and San Mateo County for County inspectors to complete annual cross-connection inspection services and submit reports to the State. The contract remains in effect until either the City or County choose to terminate it. All inspection activities by the County, including enforcement and compliance, are coordinated and approved by City staff. If County inspectors determine that a backflow device needs to be repaired or replaced, the property owner is responsible to complete any repairs, which can range from \$3,000 to \$10,000 depending on the type of system.

While the City is complying with State backflow inspection, reporting, and enforcement requirements, none of these practices are currently codified in the Municipal Code. In June 2016, the California Water Resources Control Board updated the State Code of Regulations to encourage local water agencies adopt "operating rules or ordinances to implement the cross-connection program." Such an ordinance should designate the agency as the administrative and enforcement authority; explain and specify the provisions of an agency's backflow protection system; inspection, testing, maintenance record and reporting procedures; and how property owners are to test and maintain their backflow devices.

DISCUSSION:

Staff proposes a Cross-Connection Ordinance adding Chapter 10.15 to the San Bruno Municipal Code (Water Municipal Services). The purpose of the Ordinance is to protect the water supply from cross-connection and back flow contamination and incorporates all of the

elements to comply with the California Code of Regulations and to ensure the safety of the City's water supply. The principal provision designates the City of San Bruno as the program's Administrative Authority. San Mateo County Environmental Health Services Division will continue to inspect backflow prevention and cross-contamination devices and work with property owners to achieve compliance. The new ordinance provides the City with specific enforcement authority, including the ability to issue warnings, fines, and ultimately discontinuing water service if necessary to achieve compliance and avoid contamination.

The ordinance will not tangibly affect the City's practices, and the cross-connection program will continue operating as it is currently. City staff will continue reviewing development permit applications to determine if a backflow device is required. San Mateo County engineers will continue annual inspections and submit reports to the State. Property owners will still be responsible to maintain and repair their systems as needed by a certified cross-connection contractor.

During preparation of this Ordinance, staff learned that in 1976, the City Council adopted an ordinance (Ordinance No. 1268, attached for reference) regarding cross-connection devices, but the ordinance was never codified, for unknown reasons. Because that ordinance is now outdated and was never codified, the proposed ordinance will be considered a new addition to the Municipal Code.

The Cross-Connection Ordinance will take effect 30 days from the date of adoption by the City Council. The ordinance will be incorporated into the Municipal Code during the semi-annual supplemental update in April 2017, as the October 2016 supplemental was already published.

FISCAL IMPACT:

There is no new budget impact by adopting this ordinance. The City will continue reimbursing the County for annual inspections in an anticipated amount of \$42,500 which is funded from the 2016-17 Water Division Operating Budget.

ALTERNATIVES:

1. Provide policy direction on recommendations to the Ordinance or the cross-connection backflow program and direct that the proposed Ordinance be revised before introduction.
2. Do not introduce the Ordinance. The City would be out of compliance with Title 17 of the California Code of Regulations.

RECOMMENDATION:

Waive second reading, and adopt an Ordinance Adding Chapter 10.15 to the Municipal Code to include water supply cross-connection and backflow prevention standards.

ATTACHMENTS:

1. Proposed Ordinance
2. San Mateo County Environmental Health Services Cross-Connection Control Program Description

REVIEWED BY:

_____ CM
_____ ACM
_____ CA

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SAN BRUNO
ADDING CHAPTER 10.15 OF THE CITY OF SAN BRUNO MUNICIPAL CODE TO
UPDATE WATER SUPPLY CROSS-CONNECTION AND BACKFLOW
PREVENTION STANDARDS IN ACCORDANCE WITH TITLE 17 OF THE
CALIFORNIA CODE OF REGULATIONS**

The City Council of the City of San Bruno does hereby ordain as follows:

Section 1. Factual Background and Findings.

WHEREAS, California Code of Regulations (CCR), Title 17 requires the City of San Bruno as a water purveyor to protect the Public Water Supply System from potential and actual contamination; and

WHEREAS, in order to protect the water supply from potential and actual contamination and to comply with State regulations, the City has implemented backflow prevention and cross-connection standards; and

WHEREAS, the Public Services Department staff has jointly worked with the California Department of Public Health Service and San Mateo County Health Department to add Chapter 10.15 to the San Bruno Municipal Code to comply with the recently adopted regulations in CCR, Title 17;

WHEREAS, this ordinance is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per 14 CCR section 15308 (actions for the protection of the environment).

NOW, therefore, the City Council of the City of San Bruno does ordain as follows:

Section 2. Ordinance 1268, adopted on September 13, 1976, is hereby repealed. Chapter 10.15 of the San Bruno Municipal Code is added as follows:

a) Chapter 10.15 ("Cross-Connection and Backflow Standards") is added and shall read as follows:

10.15.010

PURPOSE

The purpose of this chapter is to describe the Cross-Connection Control Program implemented by the City of San Bruno Public Services Department to protect the public water supply against actual or potential contamination through cross-connection and backflow.

10.15.020

SCOPE

The scope of the Cross-Connection Control Program includes all of the elements necessary to ensure compliance with the California Code of Regulations, Title 17, Public Health Sections 7583 through 7605. The City of San Bruno partners with the San Mateo County Environmental Health Services Division to implement the majority of the scope of this program, including compliance with required program personnel certifications, surveying of residential, industrial and commercial user facilities for potential cross-connection hazards, designation of appropriate backflow preventers, requirements for testers and testing of backflow prevention assemblies, and maintenance of records.

10.15.030

DEFINITIONS

The following definitions describe those terms and phrases that are pertinent to the various elements of a cross-connection control program:

A. Approved Backflow Prevention Assembly

The term "Approved Backflow Prevention Assembly" shall mean assemblies listed, and installed as prescribed, on the most current List of Approved Backflow Prevention assemblies, published by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research (USC Foundation), and meet any additional requirements deemed necessary by the City or Environmental Health.

B. Approved Water Supply

The term "approved water supply" means any local water supply whose potability is regulated by a State or Local Health Agency.

C. Auxiliary Water Supply

The term "auxiliary water supply" means any water supply on or available to the premises other than the approved water supply as delivered by the water purveyor to the service connection.

D. AWWA

The term "AWWA" is an acronym for the American Water Works Association.

E. Backflow

The term "backflow" shall mean a flow condition, caused by a differential in pressure, which causes the flow of water or other liquid, gases, mixtures or substances into the distributing pipes of a potable supply of water from any source or sources other than an approved water supply source. Back siphonage is one cause of backflow. Back pressure is the other cause.

F. Backflow Preventer

An approved assembly or means designed to prevent backflow.

1. Air Gap.

The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water to a tank, plumbing fixture, receptor or other assembly and the flood level rim of the receptacle. These vertical physical separations must be at least twice the diameter of the water supply outlet, never less than 1 inch.

2. Reduce Pressure Principle Backflow Prevention Assembly.

This assembly consists of two independently acting approved check valves together with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves and below the first check valve. These units are located between two tightly closing resilient-seated shutoff valves as an assembly and equipped with properly located resilient-seated test cocks.

3. Double Check Valve Assembly.

This assembly consists of two internally loaded check valves, either spring-loaded or internally weighted, installed as a unit between two tightly closed resilient-seated shutoff valves and equipped with properly located resilient-seated test cocks.

4. Double Check Valve Detector Assembly.

This assembly is a specially designed backflow assembly composed of a line-sized-approved double check valve assembly with a bypass containing a water meter and an approved double check valve assembly. The meter shall register accurately for only very low rates and is used to show unauthorized usage or leaks in the customers system.

5. Pressure Vacuum Breaker Assembly.

This assembly contains one or two independently operated spring loaded check valves and an independently operated spring loaded air inlet valve located on the discharge side of the check or checks. It also includes two tightly closing

shutoff valves on each side of the check valves and equipped with properly located resilient-seated test cocks.

6. Atmospheric Vacuum Breaker Assembly.

This assembly contains an air inlet valve, a check seat and an air inlet port(s). A shut off valve immediately upstream may be an integral part of the assembly, but there shall be no shutoff valves or obstructions downstream. The assembly shall not be subject to operating pressure for more than twelve (12) hours in any twenty-four (24) hour period.

7. Hose Bibb Vacuum Breaker.

This device is permanently attached to a hose bibb and acts as an Atmospheric Vacuum Breaker.

G. Customer or Responsible Party

The Customer or Responsible Party is the person that either has applied for water service from the City, or owns or controls water piping or fixtures served by the City water supply. The terms customer and responsible party have the same meaning within this ordinance.

H. Contamination

The term "contamination" means a degradation of the quality of the potable water by any foreign substance which creates a hazard to the public health, or which may impair the usefulness or quality of the water.

I. Pollution

The term "pollution" shall mean an impairment of the quality of the water to a degree which does not create a hazard to the public health, but, which does adversely and unreasonably affect the aesthetic qualities of such waters for domestic use.

J. Cross-Connection

The term "cross-connection" as used in this document means any unprotected actual or potential connection between a potable water system used to supply water for drinking purposes and any source or system containing unapproved water or a substance that is not or cannot be approved as safe, wholesome, and potable. By-pass arrangements, jumper connections, removable sections, swivel or changeover devices, or other devices through which backflow could occur, shall be considered to be cross-connections.

K. Person

The term "person" means an individual, corporation, company, association, partnership, municipality, public utility, or other public body or institution.

L. Facility

The term “facility” means any and all areas on a water user’s property which are served or have the potential to be served by the public water system.

M. Public Water System

The term “public water system” means a system for the provision to pipe water to the public for human consumption that has fifteen or more service connections or regularly serves an average of 25 individuals daily at least 60 days out of the year.

N. Service Connection

The term “service connection” refers to the point of connection of a facility’s piping to the water supplier’s facilities, usually considered the point at the outlet from the water meter.

O. Water Supplier

The term “water supplier” means the person who owns or operates the approved water supply system.

P. Water User

The term “water user” means any person obtaining water from an approved water supply system.

Q. City

Unless otherwise specified, the term “City” shall refer to the City of San Bruno Department of Public Services - Water Division or San Mateo County Environmental Health working as a partner to the Water Division.

R. Inspection Tag

“Inspection Tag” means a current-calendar-year backflow tag purchased from San Mateo County Environmental Health.

S. Cross-Connection Control Program Specialist

The term “cross-connection control program specialist” means a person certified by AWWA, or an approved equivalent certifying entity, to evaluate the hazards inherent in supplying a customer’s water system.

T. Certified Tester

The term “certified tester” means a person certified by AWWA or an approved equivalent certificate and certified by San Mateo County Environmental Health Services to perform backflow prevention assembly testing.

10.15.040 ADMINISTRATION OF PROGRAM

A. Authority

City of San Bruno Department of Public Services is the Administrative Authority for the Cross-Connection Control Program. The authority to administer this program comes from State of California, Title 17; State of California, Public Utilities Commission Rule 16c; and State of California, Department of Public Health Services (and any successor agencies).

B. Program Administrator

The program administrator for the Cross-Connection Control Program in the City of San Bruno is the Public Services Director or his/her designee. The City also partners with the San Mateo County Environmental Health Services Division through an agreement to implement portions of the program, as allowed by California Health and Safety Code. However, the City is ultimately responsible for the implementation of the program.

10.15.050 APPROPRIATE BACKFLOW PROTECTION

A. New Construction, Remodels and Tenant Improvements

1. Residential, Single-Family and Duplexes Only

a. Domestic Water – The City may require an Approved Backflow Prevention Assembly to be installed on the customer's facility, as close as possible to the service connection. The assembly shall be a Reduced Pressure Principle Backflow Prevention Assembly (RP) or a Double Check Valve Assembly (DC) as determined by the City. If it is determined that a backflow prevention assembly is required, the customer may also need to install a thermal expansion tank in accordance with the California Plumbing Code.

b. Irrigation System – The City requires an Approved Backflow Prevention Assembly to be installed on the customer's facility on the branch line serving an Irrigation system. The assembly shall be a Pressure Vacuum Breaker (PVB), Reduced Pressure Principle Backflow Prevention Assembly (RP), or Atmospheric Pressure Vacuum Breaker (AVB) as determined by the City.

c. Fire Suppression System – All facilities with an installed fire suppression system must have an Approved Backflow Prevention Assembly, excluding flow-through fire systems, on the branch line serving the fire suppression system. The assembly shall be a Double Check Valve Assembly (DC) or as determined by the City. Flow-through fire protection systems shall be constructed with approved potable water piping and material

2. Commercial, Industrial, Institutional, Multi-Family

- a. Domestic Water – The City may require an Approved Backflow Prevention Assembly to be installed on the customer's facility, as close as possible to the service connection. The assembly shall be a Reduced Pressure Principle Backflow Prevention Assembly (RP) or a Double Check Valve Assembly (DC) as determined by the City, the customer may also be required to install a thermal expansion tank in accordance with the California Plumbing Code.
- b. Irrigation System – The City requires an Approved Backflow Prevention Assembly to be installed on the customer's facility, as close as possible to any irrigation system service connections or on any irrigation branch line. The assembly shall be a Pressure Vacuum Breaker (PVB), Reduced Pressure Principle Backflow Prevention Assembly (RP) or Atmospheric Pressure Vacuum Breaker (AVB) as determined by the City.
- c. Fire Suppression System - All facilities with an installed fire suppression system must have an Approved Backflow Prevention Assembly. The assembly shall be a Double Check Valve Detector Assembly (DCDA) and installed according to City standard specifications and drawings, and this Ordinance. The assembly must incorporate a City- supplied bypass water meter at customer's cost which is also protected with an approved double check valve assembly.

B. Existing Service Connection

When it is determined in a survey by a City or Environmental Health Cross-Connection Control Program Specialist that an actual or potential cross connection or backflow condition is present on an existing facility, the installation of an appropriate backflow preventer shall be required. Should an existing backflow prevention assembly be in place that does not meet the City's installation requirements, does not comply with this ordinance, or does not provide adequate protection with the degree of hazard found on site, the assembly shall be replaced or upgraded as required by the City, at the expense of the customer or responsible party.

10.15.060 SURVEYS

A. Identification of Survey Candidates

The City may identify specific industries that might pose an actual or potential backflow hazard to the public water supply. Some of these industries are identified from common lists of industries where cross-connections are likely to be found, as provided by the State of California, the USC Foundation, and other recognized organizations. From these lists, specific facilities in the City's service area may be identified by directories, mailing lists, associations, and business licenses.

B. Survey

Surveys may take the form of office surveys or field surveys. Office surveys may include determination of facility hazards based on business type or known water use on the facility. Office surveys could also include evaluation of responses to mailed or on-line surveys.

Field surveys may include evaluation of water use by observations made from public or private areas not on the subject facility, or physical inspection on all or a portion of the facility. When possible, a request to survey the facility shall be made at least 24 hours in advance, and a date and time agreed upon with a responsible party.

Should the request to survey be denied by a responsible party, notice shall be sent to the customer or responsible party directing installation of the appropriate backflow assembly, at the water meter, based on best available knowledge of the water use and potential hazards at the facility.

During the survey many factors are considered to determine if activities or water use on facility are or could be a potential hazard to the public water supply. Factors that may be considered include:

1. Alternative sources of water on site (auxiliary water supplies).
2. Piping configurations on site.
3. Uses of water on site.
4. Types of water using equipment.
5. Condition of water using equipment.
6. Complexity and elevations of plumbing on site, and the potential for alterations of that system.
7. Storage and use of hazardous materials on site.

All the factors found and recorded during the survey shall be considered in the determination of the degree of potential hazard (degree of hazard) to the public water supply. This information shall be considered in the determination of the appropriate backflow preventer. The customer or responsible party shall be informed of the requirement to provide backflow protection and the type of backflow prevention assembly required in accordance with Title 17 of the California Regulations Related to Drinking Water or the direction of the County Health Officer.

10.15.070 LOCATION AND CONFIGURATION OF BACKFLOW ASSEMBLIES

Backflow prevention assemblies shall be installed in accordance with Title 17 of the California Code of Regulations, Section 7603, the City's Standard Specifications, and the most recent edition of the USC Foundation manual. Any deviation from

these requirements shall require the City's approval. Unless otherwise permitted by the City, all backflow preventers shall be installed on the customer's or responsible party's facility.

A. Air-Gap Separation (AG)

The Air-gap separation shall be located as close as practical to the user's connection and all piping between the user's connection and the receiving tank shall be entirely visible unless otherwise approved.

B. Double Check Valve Assembly (DC)

A double check valve assembly and double check valve detector assembly shall be installed a minimum of twelve inches (12") above grade and not more than thirty-six inches (36") above grade measured from the bottom of the assembly in a manner where it is readily accessible for testing and maintenance.

C. Reduced Pressure Principle Backflow Prevention Assembly (RP)

A reduced pressure principle backflow prevention assembly shall be installed a minimum of twelve inches (12") above grade and not more than thirty-six inches (36") above grade measured from the bottom of the assembly, and with a minimum of twelve inches (12") side clearance in a manner where the assembly is readily accessible for testing and maintenance.

D. Pressure Vacuum Breaker (PVB)

A pressure vacuum breaker check valve assembly shall be installed a minimum of twelve inches (12") above all downstream piping and flood level rims of receptors and in a manner where it is readily accessible for testing and maintenance.

E. Atmospheric Vacuum Breaker (AVB)

An atmospheric vacuum breaker check valve assembly shall be installed a minimum of six inches (6") above all downstream piping and flood level rims of receptors and in a manner where it is readily accessible for testing and maintenance.

F. Backflow Prevention Assembly Enclosures

A backflow prevention assembly enclosure, cage or locked bag may be required by the City to be installed at the customer's expense, to combat against tampering, vandalism or theft. The City may require that any enclosure, cage or locked bag be secured to a concrete slab and securely locked.

Any deviation of installation from the descriptions provided shall require the City's approval prior to installation. All backflow prevention assembly installations may be inspected by the City to ensure compliance with all relevant Statutes, Regulations, Ordinances, and City requirements.

10.15.080 TESTING AND MAINTENANCE OF BACKFLOW PREVENTERS

A. Responsibility

As per the California Code of Regulations, Title 17, the City shall ensure that adequate maintenance and periodic testing of backflow prevention assemblies are provided by the customer or responsible party, to ensure the proper operation of the assemblies. Therefore, the City declares that the customer or responsible party is ultimately responsible for the installation, testing, and maintenance of all required backflow prevention assemblies on or related to the customer's facility.

B. Certified Testers

No person shall test and/or make reports on backflow prevention assemblies to comply with this chapter unless he or she possesses a current certification issued by the San Mateo County Environmental Health Services Division as defined in County Ordinance Code.

C. Frequency of Testing

Backflow prevention assemblies shall be tested by a Certified Tester immediately after they are installed, relocated or repaired and not placed in service unless they are functioning as required. All backflow prevention assemblies shall be tested at least annually or more frequently if determined to be necessary by the City or Environmental Health, in accordance with the California Code of Regulations, Title 17, and San Mateo County Ordinance Code. Exception is 8.4.1.A

D. Fire Suppression System Backflow Preventer Testing

Single-Family and Duplex Residential

1. Single-Family and Duplex Residential (SFDR) fire suppression systems with an installed backflow prevention assembly shall be tested upon installation only, unless otherwise required by the City. After completion of successfully testing the assembly, the #1 and #2 shut off valves shall remain in the open position and the handles removed. The handles shall be stored in the spare head box. SFDR fire suppression system backflow assemblies are not required to be tested annually because of the low degree of hazard.

2. Commercial, Industrial, Multi-Family

a. Commercial, industrial, multi-family fire suppression system backflow preventers must be tested annually by a Certified Tester.

b. If an existing fire suppression system backflow assembly is located in a vault, and has adequate physical clearance to test, it is considered "existing non-conforming" and approved for testing.

c. If an existing assembly fails the field test, the assembly must be repaired or replaced with an appropriate, approved backflow prevention assembly, installed to current City standards. If any failed assembly is currently in a vault, the assembly must be relocated above grade, to meet all current codes and City standards.

d. If an existing fire system does not have testable approved backflow prevention assembly, the City shall require that a new appropriate assembly that meets all current codes be installed at customer or responsible party expense.

10.15.090 PROCEDURES FOR TESTING AND INSPECTION

- A. Testable backflow prevention assemblies shall be tested using current USC Foundation test procedures.
- B. When a backflow prevention assembly is inspected and has passed the testing procedure, the certified tester shall immediately affix a numbered inspection tag to the assembly purchased from the County of San Mateo Environmental Health Services Division.
- C. When a backflow prevention assembly fails the testing procedure, the certified tester shall immediately affix a "Failed" inspection tag to the assembly. Records of failed & passed assembly tests shall be filed/submitted as directed within ten (10) days. The "Failed" inspection tag shall remain affixed to the assembly until the assembly is repaired, has passed the testing procedures and has been affixed with a numbered inspection tag.
- D. Certified testers are solely responsible to comply with applicable municipal requirements for additional permits or licenses (i.e., local business license, plumbing permit, etc.) to test or repair backflow prevention assemblies within the City.

10.15.100 ENFORCEMENT

San Mateo County Environmental Health has the authority to take enforcement action as allowed in the County Ordinance Code Relating to Backflow Prevention, and as it applies to the agreement between the City and Environmental Health. The City shall have the authority to enforce this chapter as follows.

- A. Any person who violates any provision of this chapter, or bypasses or renders inoperative any backflow prevention assembly installed under the provisions of this chapter, shall be subject by San Mateo County Environmental Health or fines as detailed in the City of San Bruno Municipal Code Chapter 1.28 – Violations of Code.
- B. Failure to comply with any section of this chapter may be cause for the discontinuance of water service by the City. The program administrator shall give notice in writing of any violations of this chapter to the customer or responsible party. If appropriate action is not taken within ten (10) days after such notice has been mailed or delivered in person, the program administrator may discontinue delivery of water. However, if the program administrator or San Mateo County Environmental Health determines that the violation constitutes an immediate threat to the public health or safety or to the integrity of the public water system, the program administrator or the health officer may discontinue delivery of water immediately without prior notice; in such an instance, the program administrator or the health officer shall deliver notice of discontinuance as soon as practicable to the property owner and customer or responsible party. Delivery of water shall not be resumed until all required corrective actions have been made and certified as complete by the City or Environmental Health.
- C. All costs incurred by the City for discontinuance of water service and all fees associated with reinstating water service shall be paid by the customer or responsible party. Costs incurred by Environmental Health for inspections shall be paid by the customer or responsible party at the rate set forth by San Mateo County Ordinance.

10.15.110 REPORTING

All reporting required by this chapter at the City shall be the responsibility of the program administrator. This includes any reports to local, state, and federal regulatory or health agencies such as; California Department of Health Services, and San Mateo County Environmental Health Services Division.

10.15.120 TRAINING OF PERSONNEL

- A. Program Administrator

The Program Administrator of the Cross-Connection Control Program at the City shall be a minimum of a supervisor capacity. He or she shall be a Cross-Connection Control Program Specialist as defined in this chapter.

- B. Cross-Connection Control Inspector and Tester

The City representative assigned to the inspection and survey of customers to determine if backflow prevention is warranted shall be a Cross-Connection Control Program Specialist as defined in this chapter. The City employee assigned to the testing of City-owned assemblies shall be a certified Tester as defined in this chapter.

10.15.130 MAINTENANCE OF RECORDS

A. Assembly Records

Records of assembly type, size, manufacturer, installation date, location, account number, customer or responsible party of record, and repair history shall be kept electronically or in hard copy form. Assembly records shall be kept for the life of the assembly by either the City or by Environmental Health as appropriate.

B. Testing Records

Test results on all assemblies shall be kept electronically or in hard copy form for a minimum of three years.

Section 3. The Director of Public Services is hereby authorized to implement the provisions of this Chapter in compliance with CCR Title 17.

Section 4. The City Clerk is directed to publish this ordinance in the manner required by law.

Jim Ruane, Mayor

SAN MATEO COUNTY ENVIRONMENTAL HEALTH CROSS-CONNECTION CONTROL PROGRAM

Water Purveyor System Protection Program

The goal of the San Mateo County Environmental Health Cross-Connection Control Program is to protect the public from contaminants and pollutants by preventing backflow from facilities to the public water supply and by eliminating and protecting from internal cross-connections within facilities. To achieve these goals, Environmental Health partners with Water Purveyors in San Mateo County to implement a water system protection program as mandated by California Code of Regulations Title 17 (17CCR) and the California Health and Safety Code (CA H&SC), and enforced by the Drinking Water Division of the State Water Resources Control Board (SWRCB). Authority and scope for Environmental Health to implement cross-connection control programs are detailed in Chapter 4.72 of Title 4 of the San Mateo County Backflow Prevention Ordinance.

The emphasis of Environmental Health's Purveyor System Protection Program is protection of the public water supply from backflow, typically achieved by installation of backflow prevention assemblies at the service connection (meter) of water users. In lieu of meter protection, assemblies may be required within the water user's facility, provided that the facility has been inspected by the County to ensure that all possible sources of contamination have been eliminated, and therefore, achieves backflow protection.

In performance of the Purveyor System Protection Program, Environmental Health will, at all times, maintain staff with appropriate certification in cross-connection control as required by 17CCR, and will be responsible for the following.

A. Enforcement of Statute, Regulation and Local Ordinance for Cross-Connection Control

1. Environmental Health will enforce applicable statutes, regulations and local ordinances as related to cross-connection control for which Environmental Health has authority.
2. Environmental Health will conduct cross-connection surveys of commercial and residential water users within the service area of the Water Purveyor, as needed, to evaluate potential cross-connections and health hazards. Surveys will consist of a thorough inspection of all water use and potential contaminating activities at the water user facility, consistent with survey elements and procedures detailed in the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research (USC Foundation) Manual of Cross-Connection Control. A summary of the surveys will be sent to the water user itemizing potential cross-connections found on the premises, as well as any required corrective action with a corresponding compliance date.
3. Based on surveys and general knowledge of water use within water user facilities, Environmental Health staff will determine the need for backflow prevention assemblies at the water user service connection for the protection of the public water supply.
4. Environmental Health will initiate progressive enforcement action for non-compliance by water users with required corrective actions or any other violation of applicable cross-connection control statute, regulation or local ordinance.

**SAN MATEO COUNTY ENVIRONMENTAL HEALTH
CROSS-CONNECTION CONTROL PROGRAM**

5. If deemed necessary, Environmental Health may recommend or require the Water Purveyor to discontinue water service to any water user facility for the protection of the public water supply.
6. Environmental Health will provide the Water Purveyor with an annual (at a minimum) report of activities, as well as any other documentation received or distributed to water users within their service areas.
7. Upon request of any municipal building department serving the water purveyor service area, Environmental Health will review plans submitted to the building department to evaluate potential cross-connection hazards on those properties served by the Water Purveyor. Building permit review fees may be charged directly to the water user.
8. Environmental Health will meet with water purveyors in preparation for and during inspections by SWRCB staff. Environmental Health will be available to SWRCB staff to provide information on the Purveyor System Protection Program, as well as all Environmental Health records related to the specific Purveyor's system.
9. Environmental Health will, upon notification by the Water Purveyor, respond in tandem with Water Purveyor field staff to any suspected backflow incidents, and will continue to consult with Water Purveyor and SWRCB staff on backflow incidents and appropriate follow-up.

B. Approved Backflow Prevention Assemblies

1. Environmental Health will maintain relationship with USC Foundation, and consult with and advise Water Purveyors and water users on USC Foundation approved backflow prevention assemblies.
2. Environmental Health will consult with and advise Water Purveyors and water users on the proper installation of approved backflow prevention assemblies.

C. Backflow Prevention Assembly Testing Program

1. Environmental Health will maintain a backflow prevention assembly Tester Certification Program as detailed in County Backflow Prevention Ordinance.
2. Environmental Health will maintain records of all known backflow prevention assemblies within the Purveyor service area, as well as records of testing of those assemblies as required by statute, regulation and local ordinance.
3. Environmental Health will enforce annual testing of assemblies as required by statute, regulation and local ordinance, including the following tasks.
 - a. Notify water users when assembly testing is due.
 - b. Supply water users with a current list of San Mateo County-certified Backflow Prevention Assembly Testers.
 - c. Evaluate testing results for inadequacies or needed follow-up.
 - d. Update assembly records as testing reports are received.
 - e. Follow-up delinquent reporting of test results.
 - f. Implement progressive enforcement of water users for non-compliance.

**SAN MATEO COUNTY ENVIRONMENTAL HEALTH
CROSS-CONNECTION CONTROL PROGRAM**

D. Consultation

Environmental Health will provide to Water Purveyors reasonable and appropriate technical consultation related to cross-connection control and backflow protection. In instances considered by Environmental Health to be beyond the scope of the general Purveyor System Protection Program as outlined above, Environmental Health may, with adequate prior notice, charge either Purveyor or water user, as appropriate, for staff time on an hourly basis.

Responsibilities of Water Purveyor Participating in System Protection Program

In order to facilitate accurate and timely cross-connection control surveys by Environmental Health, the Water Purveyor must provide Environmental Health, at least **annually**, with current water service meter account inventory in a spreadsheet format. The spreadsheet should include, at a minimum, the following information.

- service facility name and address
- physical location of meter (either through description, maps, and/or GPS coordinates)
- meter number
- meter size and type (e.g. irrigation, domestic, fire)
- owner name and contact information including phone number

In addition, the Water Purveyor shall notify Environmental Health as soon as feasible when the following occurs.

- If there is a suspicion of a backflow incident, the Water Purveyor shall notify Environmental Health within 24 hours. The Water Purveyor shall reference the Backflow Incident and Response Notification Plan to contact Environmental Health.
- When there are changes to the primary and/or secondary point of contact for the Water Purveyor.
- SWRCB schedules an inspection of the Water Purveyor's Drinking Water Program.
- The addition of new water meter service accounts. This shall be provided to Environmental Health quarterly, or more frequently as needed, to ensure the service is adequately surveyed.

Our goal is to work in close partnership with member Water Purveyors. Therefore, Water Purveyors shall respond to Environmental Health calls and emails as quickly as practicable to maintain functional lines of communication.



Carol Bonner
City Clerk
San Bruno, CA

10/25/16

I hereby tender my resignation
to the San Bruno BPAC
effective immediately.

Malcolm Robinson

RECEIVED
NOV 7 2016
CITY CLERK'S OFFICE

MALCOLM ROBINSON
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City Council Agenda Item Staff Report

CITY OF SAN BRUNO

DATE: November 22, 2016

TO: Honorable Mayor and Members of the City Council

FROM: Carol Bonner, City Clerk
Tami Yuki, Assistant City Manager
Marc Zafferano, City Attorney

SUBJECT: Adopt Resolution Approving Revisions to the City's Conflict of Interest Code Appendix

BACKGROUND:

The Political Reform Act (PRA) requires designated public officials to disclose their economic interests to the public. Public officials so designated include city council members, planning commissioners, city managers, city attorneys, city clerks, and city treasurers. These officials are sometimes referred to as "code filers." The purpose of the disclosure requirement is to alert both public officials and the public to any personal economic interests that may be affected during the public official's performance of duties. The disclosure occurs through the filing of the "Form 700" upon taking office, on an annual basis, and upon leaving office.

Similarly, the PRA requires local agencies to adopt a conflict of interest code applicable to employees whose financial interests may be affected when participating or making decisions on behalf of the City. Like most cities, San Bruno adopted the conflict of interest code applicable to "code filers" as its own. (Resolution No. 1994-46) Like public officials, designated employees must also file a Form 700, but only to the extent required by the local code. Disclosure levels may differ across departments even for employees of similar levels of responsibility – the issue is whether a particular employee classification makes or participates in decisions that may put his or her financial interests at stake.

The PRA requires every local government agency to review its conflict-of-interest code biennially to determine whether the code must be amended. The last review occurred in December 2014 so a review is due this year.

DISCUSSION:

The City's local conflict of interest code has 4 disclosure categories. The categories directly relate to the likelihood that an employee will be called upon to recommend or make decisions that affect his or her financial interests. The disclosure obligations are provided as an attachment, and may be summed up as follows:

7.9.

Category 1

- Similar to code filers (elected officials, city manager, city attorney), requires disclosure of all sources of income, investments, interests in real property in San Bruno, and any business entity in which the employee holds a position.
- This is the broadest category – all department directors are in this category.

Category 2

- Requires disclosure of all sources of income, investments, and business positions in companies that engage in land development and construction activities.
- This category typically applies to planning and public works personnel.

Category 3

- Requires disclosure of all sources of income, investments, and business positions in companies *of the type* that contract *with the City* to provide goods, services, supplies, etc.
- This category typically applies to positions handling contracts affecting all city departments.

Category 4

- Requires disclosure of all sources of income, investments, and business positions in companies *of the type* that typically contract with the employee's *department*.
- This category typically applies to supervisors and managers making contract recommendations and decisions for a particular department.

Staff has reviewed the proposed conflict of interest code to ensure that it specifically enumerates each of the positions within the City that involve making or the participation in the making of decisions that may foreseeably have a material financial effect on any financial interest of the person holding that position. Using the format required by state law, an attachment reflects the recommended changes by striking out those positions no longer designated and by highlighting additions to the list. In summary, the recommended changes are as follows:

- Job positions where the employee is likely to be called upon to step in for the director from time to time are re-designated at Category 1.
- Managers and supervisors across the board have disclosure categories 2, 3, or 4, depending on the work that department performs, unless that particular department does not designate managers and supervisors.
- There were several positions added to the list which were approved and adopted in City Department budgets:

- Accountant
 - Assistant to the City Manager
 - Revenue Services Supervisor
 - Systems Administrator
- Additional changes include adjustments to the disclosure categories for the Financial Services Manager, Accounting Services Manager, Financial Services Supervisor, and Accounting Services Supervisor to better reflect the scope and responsibilities of the position.

FISCAL IMPACT:

These are non-substantive changes to the Designated Employee portion of the Appendix to the Conflict of Interest Code and have no fiscal impact.

ALTERNATIVES:

1. Do not adopt Resolution.
2. Direct staff to make other changes to the local conflict of interest code.

RECOMMENDATION:

Adopt Resolution Approving Revisions to the City's Conflict of Interest Code Appendix

ATTACHMENTS:

1. Resolution
2. Disclosure Categories
3. Designated Employees List

DATE PREPARED:

November 14, 2016

REVIEWED BY:

____ CM
____ CC
____ CA

RESOLUTION NO. 2016-_____

RESOLUTION APPROVING REVISIONS TO THE CITY'S
CONFLICT OF INTEREST CODE APPENDIX

WHEREAS, the Political Reform Act, Government Code Section 8100, et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes and pursuant to 2 Cal. Code of Regulations Section 18730, the City of San Bruno adopted the terms of the standard conflict of interest code contained therein pursuant to Resolution No. 1994-46;

WHEREAS, this conflict of interest code must be reviewed and revised, if necessary, every two (2) years and due to re-organization of department director classifications and some other personnel changes, it is necessary to revise the designated employees portion of the appendix to the local conflict of interest code;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of San Bruno that the attached Appendix (Exhibit A) Designated Employee List is hereby adopted and incorporated into the existing conflict of interest code.

BE IT FURTHER RESOLVED that all prior Designated Employee Lists to the Conflict of Interest Code are hereby superseded.

---o0o---

I hereby certify that the foregoing Resolution No. 2016-_____ was duly introduced and adopted by the San Bruno City Council at a regular meeting held November 22, 2016, by the following vote:

AYES: COUNCILMEMBERS: _____

NOES: COUNCILMEMBERS: _____

ABSENT: COUNCILMEMBERS: _____

Carol Bonner, City Clerk

APPENDIX

Disclosure Categories

1. All designated employees in this category shall disclose all sources of income, investments, interests in real property in the City of San Bruno, and any business entity in which the designated employee is a director, officer, partner, trustee, employee or holds any management position.
2. All designated employees in this category shall disclose all sources of income, investments, and business positions in business entities if the business entity engages in land development; construction, the provision of architectural, engineering, design or other services in connection with land development or construction; the manufacture, sale or lease of electrical, plumbing, construction materials or supplies and any other equipment or products used in construction; the acquisition, sale or lease of real property or financing of land acquisition, lease, development or construction.
3. All designated employees in this category shall disclose all sources of income, investments, and business positions in business entities if the business entity is of the type that contracts with the City of San Bruno to provides goods, services, supplies, materials, machinery, or equipment, including computer hardware or software of the type utilized by the City of San Bruno.
4. All designated employees in this category shall disclose all sources of income, investment and business positions in business entities if the business entity is of the type that contracts with or sells to the designated employee's department.

Consultants*

- * Consultants shall disclose in accordance with Category 1, provided, however, that the City Manager may determine in writing that a particular consultant, although a "designated employee," is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements described in this section. Such determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The determination of the City Manager is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of this Conflict of Interest Code.

Designated Position List

Department/Commission	Position	Disclosure Category
Cable TV	Director	1
	Business Manager	1
	Programming Technology Manager	3
	System Engineer	1
City Clerk	Deputy City Clerk	1
City Manager	Assistant City Manager	1
	Assistant to the City Manager	4
	Management Analyst	4
Community Development	Director	1
	Senior Planner	1
	Associate Planner	2, 4
	Assistant Planner	2, 4
	Long-Term Planning Manager (Housing & Redevelopment Mgr.)	1
	Building Official	1
	Senior Code Enforcement Officer	2, 4
	Building Inspector	2, 4
	Plan Check Engineer	2, 4
	Code Enforcement Officer	2, 4
	Community Development Technician I / II	2
	Finance	Director
Assistant Finance Director		1
Financial Services Manager		1, 3, 4
Accounting Services Manager		1, 3, 4
Financial Services Supervisor		1, 4
Accounting Supervisor		1, 4
Accountant		4
Revenue Services Supervisor		4
Fire	Chief	1
	Division Chief	1
	Deputy Fire Chief	1
	Battalion Chief	1
Human Resources	Director	1
	Human Resources Manager	1
	Information Technology Manager	3, 4
	Systems Administrator	3, 4
	Information Technology Analyst I/II	3, 4
Community Services	Management Analyst	4
	Director	1
	Community Services Superintendent	2, 3
	Assistant Library Director	3
	Maintenance Services Manager	2, 3
	Parks & Facilities Manager	2, 3
	Recreation Services Manager	3
	Recreation Services Supervisor	3
	Recreation Services Coordinator	3
	Library Children Services Manager	3
	Library Services Manager	3
	Circulation Services Manager	3
	Field Supervisor	4

Designated Position List

Department/Commission	Position	Disclosure Category
Police	Chief	1
	Commander	1
	Lieutenant	4
	Sergeant	4
	Records and Communications Supervisor	4
	Management Analyst	4
Public Services	Director	1
	Deputy Director of Public Works	1
	Principal Civil Engineer	1
	Associate Civil Engineer	2, 4
	Assistant Engineer	2, 4
	Maintenance Services Manager	2, 3, 4
	Field Supervisor	2, 3, 4
	Management Analyst	2, 3, 4
	Engineering Technician/Public Works Inspector	2, 4
	Water System and Conservation Manager	2, 3, 4

RESOLUTION NO. 2016 - XX

**RESOLUTION AUTHORIZING TEMPORARY CLOSURE OF THE
1900 BLOCK OF GLEN AVENUE FOR THE ANNUAL SANTA ARRIVAL
ON SUNDAY, DECEMBER 11, 2016 FROM 5:00 P.M. TO 9:00 P.M.**

WHEREAS, the annual Glen Avenue Block Christmas lighting and Santa arrival will be held Sunday, December 11, 2016 between the hours of 5:00 p.m. and 9:00 pm; and

WHEREAS, the San Bruno City Council finds and declares, pursuant to California Vehicle Code Section 21101, that the closing of a certain street in connection with such event is necessary for the safety and protection of persons who are to use certain portions of such street during such temporary closing;

NOW, THEREFORE, BE IT RESOLVED by the San Bruno City Council that Glen Avenue shall be closed to vehicular traffic, except those units participating in such event, on December 11th between the hours of 5:00 p.m. and 9:00 p.m., except under such circumstances in which the Chief of Police or his designated representative(s) or authorized personnel find that vehicular traffic may use such street or portions thereof without interfering with the safety or functioning of the units participating in such event.

1. 1900 Block of Glen Ave

---oOo---

I hereby certify that foregoing **Resolution No. 2016 - XX**
was introduced and adopted by the San Bruno City Council at a regular meeting on
November 22, 2016, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

Carol Bonner, City Clerk

J.h.



**City Council Agenda Item
Staff Report**

CITY OF SAN BRUNO

DATE: November 22, 2016
TO: Honorable Mayor and Members of the City Council
FROM: Marc Zafferano, City Attorney
SUBJECT: Adopt Resolution Ratifying San Bruno Community Foundation Officers for 2017

BACKGROUND:

The San Bruno Community Foundation is the organization created by the City Council to invest, manage and expend the restitution settlement of \$70 million in cash funds and real property that the City received from PG&E after the 2010 gas line explosion in the Crestmoor neighborhood.

Article VIII, Section 1 of the Foundation's Bylaws require that the Foundation select the offices of President, Vice-President, Secretary, and Treasurer. Article VIII, Section 2 states that such officers will serve one-year terms starting on January 1, and are subject to the approval of the San Bruno City Council.

DISCUSSION:

At its November 2 regular meeting, the Foundation Board appointed officers for 2017. On unanimous votes, Nancy Kraus was selected president, Frank Hedley Vice President, John McGlothlin Secretary, and Tim Ross Treasurer. There were no other nominations for the offices. These selections provide needed continuity and expertise in these positions. Staff recommends that the City Council authorize approval of these officers as required by the Bylaws.

FISCAL IMPACT:

None.

ALTERNATIVES:

1. Do not approve the Foundation's selection of officers for 2017 and provide additional direction regarding the City Council's interests regarding the Board's officers.

RECOMMENDATION:

Adopt Resolution Ratifying San Bruno Community Foundation Officers for 2017

ATTACHMENTS:

1. San Bruno City Council Resolution Approving Foundation Officers

DISTRIBUTION:

SBCF Board of Directors

RESOLUTION NO. 2016-____

**RESOLUTION APPROVING SAN BRUNO COMMUNITY FOUNDATION OFFICERS FOR
2017**

WHEREAS, on November 2, 2016, the San Bruno Community Foundation selected officers to hold the positions of President, Vice-President, Secretary, and Treasurer for 2017; and

WHEREAS, Article VIII, Section 2 and Article XVI of the Foundation's Bylaws require the San Bruno City Council to approve the officers;

NOW THEREFORE BE IT RESOLVED that the City Council of the City of San Bruno adopts a resolution approving the SBCF officers for 2017 as follows:

President:	Nancy Kraus
Vice-President:	Frank Hedley
Secretary:	John McGlothlin
Treasurer:	Tim Ross

---oOo---

I hereby certify that foregoing **Resolution No. ____**
was introduced and adopted by the San Bruno City Council at a regular meeting on
November 22, 2016, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:



City Council Agenda Item
Staff Report

CITY OF SAN BRUNO

DATE: November 22, 2016

TO: Honorable Mayor and Members of the City Council

FROM: Tami Yuki, Assistant City Manager

SUBJECT: Adopt Resolution Approving an Agreement between the City of San Bruno and the San Bruno Professional Firefighters Association, Represented by Teamsters Union Local 856, and Authorizing its Execution by the City Manager

BACKGROUND

The Memorandum of Understanding (MOU) between the City of San Bruno and the San Bruno Professional Firefighters Association expires on December 31, 2016. Representatives of the City and the representatives from the Firefighters Association represented by the Teamsters Union Local 856 have met and conferred in good faith and have reached a tentative agreement extending the existing Memorandum of Understanding. The Firefighters Association ratified the tentative agreement on November 8, 2016.

DISCUSSION

The attached Agreement for the Firefighters Association extends the current Memorandum of Understanding from December 21, 2016 through December 31, 2017.

The agreement includes a wage adjustment of 3% effective the first full pay period in January 2017 including continuation of the health care premium rate structure which calls for the City to pay 75% of the January 1, 2017 health care premium increase. These provisions are similar to the Police Bargaining Unit Memorandum of Understanding which will expire on December 31, 2017.

The City is continuing to negotiate with the Public Safety Mid Management Unit, Mid Management Unit, and the Miscellaneous Unit.

FISCAL IMPACT

The 2016-17 Budget does not include funds for increases to employee salary and benefits over the prior fiscal year. The additional salary increase and health care premium costs for the San Bruno Professional Firefighter Association is anticipated to cost an additional \$130,000 annually to the General Fund. For FY2016-17, the expected

T.J.

fiscal impact over the approved budget is \$65,000 for the period of January 1 to June 30, 2017.

ALTERNATIVES

1. Do not approve Agreement and direct the negotiating team to seek changes or to begin negotiating a Memorandum of Understanding with the San Bruno Professional Firefighters Association whose agreement has expired.

RECOMMENDATION

Adopt Resolution Approving Side Letter Agreement between the City of San Bruno and the San Bruno Professional Firefighters Association, Represented by Teamsters Union Local 856, and Authorizing its Execution by the City Manager

ATTACHMENTS

1. Resolution
2. Agreement

DATE PREPARED

November 14, 2016

REVIEWED BY

_____ CM
_____ FD

RESOLUTION NO. 2016 –

ADOPT RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF SAN BRUNO AND THE SAN BRUNO PROFESSIONAL FIREFIGHTERS ASSOCIATION, REPRESENTED BY THE TEAMSTERS UNION LOCAL 856, AND AUTHORIZING ITS EXECUTION BY THE CITY MANAGER

WHEREAS, representatives of the San Bruno Professional Firefighters Association represented by the Teamsters Local 856 and representatives of the City of San Bruno have met and negotiated in good faith; and

WHEREAS, as a result of those negotiations, an agreement has been reached regarding changes to the terms and conditions of employment for the San Bruno Professional Firefighters Association existing Memorandum of Understanding extending the period to December 31, 2017; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of San Bruno that it hereby approves the Agreement reached between the City of San Bruno and the San Bruno Professional Firefighters Association modifying the existing Memorandum of Understanding between the parties adopted pursuant to Resolution No. 2014-44, and consistent with terms and conditions outlined in the Agreement attached hereto and marked Exhibit A; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute on behalf of the City of San Bruno the attached Agreement, and any modified and consolidated Memorandum of Understanding prepared incorporating all prior agreed upon terms and conditions of employment approved by the City of San Bruno and the San Bruno Professional Firefighters Association represented by the Teamsters Local 856.

--oOo--

I hereby certify the foregoing Resolution No. _____ was introduced and adopted by the San Bruno City Council, at a regular meeting on November 22, 2016 by the following vote:

AYES: Councilmembers: _____
NOES: Councilmembers _____
ABSENT: Councilmembers: _____

Carol Bonner, City Clerk

**City of San Bruno and
San Bruno Professional Firefighters Association
Represented by Teamsters Local #856**

Amendment to the

MEMORANDUM OF UNDERSTANDING (MOU)

Pursuant to the Meyers-Milias-Brown Act (Government Code Sections 3500-3510) the parties to the Memorandum of Understanding (MOU) 2012-2016 have agreed to the amendments described below. Except for these amendments, all other provision of the MOU remain unchanged.

Section 6. Salary Plan

Section 6.1 Salary Range

Salary Increases:

The salary ranges for Firefighter and Fire Captain shall be as set forth in Appendix "A", based upon the following understandings:

(1) Top-step firefighter salary shall include the 6% (six percent) AA/AS educational incentive pay previously provided. Possession of AA/AS and/or California Paramedic may now be required by the City as a minimum educational requirement for position of Firefighter.

(2) For the duration of this contract, the City agrees to maintain a 9% differential between the top step salaries of the classifications of Fire Captain and Firefighter/Paramedic.

(3) The salary range for Fire Captain shall be determined by taking the Firefighter salary range, adding the Paramedic Assignment Pay (Section 23.2), and adding 9.0% (in accordance with paragraph 2 above).

(3) The following represents agreed upon modifications to salary during this contract:

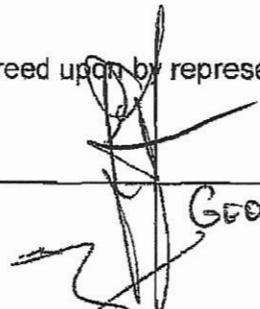
- a) 4% increase effective the first full pay period following ratification by the City Council retroactive to January 1, 2014 and for those who are active employees on March 1, 2014

- (b) 3% increase effective the first full pay period in January 2015
- (c) 3% increase effective the first full pay period in January 2016
- (d) 3% increase effective the first full pay period in January 2017

Section 40. Term

This Memorandum of Understanding, shall remain in effect for those employees employed in the classifications set forth in Appendix "A" for the period from July 1, 2012 and until December 31, ~~2016~~ 2017 except to the extent that such Memorandum of Understanding may be modified by the parties during such period, and shall continue in full force and effect until either superseded by a subsequent Memorandum of Understanding or by such other action of the City Council affecting wages, hours, and conditions of employment of the employees in classifications covered by this Memorandum of Understanding.

Agreed upon by representatives of the City of San Bruno:



 GEOFFREY ROTHMAN

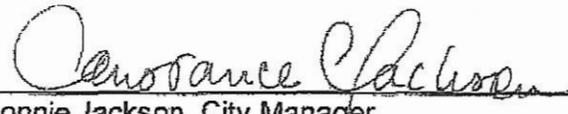
 Tami Yuki, Assistant City Manager

10/27/16

 Date
10/27/16

 Date

Approved by:

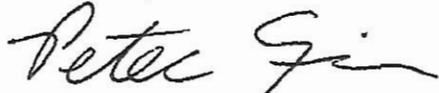


 Connie Jackson, City Manager

Oct. 27, 2016

 Date

Agreed upon by representatives of the San Bruno Professional Firefighters Association, represented by Teamsters Local 856:



11/15/2016

 Date



City Council Agenda Item
Staff Report

CITY OF SAN BRUNO

DATE: November 22, 2016

TO: Honorable Mayor and Members of the City Council

FROM: Marc Zafferano, City Attorney
Ed Barberini, Police Chief

SUBJECT: Hold Public Hearing and Extend Interim Urgency Ordinance Regulating Cultivation and Prohibiting the Manufacture, Processing, Laboratory Testing, Labeling, Storing, Wholesale, and Retail Distribution of Non-medical Marijuana Pursuant to Government Code Section 65858(a)

BACKGROUND:

Proposition 64 was adopted on the November 8, 2016 ballot (the Adult Use of Marijuana Act or "AUMA"). The Act provides that:

1. Recreational marijuana use, possession, transportation, and purchase of specified amounts by adults 21 years or older is legalized, except that certain activities, such as possession or smoking marijuana will still be prohibited in those places otherwise prohibited by state law (such as places of employment) or local ordinance;
2. Individuals who are 21 years or older are allowed to grow up to six marijuana plants per residence, indoors or outdoors, for their personal recreational use; and
3. Commercial non-medical cultivation, processing, laboratory testing, labeling, storing, wholesale distribution and retail sales of marijuana is now controlled, licensed, and taxed by an agency to be designated as the Bureau of Marijuana Control, located within the state Department of Consumer Affairs.

With the approval of Proposition 64, state licenses for commercial non-medical marijuana activities could be issued at any time between November 9, 2016 and January 1, 2018, which is the last date set by the law for issuance of licenses. Once state licenses are issued, they will take precedence over subsequently enacted local ordinances that seek to restrict those commercial activities or outdoor cultivation for personal use. The AUMA prohibits cities from completely banning indoor cultivation of up to six plants, but the Act allows local regulation of this activity.

San Bruno Municipal Code Chapter 6.58 currently prohibits all medical marijuana distribution facilities throughout the City. Collective or cooperative cultivation of medical

marijuana is also prohibited. This ordinance does not apply to any of the recreational, personal, or commercial non-medical activities that Proposition 64 now allows.

On October 25, 2016, the City Council unanimously adopted an urgency ordinance to impose a moratorium on these activities so that the City can further study the effects of Proposition 64 and determine if the City should continue to prohibit some or all of these activities, or regulate them, and if so, in what manner. The interim ordinance would expire on December 9, 2016 if not extended by the required 4/5 vote.

DISCUSSION:

Most municipal ordinances may only be adopted at a regular meeting of the Council after two readings. Adoption usually requires a majority vote of the Council and the ordinance normally takes effect 30 days after final passage.

State law authorizes adoption of an interim urgency ordinance which would take effect immediately to preserve the public peace, health or safety. Such an interim measure is designed to prohibit "any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal which the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time." The ordinance must contain a declaration of facts constituting the urgency, requires only one reading, must be passed by a four-fifths vote of the Council, takes effect immediately after introduction, and is effective for 45 days. The interim ordinance may be extended twice: initially for an additional 10 months and 15 days following a public hearing; and subsequently for one additional year. Any extension requires a four-fifths vote for adoption and no more than two extensions may be adopted.

The specific urgency findings adopted by the City Council on October 25 address the following:

1. Possible permanent damage to the City's aesthetic, health and safety, and economic interests arising from the potential gap in regulation of cultivation and distribution of nonmedical marijuana now that Proposition has 64 passed;
2. Providing the City with sufficient time to develop a comprehensive approach to marijuana, including:
 - a. Analyzing the provisions of Proposition 64's amendments and additions to the California Health and Safety Code;
 - b. Regulating presently unregulated delivery services;
 - c. Addressing indoor and outdoor marijuana cultivation for personal use by San Bruno residents, including the potential aesthetic impact to residential neighborhoods and potential "grandfathering" of nonmedical outdoor marijuana grows at private residences;
 - d. Preventing a potential gap in regulation of the cultivation and distribution of nonmedical medical marijuana in the City.

As previously adopted, the urgency ordinance established, during the term of the ordinance, a ban on commercial cultivation, processing, laboratory testing, labeling, storing, wholesale distribution and retail sale and outdoor cultivation for personal use. The ordinance allows the City to retain the right to fully study and determine whether it wishes to allow any of the above-referenced activities, and if so, under what circumstances. The urgency ordinance also preserves the City's ability to later enact other health and safety regulations applicable to legal indoor cultivation for personal use, which cannot be banned now that Proposition 64 has passed.

The ordinance also included health and safety findings that supported the City Council's determination that there is a current and immediate threat to the public health, safety and welfare posed by the approval of Proposition 64 before the City enacts comprehensive regulations regarding both commercial and noncommercial marijuana uses and cultivation.

Since the election, staff has begun investigating the issues raised by Proposition 64, but doing so will take additional time. Specifically, staff will need to gather information from other states that have adopted similar laws to understand and evaluate the range of options, including cost recovery and/or taxation, available to cities that have decided to allow and regulate these commercial activities. The County of San Mateo will also be studying this and may develop a model ordinance should cities wish to participate. It is anticipated that these efforts will take a significant amount of time after the holidays. Staff is therefore recommending that the City Council consider extending the interim ordinance for the full allowed initial period of 10 months and 15 days. The City Council could terminate the extension sooner if progress is made more quickly, or extend the ordinance for an additional year if warranted at a later date.

RECOMMENDATION:

Hold Public Hearing and Extend Interim Urgency Ordinance Regulating Cultivation and Prohibiting the Manufacture, Processing, Laboratory Testing, Labeling, Storing, Wholesale, and Retail Distribution of Non-medical Marijuana Pursuant to Government Code Section 65858(a)

FISCAL IMPACT:

None.

ALTERNATIVES:

1. Decline to extend the interim ordinance at this time.
2. Extend the interim ordinance for a shorter period of time.

ATTACHMENTS:

1. Interim Urgency Ordinance
2. Resolution

REVIEWED BY:

__ACM

__CM

ORDINANCE NO. _____

**AN INTERIM URGENCY ORDINANCE OF THE CITY OF SAN BRUNO
REGULATING CULTIVATION AND PROHIBITING THE MANUFACTURE,
PROCESSING, LABORATORY TESTING, LABELING, STORING, WHOLESALE, AND
RETAIL DISTRIBUTION OF NONMEDICAL MARIJUANA IN THE CITY OF SAN BRUNO
CITY PURSUANT TO GOVERNMENT CODE SECTION 65858(a)**

The City Council of the City of San Bruno **ORDAINS** as follows:

SECTION 1. FINDINGS.

WHEREAS, the City Council finds that it is necessary for the City Staff, Planning Commission, and City Council to study, develop, and adopt regulations within a reasonable time regarding the cultivation of nonmedical marijuana in the City of San Bruno; and

WHEREAS, there is concern regarding the potential passage of Proposition 64 (the Adult Use of Marijuana Act "AUMA") on the November 8, 2016 ballot and the City must be prepared with reasonable regulations of nonmedical marijuana should it pass; and

WHEREAS, the City Council finds and declares that there is a current and immediate threat to the public peace, health, welfare, and safety, specifically including possible permanent damage to the City's aesthetic, health and safety, and economic interests arising from the potential gap in regulation of cultivation and distribution of nonmedical marijuana should Proposition 64 pass; and

WHEREAS, the cultivation of marijuana and medical marijuana dispensaries are currently prohibited by Chapter 6.58 of the City's Municipal Code; and

WHEREAS, the City Council desires to enact this interim urgency ordinance to expressly clarify that the manufacture, processing, laboratory testing, labeling, storing, wholesale distribution, and retail sale of marijuana, whether medical or recreational, are prohibited in all zones throughout the City; and

WHEREAS, the immediate ban of all commercial or industrial marijuana activities will enable the City to develop a comprehensive approach to marijuana, including analysis of the provisions of Proposition 64's amendments and additions to the California Health and Safety Code, if passed, as well as regulation of presently unregulated delivery services; and

WHEREAS, the citizens of San Bruno will be well-served if the City more fully addresses the potential impacts of indoor and outdoor marijuana cultivation for personal use by San Bruno residents; and

WHEREAS, the most appropriate way to ensure public review and consideration and to prevent a potential gap in regulation of the cultivation and distribution of nonmedical medical marijuana in the City is to enact an urgency ordinance; and

WHEREAS, there is an immediate need to prevent unregulated nonmedical marijuana grows in the City of San Bruno, which have the potential to affect the character and aesthetic of the community; and

WHEREAS, this interim ordinance is necessary to prevent potential "grandfathering" of nonmedical outdoor marijuana grows on private residences; and

WHEREAS, the City Council finds that it is necessary to protect the health, safety, and welfare, and specifically the City's and the public's interests in the City's aesthetic, economic, health, safety, and community character until additional staff review has been completed and any necessary code revisions have been adopted and made effective by the City Council; and

WHEREAS, the City Council directs City staff to continue to study the issue of nonmedical commercial cultivation, manufacture, processing, laboratory testing, labeling, storing, wholesale, distribution, and retail of marijuana. The City Council also directs staff to study the issue of nonmedical cultivation, processing, and storing of marijuana for personal, private use.

SECTION 2. REGULATION. The following regulation is hereby imposed. This regulation shall prevail over any conflicting provisions of the San Bruno Municipal Code or the other ordinances, resolutions, policies, and regulations of the City of San Bruno.

a. Any commercial or industrial use involving marijuana, including but not limited to manufacture, processing, laboratory testing, labeling, storing, wholesale, distribution, and retail, is prohibited in every zoning district in the City.

b. Outdoor cultivation of marijuana is prohibited in every zoning district in the City. Indoor cultivation of marijuana is limited to residential districts, is limited to six (6) plants per residence, and must be entirely for the personal use of a resident of the residence who is twenty-one (21) years of age or older. The City reserves the right to enact regulations regarding the indoor cultivation of marijuana at a later date.

c. For purposes of this interim urgency ordinance, the term "marijuana" shall mean all items included in Health and Safety Code Sections 11018 and 11018.1. The term "indoor cultivation" shall mean cultivation inside a fully enclosed private residence as defined in Health and Safety Code Section 11362.2(b)(2). The term "outdoor cultivation" shall mean any cultivation that is not defined as indoor cultivation as defined in Health and Safety Code Section 11362.2(b)(2).

SECTION 3. INTERIM URGENCY ORDINANCE. The City Council does hereby, pursuant to Government Code Section 65858(a), impose an interim urgency ordinance for forty-five (45) days, issuing interim regulations as stated in Section 2, above.

SECTION 4. EFFECTIVE DATE. Enforcement of this interim urgency ordinance shall be suspended until November 9, 2016, and shall be automatically void should Proposition 64 fail to pass on November 8, 2016.

SECTION 5. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of San Bruno hereby declares that it would have adopted this Ordinance and such section, subsection, sentence, clause, phrase or portion may be declared invalid or unconstitutional.

SECTION 6. This is an interim urgency ordinance and requires a 4/5 vote of approval of all of the members of the City Council and goes into effect immediately upon its adoption.

SECTION 7. This interim urgency ordinance shall be published once within fifteen (15) days of its adoption. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall have it posted in three (3) public places designated by the City Council.

Jim Ruane, Mayor

ATTEST:

Carol Bonner, City Clerk

APPROVED AS TO FORM:

Marc Zafferano, City Attorney

--oOo--

I hereby certify that foregoing **Interim Urgency Ordinance No.** _____
was adopted at a regular meeting of the San Bruno City Council on _____, 2016
by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

Carol Bonner, City Clerk

RESOLUTION NO. 2016 –

A RESOLUTION EXTENDING AN INTERIM URGENCY ORDINANCE OF THE CITY OF SAN BRUNO REGULATING CULTIVATION AND PROHIBITING THE MANUFACTURE, PROCESSING, LABORATORY TESTING, LABELING, STORING, WHOLESALE, AND RETAIL DISTRIBUTION OF NONMEDICAL MARIJUANA IN THE CITY OF SAN BRUNO CITY PURSUANT TO GOVERNMENT CODE SECTION 65858(a)

WHEREAS, the City Council finds that it is necessary for the City Staff, Planning Commission, and City Council to study, develop, and adopt regulations within a reasonable time regarding the cultivation of nonmedical marijuana in the City of San Bruno; and

WHEREAS, there is concern that since the passage of Proposition 64 (the Adult Use of Marijuana Act “AUMA”) on the November 8, 2016 ballot, the City must be prepared with reasonable regulations of nonmedical marijuana; and

WHEREAS, the City Council finds and declares that there is a current and immediate threat to the public peace, health, welfare, and safety, specifically including possible permanent damage to the City’s aesthetic, health and safety, and economic interests arising from the potential gap in regulation of cultivation and distribution of nonmedical marijuana now that Proposition 64 has passed; and

WHEREAS, the cultivation of marijuana and medical marijuana dispensaries are currently prohibited by Chapter 6.58 of the City’s Municipal Code; and

WHEREAS, the City Council desires to extend the interim urgency ordinance adopted by the City Council on October 25, 2016 to expressly clarify that the manufacture, processing, laboratory testing, labeling, storing, wholesale distribution, and retail sale of marijuana, whether medical or recreational, are prohibited in all zones throughout the City; and

WHEREAS, the immediate ban of all commercial or industrial marijuana activities will enable the City to develop a comprehensive approach to marijuana, including analysis of the provisions of Proposition 64’s amendments and additions to the California Health and Safety Code, if passed, as well as regulation of presently unregulated delivery services; and

WHEREAS, the citizens of San Bruno will be well-served if the City more fully addresses the potential impacts of indoor and outdoor marijuana cultivation for personal use by San Bruno residents; and

WHEREAS, the most appropriate way to ensure public review and consideration and to prevent a potential gap in regulation of the cultivation and distribution of nonmedical medical marijuana in the City is to extend the urgency ordinance that was previously adopted; and

WHEREAS, there is an immediate need to prevent unregulated nonmedical marijuana grows in the City of San Bruno, which have the potential to affect the character and aesthetic of the community; and

WHEREAS, the extension of the interim ordinance is necessary to prevent potential “grandfathering” of nonmedical outdoor marijuana grows on private residences; and

WHEREAS, the City Council finds that it is necessary to protect the health, safety, and welfare, and specifically the City's and the public's interests in the City's aesthetic, economic, health, safety, and community character until additional staff review has been completed and any necessary code revisions have been adopted and made effective by the City Council; and

WHEREAS, the City Council directs City staff to continue to study the issue of nonmedical commercial cultivation, manufacture, processing, laboratory testing, labeling, storing, wholesale, distribution, and retail of marijuana. The City Council also directs staff to study the issue of nonmedical cultivation, processing, and storing of marijuana for personal, private use; and

WHEREAS, the City Council held a duly noticed public hearing as required by state law prior to enacting this extension.

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of San Bruno adopts a resolution extending the interim urgency ordinance adopted by the City Council on October 25, 2016 for an additional 10 months and 15 days, to October 25, 2017.

Dated: November 22, 2016

ATTEST:

Carol Bonner, City Clerk

-o0o-

I, Carol Bonner, City Clerk, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of San Bruno this 22nd day of November, 2016 by the following vote:

AYES: COUNCILMEMBERS: _____

NOES: COUNCILMEMBERS: _____

ABSENT: COUNCILMEMBERS: _____



City Council Agenda Item
Staff Report

CITY OF SAN BRUNO

DATE: November 22, 2016

TO: Honorable Mayor and Members of the City Council

FROM: Jimmy Tan, Public Services Director/City Engineer

SUBJECT: Adopt Resolution Authorizing Filing of Rubberized Pavement Grant Program Application for TRP7 Fiscal Year 2016-17 with the California Department of Resources Recycling and Recovery (CalRecycle)

BACKGROUND:

The City's Pavement Management Program (PMP) involves applying preventative maintenance treatments to local, collector, and arterial streets. The City's PMP is designed to maximize pavement longevity with timely and cost effective rehabilitation while working within budgetary constraints. Based on the PMP, the City is not able to maintain all the streets due to limited available budget. The City would need to defer the maintenance due to lack of funding since applying all the maintenance treatments recommended by the PMP would cost approximately \$12 million. The backlog for deferred maintenance will increase to \$25 million by 2020 under the current planned budgetary level.

Staff has been working to identify external funding sources and alternative maintenance treatments in an effort to maximize the use of available funds and reduce costs associated with deferred maintenance. Rubberized asphalt concrete (RAC) has been identified as a potential alternative treatment that would stretch the dollars available to the City. RAC is a proven product that has many benefits including being cost effective, durable, safe, quiet, and an environmentally friendly alternative to conventional asphalt concrete. Studies conducted by the California Department of Transportation (Caltrans) have determined that RAC may be placed at about half thickness while maintaining the same pavement strength when compared to traditional asphalt concrete.

The Department of Resources Recycling and Recovery (CalRecycle) provides funding for local agencies that use RAC products with crumb rubber which is a recycled rubber product produced from scrap tires derived from only California-generated waste tires as part of pavement maintenance treatments. As RAC is more expensive than conventional asphalt concrete, this program encourages the usage of RAC by providing reimbursement per ton of placed RAC. The City, as a first time applicant for this grant program, is eligible to receive the maximum reimbursement in the amount of \$20 per ton. This reimbursement amount is approximately the cost differential between RAC and conventional asphalt. The City's PMP has scheduled approximately 12,300 tons of asphalt for rehabilitation by the grant expiration date of April 2019. This tonnage of asphalt scheduled for rehabilitation was multiplied by the reimbursement amount per ton to determine the grant application amount. The City is applying for a grant in the amount of \$246,200 and the maximum grant award is \$350,000. The asphalt scheduled for rehabilitation was determined based on the

programmed \$6 million allocated for pavement management over the next three years and requesting the maximum grant award would require programming additional funding into the pavement management program. CalRecycle has furthermore indicated that they reserve the right to award grants at less than the requested amount. A local match is not required for this grant. According to CalRecycle requirements, the City must submit a resolution that authorizes the submittal of this grant application to CalRecycle and have an adopted Environmentally Preferable Purchases and Practices Policy (EPPP). The City's EPPP was previously adopted by City Council on November 9, 2016.

DISCUSSION:

To determine the award grant amount, CalRecycle requires that the streets selected to receive RAC be included in the grant application and identified by street segment and asphalt tonnage. The City's PMP has identified a preliminary list of streets to be rehabilitated over the next 5 years. This preliminary street list was utilized for the purposes of the grant application and identifies the streets scheduled for rehabilitation by the expiration of the grant in April 2019. Staff verified with the CalRecycle grant administrator that the City is able to substitute or replace the streets listed in the application by submitting a project change request. The streets to receive RAC are listed in Attachment 2 and are preliminary pending approval by the Surface Infrastructure Committee at an upcoming meeting.

Staff will continue to investigate the applicability of alternative pavement treatments such as cold-in-place recycling and alternative funding sources such as the recent Local Streets and Roads Preservation Program grant should this grant application not be selected for award by CalRecycle.

FISCAL IMPACT:

There is no fiscal impact to submit the grant application. Should the project be approved by CalRecycle, a local match will not be required and the City will receive \$20 per ton of placed RAC up to the award amount of \$246,200.

ALTERNATIVES

1. Do not adopt the resolution to submit CalRecycle application, pull submitted application, and seek alternative funding sources and maintenance treatments for pavement rehabilitation

RECOMMENDATION

Adopt resolution authorizing filing of Rubberized Pavement Grant Program Application for TRP7 Fiscal Year 2016-17 with the California Department of Resources and Recovery (CalRecycle).

DISTRIBUTION:

None

ATTACHMENTS:

1. Resolution
2. Preliminary RAC Street List

DATE PREPARED:

October 31, 2016

REVIEWED BY:

_____ CM
_____ ACM
_____ FIN

RESOLUTION NO. 2016- ____

RESOLUTION AUTHORIZING FILING OF RUBBERIZED PAVEMENT GRANT PROGRAM APPLICATION FOR TRP7 FISCAL YEAR 2016-17 WITH THE CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE)

WHEREAS, Public Resources Code sections 48000 et seq. authorize the Department of Resources Recycling and Recovery (CalRecycle) to administer various grant programs (grants) in furtherance of the State of California's (State) efforts to reduce, recycle and reuse solid waste generated in the state thereby preserving landfill capacity and protecting public health and safety and the environment; and

WHEREAS, in furtherance of this authority CalRecycle is required to establish procedures governing the application, awarding, and management of the grants; and

WHEREAS, CalRecycle grant application procedures require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of CalRecycle grants.

NOW, THEREFORE, BE IT RESOLVED that the San Bruno City Council authorizes the submittal of Rubberized Pavement Grant Application for TRP7 Fiscal Year 2016-17 with CalRecycle; and

BE IT FURTHER RESOLVED that the City Manager, or his/her designee is hereby authorized and empowered to execute in the name of the City of San Bruno all grant documents, including but not limited to, applications, agreements, amendments and requests for payment, necessary to secure grant funds and implement the approved grant project; and

BE IT FURTHER RESOLVED that these authorizations are effective for five (5) years from the date of adoption of this resolution.

Dated: November 22, 2016

ATTEST:

Carol Bonner, City Clerk

-o0o-

I, Carol Bonner, City Clerk, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of San Bruno this 22nd day of November 2016 by the following vote:

AYES: Councilmembers: _____

NOES: Councilmembers _____

ABSENT: Councilmembers: _____

ATTACHMENT 2

PRELIMINARY RAC STREET LIST

Street Segment	From	To
Acacia Avenue	Santa Lucia Avenue	Crystal Springs Avenue
Buena Vista Avenue	East Huntington Avenue	Herman Street
Bayhill Drive	Cherry Avenue	End
Elm Avenue	Crystal Springs Avenue	Angus Avenue
Elm Avenue	Angus Avenue	San Bruno Avenue
Elm Avenue SB	San Bruno Avenue	Bayhill Drive
Euclid Avenue	El Camino Avenue	Huntington Avenue
Green Avenue	San Bruno Avenue	Forest Lane
Hazel Avenue	Crystal Springs Avenue	Park Avenue
Huntington Ave East	Herman Street	Bayshore Circle South
San Felipe Avenue	San Antonio Avenue	El Camino Real
Scott Street	San Mateo Avenue	Herman Street
Alpine Way	San Bruno venue	Cul-De-Sac
Charleston Avenue	Trenton Drive	Crestmoor Drive
Cambridge Lane	Crestmoor Drive	Skyline Blvd
Glenbrook Lane	Rosewood Drive	Cul-De-Sac
Heather Lane	Eualyptus Way	Sequoia Avenue
Kent Court	Crestmoor Drive	Cul-De-Sac
Piedmont Avenue	Crestmoor Drive	Madison Avenue
Skyline Blvd	John Muir School	Ridgeway Aenu
Cottonwood Drive	Rollingwood Drive	Fleetwood Drive
Fleetwood Drive	Catalpa Way	Rollingwood Drive
Muirfield Circle	Oakmont (N)	Oakmont (S)
Rollingwood Drive	Sneath Lane	Fleetwood Drive
Rollingwood Drive	Fleetwood Drive	Fleetwood Drive
Valleywood Drive	Oakmont Drive	Willow Way



City Council Agenda Item Staff Report

CITY OF SAN BRUNO

DATE: November 22, 2016

TO: Honorable Mayor and Members of the City Council

FROM: Marc Zafferano, City Attorney
Connie Jackson, City Manager
Carol Bonner, City Clerk

SUBJECT: Conduct Study Session Regarding the New California Voter Participation Rights Act (SB 415) that Mandates Changes to the Years in Which Municipal Elections Must Be Held

BACKGROUND:

Section 2.04.010 of the Municipal Code, adopted in 1980, provides that the general municipal election for City Council members shall be held "in accordance with state law." Section 2.32.010 states that the "election shall be held on the same day as the school district elections in November of odd-numbered years pursuant to Section 36503.5 of the Government Code."

Recent state legislation, the California Voter Participation Rights Act (SB 415), was adopted to maximize participation in municipal elections, recognizing that the highest voter turnout occurs in even-numbered years. As described in more detail below, if voter turnout at an odd-numbered year election is less than 75% of the average voter turnout in the even-year elections, the municipal election must be held in conjunction with statewide elections, i.e., in November or June of even numbered years by January 1, 2018, or that a plan be in place to provide for such elections by no later than November 8, 2022.

With the adoption of SB 415, a city shall not hold an election for its members other than on a "statewide election date" if holding an election on a non-current date has previously resulted in a "significant decrease in voter turnout". Elections Code, section 14051(a). A "statewide election date" is either the first Tuesday after the first Monday in November of even numbered years or the first Tuesday after the first Monday in June in even numbered years. A "significant decrease in voter turnout" means the "voter turnout" for a "regularly scheduled election" is at least 25% less than the average voter turnout for the previous four "statewide general elections". Elections Code, section 14051(b). A "statewide general election" is the first Tuesday after the first Monday in November in even numbered years. "Voter turnout" means the percentage of voters who are eligible to cast ballots with the city who voted. Elections Code, section 14051(c).

Where there has been a significant decrease in voter turnout, a city may nevertheless hold an election other than on a statewide election date if, by January 1, 2018, the city has adopted a plan to consolidate a future election with a statewide election by no later than November 8, 2022.

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The City Clerk, in consultation with the County Registrar of Voters, has determined that indeed there has been a significant decrease in voter turnout in odd-numbered years, as can be seen from the table below:

SB 415 - Percent Turnout per Election								
Municipal Elections	2015	2014	2013	2012	2011	2010	2009	2008
San Bruno	27.8%	41.4%	22.2%	77.8%	27.6%	61.3%	24.7%	79.1%

When the voter turnout in November 2015 is compared to the average San Bruno voter turnout in the previous four statewide general elections, i.e., the elections in November of 2014, 2012, 2010 and 2008 (64.9%), the decrease is well over the 25% threshold to trigger the requirements of SB 415.

DISCUSSION:

The City Council will need to amend the Municipal Code such that the election of Council members will occur at a statewide election (November or June of even numbered years) by no later than November 8, 2022. As a practical matter, this means that some terms of some Council members will need to be either shortened or lengthened by one year, or lengthened by half a year. For example, one approach would be to extend the terms of current Council members such that their terms would end in December 2018 or December 2020 (or June 2018/2020). Another approach would be to shorten the terms of office for those elected in 2017 so those persons' terms would end in December 2020 (rather than December 2021), or those persons' terms (rather than the current members' terms) would be extended by one year such that the terms would end in December 2022 (or extended one half year such that the terms would end in June 2022). Moreover, because the City is required only to have in place a "plan" to consolidate a future election with a statewide election by January 1, 2018, the terms of office of those elected in 2017 could remain four years, but the terms of those elected in 2019 (and 2021) would need to have their terms either shortened by one year or lengthened by one year/one half year.

There are a total of 70 public entities in San Mateo County, which includes cities, school districts, and special districts. Before SB 415 was adopted, approximately 32 of these jurisdictions conducted even-year elections, and the other 38 conducted odd-year elections. According to the County, 14 of the odd-year jurisdictions have chosen to move to even-year elections starting in 2018, leaving 24 (including San Bruno) that have either chosen to hold a 2017 election or that have not taken any action to date. To date, the cities of Millbrae, South San Francisco, Portola Valley, and Woodside have chosen to extend the terms of their 2017 Councilmembers whose terms would have otherwise ended in 2017 to 2018 and those up for election in 2019 to 2020. Brisbane had apparently indicated that it would extend their councilmembers' terms, but would wait until after January 1 to do so. It is possible that more of these 24 remaining jurisdictions that have not yet taken action will act in the coming months to move to even year elections starting in 2018.

The purpose of this workshop is to discuss various options and receive direction from the City Council as to how it would like to proceed. Staff will then return an ordinance or some other "plan" to the Council in order for the City to comply with this new state law by the statutory

deadline. All of the Options discussed below will provide that the City's municipal elections will be conducted in even numbered years beginning no later than November 2022, as required by SB 415.

Option 1: Extend the terms of the current Council members whose terms are expiring in December 2017 (R. Medina, Ibarra, Mayor Ruane) one year to December 2018 and/or also extend the terms of the current Council members whose terms are expiring in December 2019 (M. Medina, O'Connell, Mayor) one year to December 2020. Persons elected in 2018 and 2020 would then serve until 2022 and 2024, respectively. (This option is consistent with the action taken to date by the four cities in San Mateo County listed above.)

Option 1A: Extend the terms of the current Council members by six months, rather than one year, such that the elections would be held in June 2018 and June 2020 and the terms of office extended accordingly. This option would be more costly to the City than a November election as typically fewer items are on a June ballot and the City's proportionate share of the election costs would be higher than for a November election.

Option 2: Conduct the election for City Council in November 2017 and November 2019 but shorten the term of office for those so elected by one year, i.e., to December 2020 and December 2022. Those individuals then elected in 2020 and 2022 would serve until 2024 and 2026, respectively.

Option 2A: Same as Option 2 but shorten the term of office so elected by six months, i.e., to June 2020 and June 2022. This option has the same cost considerations as Option 1A.

Option 3: Conduct the election for City Council in November 2017 and November 2019 but extend the term of office for those so elected by one year, i.e., to December 2022 and December 2024. Those individuals then elected in 2022 and 2024 would serve until 2026 and 2028, respectively.

Option 3A: Same as Option 3 but extend the term for six months, i.e., to June 2022 and June 2024. This option has the same cost considerations as Option 1A.

Option 4: Conduct the election for City Council in November 2017 for a term of four years but the term of office for those elected in 2019 and 2021 would be shortened by one year, i.e., to 2022 and 2024, respectively. (Shortening the terms of office for the 2019 and 2021 elections is required because the state law requires the even year election dates to be in place by no later than November 2022.)

Option 4A: Same as Option 4 but reduce the terms of office for those elected in 2019 and 2021 by 18, rather than 12, months. This option has the same cost considerations as Option 1A, and also raises the question of why a three-year term would be shortened to two and half years.

Option 5: Do nothing at this time and return this matter to the Council in December 2017 (following the November 2017 election) for the City Council to adopt one of the above options by January 1, 2018, so there is a "plan" in place for municipal elections to be held no later than November 2022. (This option could be viewed as kicking the can down the road but would allow a "new" Council to make the decision.)

If the City Council provides direction to staff concerning any of the Options other than Option 5, staff will prepare an Ordinance for the City Council's consideration in order to implement the Option chosen. Consistent with the City Council's action in the 1980's, the Ordinance would provide that voters be notified by mail of the change, as well as by the City's various newsletters and social media. If the City Council chooses Option 5, staff will return with a "plan" for the City Council to consider that will implement Option 5.

FISCAL IMPACT:

The cost to San Bruno of maintaining odd-year elections in 2017 and/or 2019 is directly related to the number of jurisdictions that ultimately move to 2018 elections. The fewer jurisdictions that hold odd-year elections, the higher the cost will be for each of those jurisdictions.

The County elections office has provided the City Clerk with some estimates of the cost of holding an odd-year election in 2017 if all 24 of the remaining odd-year jurisdictions that have not yet acted on this matter hold such an election. For an all-mailed ballot election, the cost would be about \$90,000. If San Bruno were the only jurisdiction to hold an all-mailed ballot election in 2017, the cost would be about \$155,000. Those costs would approximately double if the election were conducted with polling places.

In contrast, the cost to San Bruno of participating in a 2018 election would be about \$30,000.

In all cases, the cost of a June election would be more than the cost of an election in November of the same year. Therefore, Options 1A, 2A, 3A, and 4A are all more costly than the corresponding November options.

RECOMMENDATION:

Receive report on the California Voter Participation Rights Act (SB 415) and provide direction on the next steps to be taken.

ATTACHMENTS:

None.

DATE PREPARED:

November 17, 2016

REVIEWED BY:

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