

CITY OF SANTA CRUZ  
809 Center Street  
Santa Cruz, California 95060



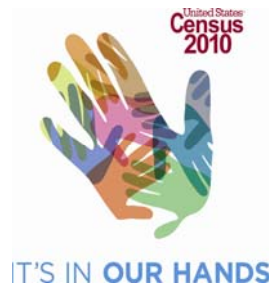
**JOINT CITY COUNCIL - REDEVELOPMENT AGENCY AGENDA**

Regular Meeting  
March 09, 2010

1:30 P.M.                                    CLOSED LITIGATION SESSION, COURTYARD CONFERENCE ROOM

3:00 P.M.                                    CONSENT, GENERAL BUSINESS, ORAL COMMUNICATIONS,  
MATTERS OF PUBLIC INTEREST AND PUBLIC HEARINGS,  
COUNCIL CHAMBERS

**Note: There will be no 7:00 p.m. Session**



*Written correspondence and telephone calls received after 5:00 p.m. on Monday preceding a Council meeting may not have time to reach Councilmembers, nor be read by them prior to consideration of an item. Please make any communication to Councilmembers regarding Council meeting items prior to 5:00 p.m. Monday.*

Council meetings are cablecast on Comcast Channel 25.

Written material for every item listed in the open sessions is available for review at the Central Branch Library Reference Desk.

Time limits set by Council Policy are guidelines. Unless otherwise specified, procedures for all items, except those approved in one motion on the Consent Agenda, are:

- Oral staff report
- Public comment - 2 minutes each; maximum total time may be established by the Presiding Officer at the beginning of the item
- Council/Agency deliberation and action

**Closed Litigation Session**

**1:30 PM**

At 1:30 p.m., the Presiding Officer will open the City Council and Redevelopment Agency Closed Litigation sessions in a public meeting in the Courtyard Conference Room, for the purpose of announcing the agenda and considering item 1; thereafter the meeting will be closed to the public.

**Referral to Closed Session**

- 1. 148 Walnut Avenue (APN 005-072-33 - Referral to Closed Session. (ED)

Motion to approve a referral to closed session the potential purchase of property located at 148 Walnut Avenue, owned by a local real estate partnership entity represented by Mr. Joe Appenrodt for the purpose of instructing the negotiator concerning the price, terms of payment, or both.

- A. Labor Negotiations (Government Code §54956.6).

Lisa Sullivan—Negotiator

- Employee Organizations—
- 1. Police Management
  - 2. Police Officers’ Association
  - 3. SEIU – All Units
  - 4. Operating Engineers-Supervisors
  - 5. Operating Engineers-Managers

- B. Real Property (Government Code §54956.8).

148 Walnut Avenue Property Acquisition (Joe Appenrodt-Owner)  
 APN 005-072-33  
 Bonnie Lipscomb-City Negotiator

212 Church Street Property Acquisition (Joe Appenrodt-Owner)  
 APN 005-048-12  
 Bonnie Lipscomb-City Negotiator

- C. Conference with Legal Counsel – Liability Claims (Government Code §54956.95)

- 1. Claimant: Sean Christopher Allen

Claims Against: City of Santa Cruz

An oral report will be presented in the 3:00 p.m. Session (item 19).

**Joint City Council/Redevelopment Agency**

**3:00 PM**

- \* Call to Order
- \* Roll Call
- \* Pledge of Allegiance
- \* Presentation - American Public Works Association - Monterey Bay Chapter Project of the Year Awarded to Public Works for the San Lorenzo Bike Pedestrian Bridge Project
- \* Presiding Officer's Announcements
- \* Statements of Disqualification
- \* Additions and Deletions
- \* Joint City Council/Redevelopment Agency Oral Communications - 30 Minutes

**Consent Agenda**

2. Minutes of the February 23, 2010 Regular and February 26, 2010 Special Closed Session City Council Meetings. (CC)  
Motion to approve as submitted.
3. Minutes of the February 23, 2010 Regular Redevelopment Agency Meeting. (CC)  
Motion to approve as submitted.
4. Affordable Housing Trust Fund Advance Repayment. (ED)  
Resolution amending the FY 2010 budget in the amount of \$589,657 increased in-lieu fee revenue and appropriating funds in the amount of \$995,000 to repay the advance and outstanding interest due to the City Public Trust Fund from the Affordable Housing Trust Fund.

**Consent Agenda (continued)**

5. Fiscal Year 2010 Budget Adjustment – Liability Insurance/Surety Bonds – Outside. (HR)

Resolution transferring funds from the Liability Insurance/Surety Bonds – Outside account in the Liability Fund to the same account in the Workers' Compensation Fund.

6. Liability Claim Filed Against City of Santa Cruz. (HR)

Motion to reject liability claim a) Sean Christopher Allen, based upon staff investigation.

7. City's Classification and Compensation Plans and the FY 2010 Budget Personnel Complement Amendment – Library. (HR)

Resolution modifying the classification and compensation plans and the FY 2010 Budget Personnel Complement by re-classifying one (1) 1.0 FTE Office Supervisor position to one (1) 1.0 FTE Administrative Analyst in the Library Department.

8. Transportation Demand Management (TDM) Promotions. (PW)

Resolution transferring funds and amending the FY 2010 in the amount of \$9,350 to fund the promotion of alternative transportation strategies to downtown employees.

9. Water Supply Project – Independent Technical Advisor – Contract Amendment No. 2. (WT)

Motion to authorize the City Manager to execute Contract Amendment No. 2 with Kennedy/Jenks Consultants of San Francisco, CA, in an amount not to exceed \$300,000 for Independent Technical Advisor to the scwd2 Seawater Desalination Program.

**Consent Agenda (continued)**

10. Beltz Monitoring Well Construction Project – Contract with Cascade Drilling, LP – Notice of Completion (WT)

Motion to accept the work completed by Cascade Drilling, LP and authorize the filing of a Notice of Completion for the contract for the Beltz Monitoring Well Construction Project.

**End Consent Agenda****General Business**

11. Revising Ordinance to Consolidate the Transportation and Public Works Commissions. (PW)

Introduction of an ordinance for publication repealing Section 2.40.015 of the Santa Cruz Municipal Code pertaining to appointment of commissioners, repealing Section 2.40.130 and 2.40.131 of the Santa Cruz Municipal Code pertaining to the Transportation Commission, and amending sections 2.40.080 and 2.40.081 of the Santa Cruz Municipal Code pertaining to the newly consolidated Transportation and Public Works Commissions.

12. San Lorenzo River Committee - Resolution Sunsetting the Committee. (CM)

Resolution dissolving the San Lorenzo River Committee, and extending the City Council's appreciation to the Committee membership for its work and accomplishments over the past six years, and rescinding Resolution No. NS-26,281.

13. Agreement Endorsing Recommendations of the Desalination Task Force on a Proposed Seawater Desalination Facility. (WT)

Motion to authorize the City Manager to execute the City of Santa Cruz and Soquel Creek Water District Agreement Endorsing the Recommendations of Joint Task Force on a Proposed Seawater Desalination Facility.

**General Business (continued)**

14. Homeless Winter Shelter Extension and Debt Funding. (ED)

Resolution appropriating funds and amending the FY 2010 budget in an amount up to \$17,042 to fund an extension of time of the Homeless Winter Shelter and assist the Homeless Services Center in covering prior debts for the Homeless Winter Shelter.

**Public Hearings**

15. Ordinance No. 2010-04. Fee Schedule Revisions Recommended for Certain Planning and Building Fees. (PL)

Final adoption of Ordinance No. 2010-04.

16. Urgency Ordinances Extending the Life of Land Use and Building Permits. (PL)

Motion acknowledging the Environmental Determination, and introduction and final adoption of the following ordinances:

An uncodified Emergency Ordinance of the City of Santa Cruz pertaining to the extension of time for exercising land use permits and declaring the presence of an emergency and the urgency thereof; and

An uncodified Emergency Ordinance of the City of Santa Cruz pertaining to the extension of time for exercising building permits and declaring the presence of an emergency and the urgency thereof.

17. Medical Marijuana Dispensaries and Personal Medical Marijuana Use Ordinances. (PL)

Introduction for publication of an Ordinance amending Title 24 of the Santa Cruz Municipal Code and of the Local Coastal Implementation Plan, modifying standards for medical marijuana dispensaries.

Introduction for publication of an Ordinance adding Section 6.90.085 to the Santa Cruz Municipal Code pertaining to annual reports from medical marijuana provider association dispensaries.

## **General Business**

18. Council Meeting Calendar.

That the City Council review the meeting calendar attached to the agenda and revise as necessary.

19. City Attorney Oral Report on Closed Session. (See Page 2.)

20. Council Memberships in City Groups and Outside Agencies.

The Presiding Officer will provide Councilmembers with the opportunity to update Council and the public regarding City Groups and Outside Agencies.

**Adjournment** — The Redevelopment Agency will adjourn from the regularly scheduled meeting of March 9, 2010 to the next regularly scheduled meeting on March 23, 2010, for a closed litigation session at 1:30 p.m., in the Courtyard Conference Room, followed by open sessions at the approximate hours of 3:00 p.m. and 7:00 p.m. in Council Chambers.

**Adjournment** — The City Council will adjourn from the regularly scheduled meeting of March 9, 2010, to the next regularly scheduled meeting on March 23, 2010, for a closed litigation session at 1:30 p.m., in the Courtyard Conference Room, followed by open sessions at the approximate hour of 3:00 p.m. and 7:00 p.m. in Council Chambers.

**Note:** The Council Chambers will be closed ten minutes after the meeting is adjourned.

**Public Hearing:** If, in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.

Any person seeking to challenge a City Council decision made as a result of a proceeding in which, by law, a hearing is required to be given, evidence is required to be taken, and the discretion in the determination of facts is vested in the City Council, shall be required to commence that action either 60 days or 90 days following the date on which the decision becomes final as provided in Code of Civil Procedure Section 1094.6 Please refer to code of Civil Procedure 1094.6 to determine how to calculate when a decision becomes "final." The 60-day rule applies to all public hearings conducted pursuant to the City's Zoning Ordinance, Title 24, Santa Cruz Municipal Code. The 90-day rule applies to all other public hearings.

### **City Council Agenda Legislative History Addendum**

No information was submitted.

City staff is responsible for providing the City Clerk with such documentation and information for the Legislative History Addendum. The information will be on file in the City Clerk's Department.

The Addendum is a listing of information specific to City Council business, but which does not appear on a Council meeting agenda. Such entities would include, but not be limited to:

Court decisions

Coastal Commission Appeals of City Council actions

Closed Session Agreements/Settlements, which are public record

Association of Monterey Bay Area Governments

Local Agency Formation Commission

#### ADDENDUM TO CITY COUNCIL AGENDA – MARCH 9, 2010

#### **INFORMATION ITEMS PREVIOUSLY DISTRIBUTED TO CITY COUNCILMEMBERS**

(Copies available in the Central Branch Library at the Reference Desk)

City Manager

Measure K Oversight Committee Semi-Annual Report to the City Council - 2/22/10 (CM FYI 136)

Economic Development Department

Google Fiber Request for Information - 2/11/10 (ED FYI 002)

314–316 Front Street – Second Amendment to Parking Lot Lease Agreement - 2/17/10 (ED FYI 003)

Termination of Municipal Wharf Webcam License Agreement - 2/23/10 (ED FYI 004)

Homeless Shelter - 2/23/10 (ED FYI 005)



ADDENDUM TO CITY COUNCIL AGENDA – MARCH 9, 2010  
**MAYOR'S PROCLAMATIONS**

1. Proclaiming February 27, 2010 as “Robert Weil Day” and urging all local residents and friends of justice around the world to join in celebrating Robert Weil’s many contributions to social justice here and around the globe and in wishing him the happiest of birthdays and many more years of effective troublemaking.
2. Proclaiming March 5, 2010 as “*Treasures Beyond the Dawn Day*” and urging residents of our fair community of every age to attend this production and to spread the word of the performances as the schedule is released, and I further commend the young people and their supporters who have written, produced, directed, scored, choreographed, acted, crewed, or helped prepare or support this bold undertaking for their creativity and engagement in a significant artistic endeavor.
3. Proclaiming March 1–7, 2010 as “Peace Corps Week” and encouraging all citizens to join in commemorating the Peace Corps 49<sup>th</sup> Anniversary; recognizing its achievements; honoring its volunteers, past and present; and reaffirming our country’s commitment to helping people help themselves throughout the world.
4. Proclaiming March 13, 2010 as “SPIN Day” and encouraging all citizens to join in honoring SPIN and all of its members, staff, and participants for their many contributions to the people of the Santa Cruz Community.
5. Proclaiming February 24, 2010 as “Bob Minnis and Jim Williams Day” and urging all residents to join in recognizing the many contributions made by these two outstanding individuals to our local Santa Cruz community and the global community as well.



CITY COUNCIL/  
REDEVELOPMENT AGENCY  
AGENDA REPORT

DATE: 03/01/10

AGENDA OF: 03/09/10

DEPARTMENT: Economic Development

SUBJECT: Referral to Closed Session - 148 Walnut Avenue, APN 005-072-33. (ED)

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RECOMMENDATION: Motion to approve a referral to closed session the potential purchase of property located at 148 Walnut Avenue owned by a local real estate partnership entity represented by Mr. Joe Appenrodt for the purpose of instructing the negotiator concerning the price, terms of payment, or both.

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BACKGROUND: The subject property, which previously was occupied and owned by FPA SENTINEL ASSOCIATES LP, was acquired recently by a local real estate partnership entity represented by Mr. Joe Appenrodt. Mr. Appenrodt recently approached staff regarding the potential interest of the City or Redevelopment Agency in acquiring the parking lot located across from the Sentinel building, adjacent to the Downtown Library.

DISCUSSION: Staff recommends that the Redevelopment Agency refer this matter to closed session to discuss the possible acquisition by the Redevelopment Agency.

FISCAL IMPACT: None at this time.

Submitted by:

Approved by:

Bonnie Lipscomb  
Director of Economic Development

Richard C. Wilson  
City Manager

ATTACHMENTS:  
NONE

# APWA Monterey Bay Chapter

2010 Public Works Project of the Year  
Nomination Form

## San Lorenzo River Bicycle/Pedestrian Bridge



December 2009

Submitted By:



Sponsor



Design Engineer



Contractor



Resident Engineer

**APWA MONTEREY BAY CHAPTER – 2010 PUBLIC WORKS PROJECT OF THE YEAR  
NOMINATION FORM**

DEADLINE: Wednesday, December 2, 2009 at 5:00 pm

**PROJECT NAME:** San Lorenzo River Pedestrian / Bicycle Bridge Project

**PROJECT COMPLETION DATE:** January 23, 2009

**PUBLIC AGENCY:**

Name: Joshua Spangrud Title: Associate Engineer

Agency/Organization: City of Santa Cruz

Address (if PO Box, include street address): 809 Center Street, Room 201

City: Santa Cruz State: CA Zip Code: 95060

Phone: (831) 420-5178 Fax: (831) 420-5161 Email: jspangrud@ci.santa-cruz.ca.us

**PRIME CONTRACTOR:**

Name: Ben Drennon Title: Project Engineer

Agency/Organization: Syblon-Reid Construction, Inc.

Address (if PO Box, include street address): PO Box 100, 1130 Sibley Street

City: Folsom State: CA Zip Code: 95763

Phone: 916-351-0457 Fax: 916-351-1674 Email: srco@srco.com

**DESIGN CONSULTANT:**

Name: Mark Imbriani Title: Project Manager

Agency/Organization: TRC Engineers, Inc.

Address (if PO Box, include street address): 10680 White Rock Road, Suite 100

City: Rancho Cordova State: CA Zip Code: 95670

Phone: (916) 366-0632 Fax: (916) 366-1501 Email: mimbriani@trcsolutions.com

**APWA MONTEREY BAY CHAPTER – 2010 PUBLIC WORKS PROJECT OF THE YEAR  
NOMINATION FORM**

**RESIDENT ENGINEER:**

Name: Bruce Shewchuk/Kimberly Fitzgerald Title: Resident Engineer

Agency/Organization: Parsons Brinckerhoff Construction Services

Address (if PO Box, include street address): 303 Second Street, Suite 700 North

City: San Francisco State: CA Zip Code: 94107

Phone: (415) 243-4600 Fax: (415) 243-9501 Email: shewchuk@pbworld.com

**SOME OF THE PROJECT TEAM MEMBERS:**



A special thanks goes to Stephanie Strelow who prepared the environmental documents and some of the language used in this nomination.



## **APWA Monterey Bay Chapter 2010 Public Works Project of the Year Nomination Form**

### ***San Lorenzo River Pedestrian/Bicycle Bridge Project, Santa Cruz, CA***

**Project Location:** The proposed bridge is located south of Highway 1 in the City of Santa Cruz, and extends over the San Lorenzo River from the top of the east river levee near the west end of Felker Street to the west levee near the Gateway Shopping Center, with ramps and a new path to integrate the new structure into the City bike path system and San Lorenzo Riverway. See Figures 1 and 2 on the following pages.

The purpose of the project is to provide a safe northerly river crossing for pedestrians and bicyclists traveling between the west and east sides of the City and along the river levee paths. The project removes pedestrian and bicycle traffic from the dangerous State Route 1 Bridge over the San Lorenzo River. State Route 1 changes from a city street (Mission Street) to a freeway facility just north of the River Street intersection. State Route 1 has interchanges at Ocean Street and State Route 17 within one-half mile to the east of the proposed bridge site. This route is not suitable for bicycles or pedestrians, thus an alternative passageway was well supported by the community.

The project includes construction of a 12-foot wide bridge that spans a distance of about 320 feet from top of west levee to top of east levee. The design is a pre-fabricated steel truss bridge supported by an abutment on each side of the river levee and two piers within the river channel. The bridge structure consists of three prefabricated steel truss spans, with a center span of 130 feet, and approach spans of 86.5 feet. The 130' span was selected to span the low flow channel in the river.

### ***Supporting Documentation***

#### **1. Completion Date: Grand Opening January 23, 2009**

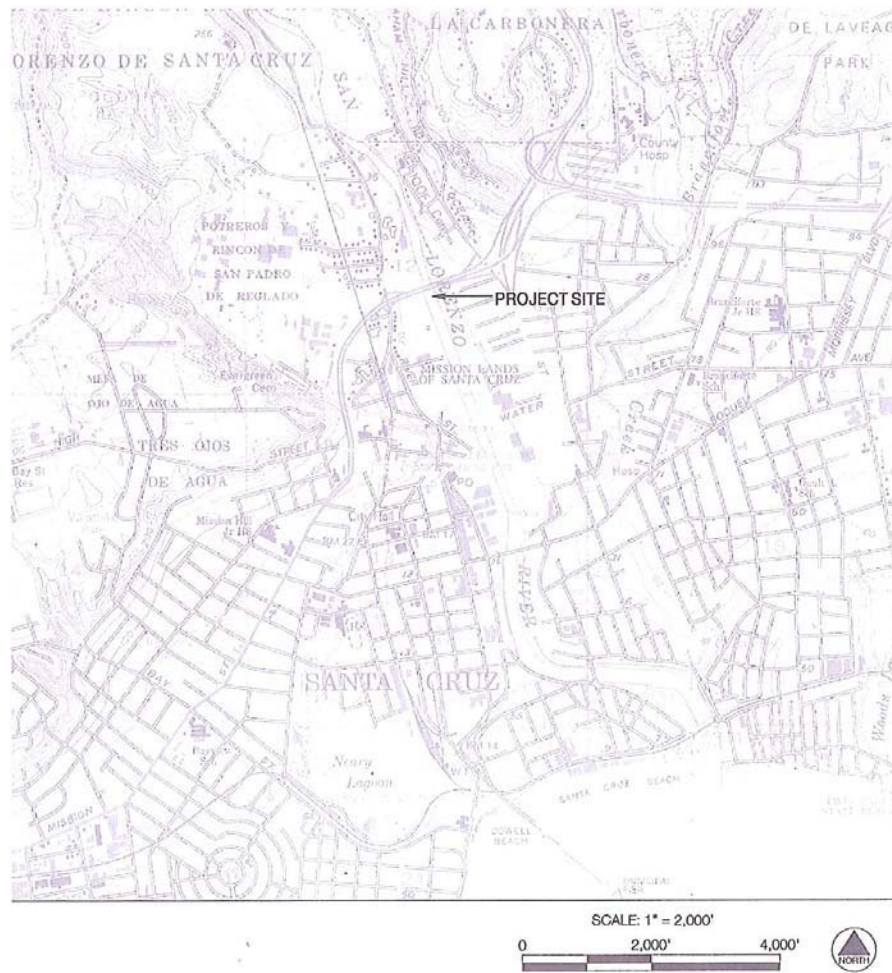
#### **2. Construction Schedule, Management, and Control Techniques Used**

The construction schedule was expected to take 24 to 26 weeks. Design completion was scheduled so that construction could commence in mid-June with most work completed in the summer of 2008 during the summer low stream flow period coincident with minimal fish migration (approximately between mid-June and mid-October). Project construction was specified to accommodate a local noise ordinance, occurring primarily on weekdays between 7AM and 6 PM. Work was permitted later in the evening and/or weekends, in accordance with City noise ordinance regulations, in order to complete critical components.

Equipment access to the site was from Felker Street on the east and from Josephine Street, south of the Gateway Plaza on the west. Unused Caltrans right of way exists adjacent to the west end of the bridge; it was used for storage of materials and equipment and for parking construction workers' vehicles. An approximate 30-foot wide path from the levee to the base of the levee was cleared on each

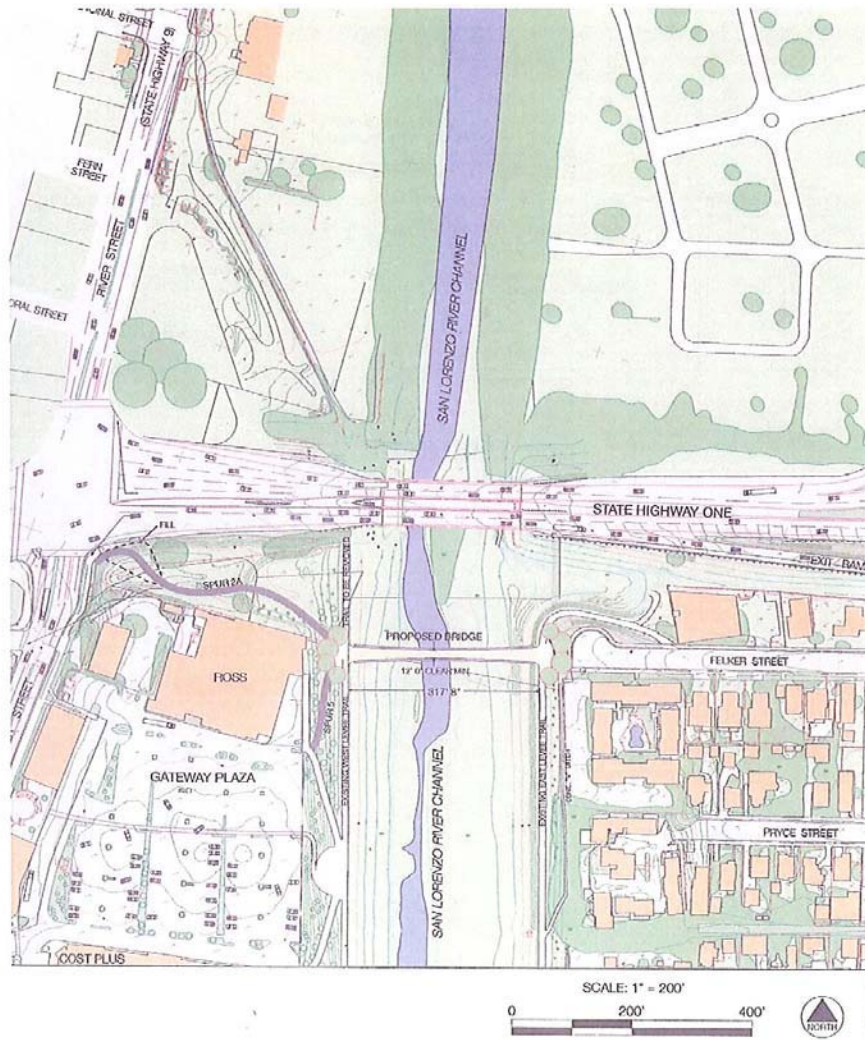


**FIGURE 1: PROJECT LOCATION**



SOURCE: John Gilchrist & Associates

**FIGURE 2: VICINITY LOCATION**



SOURCE: John Gilchrist & Associates





side to provide equipment access to the construction site at the base of the levee. The Contractor installed a temporary river crossing spanning over the low flow channel and wetland vegetation to facilitate movement of the CIDH pile drilling equipment for the pier construction.

For abutment construction, a portion of the levee was excavated. The excavation was backfilled according to COE requirements for levee construction. Grading was performed behind the levee (landside) to build up a large enough area to accommodate the crane(s) for pile drilling. Piers were constructed using large diameter drills, and the superstructure was placed using cranes. The approximate footprint and locations of these structures are shown on Figure 3.

Cranes were located on top of the levee and in the dry channel, adjacent to the levee, in order to drill the piers and place the superstructure. The drilling was accomplished via an auger attached to the crane. Soils removed from the drilling were temporarily stockpiled at the work site adjacent to the levee and hauled offsite at the end of the day. After construction of the piers, the abutment was formed and rebar and concrete placed. Concrete for the piers was pumped from the crest of the levees, and concrete trucks only needed access to the crest of the levees. There was no mixing or pumping of concrete from the river channel. Standard Caltrans' BMPs were designed and specified to prevent concrete from entering the river channel. Concrete wash-out facilities were provided at an area off of the levees, near entrances to city streets. During construction of the piers, material handling equipment (off-road forklifts and rough-terrain cranes) needed access to the pier locations in order to set up the forms. Once the abutment and piers were constructed, the superstructure (having been assembled in a laydown area alongside the river levees) was then placed on the piers and connected. All disturbed areas were revegetated.

The summer season was the critical construction critical period for construction of the piers within the river channel. Summer flow patterns limited the active low flow channel to a 20 to 25 foot wide channel in the center of the larger channel, so the active channel could be avoided during construction. A separation barrier or coffer dam was not necessary for construction. However, "best management practices" (BMPs) were used to restrict access and prevent disturbance of the active low flow channel, see Section 4 of this application for a description of mitigation measures employed.

### **3. Safety Performance Including Overall Safety Program Employed During the Construction Phase**

Safety was a vital element of the Contractor's overall plan due to the short construction window. One ill-fated incident could have jeopardized the schedule and propelled the project into another season. In an effort to minimize the risk, the Contractor employed several key items that contributed to zero lost time incidents. The Contractor prepared and submitted an Injury and Illness Prevention Plan (IIPP) which is the blueprint to work safely within the project site. Drilling down into the Plan, the Contractor prepared job hazard analyses (JHA) for the major operations, detailing the tasks, risks and safety procedures involved with these operations. The Contractor held daily safety tailgate meeting describing the operations at hand and risks involved. The Contractor also required all the major sub-contractors to comply with the basic site safety regulations as well as JHA's for the respective operations so that the General Contractor and site personnel were aware of the inherent risks with these particular operations. The Contractor enforced the 'Safety First' theme and it was not surprising that they had an exemplary safety record during the construction phase of the project.

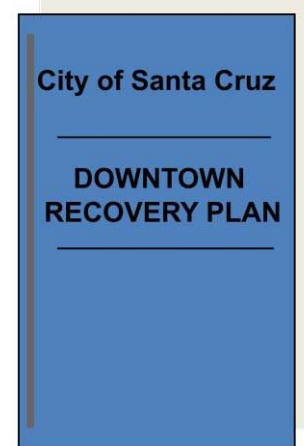
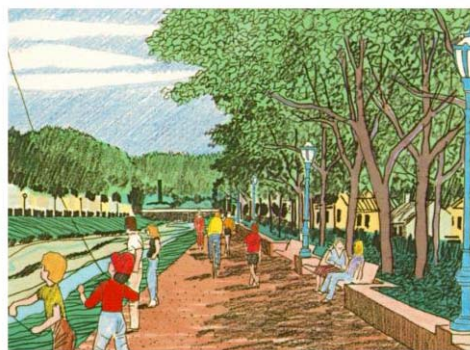
The facility has a bicycle/pedestrian safety railing meeting the required height of 54". Small openings in the railing are provided to prevent persons or objects from passing through the railing and falling into the water. A photo of the railing is shown below.



ADA requirements are incorporated into the project. The bridge type selected allows for a minimal grade difference between the levee pathways and the bridge surface, while still providing sufficient clearance above the water surface.

#### **4. Environmental Considerations Including Steps Taken to Preserve and Protect the Environment, Endangered Species, etc. During the Construction Phase**

Environmental documents for both NEPA and CEQA approvals were completed in 2008. A Biological Evaluation, Natural Environment Study, and a Location Hydraulic Study were prepared and reviewed and accepted by federal agencies. A Categorical Exclusion and Initial Study/Mitigated Negative Declaration were also prepared and approved in 2008. Guidance for the project was provided by three City-developed documents:





- San Lorenzo River Enhancement Plan – recommendations for landscaping and natural vegetation along the river
- Downtown Recovery Plan – developed after the Loma Prieta earthquake, contains recommendations to maintain traffic and attract business to the downtown area
- River Design Concept Plan – guidelines for projects on the riverfront

The bicycle-pedestrian bridge is visible from key viewpoints identified in the City’s General Plan, specifically the Highway and Water Street Bridges, as well as the San Lorenzo River levee public pathways. A visual analysis (Visual Impact Study) incorporated into the MND reviewed the preliminary photosimulations and concluded that the bridge would be a pleasing visual feature that will relate aesthetically to the San Lorenzo River and surrounding urban neighborhoods. The visual analysis found that bridge would be located in an area that is exceptionally dark at night, but concluded that there would no adverse impact due to the low reflectivity of the dark bridge surface and low-brightness and low-to-ground lighting to be installed on the bridge and pathways.

Several bridge alternatives were evaluated during the public planning process. The ideal structure would completely span the river. However due to the significant span and limited hydraulic clearance, the only structure type that would allow such a long span is a cable stay type, where the cables are located above the deck. This type was rejected during public hearings however, as the worry was that birds would fly into the cables. Thus the selected original design alternative was a haunched arch, cast in-place concrete box structure that would have spanned the river between the east and west levees, supported by two 72-inch drilled concrete abutments on each levee, but with no supporting piers in the river channel. During project development, geotechnical, seismic, and cost concerns led to this alternative being deemed infeasible, and implementation of another alternative, a three-span prefabricated steel truss bridge, was pursued.

The steel truss design eliminates the massing of a concrete structure and provides a more open design (see Figure 3 on the next page). This design allows for views of the river through the structure. Thus, the project design does not result in a new significant impact and could even enhance the scenic views. The muted finish of the steel truss structure and low lighting results in a less-than-significant impact related to light and glare.

Federally-listed species known from or with the potential to inhabit the project area included steelhead trout, coho salmon, tidewater goby, and California red-legged frog. The San Lorenzo River is designated critical habitat for coho salmon and steelhead. In order to ensure protection of this habitat and minimize environmental impacts, a Construction Access Plan was prepared by TRC. This clarified the mitigations and required site management features for environmental reviewers, citizens, and the Contractor. That plan appears on Figure 4.

A prefabricated bridge superstructure was designed to reduced the area of construction disturbance in and adjacent to the river channel and reduce duration of activity within and near the river channel. This is due to the elimination of installing and removing “falsework” piers and supports to construct a typical concrete bridge along with elimination of a temporary equipment access road across the river channel and elimination of concrete mixing equipment within the channel. Photos showing cranes lowering the truss spans into place on the piers appears below.

FIGURE 3: PROPOSED SITE PLAN

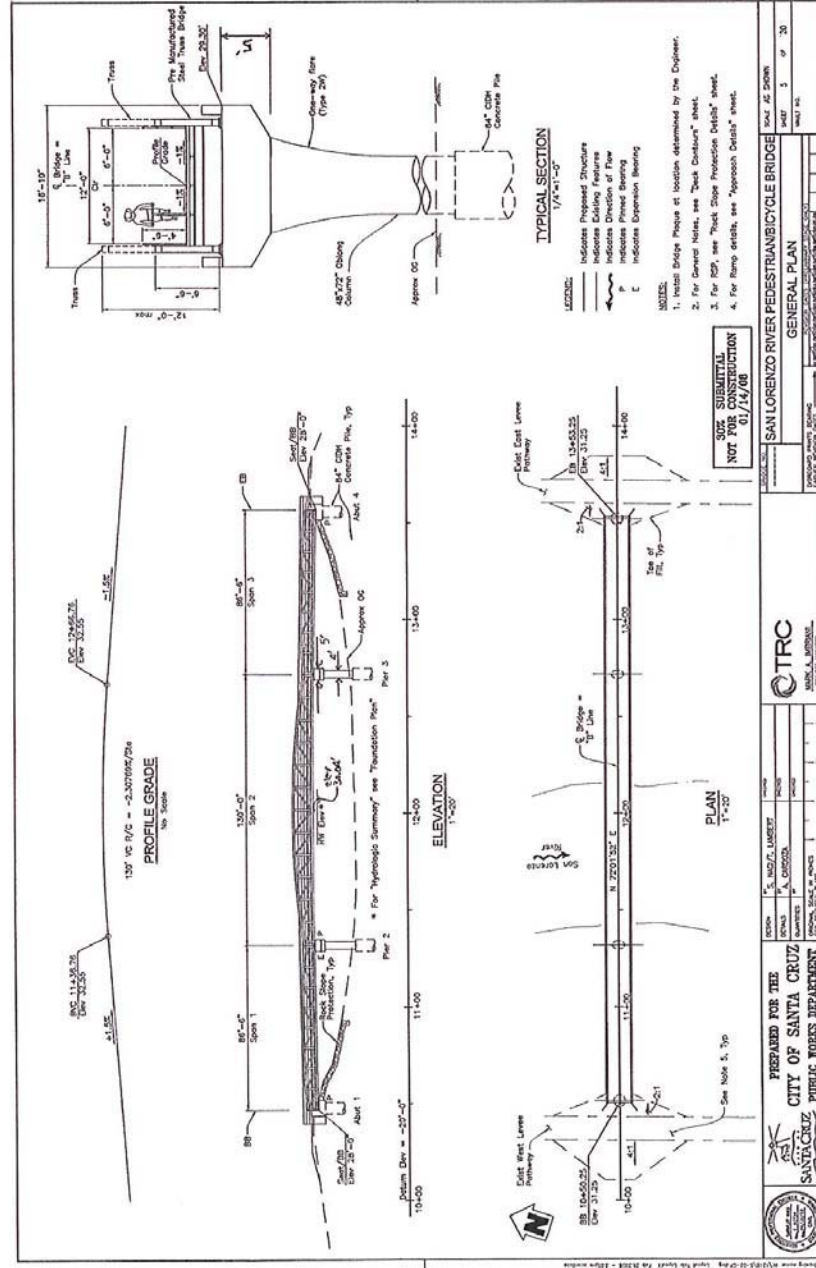
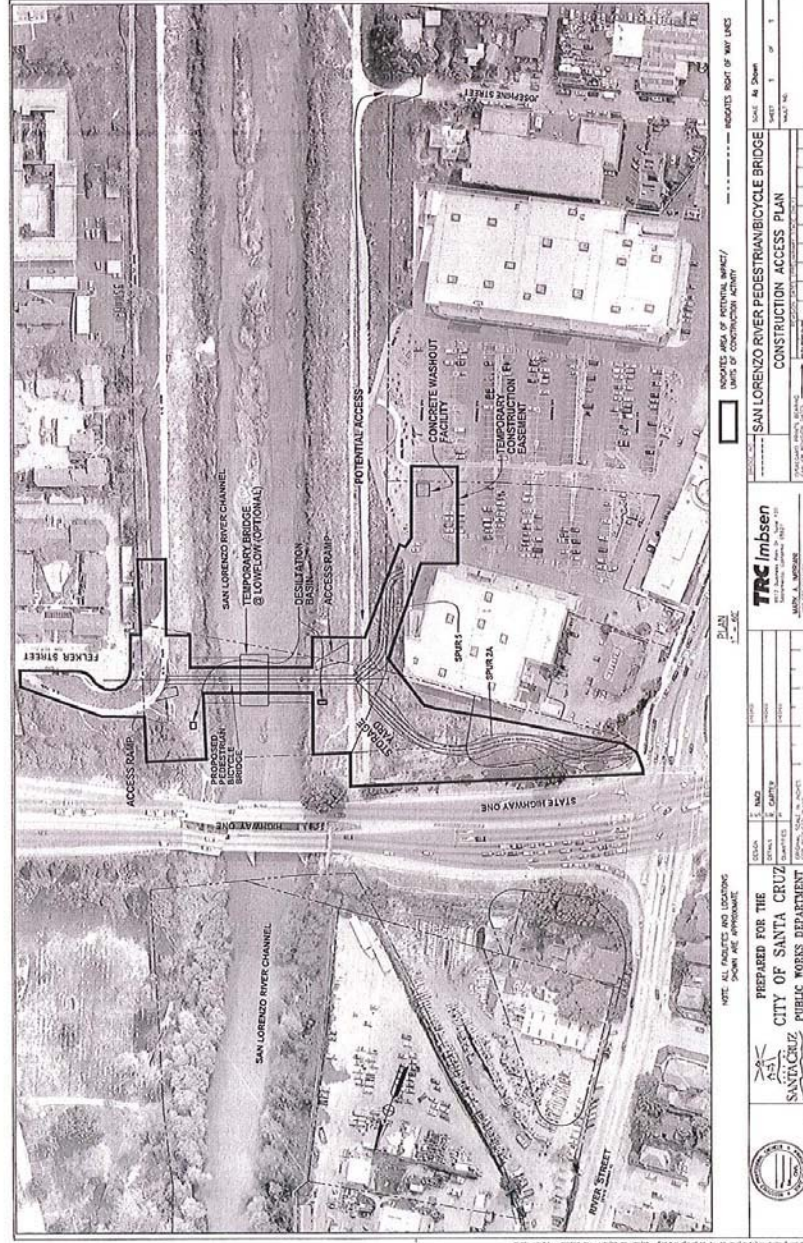
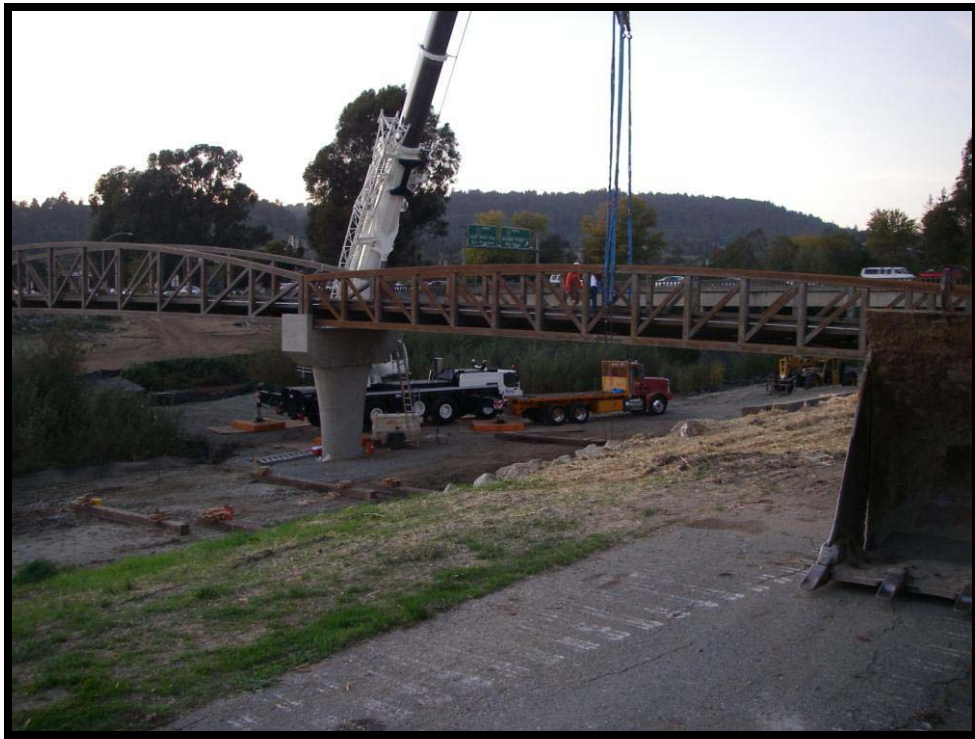




FIGURE 4: AREA OF POTENTIAL IMPACT



SAN LORENZO RIVER BICYCLE-PEDESTRIAN BRIDGE  
BIOLOGICAL EVALUATION ADDENDUM



The proposed bridge design resulted in a permanent alteration of critical habitat for coho salmon and steelhead with installation of two piers within the river channel, each with a dimension of 4x6 feet supported on an 84-inch CIDH concrete pile, but these were placed outside the active low flow



channel. Although this alteration would be permanent, it was judged not likely to adversely affect designated coho salmon or steelhead critical habitat as the piles would be located outside the low flow channel, the covered area is minimal compared to the remaining river channel, and the piles would not result in obstruction to fish passage or migration. A photo of the pile installation appears below.



With implementation of avoidance and minimization measures, the project had no effect on steelhead trout, coho salmon, California red-legged frog or tidewater goby. These measures included conducting all channel work between June 15<sup>th</sup> and October 15<sup>th</sup>, outside the steelhead migration period; implementation of erosion control measures and revegetation; and implementation of construction Best Management Practices (BMPs) to protect the low flow channel from disturbance and to prevent construction materials and debris from entering the river channel.

Regulatory permits were issued for the project by the California Regional Quality Control Board, the U. S. Army Corps of Engineers, and California Department of Fish & Game. The following avoidance and mitigation measures were employed:

1. All project activities within/above the river channel were conducted between June 15 and October 15, outside of the time period for adult or juvenile steelhead migration.
2. Temporary construction fencing was placed around sensitive habitat areas (wetlands, riparian vegetation, live river channel) to insure construction equipment or materials did not enter these areas from levee construction zones. Prior to the start of construction, bright colored



construction fencing was installed at the edge of the access routes, staging areas and work limits to avoid inadvertent impacts to vegetation and sensitive plant communities outside the work area.

3. Equipment refueling only occurred at the staging areas at the top of the levees, and all debris, petroleum products, concrete or other construction materials were located and contained where they could not enter the river.
4. Erosion control and revegetation measures after construction eliminated the potential for sedimentation into the river channel. A site specific erosion control plan was included in the design plans to clarify the intent and provide a biddable scheme. It was also required that the Contractor prepare and submitted a site specific plan for approval prior to construction. Caltrans SSPs such as SSP 07-346, "Construction Site Management", were used in the special provisions to control this work. Erosion control measures were in place before October 15<sup>th</sup>. Erosion and sedimentation control were specified per Section 20 of Caltrans Standard Specifications and appropriate BMP handbooks. Appropriate Water Pollution Control specifications were included.
5. Dust control was specified per Section 10 of Caltrans Standard Specifications.
6. Disturbed channel areas were revegetated in accordance with revegetation guidelines included in the Biological Evaluation.
7. A qualified wildlife biologist conducted a pre-construction survey for California red-legged frog prior to any construction activities within the flood control channel (between east and west levees) with at least one daytime and one nighttime survey. The biological monitor conducted a brief survey for CRLF each day prior to construction in the flood control channel. If CRLF was found, work was specified to be stopped and appropriate notification given to Caltrans and USFWS to determine guidance on dealing with this listed species.
8. After construction, all areas disturbed by construction were revegetated in accordance with revegetation guidelines in the special provisions and Appendix E of the BE. Landscape species were replanted only in landscape areas disturbed by construction

The proposed modified project design caused no take of listed species, including mortality, harassment, loss of reproduction, loss of forage and/or foraging potential, loss of shelter or cover, loss of migration or movement corridors, habitat fragmentation urbanization induced by the project, increased predation or impacts to water quality. The project design resulted in an alteration and direct loss of critical habitat due to the installation of permanent two bridge-support piles, with a total fill area of approximately 48 square feet. The piles would cover a total of approximately 48 square feet. Although this alteration would be permanent, it would not result in adverse effects to coho salmon or other aquatic species as the piles would be located outside the low flow channel, the covered area is minimal compared to the remaining river channel, and the piles would not result in obstruction to fish passage or migration. With the proposed bridge design, and avoidance and minimization measures in place, the project will have no adverse effects upon federally-listed species.

#### **5. Community Relations - a Summary of Efforts by the City, Consultant Team, and Contractor to Protect Public Lives and Property, Minimize Public Inconvenience, and Improve Relations**

A public outreach program was conducted to allow stakeholders input on the project and to incorporate their needs into the project. Several public meetings were held at which the various features and alternatives were discussed and input received and acknowledged. After this process, a smaller group of stakeholders was assembled, and numerous progress meetings were held with this





group as the final project was selected and developed. The committee included representatives of the City Public Works and Parks Departments, police and fire departments, Redevelopment Agency, San Lorenzo River Committee, Bicycle Advocates, the Consultant team, artists, an architect, Council representatives, etc. This group met and made decisions all through the design process, and guided the efforts of the engineering consultant team.

The project greatly relieves pedestrian and bicycle traffic that previously used State Route 1 to cross the river. SR 1 has extremely narrow shoulders and a high traffic volume, conditions that were quite unsafe for pedestrians and bicyclists. The new bridge allows these non-motorized modes to completely avoid the freeway, with a dedicated pathway and structure exclusively for their use. This was a primary purpose of the project and its proponents. The bridge provides a much safer travelling experience and greatly improves public convenience by allowing a river crossing without vehicles.

All right of way for the project is City-owned, no private property was taken for this project.

During construction, work areas were fenced off to protect the public. Minimal incursion onto private property was allowed and any impacts were mitigated fully. Excellent relations were maintained with the neighborhood residents, for example drilled piles were designed rather than driven, which resulted in much less noise and vibration during installation. Access to the pathways was maintained during construction with only occasional detours.

All in all, the City residents are delighted with the project which was delivered quickly and in an environmentally sensitive manner, and with stakeholder interests addressed. Evidence of this is demonstrated by the excellent turnout at the Grand Opening ceremony, see the photos below.







## **6. Unusual Accomplishments under Adverse Conditions, Including But Not Limited To, Adverse Weather, Soil, or Site Conditions, or Other Occurrences Over Which There Was No Control**

Several adverse conditions existed:

- A. Geology - Poor, sandy soils that are subject to caving and to liquefaction during a high seismic event, such as the Loma Prieta earthquake.
- B. Environmental - An environmentally sensitive area, a description of measures to minimize impacts was discussed in section 4.
- C. Flood Control - A river operating as a flood control channel, which required that any structure not increase water surface elevations up or downstream of the site.
- D. Budgetary – funding for this type of project is generally limited, however eight different funding sources were secured.
- E. Schedule – the project had a limited window during construction could be performed in the river, due to hydraulic and environmental considerations.

How we handled these considerations and how we produced a successful project are described below:

- A. Geology - The project site is subject to “very intense” shaking during an earthquake, and is subject to high liquefaction potential. In order to minimize these hazards the proposed bridge was designed in accordance with Caltrans’ Seismic Design Criteria for Bridges, as well as additional recommendations from a site-specific geotechnical report that was prepared with the final bridge design.
  - *Project Solution:* Similar soil conditions exist at the downstream Water Street, Soquel Avenue, and Laurel/Broadway bridges across this river. Fortunately the design team for this project designed bridge replacement and/or seismic retrofit of those three structures. Thus the design team was quite familiar with geologic conditions. The seismic risk of liquefaction is significant and governed the design. Shorter spans were required to minimize loads to any individual foundation. The truss bridge structure is much lighter than a concrete structure would be, thus reducing the level of seismic force and the size and number of foundations required. Shorter spans also obviated the need for soil improvement, which eliminate the need for injection grouting below the river surface. Additionally, the truss design is much more structurally efficient and reduces exposure to liquefaction risks as four supports are used to withstand earthquake loadings instead of two. Preparation of a geotechnical study was required as a mitigation measure for this project, and resulted in minimization of impacts related to seismic hazards (liquefaction).
- B. Environmental – see Section 4 of this supporting documentation.
- C. Flood Control/Hydraulics - The river is controlled by the U. S. Army COE, which originally constructed the levees for flood control circa 1955. In this regard, the COE reviewed the project for conformance with their river hydraulic models. A Location Hydraulic Study and Design Hydraulic Study were prepared for the various bridge alternatives to demonstrate that no increase in water surface elevation would occur as a result of the project. Erosion and sedimentation could become a problem during the rainy season if bare areas were left after construction. Sedimentation into the San Lorenzo River could adversely affect aquatic organisms. Thus erosion control plans and water pollution control requirements were incorporated into the design and construction.
- D. Budgetary - \$2.63M contract with only 2% contract change orders. Numerous funding sources, including several grants, were obtained to pay for the project.
- E. Schedule – the project was designed so that it could be constructed in one construction season. Single piers were used at each support location to facilitate construction. The prefabricated trusses were being assembled in a shop while the abutments and piers were



constructed in the field. Once the concrete for the abutments and piers hardened and reached its full strength, the trusses were delivered to the site and placed upon their supports. This provided the Contractor with sufficient time to complete their work in the river in one season in accordance with agency permit requirements.

#### **7. Additional Considerations Such as Innovations in Technology and/or Management Applications During the Project**

The project embraced a truly collaborative team effort to complete the project on time. The environmental window was quickly closing on the project and there were many items to complete within the San Lorenzo River banks. The project team brainstormed with the Department of Fish and Game (biologist and warden), Caltrans Environmental Group, and local wildlife biologist to re-sequence activities, work over-time and limit access within the river banks to continue working and take advantage of good weather conditions. Had it not been for this open communication between all parties, the project would have gone into another construction season.

The bridge is made from a special type of steel known as weathering steel. This steel naturally corrodes to some degree over time, but in doing so seals itself and further corrosion is halted. A corrosion study was performed by an expert to recommend measures to prevent future corrosion.





**NOMINATED BY:**

Name: Chris Schneider Title: Assistant Public Works Director  
Agency/Organization: City of Santa Cruz, Dept. of Public Works  
Address (if PO Box, include street address): 809 Center Street, Room 201  
City: Santa Cruz State: CA Zip Code: 95060  
Phone: (831) 420-5422 Fax: (831) 420-5161 Email: cschneider@ci.santa-cruz.ca.us

**THESE MATERIALS MUST BE SUBMITTED TO:**

Tom Sharp, Senior Engineering Associate  
City of Watsonville – Community Development Dept  
PO Box 50000  
Watsonville, CA 95076

Contract Tom at (831) 768-3076 or send an e-mail to [TSharp@ci.watsonville.ca.us](mailto:TSharp@ci.watsonville.ca.us) if you have any questions.



**Sponsor**



**Design Engineer**



**Contractor**



**Resident Engineer**

**MINUTES ARE UNOFFICIAL UNTIL APPROVED BY COUNCIL**

CITY OF SANTA CRUZ  
809 Center Street  
Santa Cruz, California 95060

**MINUTES OF A REGULAR JOINT CITY COUNCIL/  
REDEVELOPMENT AGENCY MEETING**

February 23, 2010

**1:30 PM SESSION**

Mayor Rotkin opened the Closed Litigation Session at 1:40 p.m. in a public session in the Courtyard Conference Room, for the purpose of announcing the agenda and considering item 1.

**Referral to Closed Session**

1. Referral to Closed Session - Real Property Negotiation for Acquisition of Property Located at 575 Dimeo Lane (APN 059-121-07). (ED)

Action

Councilmember Lane moved, seconded by Councilmember Madrigal, to refer to closed session the potential purchase of property located at 575 Dimeo Lane (APN 059-121-07) owned by the Humphrey Estate for the purpose of instructing the negotiator concerning price, terms, or both. The motion carried unanimously (Councilmember Robinson absent).

Council closed the session to the public at 1:43 p.m. All Councilmembers were present (Councilmember Robinson arrived at 1:56 p.m.). (See pages 1103 through 1104 for a report on closed session.)

JOINT CITY COUNCIL/  
REDEVELOPMENT AGENCY MEETING  
FEBRUARY 23, 2010  
3:00 P.M. SESSION

**3:00 PM SESSION**

Mayor/Chair Rotkin called the meeting to order at 3:08 p.m. in the Council Chambers.

**Roll Call**

Present: Councilmembers/Members Lane, Mathews, Beiers, Madrigal, Robinson; Vice Mayor/Vice Chair Coonerty; Mayor/Chair Rotkin.

Absent: None.

Staff: City Manager R. Wilson, Assistant City Manager M. Bernal, Principal Administrative Analyst T. Shull, Special Events Coordinator K. Agnone, City Attorney J. Barisone, Director of Economic Development and Redevelopment B. Lipscomb, Principal Planner C. Berg, Director of Human Resources L. Sullivan, Director of Finance J. Dilles, Chief of Fire R. Oliver, Director of Information Technology S. Caiocca, Director of Parks and Recreation D. Shoemaker, Director of Planning and Community Development J. Rebagliati, Assistant Director of Planning and Community Development A. Khoury, Director of Public Works M. Dettle, Superintendent of Resource Recovery R. Nelson, Director of Water B. Kocher, City Clerk L. Brewer, Deputy City Clerk T. Graves.

**Pledge of Allegiance**

**Spotlight on City Services** - 2009 Homeless Survey and City Services – Presented by Principal Planner Carol Berg and Paul O'Brien, Homeless Action Partnership.

**Presiding Officer's Announcements**

**Statements of Disqualification** – None.

**Additions and Deletions** – None.



### **Joint City Council/Redevelopment Agency Oral Communications**

Mike Tomasi expressed disappointment and anger at the VA Hospital in Palo Alto.

### **Consent Agenda**

Item 11 was removed from the Consent Agenda.

#### Action

Councilmember/Member Lane moved, seconded by Councilmember/Member Robinson, to approve the remaining items on the Consent Agenda. The motion carried unanimously.

2. Minutes of the February 9, 2010 Regular City Council Meeting. (CC)

Motion carried to approve as submitted.

3. Minutes of the February 9, 2010 Regular Redevelopment Agency Meeting. (CC)

Motion carried to approve as submitted.

4. Street Lighting Program and Lower Pacific Avenue Street Lights Project – Cooperation Agreement. (ED)

City Council Resolution No. NS-28,168 was adopted authorizing the City Manager to execute a Cooperation Agreement with the Redevelopment Agency through which the Agency will contribute to the Street Lighting Program and Lower Pacific Avenue Street Lights Project.

Redevelopment Agency Resolution No. 1479 was adopted authorizing the Executive Director to execute a Cooperation Agreement with the City through which the Agency will contribute to the Street Lighting Program and Lower Pacific Avenue Street Lights Project.

Redevelopment Agency Resolution No. 1480 was adopted amending the FY 2010 budget and authorizing funds in an amount up to \$26,000 from available fund balance to fully fund the Street Lighting Program and Lower Pacific Avenue Street Lights Project.

City Council Resolution No. NS-28,169 was adopted amending the FY 2010 budget and authorizing funds in an amount up to \$26,000 provided by the Redevelopment Agency to fully fund the Street Lighting Program and Lower Pacific Avenue Street Lights Project.

JOINT CITY COUNCIL/  
 REDEVELOPMENT AGENCY MEETING  
 FEBRUARY 23, 2010  
 3:00 P.M. SESSION

**Consent Agenda (continued)**

5. City's Classification and Compensation Plans and the FY 2010 Budget Personnel Complement – Water Department. (HR)

Resolution No. NS-28,170 was adopted amending the Classification and Compensation Plans and the FY 2010 Budget Personnel Complement by deleting one full-time Operations Technician position in the Water Department and deleting the classification of Operations Technician from the City's Classification Plan.

6. Designation of HOPE Services, Inc., as Designated Approved Collector for Electronic Waste. (PW)

Motion carried to approve an agreement, in a form approved by the City Attorney, designating HOPE Services, Inc., as a Designated Approved Collector for covered electronic wastes (CEW) pursuant to 14 CCR 18660.5(a)(34).

7. San Lorenzo River Gravity Outlet Valve Maintenance Project - c400033 - Sole Source Vendor. (PW)

Motion carried to authorize Anderson Pacific Engineering Construction Inc. (Santa Clara, CA), as the sole source contractor for the San Lorenzo River Gravity Outlet Valve Maintenance Project. The City Manager is hereby authorized and directed to execute the contract, approved as to form by the City Attorney, as authorized by Resolution No. NS-27,563.

8. Soquel Avenue/Hagemann Avenue Safety Improvement Project (c400803)- Ratify Bid Award. (PW)

Motion carried to ratify the bid award to, and agreement with, Don Chapin Inc, Salinas, CA in the amount of \$144,470.70 for the Soquel Avenue/Hagemann Avenue Intersection Improvement Project (c400803).

9. Summer 2009 Overlay Project – West Cliff Drive (c400829) Contract Change Order. (PW)

Motion carried to accept Change Order #1 to the contract with Joseph J. Albanese, Inc., of Santa Clara, CA, increasing the contract by \$209,000 for the Summer 2009 Overlay Project – West Cliff Drive (c400829).

**Consent Agenda (continued)**

10. San Lorenzo River Highway 1 Bridge Underpass Project Contract Amendment 1 (c400826) Construction Management Services. (PW)

Motion carried to approve Amendment 1 to the contract with PB Americas, Inc., Sacramento, CA, in the amount of \$71,500 for the construction management of the San Lorenzo River Highway 1 Bridge Underpass Project - (c400826) to cover costs associated with compliance with additional oversight by the State and complications associated with unfavorable weather conditions.

11. Habitat Conservation Plan and Incidental Take Permit – Scientific and Permitting Support - Contract Amendment No. 1. (WT)

Director of Water B. Kocher presented an oral report and responded to Council's questions.

SPEAKING FROM THE FLOOR EXPRESSING SUPPORT AND/OR CONCERNS:

Mike Tomasi

Action

Councilmember Beiers moved, seconded by Councilmember Lane, to ratify the agreement dated August 7, 2009 between the City of Santa Cruz and Hagar Environmental Sciences (Richmond, CA), for scientific and permitting support of the City's a Habitat Conservation Plan and Incidental Take Permit, and to ratify Contract Amendment No.1 in the amount of \$55,110 with Hagar Environmental Sciences (Richmond, CA), for additional scientific and permitting support of the City's Habitat Conservation Plan and Incidental Take Permit. The motion carried unanimously.

12. Water Supply Project - Entrainment Study and Impact Assessment - Contract Amendment No. 3. (WT)

Motion carried to authorize the City Manager to execute Contract Amendment No. 3 with Tenera Environmental (Layayette, CA), in the amount of \$38,200 for additional data collection and interpretation for the Entrainment Study and Impact Assessment for the scwd2 Desalination Program.

**End Consent Agenda**

JOINT CITY COUNCIL/  
REDEVELOPMENT AGENCY MEETING  
FEBRUARY 23, 2010  
3:00 P.M. SESSION

**General Business**

13. Special Events Alcohol Policy. (CM)

Principal Administrative Analyst T. Shull and Special Events Coordinator K. Agnone presented oral reports and responded to Council's questions.

SPEAKING FROM THE FLOOR EXPRESSING OPPOSITION AND/OR CONCERNS:

Mike Tomasi

Action

Vice Mayor Coonerty moved, seconded by Councilmember Mathews, to authorize a permanent special events alcohol program that will allow the consumption of wine and beer during special events held on public property in specifically designated and controlled areas. The motion carried unanimously.

14. Countywide Single-Use Bag Reduction Measures. (PW)

Superintendent of Resource Recovery R. Nelson and Emily Glanville, Save Our Shores Program Manager, presented oral reports and responded to Council's questions.

SPEAKING FROM THE FLOOR EXPRESSING SUPPORT AND/OR CONCERNS:

Mike Tomasi

Action

Councilmember Beiers moved, seconded by Councilmember Lane, to join with the County and other local governments to take appropriate actions to reduce the use of single-use bags by local retailers and consumers. The motion carried unanimously.

**General Business (continued)**

15. Merging the City Transportation and Public Works Commissions. (PW)

Director of Public Works M. Dettle presented an oral report and responded to Council's questions.

Action

Councilmember Mathews moved, seconded by Councilmember Robinson, to combine the City Transportation Commission and Public Works Commission into one body and to provide direction to staff to prepare the necessary enabling ordinance revisions and by-laws to create a merged Transportation and Public Works Commission. The motion carried unanimously.

**Public Hearing**

16. Fee Schedule Revisions Recommended for Certain Planning and Building Fees. (PL)

Assistant Director of Planning and Community Development A. Khoury presented an oral report and responded to Council's questions.

Mayor Rotkin opened the public hearing at 4:27 p.m.

No members of the public wished to speak.

Mayor Rotkin closed the public hearing at 4:27 p.m.

Action

Councilmember Mathews moved, seconded by Councilmember Robinson, to introduce for publication Ordinance No. 2010-04 amending portions of Title 18 relating to permit fees and to adopt Resolution No. NS-28,171 revising Fee Schedules for the Department of Planning and Community Development and rescinding Resolution No. NS-27,971, changing the last sentence in the last paragraph to read, "BE IT FURTHER RESOLVED by the City of Santa Cruz that the fees shown in Exhibit A continue to be adjusted annually on July 1<sup>st</sup> to account for inflation, based on the Consumer Price Index for the previous 12-month period going back to the previous April..."; to include the arborist fees; and to make the proposed fees effective in 60 days. The motion carried unanimously.

JOINT CITY COUNCIL/  
 REDEVELOPMENT AGENCY MEETING  
 FEBRUARY 23, 2010  
 3:00 P.M. SESSION

**General Business**

17. Council Meeting Calendar

Mayor Rotkin announced the Council would meet in Closed Session on Friday, February 26, 2010 to consider the appointment of a new City Manager.

18. City Attorney Oral Report on Closed Session.

A. Real Property (Government Code §54956.8).

575 Dimeo Lane Property Acquisition (Humphrey-Owner)  
 APN: 059-121-07  
 Bonnie Lipscomb--Negotiator

Council received a status report, instructed the negotiator, and took no reportable action.

B. Labor Negotiations (Government Code §54956.6).

Lisa Sullivan—Negotiator  
 Employee Organizations—

1.	Police Management
2.	Police Officers' Association
3.	SEIU – All Units
4.	Operating Engineers-Supervisors
5.	Operating Engineers-Managers

Council received a status report, instructed the negotiator, and took no reportable action.

C. Conference With Legal Counsel—Existing Litigation (Government Code §54956.9).

1. City v. Deleon/Richardson, Santa Cruz Superior Court Consolidated Case No. CV162526

Council received a status report, instructed the City Attorney, and took no reportable action.

**Closed Litigation Session (continued)**

- D. Conference with Legal Counsel-Anticipated Litigation (Government Code §54956.9).

Initiation of Litigation by City (Government Code §54956.9(c)).

1 case was discussed.

19. Council Memberships in City Groups and Outside Agencies.

Councilmember Lane said the Regional Transportation Commission is grappling with the state over funds for the purchase of the rail line, and urged Councilmembers and/or members of the public to lobby the State Transportation Commission and their legislative representatives on the RTC's behalf.

**At 4:36 p.m., the City Council and Redevelopment Agency recessed to the 7:00 P.M. Session.**

CITY OF SANTA CRUZ  
809 Center Street  
Santa Cruz, California 95060

**MINUTES OF A JOINT CITY COUNCIL/  
REDEVELOPMENT AGENCY MEETING**

February 23, 2010

**7:00 P.M. SESSION**

Mayor/Chair Rotkin called the meeting to order at 7:07 p.m. in Council Chambers.

**Roll Call**

Present: Councilmembers/Members Lane, Mathews, Beiers, Madrigal, Robinson, Vice Mayor/Vice Chair Coonerty; Mayor/Chair Rotkin.

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Staff: Assistant City Manager M. Bernal, City Attorney C. Cassman, Chief of Police H. Skerry, CPVAW Coordinator K. Agnone, City Clerk L. Brewer, Deputy City Clerk T. Graves.

**Presentation** – Mayor’s Proclamation Celebrating the Santa Cruz Peace Corps Community – Amy Monroe, UCSC Peace Corps Representative and Martin Case, UCSC Peace Corps Volunteer.

**Joint City Council and Redevelopment Agency Oral Communications**

Stuart Kriege spoke in favor of the Westside Medicinal Cannabis Collective.

Tony Madrigal spoke about the Prom Dress Drive, and passed out an informational flyer.



**General Business**

20. Commission for Prevention of Violence Against Women's (CPVAW) 2008-2009 Annual Report and Recommendations. (CM)

Commission for Prevention of Violence Against Women (CPVAW)  
Coordinator K. Agnone, Chief of Police H. Skerry, CPVAW Chair Martine  
Watkins, and CPVAW Past Chair Karren Zook presented oral and reports  
and responded to Council's questions.

SPEAKING FROM THE FLOOR EXPRESSING OPPOSITION AND/OR  
CONCERNS:

Gillian Greensite  
Nina Millikan

SPEAKING FROM THE FLOOR EXPRESSING SUPPORT AND/OR  
CONCERNS:

Brad Snyder  
Laura Segura, Executive Director, Women's Crisis Support/  
Defensa de la Mujeres

Action

Vice Mayor Coonerty moved, seconded by Councilmember Madrigal, to accept the CPVAW's 2008–2009 Annual Report; to support and prioritize the safety skills/self-defense programs scheduled and coordinated by the CPVAW for community members through public classes as well as classes scheduled in partnership with Santa Cruz City Schools; to recognize the importance of prevention programs, such as the safety skills/self-defense classes, Engaging the Bystander workshops, and other current and future CPVAW activities, and support these programs by attending and encouraging community members to participate; to approve the CPVAW's solicitation of grant funding which would maintain and build current partnerships with a variety of organizations; and to accept the CPVAW's sincere appreciation for the ongoing support as the 30th Anniversary of the CPVAW approaches in 2011. The motion carried unanimously.

Staff was directed to bring back a report regarding rape and assault statistical data.

JOINT CITY COUNCIL/  
REDEVELOPMENT AGENCY MEETING  
FEBRUARY 23, 2010  
3:00 P.M. SESSION

**Adjournment** — At 8:31 p.m., the Redevelopment Agency adjourned from the regularly scheduled meeting of February 23, 2010 to the next regularly scheduled meeting on March 9, 2010, for a closed litigation session at 1:30 p.m., in the Courtyard Conference Room, followed by open sessions at the approximate hours of 3:00 p.m. and 7:00 p.m. in Council Chambers.

**Adjournment** — At 8:31 p.m., the City Council adjourned from the regularly scheduled meeting of February 23, 2010, to a Special Closed Session meeting on Friday, February 26, 2009 at 3:00 p.m., in the City Manager's Conference Room. The next regularly scheduled meeting will be on March 9, 2010, for a closed litigation session at 1:30 p.m., in the Courtyard Conference Room, followed by open sessions at the approximate hours of 3:00 p.m. and 7:00 p.m. in Council Chambers.

Respectfully submitted

Tom Graves  
Deputy City Clerk

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Approved

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Lorrie Brewer  
City Clerk

Approved

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Michael Rotkin  
Mayor

**MINUTES ARE UNOFFICIAL UNTIL APPROVED BY COUNCIL**

CITY OF SANTA CRUZ  
809 Center Street  
Santa Cruz, California 95060

**MINUTES OF A SPECIAL CITY COUNCIL CLOSED SESSION MEETING**

February 26, 2010

**3:00 PM SESSION**

Present: Councilmembers Lane, Mathews, Beiers, Madrigal (arrived at 3:13 p.m.), Robinson; Vice Mayor Coonerty; Mayor Rotkin.

Absent: None.

Mayor Rotkin opened the Closed Litigation Session at 3:07 p.m. in a public session in the Courtyard Conference Room, for the purpose of announcing the agenda. No members of the public were present.

Mayor Rotkin closed the public session at 3:07 p.m.

A. Public Employee Hiring Decision (Government Code §54957).

City Council's hiring of City Manager.

The Council discussed the hiring of the City Manager.

**Adjournment:** At 5:50 p.m., the City Council adjourned from the special closed session of February 26, 2010 to the next regularly scheduled meeting on March 9, 2010 for a 1:30 p.m. Closed Litigation Session in the Courtyard Conference Room followed by 3 p.m. and 7 p.m. open sessions in Council Chambers.

Approved

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Lorrie Brewer  
City Clerk

**MINUTES ARE UNOFFICIAL UNTIL APPROVED BY COUNCIL**

CITY OF SANTA CRUZ  
809 Center Street  
Santa Cruz, California 95060

**MINUTES OF A REGULAR REDEVELOPMENT AGENCY MEETING**

February 23, 2010

**3:00 PM SESSION**

Mayor/Chair Rotkin called the meeting to order at 3:08 p.m. in the Council Chambers.

**Roll Call**

Present: Councilmembers/Members Lane, Mathews, Beiers, Madrigal, Robinson; Vice Mayor/Vice Chair Coonerty; Mayor/Chair Rotkin.

Absent: None.

Staff: City Manager R. Wilson, Assistant City Manager M. Bernal, Principal Administrative Analyst T. Shull, Special Events Coordinator K. Agnone, City Attorney J. Barisone, Director of Economic Development and Redevelopment B. Lipscomb, Principal Planner C. Berg, Director of Human Resources L. Sullivan, Director of Finance J. Dilles, Chief of Fire R. Oliver, Director of Information Technology S. Caiocca, Director of Parks and Recreation D. Shoemaker, Director of Planning and Community Development J. Rebagliati, Assistant Director of Planning and Community Development A. Khoury, Director of Public Works M. Dettle, Superintendent of Resource Recovery R. Nelson, Director of Water B. Kocher, City Clerk L. Brewer, Deputy City Clerk T. Graves.

**Pledge of Allegiance**

**Spotlight on City Services** - 2009 Homeless Survey and City Services – Presented by Principal Planner Carol Berg and Paul O'Brien, Homeless Action Partnership.

**Presiding Officer's Announcements**

**Statements of Disqualification** – None.

**Additions and Deletions** – None.

REDEVELOPMENT AGENCY MEETING  
 FEBRUARY 23, 2010  
 3:00 P.M. SESSION

**Joint City Council/Redevelopment Agency Oral Communications**

Mike Tomasi expressed disappointment and anger at the VA Hospital in Palo Alto.

**Consent Agenda**

Item 11 was removed from the Consent Agenda.

Action

Councilmember/Member Lane moved, seconded by Councilmember/Member Robinson, to approve the remaining items on the Consent Agenda. The motion carried unanimously.

1. Minutes of the February 9, 2010 Regular City Council Meeting. (CC)

Motion carried to approve as submitted.

2. Minutes of the February 9, 2010 Regular Redevelopment Agency Meeting. (CC)

Motion carried to approve as submitted.

3. Street Lighting Program and Lower Pacific Avenue Street Lights Project – Cooperation Agreement. (ED)

City Council Resolution No. NS-28,168 was adopted authorizing the City Manager to execute a Cooperation Agreement with the Redevelopment Agency through which the Agency will contribute to the Street Lighting Program and Lower Pacific Avenue Street Lights Project.

Redevelopment Agency Resolution No. 1479 was adopted authorizing the Executive Director to execute a Cooperation Agreement with the City through which the Agency will contribute to the Street Lighting Program and Lower Pacific Avenue Street Lights Project.

Redevelopment Agency Resolution No. 1480 was adopted amending the FY 2010 budget and authorizing funds in an amount up to \$26,000 from available fund balance to fully fund the Street Lighting Program and Lower Pacific Avenue Street Lights Project.

City Council Resolution No. NS-28,169 was adopted amending the FY 2010 budget and authorizing funds in an amount up to \$26,000 provided by the Redevelopment Agency to fully fund the Street Lighting Program and Lower Pacific Avenue Street Lights Project.

REDEVELOPMENT AGENCY MEETING  
FEBRUARY 23, 2010  
3:00 P.M. SESSION

**Consent Agenda (continued)**

4. City's Classification and Compensation Plans and the FY 2010 Budget Personnel Complement – Water Department. (HR)

Resolution No. NS-28,170 was adopted amending the Classification and Compensation Plans and the FY 2010 Budget Personnel Complement by deleting one full-time Operations Technician position in the Water Department and deleting the classification of Operations Technician from the City's Classification Plan.

5. Designation of HOPE Services, Inc., as Designated Approved Collector for Electronic Waste. (PW)

Motion carried to approve an agreement, in a form approved by the City Attorney, designating HOPE Services, Inc., as a Designated Approved Collector for covered electronic wastes (CEW) pursuant to 14 CCR 18660.5(a)(34).

6. San Lorenzo River Gravity Outlet Valve Maintenance Project - c400033 - Sole Source Vendor. (PW)

Motion carried to authorize Anderson Pacific Engineering Construction Inc. (Santa Clara, CA), as the sole source contractor for the San Lorenzo River Gravity Outlet Valve Maintenance Project. The City Manager is hereby authorized and directed to execute the contract, approved as to form by the City Attorney, as authorized by Resolution No. NS-27,563.

7. Soquel Avenue/Hagemann Avenue Safety Improvement Project (c400803)- Ratify Bid Award. (PW)

Motion carried to ratify the bid award to, and agreement with, Don Chapin Inc, Salinas, CA in the amount of \$144,470.70 for the Soquel Avenue/Hagemann Avenue Intersection Improvement Project (c400803).

8. Summer 2009 Overlay Project – West Cliff Drive (c400829) Contract Change Order. (PW)

Motion carried to accept Change Order #1 to the contract with Joseph J. Albanese, Inc., of Santa Clara, CA, increasing the contract by \$209,000 for the Summer 2009 Overlay Project – West Cliff Drive (c400829).

REDEVELOPMENT AGENCY MEETING  
 FEBRUARY 23, 2010  
 3:00 P.M. SESSION

### **Consent Agenda (continued)**

9. San Lorenzo River Highway 1 Bridge Underpass Project Contract Amendment 1 (c400826) Construction Management Services. (PW)

Motion carried to approve Amendment 1 to the contract with PB Americas, Inc., Sacramento, CA, in the amount of \$71,500 for the construction management of the San Lorenzo River Highway 1 Bridge Underpass Project - (c400826) to cover costs associated with compliance with additional oversight by the State and complications associated with unfavorable weather conditions.

10. Habitat Conservation Plan and Incidental Take Permit – Scientific and Permitting Support - Contract Amendment No. 1. (WT)

Director of Water B. Kocher presented an oral report and responded to Council's questions.

SPEAKING FROM THE FLOOR EXPRESSING SUPPORT AND/OR CONCERNS:

Mike Tomasi

#### Action

Councilmember Beiers moved, seconded by Councilmember Lane, to ratify the agreement dated August 7, 2009 between the City of Santa Cruz and Hagar Environmental Sciences (Richmond, CA), for scientific and permitting support of the City's a Habitat Conservation Plan and Incidental Take Permit, and to ratify Contract Amendment No.1 in the amount of \$55,110 with Hagar Environmental Sciences (Richmond, CA), for additional scientific and permitting support of the City's Habitat Conservation Plan and Incidental Take Permit. The motion carried unanimously.

11. Water Supply Project - Entrainment Study and Impact Assessment - Contract Amendment No. 3. (WT)

Motion carried to authorize the City Manager to execute Contract Amendment No. 3 with Tenera Environmental (Layayette, CA), in the amount of \$38,200 for additional data collection and interpretation for the Entrainment Study and Impact Assessment for the scwd2 Desalination Program.

**End Consent Agenda**

REDEVELOPMENT AGENCY MEETING  
FEBRUARY 23, 2010  
3:00 P.M. SESSION

**General Business**

12. Special Events Alcohol Policy. (CM)

Principal Administrative Analyst T. Shull and Special Events Coordinator K. Agnone presented oral reports and responded to Council's questions.

SPEAKING FROM THE FLOOR EXPRESSING OPPOSITION AND/OR CONCERNS:

Mike Tomasi

Action

Vice Mayor Coonerty moved, seconded by Councilmember Mathews, to authorize a permanent special events alcohol program that will allow the consumption of wine and beer during special events held on public property in specifically designated and controlled areas. The motion carried unanimously.

13. Countywide Single-Use Bag Reduction Measures. (PW)

Superintendent of Resource Recovery R. Nelson and Emily Glanville, Save Our Shores Program Manager, presented oral reports and responded to Council's questions.

SPEAKING FROM THE FLOOR EXPRESSING SUPPORT AND/OR CONCERNS:

Mike Tomasi

Action

Councilmember Beiers moved, seconded by Councilmember Lane, to join with the County and other local governments to take appropriate actions to reduce the use of single-use bags by local retailers and consumers. The motion carried unanimously.



REDEVELOPMENT AGENCY MEETING  
 FEBRUARY 23, 2010  
 3:00 P.M. SESSION

**General Business (continued)**

14. Merging the City Transportation and Public Works Commissions. (PW)

Director of Public Works M. Dettle presented an oral report and responded to Council's questions.

Action

Councilmember Mathews moved, seconded by Councilmember Robinson, to combine the City Transportation Commission and Public Works Commission into one body and to provide direction to staff to prepare the necessary enabling ordinance revisions and by-laws to create a merged Transportation and Public Works Commission. The motion carried unanimously.

**Public Hearing**

15. Fee Schedule Revisions Recommended for Certain Planning and Building Fees. (PL)

Assistant Director of Planning and Community Development A. Khoury presented an oral report and responded to Council's questions.

Mayor Rotkin opened the public hearing at 4:27 p.m.

No members of the public wished to speak.

Mayor Rotkin closed the public hearing at 4:27 p.m.

Action

Councilmember Mathews moved, seconded by Councilmember Robinson, to introduce for publication Ordinance No. 2010-04 amending portions of Title 18 relating to permit fees and to adopt Resolution No. NS-28,171 revising Fee Schedules for the Department of Planning and Community Development and rescinding Resolution No. NS-27,971, changing the last sentence in the last paragraph to read, "BE IT FURTHER RESOLVED by the City of Santa Cruz that the fees shown in Exhibit A continue to be adjusted annually on July 1<sup>st</sup> to account for inflation, based on the Consumer Price Index for the previous 12-month period going back to the previous April..."; to include the arborist fees; and to make the proposed fees effective in 60 days. The motion carried unanimously.

REDEVELOPMENT AGENCY MEETING  
FEBRUARY 23, 2010  
3:00 P.M. SESSION

**General Business**

16. Council Meeting Calendar

Mayor Rotkin announced the Council would meet in Closed Session on Friday, February 26, 2010 to consider the appointment of a new City Manager.

17. City Attorney Oral Report on Closed Session.

A. Real Property (Government Code §54956.8).

575 Dimeo Lane Property Acquisition (Humphrey-Owner)  
APN: 059-121-07  
Bonnie Lipscomb--Negotiator

Council received a status report, instructed the negotiator, and took no reportable action.

B. Labor Negotiations (Government Code §54956.6).

Lisa Sullivan—Negotiator  
Employee Organizations—

1. Police Management
2. Police Officers' Association
3. SEIU – All Units
4. Operating Engineers-Supervisors
5. Operating Engineers-Managers

Council received a status report, instructed the negotiator, and took no reportable action.

C. Conference With Legal Counsel—Existing Litigation (Government Code §54956.9).

1. City v. Deleon/Richardson, Santa Cruz Superior Court Consolidated Case No. CV162526

Council received a status report, instructed the City Attorney, and took no reportable action.

REDEVELOPMENT AGENCY MEETING  
FEBRUARY 23, 2010  
3:00 P.M. SESSION

**Closed Litigation Session (continued)**

- D. Conference with Legal Counsel-Anticipated Litigation (Government Code §54956.9).

Initiation of Litigation by City (Government Code §54956.9(c)).

1 case was discussed.

18. Council Memberships in City Groups and Outside Agencies.

Councilmember Lane said the Regional Transportation Commission is grappling with the state over funds for the purchase of the rail line, and urged Councilmembers and/or members of the public to lobby the State Transportation Commission and their legislative representatives on the RTC's behalf.

**At 4:36 p.m., the Redevelopment Agency recessed to the 7:00 P.M. Session.**

CITY OF SANTA CRUZ  
809 Center Street  
Santa Cruz, California 95060

**MINUTES OF A REDEVELOPMENT AGENCY MEETING**

February 23, 2010

**7:00 P.M. SESSION**

Mayor/Chair Rotkin called the meeting to order at 7:07 p.m. in Council Chambers.

**Roll Call**

Present: Councilmembers/Members Lane, Mathews, Beiers, Madrigal, Robinson, Vice Mayor/Vice Chair Coonerty; Mayor/Chair Rotkin.

-----  
Staff: Assistant City Manager M. Bernal, City Attorney C. Cassman, Chief of Police H. Skerry, CPVAW Coordinator K. Agnone, City Clerk L. Brewer, Deputy City Clerk T. Graves.

**Presentation** – Mayor’s Proclamation Celebrating the Santa Cruz Peace Corps Community – Amy Monroe, UCSC Peace Corps Representative and Martin Case, UCSC Peace Corps Volunteer.

**Joint City Council and Redevelopment Agency Oral Communications**

Stuart Kriege spoke in favor of the Westside Medicinal Cannabis Collective.

Tony Madrigal spoke about the Prom Dress Drive, and passed out an informational flyer.

REDEVELOPMENT AGENCY MEETING  
 FEBRUARY 23, 2010  
 7:00 P.M. SESSION

### **General Business**

19. Commission for Prevention of Violence Against Women's (CPVAW) 2008-2009 Annual Report and Recommendations. (CM)

Commission for Prevention of Violence Against Women (CPVAW) Coordinator K. Agnone, Chief of Police H. Skerry, CPVAW Chair Martine Watkins, and CPVAW Past Chair Karren Zook presented oral and reports and responded to Council's questions.

SPEAKING FROM THE FLOOR EXPRESSING OPPOSITION AND/OR CONCERNS:

Gillian Greensite  
 Nina Millikan

SPEAKING FROM THE FLOOR EXPRESSING SUPPORT AND/OR CONCERNS:

Brad Snyder  
 Laura Segura, Executive Director, Women's Crisis Support/  
 Defensa de la Mujeres

### Action

Vice Mayor Coonerty moved, seconded by Councilmember Madrigal, to accept the CPVAW's 2008–2009 Annual Report; to support and prioritize the safety skills/self-defense programs scheduled and coordinated by the CPVAW for community members through public classes as well as classes scheduled in partnership with Santa Cruz City Schools; to recognize the importance of prevention programs, such as the safety skills/self-defense classes, Engaging the Bystander workshops, and other current and future CPVAW activities, and support these programs by attending and encouraging community members to participate; to approve the CPVAW's solicitation of grant funding which would maintain and build current partnerships with a variety of organizations; and to accept the CPVAW's sincere appreciation for the ongoing support as the 30th Anniversary of the CPVAW approaches in 2011. The motion carried unanimously.

Staff was directed to bring back a report regarding rape and assault statistical data.

REDEVELOPMENT AGENCY MEETING  
FEBRUARY 23, 2010  
7:00 P.M. SESSION

**Adjournment** — At 8:31 p.m., the Redevelopment Agency adjourned from the regularly scheduled meeting of February 23, 2010 to the next regularly scheduled meeting on March 9, 2010, for a closed litigation session at 1:30 p.m., in the Courtyard Conference Room, followed by open sessions at the approximate hours of 3:00 p.m. and 7:00 p.m. in Council Chambers.

Approved

---

Mike Rotkin  
Chair

Attest

---

Bonnie Lipscomb  
Executive Director



## CITY COUNCIL AGENDA REPORT

DATE: 03/01/2010

AGENDA OF: 3/9/2010

DEPARTMENT: Economic Development

SUBJECT: Affordable Housing Trust Fund Advance Repayment. (ED)

---

**RECOMMENDATION:** Resolution amending the FY 2010 budget in the amount of \$589,657 increased in-lieu fee revenue and appropriating funds in the amount of \$995,000 to repay the advance and outstanding interest due to the City Public Trust Fund from the Affordable Housing Trust Fund.

---

**BACKGROUND:** On October 28, 2003, City Council established the Affordable Housing Trust Fund (AHTF) for the purpose of developing and preserving affordable housing. At the same time, City Council approved an advance (loan from one fund to another) of \$530,000 from the City Public Trust Fund to the new AHTF so that it would have the \$1 million balance that would qualify the City for a grant from the California Department of Housing and Community Development Local Housing Trust Fund.

On April 22, 2008, Council authorized an additional advance of \$355,000 from the City Public Trust Fund to the AHTF to cover a shortfall in available funds due to delayed developer payments of in-lieu fees. The advance was necessary to cover AHTF program grants. The combined outstanding advance balance of \$885,000 has been accruing interest which currently totals approximately \$120,000.

**DISCUSSION:** On February 2nd, the City received payment of deferred in-lieu fees from one developer in the amount of \$589,657. Combined with the available accumulated fund balance in the Affordable Housing Trust Fund, the outstanding loan and accrued interest, totaling approximately \$1,005,000 may now be repaid to the City Public Trust Fund.

In the current fiscal year budget, only \$10,000 had been appropriated to repay interest accruing on the advance balance. The additional \$995,000 appropriation of this budget adjustment will be funded by the \$589,657 of in-lieu fee revenue and \$405,343 of available fund balance in the Affordable Housing Trust Fund.

The remaining AHTF current fiscal year end available fund balance will be approximately \$25,000. It is anticipated that developer in-lieu fees of \$216,000 and Inclusionary Program administrative fees of \$7,500 will replenish the AHTF in the next fiscal year. In the longer term, proceeds from the sale of the two units at 2030 North Pacific will also increase the fund balance available for new affordable housing projects.

FISCAL IMPACT: The City Public Trust Fund available balance will increase by \$1,005,000 which represents the balance outstanding at June 30, 2009 of \$991,284 and interest accrued for fiscal year 2010. The Affordable Housing Trust Fund available balance will decrease by the payment amount.

Prepared by:  
Kathryn Mintz  
Redevelopment Finance Manager

Submitted by:  
Bonnie Lipscomb  
Director of Economic Development

Approved by:  
Richard C. Wilson  
City Manager

ATTACHMENTS:  
Budget Adjustment  
Memo



**City of Santa Cruz  
BUDGET ADJUSTMENT REQUEST**

<input checked="" type="radio"/> Council Approval .....	Resolution No. _____
<input type="radio"/> RDA Approval .....	Resolution No. _____
<input type="radio"/> Administrative Approval	

<input checked="" type="radio"/> Current Fiscal Year
<input type="radio"/> Prior Fiscal Year

Date:

<u>ACCOUNT</u>	<b>REVENUE</b> EDEN ACCOUNT TITLE	
279-51-81-5201-46917	Affordable Housing Trust Fund: Housing in-lieu charges	\$589,657.00
<b>TOTAL REVENUE</b>		<b>\$589,657.00</b>

<u>ACCOUNT</u>	<b>EXPENDITURE</b> EDEN ACCOUNT TITLE	
279-51-81-5201-58150	Affordable Housing Trust Fund: Advance principal	\$885,000.00
279-51-81-8210-58250	Affordable Housing Trust Fund: Advance interest	110,000.00
<b>TOTAL EXPENDITURE</b>		<b>\$995,000.00</b>

**NET: \$ (405,343.00)**

**Purpose:** To budget the receipt of Affordable Housing Trust Fund developer in-lieu fees and to appropriate repayment of the advance and outstanding accrued interest to the City Public Trust Fund. A \$10,000 repayment of interest had been previously budgeted.

<b>PREPARED BY</b>	<b>DEPARTMENT HEAD APPROVAL</b>	<b>ACCOUNTING APPROVAL</b>	<b>FINANCE DIRECTOR APPROVAL</b>	<b>CITY MANAGER APPROVAL</b>
Kathryn Mintz <small>Digitally signed by Kathryn Mintz DN: cn=Kathryn Mintz, o=City of Santa Cruz, ou=Finance, email=kmintz@cityofscruz.ca.us, c=US Date: 2010.02.11 15:27:44 -0800</small>	Bonnie Lipscomb <small>Digitally signed by Bonnie Lipscomb DN: cn=Bonnie Lipscomb, o=City of Santa Cruz, CA, ou=H&amp;A, email=blipscomb@cityofscruz.ca.us, c=US Date: 2010.02.11 15:28:37 -0800</small>	Cheryl Fyfe <small>Digitally signed by Cheryl Fyfe DN: cn=Cheryl Fyfe, o=City of Santa Cruz, CA, ou=H&amp;A, email=cfyfe@cityofscruz.ca.us, c=US Date: 2010.02.11 17:14:18 -0800</small>	Jack Dilles <small>Digitally signed by Jack Dilles DN: cn=Jack Dilles, ou=Finance, email=JD, email=jdilles@cityofscruz.ca.us, c=US Date: 2010.02.11 17:16:59 -0800</small>	
2/3/10		2/11/10		

Revised December 2009



809 Center Street, Room 101, Santa Cruz, CA 95060 • 831 420-5053 • Fax: 831 420-5312 • www.cityofsantacruz.com

## MEMORANDUM

DATE: February 11, 2010

TO: Richard C. Wilson, City Manager

FROM: Jack Dilles, Finance Director

RE: **Status of City Public Trust Fund Receivables**

---

Currently, the City Public Trust Fund has approximately \$4.6 million in loan balances due from other funds to which the Trust Fund has previously made advances. The following table summarizes these loan balances:

<b>Advances Due From Other Funds:</b>	<b>Remaining Principal</b>
Redevelopment Mission Street Underground Utility Project	\$ 888,476
Affordable Housing Trust Fund	991,284
CDBG Fund for Homeless Center	210,000
General Fund CIP for Street Overlay Project	2,000,000
General Fund CIP for Skateboard Park	509,687
<b>Total Advances Due From Other Funds:</b>	<b>\$ 4,599,447</b>

Once the Affordable Housing Trust Fund has repaid its loan to the City Public Trust Fund, loans receivable in the Trust Fund will total approximately \$3.6 million.



## CITY COUNCIL AGENDA REPORT

DATE: 03/03/2010

AGENDA OF: 3/9/2010

DEPARTMENT: Human Resources

SUBJECT: Fiscal Year 2010 Budget Adjustment – Liability Insurance/Surety Bonds –  
Outside. (HR)

---

RECOMMENDATION: Resolution transferring funds and amending the FY 2010 budget in the amount of \$33,000 from the Liability Fund to the Workers' Compensation Fund.

---

BACKGROUND: Funds for excess Workers' Compensation insurance were approved in the FY 2010 budget, but incorrectly placed in the Liability Insurance Fund. In accordance with City policy (Administrative Procedure Order #I-9), transfers of existing appropriations between funds must be approved by the City Council.

DISCUSSION: The cost of excess Workers' Compensation insurance should be assigned to the Workers' Compensation fund.

FISCAL IMPACT: There will not be an impact to the overall FY 2010 budget. This will result in a reduction of \$33,000 in budgeted expenditures in the Liability Insurance Fund and an increase in expenditures to the Workers' Compensation Fund in the same amount.

Prepared by:	Submitted by:	Approved by:
Lisa Martinez Sullivan	Lisa Martinez Sullivan	Richard C. Wilson
Director of Human Resources	Director of Human Resources	City Manager

ATTACHMENTS: Budget Adjustment

**City of Santa Cruz  
BUDGET ADJUSTMENT REQUEST**

<input checked="" type="radio"/> Council Approval .....	Resolution No. _____
<input type="radio"/> RDA Approval .....	Resolution No. _____
<input type="radio"/> Administrative Approval	

<input checked="" type="radio"/> Current Fiscal Year
<input type="radio"/> Prior Fiscal Year

Date: \_\_\_\_\_

ACCOUNT	REVENUE EDEN ACCOUNT TITLE	
<b>TOTAL REVENUE</b>		<b>\$0.00</b>

ACCOUNT	EXPENDITURE EDEN ACCOUNT TITLE	
842-12-08-7821-52933	Liability Insurance/Surety Bonds - Outside	(\$33,000.00)
841-12-07-7820-52933	Liability Insurance/Surety Bonds - Outside	33,000.00
<b>TOTAL EXPENDITURE</b>		<b>\$0.00</b>

**NET: \$ 0.00**

Purpose: Transfer of funds to cover excess Workers' Compensation Payroll Premium Audit. Funds were budgeted in Liability (7821) and the expense should be paid from Workers' Compensation (7820).

PREPARED BY	DEPARTMENT HEAD APPROVAL	ACCOUNTING APPROVAL	FINANCE DIRECTOR APPROVAL	CITY MANAGER APPROVAL
Kathy Stagnaro <small>Digitally signed by Kathy Stagnaro DN: cn=Kathy Stagnaro, o=City of Santa Cruz, ou=City of Santa Cruz, email=kstagnar@city.santa-cruz.ca.us, c=US Date: 2010.02.24 15:55:42 -0800</small>	Lisa Sullivan <small>Digitally signed by Lisa Sullivan DN: cn=Lisa Sullivan, o=City of Santa Cruz, ou=City of Santa Cruz, email=lsullivan@city.santa-cruz.ca.us, c=US Date: 2010.02.23 12:11:58 -0800</small>	Patty Haymond <small>Digitally signed by Patty Haymond DN: cn=Patty Haymond, o=Finance Department, ou=City of Santa Cruz, email=phaymond@city.santa-cruz.ca.us, c=US Date: 2010.02.24 12:25:12 -0800</small>  2/24/10	Jack Dilles <small>Digitally signed by Jack Dilles DN: cn=Jack Dilles, ou=Finance, ou=FRAC, email=jdilles@city.santa-cruz.ca.us, o=US Date: 2010.02.24 15:55:42 -0800</small>	



## CITY COUNCIL AGENDA REPORT

DATE: 03/01/2010

AGENDA OF: 3/9/2010

DEPARTMENT: Human Resources

SUBJECT: Liability Claims Filed Against City of Santa Cruz. (HR)

---

RECOMMENDATION: Motion to reject liability claim a) Sean Christopher Allen, based upon staff investigation.

---

### BACKGROUND:

a. Claimant: Sean Christopher Allen  
Date of occurrence: 01/11/10  
Date of claim: 02/04/10  
Amount of claim: \$600.00

Claimant alleges police damaged two doors while executing a search warrant.

Represented by himself.

DISCUSSION: None

FISCAL IMPACT: None

Prepared by:  
Kris Kamandulis  
Risk & Safety Manager

Submitted by:  
Lisa Martinez Sullivan  
Director of Human Resources

Approved by:  
Richard C. Wilson  
City Manager

ATTACHMENTS: None



## CITY COUNCIL AGENDA REPORT

DATE: 03/01/2010

AGENDA OF: 3/9/2010

DEPARTMENT: Human Resources

SUBJECT: City's Classification and Compensation Plans and the FY 2010 Budget  
Personnel Complement Amendment – Library. (HR)

---

**RECOMMENDATION:** Resolution modifying the classification and compensation plans and the FY 2010 Budget Personnel Complement by re-classifying one (1) 1.0 FTE Office Supervisor position to one (1) 1.0 FTE Administrative Analyst in the Library Department.

---

**BACKGROUND:** In order to address the library budget shortfall, several library positions were deleted from the library budget including a full time senior management Librarian III and the full time Assistant Director of Libraries. Both of these positions provided senior management level support for the Director of Libraries.

**DISCUSSION:** Since her appointment in July, 2009, the Director of Libraries has become familiar with the library and its organizational structure and staffing needs. Given the size and scope of the library organization and services, combined with the elimination of two senior management positions, the Director of Libraries has a strong need for assistance with certain management level administrative tasks. Some of these tasks include taking an active role in preparing and managing the library's budget, performing research projects such as the return on investment (ROI) calculator, assisting with revising organizational processes and policies, assisting staff with personnel issues, and working on the monthly and annual statistics.

In order to best meet the staffing and organizational needs of the Library, the Director of Libraries is recommending the position of Office Supervisor in the Supervisory bargaining unit be reclassified to an Administrative Analyst position in the Mid-Management bargaining unit. This will allow the Administrative Analyst position to assume the higher, management level tasks as mentioned above as well as continue with the tasks of the Office Supervisor.

The Human Resources Department has analyzed the recommendation and is in agreement with the reclassification. These recommendations have been reviewed and approved by the Library Joint Powers Authority Board and also have been presented to both the Supervisory and Mid-Management bargaining units.

FISCAL IMPACT: The fiscal impact to the Library fund for the FY 2010 budget is a cost increase of approximately \$2,100 and will be paid through existing funds in the Library's temporary personnel budget. The annual fiscal impact is a cost increase of approximately \$10,200 to the Library Fund with funds being transferred from existing budget expenses as part of the new FY 2011 budget adoption. There will be no cost increase to the General Fund with this change.

Prepared by:  
Cathy Bonino  
Principal HR Analyst

Submitted by:  
Lisa Martinez Sullivan  
Director of Human Resources

Approved by:  
Richard C. Wilson  
City Manager

ATTACHMENTS: Resolution

RESOLUTION NO. NS-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ  
MODIFYING THE CLASSIFICATION AND COMPENSATION PLANS AND THE  
FY 2010 BUDGET PERSONNEL COMPLEMENT – LIBRARY BY RE-CLASSIFYING  
ONE (1) 1.0 FTE OFFICE SUPERVISOR TO ONE (1) 1.0 FTE  
ADMINISTRATIVE ANALYST POSITION

WHEREAS, staff has recommended certain modifications to the Library

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

That, effective March 20, 2010, the City of Santa Cruz Classification and Compensation Plans be modified to:

	<u>Class No.</u>	<u>Activity</u>	<u>Classification Title</u>	<u>Salary</u>
<b><u>Delete:</u></b>	316-003	3410	Office Supervisor	\$3,958/mo - \$5,848mo
<b><u>Add:</u></b>	702-	3410	Administrative Analyst	\$4,726/mo - \$6,396/mo

PASSED AND ADOPTED this 9th day of March, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk





## CITY COUNCIL AGENDA REPORT

DATE: 03/01/2010

AGENDA OF: 3/9/2010

DEPARTMENT: Public Works

SUBJECT: Transportation Demand Management (TDM) Promotions. (PW)

---

**RECOMMENDATION:** Resolution transferring funds and amending the FY 2010 in the amount of \$9,350 to fund the promotion of alternative transportation strategies to downtown employees.

---

**BACKGROUND:** At the Downtown Commission meeting of September 24, 2009, staff presented existing TDM tools that are currently available to businesses and employees of Downtown Santa Cruz. Commissioners were amazed at the number of alternative transportation options that currently exist for downtown employees but were unaware that they were available.

The Commission formed a subcommittee with Staff, Commissioners Mandel, Slack and Hoffman, Tegan Speiser of the Santa Cruz County Regional Transportation Commission (SCCRTC), Piet Canin of Ecology Action and Chip from the Downtown Association (DTA) to look at ways to promote the current TDM services. The subcommittee discussed a number of ideas on how to best promote these services including:

- SCCRTC Event for February 2010 "Meet Your Match" with prize drawings and a cover story and pull-out section in the Good Times (February 4, 2010 edition).
- A promotional blitz during Rideshare Week (October 2010).
- Downtown commuter club with membership perks.
- Signs about TDM programs on the bike lockers and the Pacific Avenue garbage truck.
- New comprehensive parking brochure with alternative transportation options listed in both English and Spanish.
- TDM Choices power point presentation on websites: City, Ecology Action, SCCRTC and DTA.
- Distribution of ParkCard brochure with parking tickets.
- Add TDM Choices information (flier or brochure) with new business licenses packages.

DISCUSSION: The Master Transportation Study (MTS) parking objectives and policy direction proscribe the increased use of alternative modes of transportation (TDM) and improved access options for workers. The Downtown Commission, at its January 28, 2010 meeting, recommended budget adjustment approval from City Council to fund the TDM promotional items.

While some of these ideas are sponsored by outside agencies, or are items that will be cost neutral, a budget needs to be created to produce the promotion advertisement components. The items requiring additional funding to include:

Graphic design services: \$3000  
Brochure printing: \$2000  
Sign production and installation: \$1500  
Postage: \$500  
Filer printing: \$200  
Print Advertising: \$2000  
Translation costs: \$150

FISCAL IMPACT: This item has no General Fund impact. Cost to the Downtown Parking Fund estimated at \$9,350 for the first year and an additional \$2,500 for each budget year to update and continue the promotion of TDM Services.

Prepared by:	Submitted by:	Approved by:
Marlin Granlund	Mark R. Dettle	Richard C. Wilson
Parking Program Manager	Director of Public Works	City Manager

ATTACHMENTS: Budget Adjustment

**City of Santa Cruz  
BUDGET ADJUSTMENT REQUEST**

<input checked="" type="radio"/> Council Approval .....	Resolution No. _____
<input type="radio"/> RDA Approval .....	Resolution No. _____
<input type="radio"/> Administrative Approval	

<input checked="" type="radio"/> Current Fiscal Year
<input type="radio"/> Prior Fiscal Year

Date:

ACCOUNT	REVENUE EDEN ACCOUNT TITLE	
<b>TOTAL REVENUE</b>		<b>\$0.00</b>

ACCOUNT	EXPENDITURE EDEN ACCOUNT TITLE	
741-40-64-7401-52199	Other Professional & Technical Services	\$4,650.00
741-40-64-7401-52960	Advertising	2,000.00
741-40-64-7401-52972	Printing and Binding - Outside	2,200.00
741-40-64-7401-53101	Postage Charges	500.00
<b>TOTAL EXPENDITURE</b>		<b>\$9,350.00</b>

**NET: \$ (9,350.00)**

**Purpose:** To fund Transportation Demand Management (TDM) promotions for downtown employee alternative transportation strategies, from fund balance.

PREPARED BY	DEPARTMENT HEAD APPROVAL	ACCOUNTING APPROVAL	FINANCE DIRECTOR APPROVAL	CITY MANAGER APPROVAL
Marlin Granlund <small>Digitally signed by Marlin Granlund DN: cn=Marlin Granlund, o=City of Santa Cruz, ou=Public Works, email=granlund@cityofsc.org, c=US</small> Date: 2010.02.17 10:18:27 -0800  2/17/10	Mark R. Dettle <small>Digitally signed by Mark R. Dettle DN: cn=Mark R. Dettle, o=City of Santa Cruz, ou=Public Works, email=mdettle@cityofsc.org, c=US</small> Date: 2010.02.17 10:28:41 -0800	Patty Haymond <small>Digitally signed by Patty Haymond DN: cn=Patty Haymond, o=Finance Department, ou=City of Santa Cruz, email=p.haymond@cityofsc.org, c=US</small> Date: 2010.02.24 10:30:10 -0800  2/24/10	Jack Dilles <small>Digitally signed by Jack Dilles DN: cn=Jack Dilles, ou=Finance, ou=FMAC, email=jdilles@cityofsc.org, o=City of Santa Cruz, c=US</small> Date: 2010.02.25 08:54:04 -0800	

Revised December 2009



## CITY COUNCIL AGENDA REPORT

DATE: 03/01/2010

AGENDA OF: 3/9/2010

DEPARTMENT: Water

SUBJECT: Water Supply Project – Independent Technical Advisor – Contract  
Amendment No. 2. (WT)

---

**RECOMMENDATION:** Motion to authorize the City Manager to execute Contract Amendment No. 2 with Kennedy/Jenks Consultants of San Francisco, CA, in an amount not to exceed \$300,000 for Independent Technical Advisor to the scwd2 Seawater Desalination Program.

---

**BACKGROUND:** At its July 18, 2007 meeting, the scwd2 Desalination Task Force approved an organizational structure and descriptions of responsibilities for the Task Force, Program Managers, Desalination Program Coordinator and Public Outreach Coordinator. The approved organizational structure includes an Independent Technical Advisor. This position provides general program oversight and advises staff on technical issues.

Following a competitive process in the fall of 2007, the City, on behalf of scwd2, hired Kennedy/Jenks Consultants (K/J) in March 2008 under a one-year contract for \$250,000, with extensions granted annually as appropriate. In February 2009, the Task Force approved Contract Amendment No. 1 in the amount of \$350,000. The increase was to accommodate the anticipated increase in projects and subsequent level of effort to be requested by KJ.

**DISCUSSION:** Staff continues to be very pleased with the contributions to the project by K/J. K/J is well staffed and able to deal with the various issues surrounding this project including seawater reverse osmosis, water treatment in general, fisheries issues, geology, hydrogeology, energy use, greenhouse gases, environmental review, and more.

Staff requested a revised scope and budget from K/J for its third annual contract from March 2010 to March 2011. The proposed contract amendment's scope and budget reflects the anticipated work in the coming year, including the following: facility design, intake study and design, public outreach and permitting strategy development.

This contract amendment will be taken to the scwd2 Desalination Task Force for ratification prior to the City Manager's final approval.

FISCAL IMPACT: The proposed fee from Kennedy/Jenks for this one year of service is \$300,000. Funds for Contract Amendment No. 2 are available in the Water Department FY 2010 Capital Improvement Program budget: \$210,000 in c700305, Water Supply Project and \$90,000 in c700016, Water Supply Project – SDC. According to the Memorandum of Agreement, Soquel Creek Water District will share the cost of this contract.

Submitted by:  
Bill Kocher  
Water Director

Approved by:  
Richard C. Wilson  
City Manager

ATTACHMENTS: Contract Amendment No. 2

**CONTRACT AMENDMENT**

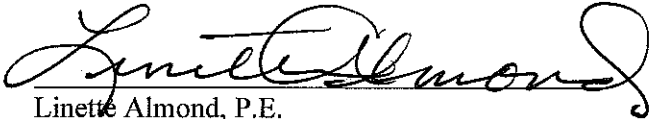
**Number Two**

That certain Agreement dated February 28, 2008 between the City of Santa Cruz and Kennedy/Jenks Consultants for professional services as Technical/Program Advisor to the scwd<sup>2</sup> Seawater Desalination Program is hereby amended as follows. The terms of this contract amendment apply to all Consultant's duties and tasks under the Professional Services Agreement.

1. Appendix One, Scope of Services. Replace with attached letter dated 22 February 2010.
2. Appendix Two, Fees and Payments. Replace with attached letter dated 22 February 2010 including Fee Estimate and Schedule of Charges. Use of Consultant's vehicles for travel shall be paid at the current standard business mileage rate as established by the U.S. Internal Revenue Service.

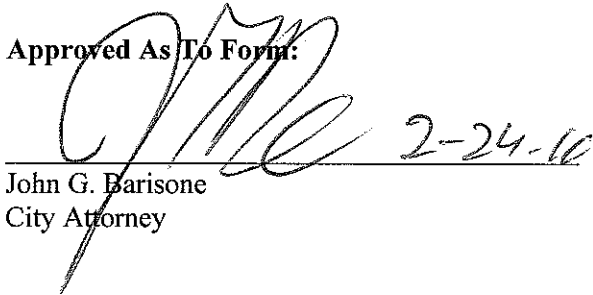
All other terms and conditions of the original Agreement shall remain in effect.

**Reviewed by:**



Linette Almond, P.E.  
Deputy Water Director/Engineering Manager

**Approved As To Form:**



John G. Barisone  
City Attorney

**Kennedy/Jenks Consultants**

By \_\_\_\_\_  
Kerwin Allen, Vice President

Dated \_\_\_\_\_

**CITY OF SANTA CRUZ**

By \_\_\_\_\_  
Richard C. Wilson, City Manager

Dated \_\_\_\_\_



## Kennedy/Jenks Consultants

### Engineers & Scientists

303 Second Street, Suite 300 South  
San Francisco, California 94107  
415-243-2150  
FAX: 415-896-0999

22 February 2010

Ms. Heidi Luckenbach  
Desalination Program Coordinator  
**scwd**<sup>2</sup> Seawater Desalination Program  
212 Locust Street, Suite C  
Santa Cruz, California 95060

Subject: Proposal for Technical Advisory Services for 2010/2011  
**scwd**<sup>2</sup> Seawater Desalination Program  
K/J B10880035 / B10032

Dear Ms. Luckenbach:

Kennedy/Jenks Consultants (Kennedy/Jenks) has been providing Technical Advisory Services for the **scwd**<sup>2</sup> Seawater Desalination Program, beginning in March 2008 and going through February 2010, in accordance with our professional services agreement with the City of Santa Cruz Water Department (City), dated 28 February 2008. As requested, we have prepared a proposed detailed scope of work and fee proposal for the Technical Advisor Services covering the third one-year period, from March 2010 through February 2011. The general project scope elements include:

- Task 1. Project Management and Quality Control
- Task 2. Project Meetings
- Task 3. Outreach and Communications Assistance
- Task 4. Program Advisor Assistance
- Task 5. Intake System Assistance
- Task 6. Desalination Facility Assistance
- Task 7. Program Technical Assistance

Based on discussions with the **scwd**<sup>2</sup> Seawater Desalination Program Coordinator, the tasks below describe more specific work that is likely to be completed in the 2010/2011 period. We understand that the services performed by the Technical Advisor are as-needed and that the specific extent, duration, and limit of the Technical Advisor Services will be negotiated with the City.

### Scope of Work

#### Task 1 – Project Management and Quality Control (QC)

Kennedy/Jenks will provide project management services focused on providing the right expertise to meet the project goals, control of costs, maintaining schedule requirements,

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Proposed Scope of Services for 2010/2011  
scwd2 Seawater Desalination Program  
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identifying key issues and delivering quality documents, as appropriate. Project management will include directing the work of the team so that the work is accomplished on-time and within budget.

### **Task 1.1 – Project Management**

Kennedy/Jenks will provide overall project management; supervision of in-house staff; coordination of subconsultants; planning and monitoring budget and schedule; reviewing and submitting monthly invoices and progress reports, as required; and coordination with City staff. Communications with the Desalination Program Coordinator will include periodic telephone calls to discuss current activities and any needs for additional input or information. A project file will be maintained including copies of correspondence, reports, minutes of meetings and memoranda.

### **Task 1.2 – Quality Assurance and Quality Control**

Kennedy/Jenks will provide quality assurance and quality control (QA/QC) for all work, including detailed checking of work by in-house staff and subconsultants and review of all deliverables prior to submittal to the City. QA/QC shall include, as applicable to each task, reviews for clarity, code compliance, technical approach, and constructability.

### **Task 2 – Project Meetings**

For budgeting purposes, we assume that Kennedy/Jenks Project Manager and Senior Technical Advisor, as required, will meet with the Desalination Program Coordinator on a monthly basis for general project meetings to review project progress, meet with City and District staff and coordinate with other program consultants. We will strive to combine meetings to be efficient with our time. Additional specific task meetings are described below in other tasks as appropriate.

### **Task 3 – Outreach and Communications Assistance**

Kennedy/Jenks will provide as-needed public outreach and communications strategy and assistance toward addressing potential challenges to the project. Our approach is to listen and be proactive in anticipating and responding to community, media, and stakeholder concerns in a transparent and forthright manner. Kennedy/Jenks proposes to help review key stakeholder issues and concerns and assist in preparing an effective outreach strategy to achieve project implementation. Kennedy/Jenks will provide recommendations, outreach expertise, and assistance as warranted. Our public outreach specialist, Mark Millan of Data Instincts, is currently chair of the Public Outreach and Education Committee for the national WaterReuse Association which focuses on recycled water and desalination interests. He is located in the Bay Area and has over 18 years of experience in public outreach for public water related projects.



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### **Task 3.1 – Provide Outreach and Communications Strategy Assistance**

Our objective is to implement and maintain consistent responsible communications throughout the project study and CEQA EIR phases. We will assist in developing and preparing communications materials, as needed, in coordination with Project Team. This potentially includes a variety of collateral materials such as: Backgrounders, fact sheets, project updates, educational materials, maps, letters, and e-mail broadcasts. Kennedy/Jenks will provide assistance with writing, editing, layout and design.

This task includes meetings and conferences with Soquel Creek Water District staff, Santa Cruz Water Department staff and Project Management Team members, CEQA Consultants, media representatives, public officials and potentially impacted individuals, businesses, and special interest groups. We will assist and advise Project Management Team leaders on best approaches for communications with policymakers, stakeholders, community members, and media representatives. Task elements include:

- Provide guidance and assistance with writing, editing, layout, and design of outreach materials related to the project outreach effort.
- Provide guidance with e-mail broadcast group lists and distribution of messages.
- Provide guidance and support to Project Team for communications with public, stakeholders, special interest groups and potentially affected property owners.
- Encourage and facilitate team listening and consideration of community concerns/needs and translate/integrate back to Project Team outreach efforts.
- Help the Project Team remember promises made in the community through the many phases of project development and construction.
- Review project-related studies, EIR documents and messages prior to release and coordinate EIR, project design and construction notifications. Assist in preparing CEQA required notifications.

### **Task 3.2 – Assist with needs Assessment/Information Gathering for Existing and Future Stakeholders**

The purpose of this task is to gather input from various potentially affected community interests to shape best informational approach to meet the needs of these constituents and project objectives. We will utilize community interviews, small information gathering sessions, one-on-one meetings, in-depth interviews/discussions and in some instances, small surveys. These efforts will gain insight into concerns and needs, test approaches, and determine best methods for ongoing communications. This task would include interfacing with key project stakeholders, special interest groups, and potentially affected property owners. Other task items include:

- Generating draft discussion points
- City/project team review discussion points and determining special interest groups/participants

Ms. Heidi Luckenbach  
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- Coordinating, conducting, and facilitating information gathering sessions including in-depth interviews
- Providing to project team a summary of sessions, analysis and making recommendations

### **Task 3.3 – Provide Assistance with Project Data Management**

Kennedy/Jenks will provide support and advice on Web content and structure with regard to the Integrated Water Plan and specific information related to the project. We will provide guidance on Web content for active community use. Community users will be able to get up-to-date information on the progress and phases of the project. The Web content will be timely in addressing developments related to environmental studies and project preliminary design.

Kennedy/Jenks will provide guidance in maintaining the project specific, segmented contact manager database, mail lists, and e-mail broadcast database. We will provide guidance in the use of outreach data and contact data records. Other tasks include:

- Advise on expansion of database to include relevant parcel and stakeholder entries of potentially affected project areas
- Coordinate updates and advise as to modifications to the system as may be required
- Advise on posting of relevant notices, documents, schedules and maps in a timely and responsive manner that meets community expectations for information about the project

### **Task 3.4 – Project Management, Quality Control and Consultations**

Activities include management of the Data Instincts consultant team dedicated to the scwd<sup>2</sup> Seawater Desalination Project and attendance at management meetings and presentations associated with public information, public outreach, and media relations. Task elements include:

- Manage Data Instincts staff and sub-consultant staff
- Provide detailed billing statements
- Attend meetings and phone conferences with staff and Project Team leaders and consultants as needed
- Includes review and or preparation of project presentations

### **Task 4 – Program Advisor Assistance**

Kennedy/Jenks will provide program advisory and oversight assistance for the scwd<sup>2</sup> Seawater Desalination Project.

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**Task 4.1 – Provide Program Strategy Assistance**

Kennedy/Jenks will provide as-needed program strategy assistance and advice as the project progresses and new conditions arise. Kennedy/Jenks will assist the Desalination Program Coordinator to review the overall work plan throughout the program year to evaluate changes that need to be made for the upcoming months and years, based on the progress to-date.

**Task 4.2 – Provide Assistance with Program Schedule**

Kennedy/Jenks will assist the Desalination Program Coordinator with maintaining and updating the overall program schedule. We will help to outline the overall program schedule, incorporate schedule details as the program progresses, and evaluate the impacts to the program critical path. We will incorporate detailed schedule components from program consultants such as the CEQA and Design Consultants.

**Task 4.3 – Provide Project Financing and Grant Strategy Assistance**

Kennedy/Jenks and team member Bartle Wells Associates will provide as-needed project financing strategy advice to assist the City and District to understand and plan for financing for the construction and operations of the desalination facility. Kennedy/Jenks proposes to meet with appropriate City and District staff to review the current project financing strategy and offer as-needed recommendations.

Kennedy/Jenks can assist scwd<sup>2</sup> in identifying potential grant and funding opportunities for the overall project and can help scwd<sup>2</sup> with managing the project grants, as needed.

**Task 4.4 – Provide Project Contract Cost Assistance**

Kennedy/Jenks will provide as-needed assistance to help the City and District to estimate the cost of upcoming project contracts for the scwd<sup>2</sup> Seawater Desalination Program, such as the Intake Design and the Desalination Facility Design.

**Task 4.5 – Provide Energy Study Assistance and Review**

Kennedy/Jenks will assist scwd<sup>2</sup> with the Energy Minimization and Greenhouse Gas Reduction Study for the desalination program. We will provide technical guidance during the study and a peer review of the draft study.

**Task 5 – Intake Study Assistance**

Kennedy/Jenks will provide technical and regulatory guidance on the intake for the project. We will guide and assist scwd<sup>2</sup> to make sure regulators are informed and that the intake studies are focused on addressing outstanding issues in the most cost-effective manner possible. We will

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also provide technical review of the intake studies, data analysis, and preliminary design as well as share our expertise and experience to benefit the project.

#### **Task 5.1 – Provide Entrainment Study Assistance**

Kennedy/Jenks will provide assistance with the Entrainment Study to support the assessment of environmental impacts of the screened, open-water intake approach. Kennedy/Jenks will attend and assist with entrainment study Technical Working Group (TWG) meetings, review data from the study and provide as-needed technical review and guidance.

#### **Task 5.2 – Provide Subsurface Geology Study Assistance**

Kennedy/Jenks will provide assistance with the Subsurface Geology Study to support the assessment of the feasibility and environmental impacts of the submerged, slant well or infiltration gallery intake approach. Kennedy/Jenks will attend and assist with subsurface geology study Technical Working Group (TWG) meetings, and review data from the study and provide as-needed technical review and guidance.

#### **Task 5.3 – Intake Feasibility Study**

Kennedy/Jenks will prepare a feasibility-level description and design criteria, system plan and section drawings and opinion of construction cost for the following alternative intake approaches: screened, open-water intakes at Mitchell's Cove and at the Santa Cruz Pier; slant well intakes; an offshore Ranney Collector-type intake; and infiltration gallery intake. As part of the Intake Feasibility Study, Kennedy/Jenks subconsultant, Geosciences, will provide independent evaluation of the slant well concept based on geophysical data from the Offshore Geophysical Study. Kennedy/Jenks subconsultant, Underwater Resources, Inc., will provide input on the offshore constructability and construction costs for the intake approaches. This will provide an evaluation of relative costs and construction complexities for each intake approach. Kennedy/Jenks will prepare a draft study report for review by scwd<sup>2</sup> Staff and incorporate review comments into a final report.

#### **Task 5.4 – Conduct an Intake Technical and Permitting Strategy Session**

After preliminary data from the studies referenced in Tasks 5.1 through 5.3 is received, Kennedy/Jenks recommends a strategy session with scwd<sup>2</sup> and our outreach and permitting specialists to review the technical and non-technical issues with the intake approaches and to confirm our strategy moving forward on the intake.

#### **Task 5.5 – Hold Intake Permitting Strategy Consultations with Regulators**

Based on the intake permitting strategy session in Task 5.4, Kennedy/Jenks recommends conducting permitting strategy consultations with the regulatory agencies that are focused on the intake issues including the Monterey Bay National Marine Sanctuary (MBNMS) and the

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California Coastal Commission (CCC). We recommend that our permitting specialist and possibly our intake specialist attend the meetings with the regulators. For this task, Kennedy/Jenks assumes preparation and attendance at two permitting strategy consultations with regulators to inform and educate them on the project specifics and negotiate additional studies required for moving ahead with the intake studies.

#### **Task 5.6 – Assist with Intake Design RFP**

Based on the preliminary data from the studies referenced in Tasks 5.1 through 5.3, Kennedy/Jenks will assist scwd<sup>2</sup> in preparing an RFP and selecting a consultant to perform preliminary and final design of the final intake approach. Based on discussions with the Desalination Program Coordinator, the intake construction could be accomplished through a progressive design-build approach.

#### **Task 5.7 – Provide Technical Review of the Intake Evaluation and Design**

Kennedy/Jenks will provide technical guidance and review of the intake system evaluation and preliminary design including criteria, materials, construction, and proposed operations and maintenance. For this task, we assume that an open intake approach is best suited for the project.

#### **Task 6 – Assistance with the Desalination Facility Design Phase**

Kennedy/Jenks will provide technical and regulatory guidance on the design of the Desalination Facility. We will guide and assist scwd<sup>2</sup> to make sure regulators are informed as appropriate and that the design focuses on addressing outstanding issues in a cost-effective manner. We will also provide technical review of the preliminary design and design as well as share our expertise and experience to benefit the project.

#### **Task 6.1 – Assist with Desalination Facility Design RFP**

Kennedy/Jenks will continue to assist scwd<sup>2</sup> in preparing an RFP and selecting a consultant to perform preliminary and final design of the desalination facility.

#### **Task 6.2 – Provide Technical Review of the Desalination Facility Preliminary Design**

Kennedy/Jenks will provide technical guidance and review of the evaluations and preliminary design for the Desalination Facility. We will provide the expertise for both a big picture and detailed review of key desalination system design concepts and parameters. Critical areas of desalination plant design include:

- Advanced energy recovery and energy efficiency components
- Proper pretreatment to improve performance of SWRO membranes
- Proper process selection to meet state and federal water quality criteria

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- Optimization of SWRO design including flux, recovery, and cleaning
- Proper materials selection for high pressure and corrosion resistance
- Proper stabilization and conditioning of the permeate to prevent finished water quality issues in the distribution system

### **Task 6.3 – Assist with Desalination Facility Specific Design Issues**

Kennedy/Jenks will attend meetings and provide assistance with other issues regarding the desalination facility such as facility location, architectural aspects, raw water, brine and distribution system piping layouts, and questions related to the EIR permitting strategy.

### **Task 7 – Program Technical Assistance**

Kennedy/Jenks will work with the scwd<sup>2</sup> staff and consultants in a collaborative and constructive manner to provide technical review and guidance for the desalination program.

#### **Task 7.1 – Prepare a White Paper on Desalination Energy Issues**

Kennedy/Jenks will prepare a white paper to communicate with the public on energy issues specific to the scwd<sup>2</sup> desalination program. The white paper will have a succinct executive summary, and more detailed information in an appendix. The objective of the white paper is to help answer questions from the public on the amount of energy that is required for desalination and to put the energy use into perspective as compared to other normal energy uses in our society.

#### **Task 7.2 – Provide As-Needed Technical Support**

Kennedy/Jenks will provide as-needed program technical review, assistance, and advice as the project progresses and new issues arise. Kennedy/Jenks will assist the Desalination Program Coordinator with technical issues regarding the desalination program to ensure the project team is informed and can make appropriate decisions.

### **Project Team**

Kennedy/Jenks proposes to maintain the key project team members that have been providing technical advisory services in the past year. These key team members bring relevant experience and expertise in guiding the scwd<sup>2</sup> Staff through the anticipated challenges with the scwd<sup>2</sup> Seawater Desalination Program. Key Team Members and subconsultants for 2010 include:

**Todd Reynolds, PE – Project Manger and Lead Technical Advisor.** Todd Reynolds has 20 years of engineering and management experience and 15 years of consulting experience for clients in the municipal and private sectors. His experience includes feasibility studies, evaluation of treatment process alternatives, pilot plant studies, preparing pre-design reports,

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developing project contract documents, design drawings and specifications; preparing operations manuals, providing startup assistance and training and performing contract administration and construction management for a variety of projects. Projects on which he has worked include both groundwater and surface water supply and treatment; membrane treatment including microfiltration, ultrafiltration and seawater and brackish water desalination. He has served as a Project Manager and Engineer for the planning, design, and construction of numerous water and wastewater projects. He has authored water-related articles and papers for professional society magazines and conferences.

**Val Frenkel, PhD, PE – Senior Technical Advisor.** Dr. Val Frenkel works closely with Todd Reynolds to provide senior level program guidance and technical advice for the program. As appropriate, Val will provide specific technical review of desalination data and design concepts, and can draw on the expertise of his extensive network of desalination experts for any specific issue, should they be needed.

Val brings 25 years of engineering experience, with specific technical expertise in water treatment and membrane technologies. His professional background includes creating innovative processes, technologies and engineering concepts that resolve complex tasks and finding non-standard, original solutions to project issues. Val's extensive desalination experience began in the Middle East where he developed various aspects of desalination projects including feasibility studies, desalination piloting, full-scale facilities design and construction, and facility startup and commissioning. Val has brought his expertise to a number of Northern California desalination projects.

**Mike Maley, PE, PG, CHg – Geology and Hydrogeology.** Mike Maley is a licensed professional geologist, certified hydrogeologist, and civil engineer with over 20 years of experience in water resources and environmental projects. He has extensive water resources experience including groundwater basin evaluations, sustainable yield estimates, water quality evaluations, groundwater-surface water interactions, and groundwater banking programs. He has conducted comprehensive hydrogeological evaluation, ground water modeling, design and operation of remediation systems, field work coordination, well design and installation, aquifer testing and chemical sampling. He has provided groundwater and water quality analysis for CEQA/NEPA support for large projects including percolation ponds and injections wells. The following is a brief list of the benefits Mike brings to this project:

- Significant experience in geological and groundwater evaluations
- Recently developed an extensive geological and groundwater study of the Santa Margarita Groundwater Basin located north of Santa Cruz
- Provides geotechnical expertise to evaluate potential for beach well intake systems

**Tim Monahan, PE – Intake Systems, Pump Stations, and Pipelines.** Tim Monahan is a registered Professional Engineer with more than 21 years of project management consulting experience in the water and wastewater industry. He has extensive experience in managing pre-design and evaluation studies, infrastructure condition assessment and asset management programs, design of water transmission and storage facilities, sewer collection and pump



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stations, and rehabilitation and expansion of wastewater treatment facilities. Other practical experience includes sewer collection system rehabilitation and construction management.

**Gary Carlton, PE – Regulatory and Permitting Strategy.** Gary Carlton has over 39 years of experience of professional technical and management experience in environmental engineering. Following are brief relevant highlights of Gary's expertise:

- Has provided regulatory liaison services to clients in the public and private sectors to assist in obtaining discharge permits from Regional Boards throughout California
- Previously appointed to serve on the Sacramento Water Resources Control Board as the Registered Civil Engineer Member with expertise in Irrigated Agriculture and Water Supply
- Previously served as Executive Officer responsible for directing technical and management activities of 260 person staff at three Central Valley offices

**Meredith Clement, Environmental and CEQA.** Meredith Clement has over 12 years of environmental consulting experience on projects throughout California. Meredith has special expertise with water planning projects, urban planning, and environmental compliance documentation, including CEQA and NEPA. She served as project manager for the Santa Ana River Water Rights Application EIR assisting with management of an EIR to support dam re-operation, raw water delivery infrastructure and associated new water right petition to the State Water Resources Control Board

**Mark Millan (Data Instincts), Public Outreach.** Mark Millan is currently chair of the Public Outreach and Education Committee for the national WaterReuse Association which focuses on recycled water and desalination interests. He is located in the Bay Area and has over 18 years of experience in public outreach for public water related projects. Specific items of note include:

- Over 25 years' experience in marketing and public relations; 18 years' experience with recycled water projects
- Expertise in developing outreach and public involvement programs for recycled water
- Experienced with media and community relations; familiarity with local media

**Tim Hogan (Alden Research Laboratory), Intake Systems and Fish Protection.** Tim Hogan is a fisheries biologist at Alden, an international consulting engineering laboratory. Tim has experience evaluating fish protection and passage alternatives at steam electric and hydro facilities. Recently, Tim has been involved with the detailed evaluation of the biological effectiveness of all potential 316(b)-compliant intake technologies for various cooling water intake structures throughout the country. In addition, Tim has conducted both laboratory and field evaluations of some of the most promising intake technologies for use in desalination, including cylindrical wedgewire screens and aquatic filter barrier (AFB). Tim understands the importance of identifying the most cost-effective and environmentally responsible intake alternatives for each potential site.

- Intricately involved with detailed evaluation of biological effectiveness of all potential 316(b)-compliant intake technologies throughout the country
- Has conducted both laboratory and field evaluations of some of the most promising intake technologies for use in desalination

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- Understands the importance of identifying the most cost-effective and environmentally responsible intake alternatives

**Dennis Williams, PhD (GeoScience Support Services, Inc.) – Subsurface and Slant Well Intakes.** Dr. Dennis E. Williams, founder and president of the Southern California-based firm, GeoScience Support Services, has over 35 years of experience in groundwater hydrology. During that time, he has directed geohydrologic investigations domestically and worldwide which includes the design and supervision of construction of over 700 deep large-scale municipal and irrigation water supply wells. Dennis also pioneered the use of slant wells for desalination feedwater supplies having constructed the first successful artificially filter packed slant well beneath the ocean. He is author of over 30 publications on groundwater and wells, and was the principal author of the Handbook of Ground Water Development (John Wiley & Sons, 1990). He was also chief reviewer for the American Society of Civil Engineers (ASCE) Manual of Water Well Design, Construction, Testing and Maintenance and primary author for two chapters, Water Well Construction, and Developing and Testing, and the Appendix Example of Water Well System Design (currently in press). Dennis was a contributor to three entries in the Encyclopedia of Water: "Radial Wells", "Well Tests", and "Well Screens" published by John Wiley and Sons in 2005. He also served on many expert and blue ribbon panels as well as performed numerous peer reviews.

**Tom Belcher (Underwater Resources Inc.) – Underwater Construction Specialist.** Tom Belcher is owner and founder of Underwater Resources, Inc., a commercial diving and marine construction company in continuous operation in the San Francisco Bay Area since 1982. After receiving a B.A. in Political Science in 1971, he received training and received an A.S. in Marine Technology in 1973. His work experience between 1971 and 1982 includes extensive diving for the installations of offshore oil pipelines and platforms, oil well-head and pier abandonment and demolition, UW pipeline and concrete structure repair, beach erosion mitigation, cooling water intake repair and restoration, retrofit and repair of dam outlet structures, and salvage. Tom has 39 years of experience in diving and marine construction with specialized expertise in UW concrete restoration (epoxy & urethane injection, tremie concrete placement), wire-saw cutting and demolition, HDPE pipeline installation, remotely operated vehicles (ROVs) and sonar imaging, floating security barriers and has both used and is familiar with all modes of conventional commercial diving and marine construction techniques. He has also provided consulting services to the US Army Corps of Engineers, Bureau of Reclamation, and numerous other public agencies. Services have included cost estimating, constructability review, expert witness testimony, review of industry standard construction practices, safety practices and oversight and has participated as a diver, superintendent or contractor on several of the largest marine construction projects in the North Sea, Gulf of Mexico, offshore California and elsewhere abroad.

### **Basis of Compensation**

We propose that compensation for our services be on a time and expense reimbursement basis in accordance with the current professional services agreement between the City and Kennedy/Jenks Consultants: Technical/Program Advisor – scwd<sup>2</sup> Seawater Desalination

**Kennedy/Jenks Consultants**

Ms. Heidi Luckenbach  
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Program, dated 28 February 2008. Kennedy/Jenks proposes to keep our rates unchanged from 2009 levels for the 2010 Technical Advisor services. Kennedy/Jenks' 2009 rate schedule is enclosed. Also, Kennedy/Jenks will maintain our reduced markup of subconsultants at 5-percent. This markup helps to cover costs associated with insurance and contracting risk with the subconsultants.

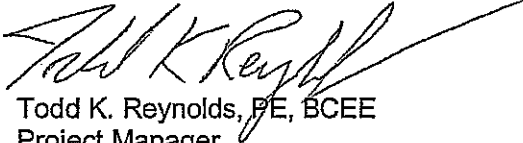
Based on our estimate of services for our proposed tasks, we propose a budget of \$300,000, which will not be exceeded without authorization. We understand that the services performed by the Technical Advisor are as-needed and that the specific extent, duration, and limit of the Technical Advisor Services will be negotiated with City.


Project Task	Task Budget
Task 1. Project Management and QA/QC	\$20,000
Task 2. Project Meetings	\$20,000
Task 3. Project Communications Assistance	\$75,000
Task 4. Program Advisor Assistance	\$50,000
Task 5. Intake System Assistance	\$50,000
Task 6. Facility Design Assistance	\$50,000
Task 7. Program Technical Assistance	\$35,000
<b>Total</b>	<b>\$300,000</b>

The Kennedy/Jenks Team is committed to meeting your goals for the scwd<sup>2</sup> Seawater Desalination Program and look forward to continuing to work with you on this important project. If you have any questions regarding this proposal, please call Todd Reynolds at (415) 243-2453.

Very truly yours,

KENNEDY/JENKS CONSULTANTS

  
Todd K. Reynolds, PE, BCEE  
Project Manager

  
Kerwin C. Allen, PE  
Vice President

Enclosures

Client/Address: scwd<sup>2</sup> Seawater Desalination Program  
212 Locust Street, Suite C  
Santa Cruz, California 95060

**Kennedy/Jenks Consultants**

Contract/Proposal Date: 22 February 2010

## Schedule of Charges

January 1, 2009

### Personnel Compensation

Classification	Hourly Rate
CAD-Technician .....	\$95
Designer-Senior Technician.....	\$125
Engineer-Scientist-Specialist 2 .....	\$120
Engineer-Scientist-Specialist 3 .....	\$135
Engineer-Scientist-Specialist 4 .....	\$150
Engineer-Scientist-Specialist 5 .....	\$165
Engineer-Scientist-Specialist 6 .....	\$185
Engineer-Scientist-Specialist 7 .....	\$210
Engineer-Scientist-Specialist 8 .....	\$220
Engineer-Scientist-Specialist 9 .....	\$225
Project Administrator .....	\$85
Administrative Assistant .....	\$70
Aide.....	\$55

In addition to the above Hourly Rates, a three percent Communications Surcharge will be added to Personnel Compensation for normal and incidental copies, communications and postage.

### Direct Expenses

Reimbursement for direct expenses, as listed below, incurred in connection with the work, will be at cost plus ten percent for items such as:

- Maps, photographs, reproductions, printing, equipment rental, and special supplies related to the work.
- Consultants, soils engineers, surveyors, contractors, and other outside services.
- Rented vehicles, local public transportation and taxis, travel and subsistence.
- Specific telecommunications and delivery charges.
- Special fees, insurance, permits, and licenses applicable to the work.
- Outside computer processing, computation, and proprietary programs purchased for the work.

Reimbursement for vehicles used in connection with the work will be at the federally approved mileage rates or at a negotiated monthly rate.

Reimbursement for use of computerized drafting systems (CAD), geographical information systems (GIS), and other specialized software and hardware will be at the rate of \$12 per hour.

Rates for professional staff for legal proceedings or as expert witnesses will be at rates one and one-half times the Hourly Rates specified above.

Other in-house charges for prints and reproductions, equipment usage, laboratory analyses, etc. will be at standard company rates.

Excise and gross receipts taxes, if any, will be added as a direct expense.

The foregoing Schedule of Charges is incorporated into the agreement for the services provided, effective January 1, 2009 through December 31, 2009. After December 31, 2009, invoices will reflect the Schedule of Charges currently in effect.



## CITY COUNCIL AGENDA REPORT

DATE: 03/03/2010

AGENDA OF: 3/9/2010

DEPARTMENT: Water

SUBJECT: Beltz Monitoring Well Construction Project – Contract with Cascade Drilling, LP – Notice of Completion

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**RECOMMENDATION:** Motion to accept the work completed by Cascade Drilling, LP and authorize the filing of a Notice of Completion for the contract for the Beltz Monitoring Well Construction Project.

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**BACKGROUND:** On July 28, 2009, Council approved plans and specifications for the Beltz Monitoring Wells Construction Project and authorized staff to advertise the project for bids. Proposals were opened on August 24th, 2010 and the contract was awarded to Cascade Drilling, LP in the amount \$203,594.05, including contingency, on October 29, 2009.

This project work consisted of drilling three new monitoring wells in the Purisima Aquifer to better track water quality and water levels for groundwater management. The monitoring wells installed for this project are located away from the coast in areas where no wells currently exist. Two of the three monitoring well locations are currently being evaluated for production well sites.

**DISCUSSION:** All services required under the contract have now been completed, inspected by Water Department staff, and found to be constructed in accordance with the approved plans and specifications. Final completion notice was provided to Cascade on February 8, 2010.

Cascade Drilling met the requirements of the City's Local Hire Ordinance by making a good faith effort to employ local residents through a request to the regional labor committee. However, they were unable to reach the City's local hiring goal of 50% of its overall labor due to the short term nature of this project. The contractor also made a good faith effort to employ apprentices as evidenced by its request to the appropriate Apprenticeship Committee and utilization of apprentices in the course of work.

**FISCAL IMPACT:** The final cost of all work under this contract, including change orders, was \$190,122. The project was funded from the Water Department FY 2010 Capital Improvement Program, project c701002 Beltz Monitoring Wells.

Submitted by:  
Bill Kocher  
Water Director

Approved by:  
Richard C. Wilson  
City Manager

ATTACHMENTS: Notice of Completion

RECORDED AT THE REQUEST OF  
Dawn Smithson, Engineering Division

WHEN RECORDED MAIL TO:

CITY CLERK  
CITY OF SANTA CRUZ  
809 CENTER STREET, ROOM 9  
SANTA CRUZ CA 95060

(Space above this line for Recorder's use only.)

THIS INSTRUMENT IS BEING RECORDED FOR THE BENEFIT OF THE CITY OF SANTA CRUZ  
NO RECORDING FEE IS REQUIRED PURSUANT TO GOVERNMENT CODE §27383

**NOTICE OF COMPLETION**

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the California Civil Code, of the completion on March 9, 2010 of the Beltz Monitoring Wells Construction Project, on three sites located as described below.

- Northwest section of Cory Street in Soquel Research Park development, APN 030-181-70
- Parking lot of Coffee Lane Park
- Southeast corner of 4400 Auto Plaza Drive, APN 034-141-32

The City of Santa Cruz has interest in said properties described above as City Right of Way and City Easement.

Said Beltz Monitoring Wells Construction Project was undertaken on said properties pursuant to a contract with Cascade Drilling, LP dated October 29, 2009. Project consisted of the construction of three monitoring wells.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Bill Kocher, Director of the Water Department  
City of Santa Cruz

STATE OF CALIFORNIA) ss  
COUNTY OF SANTA CRUZ)

I am the Director of the Water Department. I have read the foregoing Notice of Completion and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on \_\_\_\_\_, at Santa Cruz, California.

\_\_\_\_\_  
Bill Kocher, Director of the Water Department  
City of Santa Cruz

Filing of Notice of Completion was authorized by Santa Cruz City Council Minute Order of March 9, 2010.



## CITY COUNCIL AGENDA REPORT

DATE: March 1, 2010

AGENDA OF: March 9, 2010

DEPARTMENT: Public Works

SUBJECT: Revising Ordinance to Consolidate Transportation and Public  
Works Commissions

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**RECOMMENDATION:** Introduction of an ordinance for publication repealing Section 2.40.015 of the Santa Cruz Municipal Code pertaining to appointment of commissioners, repealing Section 2.40.130 and 2.40.131 of the Santa Cruz Municipal Code pertaining to the Transportation Commission, and amending sections 2.40.080 and 2.40.081 of the Santa Cruz Municipal Code pertaining to the newly consolidated Transportation and Public Works Commissions.

---

**BACKGROUND:** Following actions by both commissions recommending that Council consolidate the Public Works Commission and Transportation Commission, Council, at their February 23, 2010 meeting, directed staff to prepare the necessary enabling ordinance revisions and by-laws to create a merged Transportation and Public Works Commission.

**DISCUSSION:** The City Attorney has prepared ordinance revisions to appropriate sections of the Santa Cruz Municipal Code (SCMC) to create a merged Transportation and Public Works Commission.

In addition, as a housekeeping measure, the revised ordinance repeals Section 2.40.015 of the SCMC related to direct appointments of commission members since the appointment process was revised in 2003 with the adoption of Section 2.40.011.

Once the ordinance revisions take effect, the revised by-laws for the consolidated Transportation and Public Works Commission will be adopted by the new commission at their first meeting, and will then be forwarded to Council for approval.

**FISCAL IMPACT:** There will be a reduction in the necessary staff support time as a result of combining the Public Works and City Transportation Commissions and therefore there will be minor, but undetermined, cost savings.

This report prepared by: Mary Arman, Public Works Operations Manager

Submitted by:

Approved by:

Mark R. Dettle  
Director of Public Works

Richard C. Wilson  
City Manager

Attachments: Ordinance



ORDINANCE NO. 2010-\_\_\_\_

AN ORDINANCE OF THE CITY OF SANTA CRUZ REPEALING SECTION 2.40.015 OF THE SANTA CRUZ MUNICIPAL CODE PERTAINING TO APPOINTMENT OF COMMISSIONERS, REPEALING SECTIONS 2.40.130 AND 2.40.131 OF THE SANTA CRUZ MUNICIPAL CODE PERTAINING TO THE TRANSPORTATION COMMISSION AND AMENDING SECTIONS 2.40.080 AND 2.40.081 OF THE SANTA CRUZ MUNICIPAL CODE PERTAINING TO THE NEWLY CONSOLIDATED TRANSPORTATION AND PUBLIC WORKS COMMISSIONS

BE IT ORDAINED by the City Council of the City of Santa Cruz as follows:

- Section 1. Chapter 2.40.015 of the Santa Cruz Municipal Code is hereby repealed.
- Section 2. Chapter 2.40.130 of the Santa Cruz Municipal Code is hereby repealed.
- Section 3. Chapter 2.40.131 of the Santa Cruz Municipal Code is hereby repealed.
- Section 4. Section 2.40.080 of the Santa Cruz Municipal Code is hereby amended to read as follows:

2.40.080 ESTABLISHMENT OF TRANSPORTATION AND PUBLIC WORKS COMMISSION.

1. There is hereby established a commission of the city of Santa Cruz to be known as the Transportation and Public Works Commission.
2. As of the effective date of Ordinance No. 2010-, April 22, 2010, the Transportation and Public Works Commission will be comprised of 11 members, the six commissioners who currently serve on the Public Works Commission and five members who formerly served on the Transportation Commission which sunset with the adoption of Ordinance No. 2010-. Each of the former Transportation Commission members will serve on the Transportation and Public Works Commission for the remainder of their former current Transportation Commission term, at which time the Transportation and Public Works Commission will have a seven-member composition. Former Transportation Commission members will be eligible for re-appointment to the resulting seven-member Transportation and Public Works Commission.

- Section 5. Section 2.40.081 of the Santa Cruz Municipal Code is hereby amended to read as follows:

2.40.081 DUTIES OF COMMISSION.

The Transportation and Public Works Commission shall generally be responsible for advising the council in matters pertaining to transportation and public works. For the purposes of this chapter, “public works” shall mean structures, utilities and appurtenances on, above or below the ground which shall have been or are to be installed, constructed or reconstructed for the use or convenience of the general public or the residents of the areas served by such works, including but not limited to, streets, sidewalks, surface and subsurface storm drain facilities, street lighting, solid waste facilities, sanitary sewage facilities, gas, electric and telephone services, easements, and appurtenances to all of the foregoing such as signs, and such other works or projects as may

be determined by the city council to be public works for purposes of this chapter; but not including those facilities, projects or activities specifically assigned by ordinance to another commission, or council subcommittee. The commission’s duties shall include, but not be limited to, the following:

- (a) To act as the advisory commission to the city council for planning, design, installation and maintenance of public works;
- (b) To review and make recommendations to the city council concerning the capital improvement program;
- (c) To review, monitor and make long-range recommendations concerning the construction, reconstruction, operation and maintenance of public works;
- (d) To consider the annual budget of the public works department during its preparation and make recommendations with respect thereto to the city council;
- (e) To receive complaints pertaining to traffic and transportation patterns;
- (f) To review, monitor and suggest recommendations for city transportation matters including, but not limited to: automotive, rail, bicycle, and pedestrian traffic within the city;
- (g) To review additional transportation matters such as transportation system management, travel demand management and other related issues;
- (h) To review and suggest recommendations for placement and enforcement of warning, regulatory and guide signs on city streets;
- (i) To make recommendations regarding the allocation of funds for capital expenditures related to roadway and transportation improvements; and
- (j) To perform other duties as may from time to time be prescribed by the city council.

Section 6. This ordinance shall be in full force and take effect thirty (30) days after its final adoption.

PASSED FOR PUBLICATION this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

AYES:

NOES:

ABSENT::

DISQUALIFIED:

APPROVED: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

ORDINANCE NO. 2010-\_\_\_

PASSED FOR FINAL ADOPTION this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

AYES:

NOES:

ABSENT::

DISQUALIFIED:

APPROVED: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

This is to certify that the above and foregoing document is the original of Ordinance No. 2010- and that it has been published or posted in accordance with the Charter of the City of Santa Cruz

\_\_\_\_\_  
City Clerk



## CITY COUNCIL AGENDA REPORT

DATE: March 1, 2010

AGENDA OF: March 9, 2010

DEPARTMENT: City Manager

SUBJECT: San Lorenzo River Committee – Resolution Sunsetting the Committee. (CM)

---

**RECOMMENDATION:** Resolution dissolving the San Lorenzo River Committee, extending the City Council's appreciation to the Committee membership for its work and accomplishments over the past six years and rescinding Resolution No. NS-26,281.

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**BACKGROUND:** At its January 26, 2010 meeting and in the context of the City's projected financial and resource constraints, the City Council briefly discussed and tacitly acknowledged the benefits of sunsetting the San Lorenzo River Committee, an advisory body to the City Council.

The San Lorenzo River Committee (Committee) was created by City Council resolution in 2003 soon after the adoption of the San Lorenzo Urban River Plan. The Committee was conceived to recommend measures to implement the programs of the San Lorenzo Urban River Plan and to serve in an advisory capacity on river-related matters. In its six years, the Committee has contributed significantly to the advancement of existing river-related projects and in the formation of future plans to enhance the visitor's experience on the riverway. In addition, the Committee has advocated for improvements to the San Lorenzo Riverway including habitat restoration, pedestrian/bicycle access to the riverway and the regional trail systems, interpretive and educational opportunities, recreational opportunities, public safety and visitor comfort. Overall, the Committee encouraged residents and visitors to use, enjoy and learn from this rich resource.

The Committee has a current membership of three, with resignations, term limits and the recent appointment of a member to another city advisory body reducing the membership to this level.

**DISCUSSION:** Since 2003, a series of budget and staffing reductions cast into doubt any foreseeable improvements to the riverway or the launching of new initiatives or programs, which severely constrains the ability of the Committee to fulfill its charge in the manner prescribed by the Council. Further, the City Council has other advisory bodies, notably the Public Works Commission, Parks and Recreation Commission and the Water Commission, that hold purview over functional areas of the San Lorenzo River.

The sunseting of the Committee was discussed with the current Committee Chair and the issue of greatest concern was that the function of the Committee be lost. This concern is acknowledged and shared by City staff and, accordingly, it is recommended that the City Council reemphasize the San Lorenzo River within the existing advisory bodies: the Public Works, Parks and Recreation and Water Commission, in addition to the City Council Public Safety Committee.

FISCAL IMPACT: The fiscal impact will be a reduction in staff time.

Submitted by:

Approved by:

Tina Shull  
Council Affairs Manager

Richard C. Wilson  
City Manager

Attachment: Resolution  
Resolution No. NS-26,281

RESOLUTION NO. NS-26,281

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ  
ESTABLISHING THE SAN LORENZO RIVER COMMITTEE AND  
DESCRIBING THE FUNCTIONS OF SAID BODY

WHEREAS, the City Council of the City of Santa Cruz has adopted the San Lorenzo Urban River Plan; and

WHEREAS, the proposed restoration and flood control improvements to the San Lorenzo River Flood Control Project will be completed by 2004; and

WHEREAS, the City Council has expressed its support for further enhancing the habitat, safety, and aesthetics of the San Lorenzo River (River) within the City limits; and

WHEREAS, the River would benefit from a focused City advisory body that was knowledgeable about the multiple agencies and mandates required for maintaining and managing the River to satisfy endangered species and water quality regulations into the future.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Santa Cruz that:

- 1) The Council hereby establishes the San Lorenzo River Committee consisting of seven members, each of whom shall be a qualified elector of the City. When appointing members to the San Lorenzo River Committee, the City Council shall attempt to find members of the public with the requisite background in areas of river or habitat restoration, recreation, flood protection, tourism, alternative transportation, landscape architecture or design, and aquatic ecology;
- 2) Members of the San Lorenzo River Committee shall be appointed at-large and serve four-year staggered terms;
- 3) The San Lorenzo River Committee shall develop bylaws and rules and procedures consistent with the City Charter, State law, and Municipal Code; and
- 4) The San Lorenzo River Committee shall carry out the following functions:
  - a) Recommend measures to implement the programs of the San Lorenzo Urban River Plan and the Lower San Lorenzo River and Lagoon Management Plan;
  - b) Act in an advisory capacity to the City Council on the enhancement, maintenance, and management of the River and its associated waterways, Branciforte Creek and Jessie Street Marsh;
  - c) Call upon technical and scientific experts on a volunteer basis and at no cost to the City, as necessary, for restoration, management, and monitoring along the River, Branciforte Creek, and Jessie Street Marsh; and

RESOLUTION NO. NS-26,281

- d) Perform such advisory functions as may be delegated from time to time by the City Council.

PASSED AND ADOPTED this 22nd day of July, 2003, by the following vote:

AYES: Vice Mayor Kennedy; Councilmembers Fitzmaurice, Rotkin, Mathews, Primack, Porter; Mayor Reilly.

NOES: None.

ABSENT: None.

DISQUALIFIED: None.

APPROVED: Emily Reilly  
Mayor

ATTEST: Jonie Brewer  
City Clerk

RESOLUTION NO. NS-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ DISSOLVING THE SAN LORENZO RIVER COMMITTEE AND RECOGNIZING THE COMMITTEE'S ACCOMPLISHMENTS AND RESCINDING RESOLUTION NO. NS-26,281,

WHEREAS, after adopting the San Lorenzo Urban River Plan, on July 22, 2003 the Santa Cruz City Council created the San Lorenzo River Committee; and

WHEREAS, the City Council charged the San Lorenzo River Committee with recommending measures to implement the programs of the San Lorenzo Urban River Plan and the Lower San Lorenzo River Lagoon Management Plan and acting in an advisory capacity to the City Council on the enhancement, maintenance and management of the San Lorenzo River and associated riverways, including the solicitation of volunteer scientific experts as needed; and

WHEREAS, the San Lorenzo River Committee convened for the past six years and in that time contributed significantly to the advancement of river-related projects which are in place today, such as Riverbend Plaza and the San Lorenzo Pedestrian/Bicycle Bridge, as well as planning for interpretive, educational, connective and aesthetic improvements to the San Lorenzo Riverway as encapsulated in the *Ideas to Activate the San Lorenzo Riverway* Report, which was adopted by the City Council in June 2007 as an implementation of the San Lorenzo Urban River Plan; and

WHEREAS, the San Lorenzo River Committee advocated vigorously for holistic improvements to the San Lorenzo Riverway including habitat restoration activities, increased pedestrian/bicycle access to the riverway and the regional trail systems, improving interpretive and educational opportunities, enhancing recreational opportunities, improving public safety and visitor comfort, and encouraging residents and visitors to use and enjoy this rich resource; and

WHEREAS, notwithstanding these gains, the San Lorenzo River Committee's work has been limited by overlapping responsibility with other City Council advisory bodies and a lack of dedicated staff and funding; and

WHEREAS, increasing citywide budget constraints since 2003, which have heightened considerably in the past two years, have impaired the breadth and number of city projects related to the river and no significant projects are planned for the present or immediate long-term horizon; and

WHEREAS, in an effort to maximize efficiency of staff and volunteer time, the San Lorenzo River Committee will be sunsetted and its charge reemphasized in the work of existing advisory bodies such as the Public Works Commission, Parks and Recreation Commission and Water Commission, and the City Council Public Safety Committee; and

WHEREAS, it is the City Council's intention that the San Lorenzo River not diminish in importance or attention due to the dissolution of the San Lorenzo River Committee and reaffirms its commitment to protecting, enhancing and improving the riverway.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Santa Cruz that the San Lorenzo River Committee be dissolved.



RESOLUTION NO. NS-

BE IT FURTHER RESOLVED that stewardship of the river be reaffirmed within the existing City Council advisory bodies and the City Council Public Safety Committee so that the San Lorenzo River continues to be represented and considered in citywide decisions.

BE IT FURTHER RESOLVED that the City Council extends its deepest thanks and appreciation to the San Lorenzo River Committee members who have worked and volunteered countless hours on behalf of the San Lorenzo River.

PASSED AND ADOPTED this 9<sup>th</sup> day of March, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk



## CITY COUNCIL AGENDA REPORT

DATE: 03/03/2010

AGENDA OF: 3/9/2010

DEPARTMENT: Water

SUBJECT: Agreement Endorsing Recommendations of the Desalination Task Force  
on a Proposed Seawater Desalination Facility. (WT)

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**RECOMMENDATION:** Motion to authorize the City Manager to execute the City of Santa Cruz and Soquel Creek Water District Agreement Endorsing the Recommendations of Joint Task Force on a Proposed Seawater Desalination Facility.

---

**BACKGROUND:** On February 27, 2007, Council acted to approve the formation of a City/District Desalination Task Force (Task Force) consisting of 2 members of the Soquel Creek Water District (SqCWD) Board and 2 members of City Council, and appointing two Councilmembers and one alternate to that Task Force. In September 2007, the City and Soquel Creek Water District entered into a Memorandum of Agreement to create a Joint Task Force to pursue feasibility of construction and operation of a seawater desalination facility. Among the specific authorities the Task Force is empowered to undertake is to “Develop the concepts for an operational plan for the Facility for presentation to and final approval by the full legislative bodies of the respective parties. This operational plan shall include, but not be limited to, policies for determining when each agency would have primary use of the plant, including defining drought conditions and allowing for the possibility of joint operation in order to achieve groundwater recovery following a drought or to address groundwater issues of mutual concern to both parties.”

**DISCUSSION:** The Task Force has prepared an agreement that records multiple tentative agreements reached, which will facilitate other investigations and tasks related to development of the desalination project. Among these tentative agreements are items such as production scheduling, cost allocations, emergency requests for water, and arbitration procedures for handling disputes. The discussion of operation and primary time of use of the plant by each agency naturally leads to capital and operating cost implications as they are intertwined for the purpose of decision making. It is necessary to have tentative agreement between the two agencies regarding proposed cost sharing and timing of use of the plant to inform upcoming environmental analysis of the project as well as facility design.

Some of the key agreements within the document include a priority system defining when each agency has first right to water produced at the plant, cost sharing for capital and operating costs, how to handle emergency requests for water, and arbitration procedures for disputes over water allocations in emergencies.

This agreement does not provide project approval nor does it commit the City or the District to construction of the desalination facility. It is intended to inform the investigations, environmental review, and design of the project where detail is needed concerning the intended frequency and intensity of use of the facility.

FISCAL IMPACT: None at this time.

Submitted by:  
Bill Kocher  
Water Director

Approved by:  
Richard C. Wilson  
City Manager

ATTACHMENTS: Agreement

**CITY OF SANTA CRUZ  
AND  
SOQUEL CREEK WATER DISTRICT**

**AGREEMENT ENDORSING RECOMMENDATIONS OF JOINT TASK FORCE  
ON SEAWATER DESALINATION FACILITY**

This Agreement is entered into as of \_\_\_\_\_, 2010 by and between the City of Santa Cruz, a body politic and charter city (hereinafter "CITY") and the Soquel Creek Water District (hereinafter "SqCWD") a County Water District organized pursuant to sections 30000 *et seq.* of the California Water Code.

**RECITALS**

- A. In August 2007, the CITY and SqCWD entered into a "Memorandum of Agreement to Create a Joint Task Force to Pursue the Feasibility of Construction and Operation of a Seawater Desalination Facility" (hereinafter "2007 Agreement").
- B. The 2007 Agreement remains in full effect and is attached to this Agreement.
- C. The 2007 Agreement authorized the Task Force to, among other things:
- Oversee and direct preparation and development of studies and plans for a 2.5 million gallons per day (mgd) seawater desalination project, including, but not limited to, design, environmental review, and permitting for the proposed seawater desalination facility;
  - Provide a forum for public input on the project; and
  - Formulate an operational agreement prescribing the conditions under which each agency shall be entitled to utilize the project for supplemental supply, the contractual relationship between the two agencies and ongoing governance structure should the project proceed. (Section 10.a)

The 2007 Agreement also authorized the Task Force to adopt a work plan and schedule for the project. (Section 10.b)

- D. The Task Force has met regularly, commissioned studies on various aspects of a shared desalination facility, and provided substantial public outreach through its meetings and website.
- E. The Task Force has reported that all studies and analyses presented to it suggest that a shared desalination facility will help each party achieve important water supply goals, including those identified in the Recitals to the 2007 Agreement.
- F. The Task Force has also submitted (1) a summary project description, (2) a current schedule extending through 2010, (3) an outline of steps to be taken by each party during the preparation and public review of documents addressing environmental aspects of the project, and (4) recommendations for elements to be incorporated into an

operational agreement which will be formally adopted by both parties prior to a decision to proceed with construction of the project.

- G. The purpose of this Agreement is to memorialize the Task Force's submissions and their endorsement by the governing bodies of both parties.

NOW THEREFORE, because it is in the best interests of the parties to enter into this Agreement for the reasons set forth above, the parties agree as follows:

## **SECTION 1. SUMMARY PROJECT DESCRIPTION**

The CITY and SqCWD envision constructing and operating a seawater desalination facility with a production capacity of 2.5 million gallons per day. The project will include the following principal elements:

- A. a seawater intake system;
- B. conveyance piping from the intake to the desalination facility;
- C. a desalination facility consisting of pre-treatment filtration, reverse osmosis desalination, post-treatment conditioning and disinfection;
- D. potable water conveyance piping to the CITY distribution system and a new interconnection between the CITY and SqCWD distribution systems;
- E. brine conveyance piping and ocean-discharge outfall.

## **SECTION 2. ENVIRONMENTAL REVIEW**

- A. Both parties recognize the importance of conducting a thorough review of the potential impacts of the desalination project on the environment, methods of mitigating such impacts, and evaluation of feasible alternatives that could achieve the project's principal goals while avoiding or minimizing significant environmental impacts. To that end, the CITY has awarded a contract for the preparation of appropriate environmental documents as may be required under the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA").
- B. The Task Force has recommended that the CITY and SqCWD serve as co-lead agencies for purposes of environmental review under CEQA, and as joint lead agencies under NEPA. Both parties are willing to do so, subject to input on this issue from the selected environmental consultant as called for in the scope of work incorporated in the Request for Proposals issued by the CITY on behalf of the Task Force.
- C. The Task Force envisions the basic process through which the parties can implement the environmental review as co-lead agencies as follows:

1. At least one scoping session will be held in the CITY service area and at least one scoping session will be held in the SqCWD service area.
2. Staffs of both parties will review and comment on the administrative draft of the environmental document prior to its publication for public review and comment.
3. Following publication of the draft environmental document, at least one public comment session will be held in the CITY service area and at least one public comment session will be held in the SqCWD service area.
4. The legislative bodies of both parties will hold a joint public hearing on the environmental document. Following the public comment session, each legislative body will decide independently on whether to certify the document, and will independently adopt findings of fact, a statement of overriding consideration (if appropriate), and the mitigation monitoring and reporting program.
5. If the parties' legal counsel advise that the parties should prepare and execute a more detailed agreement for implementation of co-lead agency/joint lead agency responsibilities, the parties will promptly do so.

### **SECTION 3. SCHEDULE**

The Task Force has submitted its most recent project schedule, a copy of which is attached marked "Attachment One." The parties encourage the Task Force to continue working diligently in order to achieve the progress outlined in the schedule.

### **SECTION 4. COMPONENTS OF OPERATIONAL AGREEMENTS**

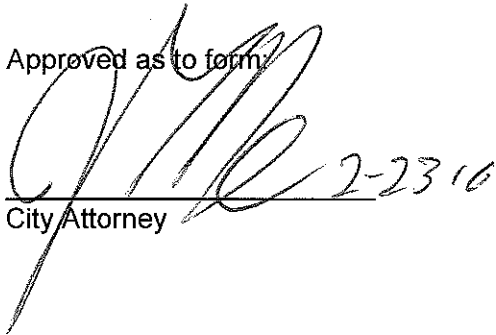
The Task Force has held detailed discussions and has formulated preliminary recommendations on several aspects of the project's operations, as contemplated by Section 3 of the 2007 Agreement. These preliminary recommendations do not presuppose the specific location or detailed configuration of the project, which will not be determined until after completion of environmental review, design and permitting. However, the parties agree that the Task Force recommendations do provide useful guidelines in evaluating technical, environmental and fiscal impacts of the project.

The Task Force's seven recommendations, each accompanied by explanatory material, are endorsed by both parties in the form attached marked "Attachment Two." In terms of scheduling, the Task Force advises, and the parties agree, that an operational agreement incorporating these elements in final form will be adopted by the parties prior to advertising for bids for construction of the project.

The Task Force has indicated that recommendations addressing the contractual relationship between the parties and an on-going governance structure (also contemplated by Section 3 of the 2007 Agreement) will be submitted later, after further investigation and discussion.

IN WITNESS WHEREOF, the Parties have affixed their signatures hereto.

Approved as to form:

  
City Attorney 2-23-10

**CITY OF SANTA CRUZ**

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
District Counsel

**SOQUEL CREEK WATER DISTRICT**

\_\_\_\_\_  
Board President

\_\_\_\_\_  
Date



Attachment 1 Desalination Program Schedule

	2009	2010	2011	2012	2013	2014	2015
	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	
Pilot Plant (2005-2010)			Final Report				
Watershed Stream Survey (2007-2010)			Final Report				
Entitlement Study (2009-2010)			Final Report				
Offshore Geophysical Survey (2009)	Begin Field Work		Final Report				
Energy Plan (2009-2010)			Final Report				
EIR (2009-2012)			Begin Work			Complete Work	
Intake: Design (2010-2012)					Begin Work	Complete Work	
Intake: Construction (2013-2014)						Begin Work	Complete Work
Full Scale Plant: Design (2010-2012)						Complete Work	
Full Scale Plant: Construction (2012-2015)						Begin Work	Complete Work
Infrastructure: Design (2010-2011)						Begin Work	Complete Work
Infrastructure: Construction (2013-2014)						Begin Work	Complete Work



## ATTACHMENT TWO

### PRELIMINARY TASK FORCE RECOMMENDATIONS FOR ELEMENTS TO BE INCLUDED IN AN OPERATIONAL AGREEMENT

#### 1. Location.

The desalination facility will be located in the CITY service area.

*Justification: the region's coastal infrastructure favors the CITY's service area in terms of placing the intake and outfall.*

#### 2. Delivery of actual produced water and blended system water.

The project will utilize existing water infrastructure to the extent possible. As a result, water delivered to the SqCWD will include a blend of both actual produced water and CITY water from other sources, with the total amount nominally delivered not to exceed the desalination plant production.

*Justification: to minimize construction cost and the project's environmental footprint.*

#### 3. Production scheduling: priority system.

Water produced by the Project will be allocated according to a monthly priority system. Table 1 shows the priorities in millions of gallons per day (mgd), calculated on a monthly basis. Plant capacity is 2.5 mgd. In all years, from May through October the City has a right to water produced at the desalination facility up to the plant capacity (2.5 mgd). The District has a right to take any remaining water. In April and November, both Agencies share an equal first priority of up to 1.25 mgd each, and an equal second priority of up to 1.25 mgd each. If the desalination facility is unable to fulfill the entire request in these months, the amount of water delivered to each agency will be reduced proportionately, first from the 2<sup>nd</sup> priority and then from the 1<sup>st</sup> priority. From December through March, the District has a right to water produced at the desalination facility up to plant capacity. The City has a right to any remaining water. If the amount ordered exceeds actual production or production capacity, orders will be filled in order of priority. The agencies will alert each other of their orders for the coming months on March 15 (for April through October) and October 15 (for November through March).

**Table 1: SCWD2 desalination plant (2.5 mgd capacity) production priority system (mgd)**

	January	February	March	April	May	June
<b>1st Priority Quantity</b>	Soquel Creek 2.5	Soquel Creek 2.5	Soquel Creek 2.5	Shared: 1.25 each	Santa Cruz 2.5	Santa Cruz 2.5
<b>2nd Priority Quantity</b>	Santa Cruz 2.5	Santa Cruz 2.5	Santa Cruz 2.5	Shared: 1.25 each	Soquel Creek 2.5	Soquel Creek 2.5
	July	August	September	October	November	December
<b>1st Priority Quantity</b>	Santa Cruz 2.5	Santa Cruz 2.5	Santa Cruz 2.5	Santa Cruz 2.5	Shared: 1.25 each	Soquel Creek 2.5
<b>2nd Priority Quantity</b>	Soquel Creek 2.5	Soquel Creek 2.5	Soquel Creek 2.5	Soquel Creek 2.5	Shared: 1.25 each	Santa Cruz 2.5

The priority system enables desalination plant output to be scaled back to standby mode when both parties deem it necessary. This is done when neither party requests water according to its priority.

*Justification: A priority system enables both parties far greater management flexibility in utilizing the desalination facility compared to a formulaic shortage trigger that would transfer desalination supply use from one party to another. The problem with a shortage trigger approach is that the complicated formulas required for the City to determine when it would take water are likely to deter the City from taking water at times when it would be prudent to do so, or to force the City to take water when conditions do not require it. To be unambiguous, a shortage trigger formula would have to be specified in immense detail, much of which cannot be known clearly in advance.*

*With a priority system, water is available to both parties in the quantities and at the times it is needed, as the parties have previously specified and which are consistent with each agency's long-term water supply modeling.*

**4. Capital cost allocation**

**A. Basic Principle**

The basic principle is that all capital costs of the 2.5 mgd project are to be shared on the basis of proportional maximum annual utilization. This approach utilizes the priority system to calculate the maximum possible annual utilization of the facility. Each agency's total annual first priority yield and second priority yield when first priority is less than plant capacity are summed, and divided by the facility's maximum annual yield. Capital costs are allocated to each agency based on the resulting percentages.

The calculation of proportional maximum annual utilization yields a capital cost allocation as follows:

Santa Cruz: 59%  
Soquel Creek: 41%

	<b>MGD</b>	<b>Days</b>	<b>Gallons</b>	<b>Guaranteed AF</b>	<b>Guaranteed Total AF</b>
<b>Santa Cruz</b>	2.50	184	460,000,000	1,412	1642
	1.25	60	75,000,000	230	
<b>Soquel Creek</b>	2.50	121	302,500,000	928	1158
	1.25	60	75,000,000	230	
<b>Total</b>		365	912,500,000	2,800	
	<b>Santa Cruz Proportion:</b>		0.59		
	<b>Soquel Creek Proportion:</b>		0.41		

**B. Capital Cost Categories**

The same recommended allocation formula will be applied to all capital costs directly associated with producing and delivering the supplemental water supply associated with the desalination project. Some refinements to the application of the basic principle to specific categories may be appropriate, as described below.

## Intake and Outfall

A decision has not yet been made regarding whether the intake will be open ocean utilizing an abandoned outfall pipe retrofitted with low-velocity manifolds or all new subsurface construction. If the outfall pipe is retrofitted for the desalination intake, it is assumed that it will be purchased or rented by scwd2. A decision has also not yet been made about whether the intake and outfall should be sized to accommodate the possibility of future expansion of the plant capacity. An independent valuation of the intake and outfall (and any other facility assets to be purchased or leased from one of the parties) will be made.

## Land

If one party chooses to purchase land in excess of what is available and needed for the plant, that party will pay the incremental cost of the additional land. An engineer will determine how much land is needed to operate the plant.

Land has a residual value that differs from the residual value of other capital costs. The implication is that either party should be compensated if the other party some day puts some or all of the land purchased for this project to other uses. If and when the land is no longer used for desalination or all or a portion of the land is put to a different beneficial use or sold by one of the parties, the other party will be paid its original proportion paid of the appraised value of the land or that portion not used for the desalination project at the time the use changes or the land is sold.

## Desalination Plant

The costs of pretreatment, treatment, and buffering (if necessary) facilities will be considered a single cost.

## Piping from Desalination Plant to City System, and from City System to Soquel Creek System

These piping costs are part of the project and subject to the 59-41 capital cost split. The City would be responsible for the cost of constructing or enlarging components of the project to accommodate future expansion of the project's capacity above 2.5 mgd.

*Justification: (i) Partnership - The two agencies are partners which independently arrived at the value of a desalination project to their systems based on long-term planning. Both agencies independently studied the potential for desalination, but were aware that the other agency was also considering desalination. One implication of the partnership principle is that the infrastructure costs of wheeling the desalinated water through one system to the other is part of the overall cost of the project. . Additional costs to accommodate increased capacity to support the desalination project, including any piping and pumping infrastructure from the DeLaveaga storage tanks to the SqCWD boundary are to be shared.*

*(ii) Systems are in Good Operating Condition - Keeping the infrastructure of each system up to standard is the responsibility of each individual agency*

## **5. Operating Costs Allocation.**

There are three categories of operating costs: fixed readiness charge (allocated the same as capital costs, 59/41); water charge (allocated as each agency's share of total orders); and capital refurbishment charges (allocated the same as capital costs, 59/41). Examples of each category, based on discussions with other water agencies, consulting engineers, and staff, follow. This list may be modified over time and is not intended to be all-inclusive

Fixed Readiness Cost Categories (R) activities or items that must be maintained regardless of whether the plant is operating so as to "stand ready" to produce water

Brine Equalization Tank  
Brine Pipeline maintenance  
Standby Engine Generator System  
Operations Building System  
Plant SCADA Systems  
Plant Electrical System  
Plant Security and Landscape  
Intake Screens and Pipeline  
Intake Pump Station (parts subject to constant corrosion)  
Source Water Pipeline  
Rapid Mix (parts subject to corrosion)  
High-Rate Clarification  
Permeate Tank  
Chlorine Contact Tank  
Brine Pump Station (parts subject to constant corrosion)  
Water quality testing  
Labor for stand-by operations

Water Charge Categories (W) items or activities directly related the amount of water produced  
Power

Intake pump stations (parts degraded by use)  
Rapid Mix (parts degraded by use)  
Strainers and MF/UF Membrane Filters, or media replacement  
Filtrate and Backwash Supply Tank  
SWRO Feed Pump Station  
1st pass SWRO membrane elements  
Distribution Booster Pumps  
Liquid Chemical Storage and Feed  
Dry Chemical Storage and Feed  
Carbon Dioxide Storage and Feed  
Backwash Supply Pump Station  
Backwash Equalization Basin  
Gravity Thickeners  
Centrifuges  
Brine Pump Station (parts subject to degradation by use)  
Labor for in-use operations  
Additional water quality tests

Capital Refurbishment Categories (C) generally longer term maintenance and replacement of components to maintain the facilities in useful condition for the life of the plant

Building  
Piping  
Valves  
RO element pressure vessels  
Equipment for changing, removing, replacing RO elements in pressure vessels  
Measurement instruments  
SCADA systems  
Chemical cleaning systems  
Intake and outfall equipment (alternative location to the above two categories)

Power equipment (on-site generators, transformers)  
 Energy recovery devices  
 Screens

Calculations of operating costs are as follows:

	Col. 1 Fixed Readiness Charge (R)	Col. 2 Water Charge (W)	Col. 3 Capital Refurbishment (C)
City	% of plant capacity	% of total orders	% of plant capacity
SqCWD	% of plant capacity	% of total orders	% of plant capacity

Note: the "% of plant capacity" for each agency is SqCWD: 41%, City: 59%

Scenario 1:

*Plant operates normally*

SqCWD pays:  $(.41*(R+C)) + (\text{SqCWD proportion of water orders} * W)$

City pays:  $(.59* (R+C)) + (\text{City proportion of water orders} * W)$

Scenario 2:

*Plant does not produce sufficient water to meet orders*

SqCWD pays:  $(.41*(R+C)) + (\text{SqCWD proportion of water taken} * W)$

City pays:  $(.59* (R+C)) + (\text{City proportion of water taken} * W)$

Many of these categories are already being tracked by the City Water Department cost tracking system. As the time of plant operation nears, these categories can be identified in or added to the existing accounting system.

An adjustment charge for normal system leakage/losses of 1.5% of deliveries will be added to the water charge paid by the Soquel Creek Water District.

Incidental overproduction. In the event that the facility occasionally or for short durations overproduces water as a result of operating conditions, and the over production exceeds ordered water, the cost of its production will be added to the cost of the ordered water, in proportion to the amounts ordered.

*Justification: To the extent possible, the direct beneficiary should cover operating costs of the plant. In some cases, operating costs are not linked to water produced, and are appropriately allocated on the same basis as are capital costs.*

## 6. Emergencies- Principles and Procedures

### "Emergency Call for Desalinated Water"

An Emergency Call for Desalinated Water can be made as a result of an incident that suddenly and unexpectedly curtails water supply for either agency. Emergencies are curtailment events whose details, timing, and severity cannot reasonably be anticipated by water managers. Examples include seismic damage to facilities, unexpected loss of multiple wells, treatment plant breakdowns, damage to reservoirs, and other similar impacts that cause immediate and unexpected loss of water supply. Emergencies do not include droughts, water shortages due to growth, or other changes in demand or supply that should be subject to regular water supply planning.

Concurrent with such an incident, either or both agencies may issue an Emergency Call for Desalinated Water. An Emergency Call for Desalinated Water triggers the following provisions. It does not trigger any other emergency-related actions or responses at or between the Agencies unless such actions or responses are specified in other documents.

#### Single-agency Emergency

An Emergency Call for Desalinated Water occurs when one Agency Manager delivers a written communication to the other requesting emergency use of the desalination facility. The timing of the event begins upon delivery of the communication either electronically or in hard copy.

The Agency Manager of the declaring agency has the authority to implement immediate changes to the priority system.

Having made an Emergency Call for Desalinated Water, the declaring agency may request up to the entire output of the desalination plant for a period of up to 15 days from the day of declaration. This request will be honored by the other agency.

During this period, the Emergency Call for Desalinated Water allocation replaces the priority system. At any time, the Agency Manager of the declaring Agency may end the Emergency Call for Desalinated Water, at which point desalinated water is again allocated according to the priority system.

After 15 days of continuous Emergency Call for Desalinated Water, the priority system will be reestablished and followed for allocation of desalinated water unless the Agency Managers jointly declare an Ongoing Emergency.

During an Ongoing Emergency allocation of desalinated water will be subject to negotiation and agreement between the two agencies.

Agency Managers will meet prior to the conclusion of the initial 15-day emergency period to discuss whether to end or continue the Emergency Call for Desalinated Water. If they agree to continue it by declaring an Ongoing Emergency, they will then agree on an allocation of water from the facility. The continuation can last up to 15 days without repeating this process.

In the event that the Agency Managers cannot agree on whether to continue the Emergency Call for Desalinated Water, the issue will be resolved through arbitration as provided in Section 7.

Operating expenses during the emergency will be allocated according to the proportion of water delivered to each agency during that period.

#### Regional Emergency

Both parties may make an Emergency Call for Desalinated Water at the same time or in overlapping periods.

If this occurs, the Agency Managers will attempt to negotiate an allocation of water from the Desalination Facility. This allocation will replace the regular priority system detailed in this agreement. If the Agency Managers are not able to reach an agreement, the issue will be resolved through Arbitration.

*Justification: In case either agency or both agencies experience an unexpected severe shortage of water supply, the desalination facility provides an opportunity to meet short-term supply needs. These incidents are expected to occur rarely and are expected to last from a few days to*

one week but could last longer. The following two principles influence the utilization of desalination water during an emergency.

- (1) *In the event of an emergency, each agency will retain its independence of action subject to any agreements the agencies have reached in advance.*
- (2) *In the event of an emergency that impacts both agencies, a principle of equity will be used in discussions over water curtailments.*

## **7. Arbitration Procedures for Disputes Over Allocation of Water in Emergencies.**

In the case of emergencies, a simple, clear and speedy procedure is needed to allocate water from the desalination plant. Mandatory, binding arbitration conducted by a single, technically-knowledgeable arbitrator is most likely to meet that objective. To accomplish that, the Task Force recommends the following:

### Panel of Arbitrators

The parties will establish by agreement a panel of neutral third parties who are acceptable to both as potential arbitrators. Experience and qualifications desirable for potential arbitrators include experience in civil engineering and/or municipal water supply management and operation. To be eligible for inclusion on the panel, a person must not be an employee of or consultant to either of the parties or have served in that capacity for a period of time agreed to by the parties. Also, potential arbitrators must agree in advance on dates of availability, compensation, the need for quick action and decision, as well as on procedural rules the parties may have established.

The parties will keep the list of potential arbitrators up-to-date.

### Selection of Arbitrator

The arbitrator may be any person on the approved list who is immediately available to serve.

### Process of Arbitration

The process should be efficient, informal and fair. Basic groundrules will include:

- prohibitions on individual contacts by either party with the arbitrator (other than to explain the nature of the decision and establish meeting logistics);
- providing a copy of all information submitted to the arbitrator to the other party;
- time limits for submission of written information to the arbitrator, for meetings to present information and argument to the arbitrator, and for the issuance of the arbitrator's decision;
- the scope of the arbitrator's decision and the length of time it can be in effect.

### Finality

The parties agree that the arbitrator's decision will be final and not subject to review in court.

*Justification: The parties should establish in advance a procedure for prompt resolution of any dispute about the existence of an emergency and the reallocation of the output of the project by a knowledgeable, independent third party.*

**CITY OF SANTA CRUZ  
AND  
SOQUEL CREEK WATER DISTRICT**

**MEMORANDUM OF AGREEMENT TO CREATE A JOINT TASK  
FORCE TO PURSUE THE FEASIBILITY OF CONSTRUCTION AND  
OPERATION OF A SEAWATER DESALINATION FACILITY**

This Agreement is entered into by and between the City of Santa Cruz, California, a body politic and charter city (hereinafter "CITY") and the Soquel Creek Water District (hereinafter "SqCWD") a County Water District organized pursuant to sections 30000 et. seq. of the California Water Code.

**RECITALS**

A. City is responsible for providing water to the residents of the City of Santa Cruz and additional customers outside the City limits within the County of Santa Cruz and a portion of the City of Capitola.

B. SqCWD is responsible for providing water to citizens in the City of Capitola and the unincorporated communities of Soquel, Seacliff, Aptos, Rio Del Mar, Seascape and La Selva Beach.

C. City's main sources of supply for water are surface water diversions with some groundwater sources; SqCWD's sole sources of supply for water are groundwater wells.

D. City has conducted extensive studies demonstrating the need to supplement its water supplies during periods of drought and has concerns about the potential of seawater intrusion impacts on its groundwater sources; SqCWD has concerns about over pumping of its groundwater supply and the potential of seawater intrusion.

E. Both parties have conducted extensive public studies on various alternative supplemental supplies that have concluded that a jointly operated seawater desalination facility is the preferred project to meet the needs of both parties. The parties recognize the mutual benefit of a desalination facility which would permit SqCWD to provide a supplemental source of supply to relieve the pressure on its groundwater resources and, in time of drought, provide an alternate source of supply to City.



F The parties recognize that a joint effort provides economies of scale and furthers interagency cooperation, which thereby improves the public health, safety and general welfare.

G Both parties have the power to acquire, construct and operate a desalination facility and the parties propose, by this agreement, to cooperate and coordinate on a regional project in order to provide more efficient operations, lower capital and operating costs and greater public benefit than acting independently

H. The parties wish to enter into an agreement to complete the investigative process, including the construction and operation of a pilot plant, that could lead to implementing the construction and operation of a 2.5 million gallon per day full-scale seawater desalination facility to serve both parties.

I. Both parties agree that this process needs to move as quickly as possible because of the critical water shortages both agencies face and because of the increasing cost of construction over time.

NOW THEREFORE, because it is in the best interests of the parties to enter into this Agreement for the reasons set forth above, the parties agree as follows:

**1. Creation of Joint Task Force.**

To carry out the terms of this Agreement, the parties have elected to create a joint task force (hereinafter referred to, interchangeably, as either "Joint Task Force" or "Task Force") composed of members of both agencies to carry out the activities described herein on the terms and conditions hereinafter provided.

**2. Effective Date.**

The effective date of this Agreement is the date this Agreement is signed by the latter of the Parties to do so, or any such other date mutually selected by the parties for convenience.

**3. Purpose.**

The purpose of this Agreement shall be to cooperatively complete the investigative phase, including required studies, design, environmental review, and permitting for the proposed 2.5 mgd seawater desalination facility, provide a forum for public input on the project, and formulate an operational agreement prescribing the conditions under which each agency shall be entitled to utilize the project for supplemental water supply, the contractual relationship between the two agencies and ongoing governance structure should the project proceed. It is understood that the City of Santa

Cruz has anticipated the need for future desalination capacity in excess of 2.5 mgd and that plant expansion is outside the purpose of this Agreement and will be pursued independently by and at the sole discretion of the City.

**4. Designation of Joint Desalination Task Force.**

The work program set forth in this Agreement shall be directed by a Joint Task Force, the members of which shall be selected and serve as follows:

- a. Each Party shall designate and appoint two members of its governing body to serve as Members of the Joint Task Force, each of whom shall have a single vote on matters coming before the Task Force. To the extent possible, the Parties shall attempt to select Task Force Members that have different terms of office to provide continuity on the Task Force.
- b. Each Party shall also designate one Alternate Task Force Member who shall also be a member of that Party's governing body who shall be authorized to act only in the absence of his or her corresponding Task Force Member with the same vote and authority as such Task Force Member. An alternate attending meetings at which he/she is not filling in for an absent member shall have the same status as a member of the public.

**5. Officers of the Joint Task Force.**

The officers of the Joint Task Force shall consist of a chair and vice-chair. The chair and vice-chair shall be selected by a majority vote of the Task Force. The chair and vice-chair shall serve one-year terms co-extensive with the fiscal year. When the chair is elected from one agency, the vice-chair shall be from the other.

**6. Compensation.**

Neither officers nor Members of the Joint Task Force shall receive compensation other than that provided by their respective affiliate jurisdiction for attendance at meetings as a member of the governing board and for service rendered as a Board/Council member by request of the Board/Council.

**7. Joint Task Force Meetings.**

- a. **Meetings:** The Task Force shall determine the frequency of regular meetings and shall specify by motion, the date, hour and place at which regular public meetings shall be held; the Chair may call a special meeting.

- b. **Call, Notice and Conduct of Meetings:** All meetings of the Task Force, including without limitation, regular, adjourned and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Section 54950 et. seq.)
- c. **Minutes:** A qualified staff member from one of the Parties or an independent contractor specifically retained for this purpose shall serve as the Secretary of the Task Force and shall cause minutes of all meetings to be kept and shall cause copies of the minutes to be provided to each Member and Alternate Member in a timely manner and made available to the public.
- d. **Quorum:** A quorum of the Task Force shall consist of three Members or Members and Alternate Members. Less than a quorum may adjourn a meeting.
- e. **Rules:** The Task Force may adopt from time to time such rules and regulations to conduct its affairs as may be required.
- f. **Vote or Assent of the Task Force:** It is the hope that the Joint Task Force shall arrive at decisions by consensus, but in the event consensus is not possible, at least three votes of the Task Force shall be required to approve any matter before it.

**8. Agents and Employees**

The City of Santa Cruz Water Director and the Soquel Creek Water District General Manager shall have joint responsibility for supervising and directing the work program as set forth in this Agreement and otherwise carrying out direction from the Task Force, and both shall answer to the Task Force with respect to their performance in this role. Any officer, agent or employee serving the Task Force can also be an officer, agent or employee of either Party. Assignment to activities in support of the Task Force of such a person shall evidence that the two positions are compatible. All of the privileges and immunities from liability, exemption from laws, ordinances, and rules, and all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents or employees of any of the Parties when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement. Any agent exclusively serving the Task Force shall be under the direction of both the City of Santa Cruz Water Director and the Soquel Creek Water District General Manager. The manner of compensating said agents shall be determined by the Task Force with the approval of the agencies.

Both agencies shall insure that its employees and agents working for the Task Force shall have the same insurance, immunities and benefits that they would have as employees or agents of the respective entities.

**9. General Authority**

The Joint Task Force shall have the authority to take the following actions:

- a. To oversee and guide the project through the investigative stage, including reviewing results and making decisions among options.
- b. To establish such bylaws and rules and regulations as may be necessary for the operation and conduct of the Task Force's business.
- c. To review and recommend the proposal, scope of work, and terms and conditions of consulting agreements associated with the project.
- d. To exercise any power conferred upon it by agreement of the Parties provided said power is in furtherance of this Agreement.
- e. To review and approve applications for permits on behalf of the Parties in connection with any Project or Projects as authorized by the Parties.
- f. With approval of the Parties, to apply for, receive and disburse funds whether provided by the Parties or any other third party source, including but not limited to, grant funds from the State of California or the United States of America.

**10. Specific Authority**

The Joint Task Force is hereby empowered to:

- a. Oversee and direct preparation of and development of studies and plans for a 2.5 mgd seawater desalination Project, including, but not limited to, design, environmental review, permitting for the proposed seawater desalination facility, provide a forum for public input on the project and formulate an operational agreement prescribing the conditions under which each agency shall be entitled to utilize the project for supplemental supply, the contractual relationship between the two agencies and ongoing governance structure should the project proceed and similar activities with respect to the Pilot Project currently being undertaken by the City of Santa Cruz.

- b. Adopt a work plan and schedule on an annual basis or more frequently as deemed appropriate. Oversee a public outreach program intended to inform the public about all aspects of the Project and provide opportunities for public input.
- c. Recommend to the governing bodies approval of contracts with public or private entities, firms, corporations, partnerships or persons for expert professional consulting services or technical assistance for purposes of implementing the aforementioned project.
- d. Recommend to the governing bodies retention of dedicated staff and consultants as necessary to complete the scope of work approved by the Task Force.
- e. Prepare and recommend adoption of an annual fiscal year budget for costs associated with the seawater desalination Project investigation and development.
- f. Receive, accept and utilize the services of personnel offered by any of the Parties, or their representatives or agents; receive, accept, and utilize property, real or personal, from any of the Parties or their representatives or agents.
- g. Develop the concepts for an operational plan for the Facility for presentation to and final approval by the full legislative bodies of the respective parties. This operational plan shall include, but not be limited to, policies for determining when each agency would have primary use of the plant, including defining drought conditions and allowing for the possibility of joint operation in order to achieve groundwater recovery following a drought or to address groundwater issues of mutual concern to both parties.
- h. Should both Parties ultimately agree to proceed with constructing the full-scale Facility, develop recommendations for ongoing governance, cost sharing, ownership and operation of the full-scale Facility.

## 11. Restrictions

The scope of the Joint Task Force is limited as follows:

- a. The Joint Task Force is limited to: 1) consideration of matters related to investigative phase, including required studies, design, environmental review, and permitting for the proposed 2.5 mgd seawater desalination facility, including a pilot facility; and 2)

formulating an operational agreement prescribing the conditions under which each agency shall be entitled to utilize the project for supplemental water supply, the contractual relationship between the two agencies and ongoing governance structure should the project proceed. The Joint Task Force has no power with respect to the operation of either of the Parties' other water supply, storage, transmission, or other water operations.

- b. The Joint Task Force has no ability to make financial commitments on behalf of either of the Parties, although it can make recommendations and requests to the respective legislative bodies of the Parties concerning financial matters.

**12. Committees**

The Joint Task Force may establish such advisory committees as it deems appropriate to advise the Task Force on matters relating to implementation of any aspect of the Project or associated Program. Such committees shall be composed of such persons as the Task Force shall determine; provided, however, that such membership shall not necessarily be limited to persons representing, or associated with, the Parties. The purpose and the function of any such committee or committees shall be specified by the Task Force.

**13. Funds and Expenditures**

This Agreement requires strict accountability of all funds and reporting of all receipts and disbursements as follows:

- a. Each and every expenditure of moneys shall be authorized or approved by the legislative bodies of both Parties or by the City of Santa Cruz Water Director and the Soquel Creek Water District General Manager that is within their respective administrative authority.
- b. Before the Task Force may expend any moneys or incur any financial obligation, it shall adopt an annual Fiscal Year Budget showing proposed expenditures for the applicable Fiscal Year and the proposed means of financing such expenditures. The Budget shall be adopted on or before April 30 of each year for the ensuing Fiscal Year and submitted to the parties along with their respective funding obligations for inclusion in their individual budget development. Provided, however, that for the first Fiscal Year of the Task Force's existence, the budget shall be adopted by the Task Force within ninety (90) days of the effective date of this Agreement.

- c. The Finance Officer of the City of Santa Cruz shall be appointed as Treasurer for the Project. The Treasurer shall periodically present to the Task Force during each Fiscal Year a financial report accounting for all moneys received and disbursed for the report period.
- d. The Treasurer shall be the depository and custodian of all dedicated Project funds.
- e. All books and accounts shall be maintained for the Project in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities. In particular, the Treasurer shall ensure strict accountability of all funds and reporting of all receipts and disbursements associated with the Project in accordance with Generally Accepted Accounting Principles (GAAP) and the accounting rules and policies applicable to government agencies within the State of California.
- f. As part of the City of Santa Cruz annual audit, the records and accounts of the Task Force shall be audited annually by an independent certified public accountant and copies of such other reports shall be filed with each Member within six (6) months of the end of the Fiscal year under examination.
- g. The governing body of the Party employing the Treasurer shall determine the charges to be shared by the Parties for the services of the Treasurer, provided, that such charges shall not exceed the actual costs for such services.

#### 14. **Member Contributions**

The parties agree that the costs for the investigative phase of the Project will be shared as follows:

- a. **Pilot Plant Costs.** The parties shall contribute equal shares for all of the costs incurred for designing (including all studies required), developing, constructing and operating the pilot plant for the duration of the test period after deduction of any grant funds received from third parties.
- b. **Investigative Studies and Full Scale Facility Costs.** The parties shall contribute equal shares of the costs for investigative studies, design, environmental review, and permitting associated with the full scale Facility after deduction of any grant funds received from third parties.

- c. **Acquisition of Property and Construction.** The parties shall contribute equal shares for commitments necessary to secure a site and associated rights-of-way for the full scale project excluding any rights-of-way or easements that solely benefit only one agency. Actual purchase of property and construction will be by separate agreement as it is beyond the scope of the Task Force.
- d. **Staffing.** Both parties will provide support from existing staff and dedicated staff or independent contractors may be retained as needed to support the Project. Actual costs incurred by each party for staff and/or independent contractors will be tracked and submitted to the Treasurer on an annual basis to issue reimbursements as appropriate to result in the equal sharing of costs by both parties.
- e. **Reimbursement of Existing Costs.** Each party shall reimburse the other for 50% of any costs described above which have been incurred prior to this agreement.

**15. Amendments**

This Agreement may be amended at any time, or from time to time, except as may be limited by contract with holders of bonds or other evidences of indebtedness issued jointly or independently by the Parties or by applicable regulations or laws of any jurisdiction having authority, by one or more supplemental agreements executed by all of the Parties who are then Parties hereto, either as required in order to carry out any of the provisions of this Agreement, or for any Project, or for any other purpose, including without limitation, addition of new Parties, including any legal entities heretofore or hereafter created, in pursuance of the purposes of this Agreement.

**16. Addition of Parties**

A Party or Parties may be added to this Agreement, upon request, evidenced by submission of a certified copy of a resolution adopted by the governing body of the public agency requesting to be a Party to the Agreement. Such requests, as pertain only to the initial 2.5 mgd facility, must be approved by the governing bodies of all of the existing Parties to the Agreement. The Joint Task Force may require a party seeking to join the Agreement to meet any terms and conditions the Task Force deems appropriate.

**17. Withdrawal of Party**

Either Party may withdraw from this Agreement at any time until both Parties are prepared to award a contract for the construction of the permanent Facility. Any withdrawal prior to that time shall be on not less than thirty (30) days written notice to the other Party provided, however,



that no award of bid for the Full Scale Plant Project shall take place until the amount of all bids has been communicated to all Parties for at least a 60-day period prior to any award. Upon providing a notice of withdrawal, the withdrawing Party shall be responsible for its contractual share of all costs and expenses and other obligations assumed by the Parties as provided herein up to the date of withdrawal. The withdrawing party shall reimburse the remaining party for said costs, expenses and other obligations within 90 days of the date of notice of withdrawal.

**18. Term and Termination**

This Agreement shall continue until terminated as specified in this paragraph. This Agreement may be terminated upon the conclusion of any Fiscal Year by an agreement executed by all of the Parties which are then parties hereto, which agreement shall be approved by the governing bodies of each of such Parties, and shall include satisfaction of all outstanding debts, obligations and liabilities for Capital Expenditures, debt services for bonds or other evidences of indebtedness, and Operation and Maintenance Costs incurred by the Task Force. Upon termination, each Party shall be entitled to receive such property and surplus money of the Task Force as lawfully may be distributed in proportion to each Party's respective contribution to all of the Projects of the Task Force or in such other manner as shall be agreed upon by all of said Parties. Until such distribution is agreed upon, such property and money shall be held in trust by the Treasurer for all of said Parties.

**19. Successors; Assignment**

This Agreement shall be binding upon and inure to the benefit of the successors or assigns of the Parties. No Party may assign any right or obligation herein without the written consent of each of the other Parties.

**20. Governing Law**

The parties agree that this agreement is executed in the State of California and that the law of the State of California shall govern this agreement.

**21. Severability**

Should any portion, term, condition, or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, or provisions shall not be affected thereby.

IN WITNESS WHEREOF, the Parties have affixed their signatures hereto.

**CITY OF SANTA CRUZ**

Emily Kelly  
Mayor

23 Sept 07  
Date

Mark B.  
Asst City Manager

9-21-07  
Date

Approved as to form

[Signature]  
City Attorney

**SOQUEL CREEK WATER DISTRICT**

Bruce Daniels  
Board President

9-19-2007  
Date



## CITY COUNCIL AGENDA REPORT

DATE: 03/01/2010

AGENDA OF: 3/9/2010

DEPARTMENT: Economic Development

SUBJECT: Homeless Winter Shelter Extension and Debt Funding. (ED)

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**RECOMMENDATION:** Resolution appropriating funds and amending the FY 2010 budget in an amount up to \$17,042 to fund an extension of time of the Homeless Winter Shelter and assist the Homeless Services Center in covering prior debts for the Homeless Winter Shelter.

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**BACKGROUND:** The City of Santa Cruz participates with the County of Santa Cruz and the Cities of Capitola, Scotts Valley, and Watsonville to provide two emergency winter shelters for the homeless. The south county shelter is located at the Salvation Army in Watsonville and the north/mid-county shelter uses the National Guard Armory which is located in DeLaveaga Park. The Armory winter shelter is operated by the Homeless Services Center (HSC). In the afternoon, clients are bussed to the Armory from HSC at 115 Coral Street and returned by bus the following morning. The shelter typically operates for five months from November 15 through April 15.

The annual budget for the winter shelters is established by the Homeless Action Partnership (HAP) Executive Committee. The Committee includes representatives of the five participating jurisdictions with the County assuming the administrative lead. Individual funding contributions are approved by each jurisdiction. In past years, the shelter program has also received some state funding under the Emergency Housing and Assistance Program Operating Facility Grants (EHAP). This funding source is no longer available.

HSC has notified the HAP that there will be insufficient funds to operate the Armory shelter for the fifth and final month (March 15 through April 15) this year. Additionally HSC has an unpaid balance for Metro Center bussing costs for the Armory winter shelter for the 2008-2009 season and has requested assistance in paying this bill.

### **DISCUSSION: NORTH/MID COUNTY WINTER SHELTER GAP**

Historically the City of Santa Cruz has proportionally contributed more on a per capita basis to winter shelter operations than the other jurisdictions. The HAP Executive Committee has been working to develop a more equitable formula based on population. For the winter shelters, the committee has recommended that the service areas and related funding be divided into the south and north/mid-county shelter systems with the Aptos and Watsonville areas being counted as the south county and the remainder as north/mid-county. The reason for this division is that the cost of operating the Armory as a shelter is much higher than the Salvation Army winter shelter, which does not require bussing or charge rent.

The proposed HAP formula dividing the \$38,368 required to fund the winter shelter gap for this year, providing for the fifth month at the Armory shelter is shown in the chart below. The “Percent Population” column in the chart proportionally represents jurisdictions in the north/mid-county areas. These percentages form the basis for the formula that will be recommended for the 2011 fiscal year budget for the north/mid-county winter shelter. “Gap Funding” represents the cost under this formula for each jurisdiction to keep the shelter open for a fifth month. “Total Funding” shows total amounts that would be paid by jurisdiction for all five months, assuming this option is approved. This includes the amount that each jurisdiction has already agreed to pay and budgeted. The final percent “%” column proportionally compares the totals by jurisdiction.

TABLE 1: GAP FUNDING OPTION 1

JURISDICTION	% POPULATION	GAP FUNDING	TOTAL FUNDING	%
County of Santa Cruz*	50.8%	\$19,485	\$121,838	48%
City of Santa Cruz	35.3%	\$13,562	\$114,212	45%
City of Capitola	6.5%	\$ 2,493	\$10,646	4%
City of Scotts Valley	7.4%	\$ 2,828	\$5,636	2%
TOTAL	100%	\$38,368	\$252,332	100%

\* Represents only the County population in the north/mid county areas.

In the HAP discussion, City staff supported an alternative which would acknowledge the City of Santa Cruz’s prior contributions, bringing the City closer to its proportional population. Funding under this second option excludes the City of Santa Cruz. The two columns to the right again represent total amounts and proportional percentages that would be spent under this option.

TABLE 2: GAP FUNDING OPTION 2

JURISDICTION	% POPULATION	GAP FUNDING	TOTAL FUNDING	%
County of Santa Cruz	79%	\$30,138	\$132,491	52%
City of Santa Cruz	NA	\$0	\$100,650	40%
City of Capitola	10%	\$3,855	\$12,008	5%
City of Scotts Valley	11%	\$4,375	\$7,183	3%
TOTAL	100%	\$38,368	\$252,332	100%

Although City staff prefers this last option as being the most equitable approach, staff also recognizes that it is important to move the process forward. If the first option recommended by the HAP Executive Committee is not approved then there is a potential that other jurisdictions may not opt to fund a fifth month for the Armory winter shelter. All jurisdictions have agreed that funding approvals will be contingent upon all other jurisdictions participating in this fifth month funding for the north/mid county shelter at the Armory.

To reduce the financial impact, the HAP Executive Committee also agreed to proceed with this fifth month on a week by week basis. If the weather supports early closure then funding will be required only for those weeks that the shelter is open.

**2008-2009 BUS SERVICE DEFICIT**

To fund the HSC debt for 2008-2009 winter shelter bus service, City staff was in agreement with the majority of the HAP members. The recommendation is for HSC to fund one half of the debt, which may be partially or wholly achieved through negotiations with the Metro Center. The

second half of the debt would be divided based on the newly proposed north/mid county formula (See Table 1 above for the % Population formula column). The City of Santa Cruz's portion of the total \$19,688 debt would be \$3,480. This approach recognizes the added burden this debt will have on HSC at a time when funds for non-profit operating expenses are declining.

In April of 2000 the City Council set aside the proceeds from the sale of the Pelton sliver lots into a separate Homeless Services Public Trust Fund to be used for homeless services. The funds have been allocated for a variety of purposes in previous years, including augmentation of winter shelter funding. There is now about \$4,200 remaining in the fund and this budget adjustment would use the remaining fund balance to close the fund. The remainder of the \$17,042 would come from the General Fund fund balance.

**FISCAL IMPACT:** A total appropriation of up to \$17,042, contingent upon approvals of proportional funding by other jurisdictions, will be funded with approximately \$4,200 from the Homeless Services Public Trust Fund and the remainder of approximately \$12,842 from the City's General Fund.

Prepared by:  
Carol Berg  
Housing & Community  
Development Manager

Submitted by:  
Bonnie Lipscomb  
Director of Economic Development

Approved by:  
Richard C. Wilson  
City Manager

**ATTACHMENTS:** Budget Adjustment

**City of Santa Cruz  
BUDGET ADJUSTMENT REQUEST**

<input checked="" type="radio"/> Council Approval .....	Resolution No. _____
<input type="radio"/> RDA Approval .....	Resolution No. _____
<input type="radio"/> Administrative Approval	

<input checked="" type="radio"/> Current Fiscal Year
<input type="radio"/> Prior Fiscal Year

Date: 02/24/2010

ACCOUNT	REVENUE EDEN ACCOUNT TITLE	
101-00-00-0000-49108	From City Public Trust Fund - Homeless Services*	\$4,200.00
	<b>TOTAL REVENUE</b>	<b>\$4,200.00</b>

ACCOUNT	EXPENDITURE EDEN ACCOUNT TITLE	
101-01-01-1113-56960	Loans and Grants	\$17,042.00
131-00-00-0000-59101	To General Fund*	4,200.00
	<b>TOTAL EXPENDITURE</b>	<b>\$21,242.00</b>

**NET: \$ (17,042.00)**

**Purpose:** To appropriate gap funding for the Homeless Winter Shelter Program from the remaining balance of the City Public Trust Fund-Homeless Services and the General Fund.

\*Will equal remaining fund balance in Fund 131.

PREPARED BY	DEPARTMENT HEAD APPROVAL	ACCOUNTING APPROVAL	FINANCE DIRECTOR APPROVAL	CITY MANAGER APPROVAL
Kathryn Mintz <small>Digitally signed by Kathryn Mintz DN: cn=Kathryn Mintz, ou=City of Santa Cruz, ou=Santa Cruz, email=kymintz@cityofsc.org, o=City of Santa Cruz Date: 2010.02.24 10:25:10 -0800</small>	Martin Bernal <small>Digitally signed by Martin Bernal DN: cn=Martin Bernal, ou=City of Santa Cruz, ou=City of Santa Cruz, email=mbernal@cityofsc.org, o=City of Santa Cruz Date: 2010.02.24 10:30:41 -0800</small>	Patty Haymond <small>Digitally signed by Patty Haymond DN: cn=Patty Haymond, ou=Finance Department, ou=City of Santa Cruz, email=phaymond@cityofsc.org, o=City of Santa Cruz Date: 2010.02.25 11:22:51 -0800</small>	Jack Dilles <small>Digitally signed by Jack Dilles DN: cn=Jack Dilles, ou=Finance, ou=FMAD, ou=City of Santa Cruz, email=jdilles@cityofsc.org, o=City of Santa Cruz Date: 2010.02.25 10:07:46 -0800</small>	
2/24/10		2/25/10		

Revised December 2009

ORDINANCE NO. 2010-04

AN ORDINANCE OF THE CITY OF SANTA CRUZ  
AMENDING PORTIONS OF TITLE 18 TO THE SANTA CRUZ MUNICIPAL CODE  
PERTAINING TO BUILDING PERMIT FEES

The City Council of the City of Santa Cruz ordains as follows:

Section 1. Chapter 18.04.050 of the Municipal Code of the City of Santa Cruz shall be amended to read as follows:

18.04.050 PERMIT FEES.

The chief building official shall charge and receive such fees for services, inspections and permits relating to any work subject to this chapter as set forth in Chapter 3, Table 3A of the Uniform Administrative Code as adopted in Section 18.04.030 and in the fee schedule established by City Council resolution.

Where development is conducted pursuant to the filing of a vested tentative subdivision map, the permit fees charged pursuant to this section shall be charged in accordance with the fee schedule in effect on the date of the building permit application.

Section 2. Chapter 18.08.050 of the Municipal Code of the City of Santa Cruz shall be amended to read as follows:

18.08.050 PERMIT FEES.

The chief building official shall charge and receive such fees for services, inspections and permits relating to any work subject to this chapter as set forth in Chapter 3, Table 3B of the Uniform Administrative Code as adopted in Section 18.04.030 and in the fee schedule established by City Council resolution.

Section 3. Chapter 18.12.050 of the Municipal Code of the City of Santa Cruz shall be amended to read as follows:

18.12.050 PERMIT FEES.

The chief building official shall charge and receive such fees for services, inspections and permits relating to any work subject to this chapter as set forth in Chapter 3, Table 3D of the Uniform Administrative Code as adopted in Section 18.04.030 and in the fee schedule established by City Council resolution.

ORDINANCE NO. 2010-04

Section 4. Chapter 18.14.050 of the Municipal Code of the City of Santa Cruz shall be amended to read as follows:

18.14.050 PERMIT FEES.

The chief building official shall charge and receive such fees for services, inspections and permits relating to any work subject to this chapter as set forth in Chapter 3, Table 3C of the Uniform Administrative Code as adopted in Section 18.04.030 and in the fee schedule established by City Council resolution.

Section 5. Chapter 18.45.060 of the Municipal Code of the City of Santa Cruz shall be amended to read as follows:

18.45.060 GRADING FEES.

The chief building official shall charge and receive such fees for services, inspections and permits relating to any work subject to this chapter as set forth in the fee schedule established by City Council resolution.

Section 6. This ordinance shall be in force and take effect thirty (30) days after its final adoption.

PASSED FOR PUBLICATION this 23<sup>rd</sup> day of February, 2010, by the following vote:

AYES: Councilmembers Lane, Mathews, Beiers, Madrigal, Robinson; Vice Mayor Coonerty; Mayor Rotkin.

NOES: None.

ABSENT: None.

DISQUALIFIED: None.

APPROVED: ss/Mike Rotkin, Mayor

ATTEST: ss/Lorrie Brewer, City Clerk



ORDINANCE NO. 2010-04

PASSED FOR FINAL ADOPTION this \_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

This is to certify that the above and foregoing document is the original of Ordinance No. 2010-04 and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.

\_\_\_\_\_  
City Clerk



## CITY COUNCIL AGENDA REPORT

DATE: 03/03/2010

AGENDA OF: 3/9/2010

DEPARTMENT: Planning

SUBJECT: Urgency Ordinances Extending the Life of Land Use and Building Permits.  
(PL)

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**RECOMMENDATION:** Motion acknowledging the Environmental Determination, and introduction and final adoption of the following ordinances:

An uncodified Emergency Ordinance of the City of Santa Cruz pertaining to the extension of time for exercising land use permits and declaring the presence of an emergency and the urgency thereof; and

An uncodified Emergency Ordinance of the City of Santa Cruz pertaining to the extension of time for exercising building permits and declaring the presence of an emergency and the urgency thereof.

---

**BACKGROUND:** The severe global financial crisis of one year ago had driven the United States of America and the State of California into a deep economic recession. The series of bank and insurance company failures that precipitated and resulted from that crisis had effectively closed global credit markets and required unprecedented governmental intervention.

The financial crisis had made it very difficult for persons living and working in the City of Santa Cruz to proceed with approved and permitted land use projects due to their inability to obtain the institutional financing necessary to undertake project development. The City was asked by persons holding these permits if there is something that could be done to extend the life of their permits. On March 10, 2009, the City Council responded by adopting urgency ordinances extending the life of all active land use and building permit applications for one year.

The past year has seen some economic improvement to the national and global economy, however there is still major uncertainty surrounding the outlook for 2010 as a protracted recovery may extend the housing and banking crisis. Permit holders continue to express concerns about acquiring financing before their permits expire and the impact starting the entitlement process again would have on the City and regional economy.

**DISCUSSION:** The Building Division still has construction projects valued at approximately \$8.5 million dollars in process ready to issue with associated fees totaling approximately \$380,000. The Current Planning Division continues to follow approved applications that are not yet under construction, at risk of expiring. The sustained difficulty in acquiring financing at this time has placed these building and land use permits in jeopardy because of the exercise deadlines

set forth in the Municipal Ordinance and the previous urgency ordinances. If currently approved permits are allowed to expire under these circumstances, project applicants would be required to either repeat the time and expense of the land use and/or building permit entitlement or abandon their projects.

Staff is therefore recommending that two urgency ordinances be immediately adopted. The first would extend the life of all active land use permits for another year. In the second ordinance, building permit applications that were filed prior to January 1, 2008, whether approved for issuance or incomplete, will expire on December 1, 2010 unless all fees are paid and the permit is issued. No further extensions are expected to be granted for the building permit applications, and all plans and documents for these applications will be deleted from our files. All applications submitted after January 1, 2008 will be addressed under the administrative provisions of the current California Building Code. The 2010 California Building Codes will be adopted January 1, 2011 making the codes under which the applications made prior to January 1, 2008 obsolete.

**ENVIRONMENTAL REVIEW:** The urgency ordinances have been determined to be exempt from the California Environmental Quality Act (CEQA) in that the activity is covered under the general rule that CEQA applies only to projects, which have the potential for causing significant effect on the environment. The proposed ordinances would not result in increased densities or intensification of uses. In most, if not all, cases environmental review would have occurred on the permits proposed to be extended. The ordinances are consistent with and serve to implement the City's General Plan and Local Coastal Program. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is exempt from CEQA per Section 15061 (b)(3).

**FISCAL IMPACT:** While there may be loss of some building and planning permit fees if expired permits were reapplied for, the overall good of facilitating entitled permits, private employment opportunities and other economic benefits attributable to the start of development or redevelopment of property within the City should overcome any loss of fees.

Prepared by:  
Alex Khoury  
Assistant Planning Director

Submitted by:  
Juliana Rebagliati  
Planning Director

Approved by:  
Richard C. Wilson  
City Manager

**ATTACHMENTS:**

Urgency Ordinance for Land Use Permits  
Urgency Ordinance for Building Permits

ORDINANCE NO.

AN UNCODIFIED EMERGENCY ORDINANCE OF THE CITY OF SANTA CRUZ  
AMENDING SECTION 24.04.160 OF THE SANTA CRUZ MUNICIPAL CODE  
PERTAINING TO THE EXTENSION OF TIME FOR LAND USE PERMITS  
AND DECLARING THE PRESENCE OF AN EMERGENCY AND  
DECLARING THE URGENCY THEREOF.

WHEREAS, the severe global financial crisis of 2008 and early 2009 had driven the United States of America and the State of California into the deepest recession since the 1930's; and

WHEREAS, the series of bank and insurance company failures had triggered a financial crisis that effectively halted global credit markets and required unprecedented government intervention; and

WHEREAS, the financial crisis had made it very difficult for persons living and working in the City of Santa Cruz to proceed with land use projects; and

WHEREAS, the difficulty in acquiring financing had placed land use permits in jeopardy because of the land use permit deadlines required in the zoning ordinance; and

WHEREAS, a number of permit holders expressed concerns about having their permits expire and forcing them to start the time consuming entitlement process over again and delaying the start of construction revenue coming to the City and regional economy; and

WHEREAS, the City Council on March 10, 2009 approved a one year extension of all land use permits to assist permit holders to weather this economic crisis; and

WHEREAS, the past year has seen some economic improvement there is still major uncertainty surrounding the outlook for 2010 as a protracted recovery may extend the housing and banking crisis; and

WHEREAS, permit holders continue to express concerns about acquiring financing before their permits expire and the impact starting the entitlement process again would have on the City and regional economy.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Santa Cruz as follows:

Section 1. Chapter 24.12.160 of the Santa Cruz Municipal Code is hereby amended as follows

24.12.160 LIFE OF PERMIT.

e. All active permits as of the March 10, 2009 and those approved up to and including March 10, 2010 shall have the life of the permit automatically extended an addition one year from the length of time currently allowed under Section 24.04.160 (1)(a). This extension authorization shall expire on March 11, 2011 unless otherwise extended by the City Council.

ORDINANCE NO.

Section 2. This ordinance is declared to be an emergency measure adopted under Section 612 of the Santa Cruz City Charter, and is necessary to preserve the public peace, health, safety, property, and general welfare, and the urgency for its adoption is set forth in the findings above.

Section 3. This ordinance shall take effect and be in force immediately upon its final adoption.

PASSED FOR PUBLICATION AND FINAL ADOPTION as an emergency ordinance this \_\_\_\_ day of March, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

This is to certify that the above and foregoing document is the original of Ordinance No. and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.

\_\_\_\_\_  
City Clerk

ORDINANCE NO.

AN UNCODIFIED EMERGENCY ORDINANCE OF THE CITY OF SANTA CRUZ  
PERTAINING TO THE EXTENSION OF TIME FOR EXERCISING BUILDING PERMITS  
AND DECLARING THE PRESENCE OF AN EMERGENCY AND DECLARING  
THE URGENCY THEREOF.

WHEREAS, the severe global financial crisis of 2008 and early 2009 had driven the United States of America and the State of California into the deepest recession since the 1930s; and

WHEREAS, the series of bank and insurance company failures had triggered a financial crisis that effectively halted global credit markets and required unprecedented government intervention; and

WHEREAS, the financial crisis had placed a number of building permits in jeopardy because of the building permit exercise deadlines set forth in the California Building Code; and

WHEREAS, if currently approved permits were allowed to expire under these circumstances thereby requiring project developers to either repeat the time consuming and costly land use entitlement process or abandon their projects, the City's current financial crisis, precipitated by the afore-referenced global financial crisis, would be significantly exacerbated by the delay or loss of tax revenue, private employment opportunities and other economic benefits attributable to the development or redevelopment of property within the City; and

WHEREAS, the City Council on March 10, 2009 approved a one year extension of certain building permits to assist permit holders to weather this economic crisis; and

WHEREAS, the past year has seen some economic improvement there is still major uncertainty surrounding the outlook for 2010 as a protracted recovery may extend the housing and banking crisis; and

WHEREAS, permit holders continue to express concerns about acquiring financing before their permits expire and the impact starting the entitlement process again would have on the City and regional economy.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Santa Cruz as follows:

Section 1. The following uncodified emergency ordinance is hereby adopted by the City of Santa Cruz.

LIFE OF PERMIT—EMERGENCY EXTENSIONS.

1. All building permit applications submitted to the City's Planning and Community Development Department prior to January 1, 2008 that have been approved for permit issuance or not approved for permit issuance shall be extended through November 30, 2010.

ORDINANCE NO.

Section 2. This ordinance is declared to be an emergency measure adopted under Section 612 of the Santa Cruz City Charter, and is necessary to preserve the public peace, health, safety, property, and general welfare, and the urgency for its adoption is set forth in the findings above.

Section 3. This ordinance shall take effect and be in force immediately upon its final adoption.

PASSED FOR FINAL ADOPTION as an emergency ordinance this \_\_\_\_ day of March, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

This is to certify that the above and foregoing document is the original of Ordinance No. and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.

\_\_\_\_\_  
City Clerk



## CITY COUNCIL AGENDA REPORT

DATE: 03/02/2010

AGENDA OF: 3/9/2010

DEPARTMENT: Planning

SUBJECT: Medical Marijuana Dispensaries and Personal Medical Marijuana Use Ordinances. (PL)

---

**RECOMMENDATION:** Introduction for publication of an Ordinance amending Title 24 of the Santa Cruz Municipal Code and of the Local Coastal Implementation Plan, modifying standards for medical marijuana dispensaries.

Introduction for publication of an Ordinance adding Section 6.90.085 to the Santa Cruz Municipal Code pertaining to annual reports from medical marijuana provider association dispensaries.

---

**BACKGROUND:** In 1996, the voters of the State of California approved Proposition 215, entitled the Compassionate Use Act of 1996, the intent of which was to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited specific circumstances. In 2000, the City Council adopted ordinances pertaining to personal medical marijuana use and the establishment of land use regulations for medical marijuana dispensaries and production within the City of Santa Cruz. Two medical marijuana dispensaries have been approved in the City of Santa Cruz in 2005 and 2006, both in the Harvey West area.

On February 25, 2009, U.S. Attorney General Eric Holder announced in a press conference that ending federal medical marijuana raids "is now American policy." After that announcement City staff received a very large number of inquiries from members of the public about the regulations and process for opening medical marijuana dispensaries and production houses within the City of Santa Cruz. Two new applications were filed to establish medical marijuana dispensaries on the Westside of Santa Cruz, while other members of the public indicated they intended to submit new applications as well. Concerns have been raised regarding the inadequacy of the current regulations to address the potential number of permit applications and the impact that such a proliferation/over concentration of medical marijuana dispensaries and production houses within the City may have on the community as a whole. As it has been 10 years since City ordinances were approved and the legal environment has changed, staff recommended re-evaluating current regulations.

Since the U.S. Attorney General's announcement, a number of cities in California have established moratoriums on the medical marijuana dispensaries because of a considerable increase in persons wishing to establish such facilities in their communities. Other cities' reasons primarily appear to be based on compatibility, health, and safety problems with the land use. An



additional concern for consideration is the fact that Santa Cruz is the only jurisdiction in the County of Santa Cruz that allows medical marijuana dispensaries and cultivation uses. This could result in a concentration of dispensaries that had not been considered when the ordinance was adopted.

On June 23, 2009, the City Council adopted Interim Ordinance 2009-17 establishing a 45-day moratorium on the establishment of medical marijuana dispensaries and production houses within the City. Due to the complexity of the issue, the City Council extended the temporary moratorium on July 28, 2009 for a period of six months to allow staff to completely study these issues and questions. Since the moratorium extension was approved, one of the permit applications for a new dispensary was withdrawn. The applicant for the other pending dispensary application, at 401 Ingalls Street, no longer has site control of that property and the site was subsequently leased to another commercial use.

Planning staff developed the proposed ordinance amendment and presented it to the Planning Commission at a public hearing on November 5, 2009. After a motion to recommend approval of the amendment as presented by staff failed on a three to three vote, the item was continued until November 19th to allow for the seventh member of the Commission to be present. The Planning Commission also asked staff to report back with clarification on the amount of marijuana that could be grown in production houses, among other issues.

On November 19, 2009, the Planning Commission discussed the new information and voted 5-2 to recommend to the City Council approval of the staff recommendations. The two Commissioners that voted against the amendments were concerned with the proposed language limiting the number of dispensaries within the City to two, thereby creating a monopoly. The Planning Commission recommended minor changes in the ordinance language which have been incorporated into this report and the attached ordinance amendment. The minutes to the November 5th and 19th Planning Commission meeting are attached to this report.

On January 12, 2010, the City Council extended the moratorium for an additional four months and 15 days to allow staff to complete the background work and modify the proposed ordinance amendment to address the recent State Supreme Court decision on allowable quantities of medical marijuana and to address the Planning Commission's questions pertaining to the "not for profit" status of dispensaries, and other issues.

**DISCUSSION:** Staff reviewed the medical marijuana dispensary ordinances of a variety of municipalities throughout the State and discussed the proposed ordinance revisions with the Police Department, the existing dispensary operators within the City and other City staff members. The majority of cities surveyed do not allow dispensaries within their jurisdictions.

The following revisions to the City's ordinances are proposed:

- Modify definition of medical marijuana dispensaries to allow on site cultivation (production houses) as well as sales of clones
- Eliminate cultivation (production houses) as a separate allowable use in the IG/EA zone districts
- Limit the size of dispensary area used for cultivation (production houses) to 2,000 square feet

- Require production houses to utilize solar panels if possible
- Limit the number of dispensaries in the City to a maximum of two
- Add residential zone districts to the 600 foot setback siting criteria
- Limit the quantity of marijuana the two dispensaries may have on site to match State Law
- Require dispensaries to provide an operations manual to show the collective will operate according to Chapter 6.9, Personal Medical Marijuana Use criteria
- Require an annual financial statement to show dispensaries are operating in compliance with City and State regulations
- Minor language cleanup

The proposed ordinance revisions in Title 24 and Title 6 are attached to this report with the additional language underlined and the deleted language struck through.

## ANALYSIS

Modify Definition of Medical Marijuana Dispensaries to Allow on Site Cultivation as well as Sales of Clones.

Under the current definition of a Medical Marijuana Provider Association Dispensary, the cultivation of marijuana is prohibited because of the specific performance standard that states no product shall be grown or harvested on the premises. However the current ordinance allows for the cultivation of medical marijuana to occur at separate locations with approval of a Special Use Permit. This leads to several issues that were not clearly addressed such as:

- Should the size of production houses be limited?
- Should production houses be required to be attached to the dispensaries or be allowed as stand-alone facilities?
- Should production houses have the similar siting criteria as dispensaries?
- What is the parking requirement for a production house?
- Should additional security measures be required for production houses?
- Should a production house require an annual inspection by the Building and Fire staff?

By allowing dispensaries to grow marijuana, the production, acquisition, manufacturing and dispensing can all occur on one site and within one building. The two existing facilities within the City have both expressed interest in growing marijuana within their facility and the ability to sell clones. The sale of clones allows a patient to purchase a plant that works best for their particular symptom and grow it at home. The ability to buy clones will lower the patient's costs for medicine as well as reduce trips to the dispensary to buy numerous small quantities.

Currently, the existing dispensaries within the City are required to purchase marijuana from outside sources which involves potential conflicts with neighbors of the cultivators, quality control for the users and conflicts in transporting the product to the dispensaries. Allowing dispensaries to cultivate on site would reduce some of these potential conflicts. Staff discussed in house cultivation with the City of Oakland hearing officer who said that the Oakland Police Department has had no problems with "in house" cultivation and preferred having the cultivation and dispensary under one roof. The hearing officer also noted that the security provided by the particular facility has created a positive spillover effect in an otherwise problem prone area.

The existing definition of Medical Marijuana Provider Association Dispensaries and the performance standard that restricts cultivation at a dispensary is found in Sections 24.22.539 and 24.12.1300-3c of the Municipal Code. The proposed revisions are attached to this report with additional language underlined and the deleted language struck through.

Eliminate Cultivation as a Separate Allowable Use in the IG/EA Zone Districts.

Sections 24.10.1510 and 24.10.1830 of the Municipal Code allows grow houses for the cultivation of medical marijuana in the IG and EA zone districts with approval of a Special Use Permit. There is no limitation on the size of the facility or setbacks from adjacent uses. Staff has received numerous calls for information on the requirements for opening growing facilities and recommends that this section of the code be eliminated in conjunction with the expanded definition of Medical Marijuana Provider Association Dispensaries discussed above.

Limit the Size of Dispensary Area Used for Cultivation to 2,000 Square feet.

Staff discussed the potential size of cultivation space at a dispensary with the Police Department, the County Sheriff Narcotics Enforcement Team “grow house” expert and the two dispensary operators within the City. The Police and Sheriff’s offices are concerned with the potential amount of marijuana that could be grown if the area devoted to cultivation was unlimited. They are concerned with the increased potential of armed robbery at a dispensary, where cultivation is unlimited and the quantity of product on site could create an attractive nuisance. Other agencies in the State have experienced armed robberies and burglaries at dispensaries.

To determine what could be grown in a 2,000 square foot grow house staff asked each dispensary to provide production estimates for processed marijuana and clone cultivation within a 2,000 square foot grow house. The Limekiln estimates are based on the operators experience with a legal grow house in the City of Oakland. The Dubois estimate is based indirectly on a growers’ estimate of production within 2,000 square feet of floor area. Staff also asked the Sheriff’s Department the same question and the Sheriff’s Department expert calculated his estimate based on his experience with over 200 illegal grow house operation cases. Based on the dispensary operators and the Sheriff Department’s expert, a 2,000 square foot grow house could produce between 125 to 430 pounds of processed marijuana and 20,000 to 117,500 clones annually. The Sheriff’s expert stated that clones can be grown in stacked trays and be ready for sale in two to three weeks.

The Greenway representative on Dubois Street has stated that a 2,000 square foot grow house would be adequate for the size of grow area required for the production of clones. A larger area would be required for complete production; however, they plan to maintain several of their off site vendors because those vendors depend on the income they get from growing medical marijuana for their own personal medical and medical insurance costs. The operator of the Santa Cruz Patients Collective on Limekiln Street stated that they would require 10,000 square feet to provide for all of the medicine their facility would need to produce annually for the patients.

Using the ratios provided by the dispensary operators and the Sheriff Department, a 10,000 square foot grow-house could be expected to produce 625 – 2,160 pounds of processed marijuana and between 100,000 and 587,500 clones annually. Please refer to Tables One and

Two, attached to this report for a comparison of production quantities by the dispensary operators and the Sheriff's expert.

After reviewing the information received from the Police, Sheriff's office and dispensary operators and considering the potential increase of violent crime due to a cash intensive operation, staff recommends a maximum of 2,000 square feet for the area of cultivation within a dispensary. This will allow an annual harvest of at least 125 to 430 pounds per dispensary with vendors still providing additional product if required.

#### Require Production Houses to Utilize Solar Panels.

Indoor grow operations require approximately two 1,000 watt bulbs for every ten plants. The maximum amount of power that could be required to provide lighting for a 2,000 square foot grow area is approximately 960 kilowatt hours per day where the average home in California uses 31 kilowatts per day. Staff has included an operational condition requiring any indoor growing facility to provide solar panels to provide as much power as possible for the use.

#### Limit the Number of Dispensaries in the City to a Maximum of Two.

Staff developed the statistics below based on data obtained from the Greenway dispensary operator and estimates from the Limekiln operator. Dispensary patients from within the City range from approximately 18 to 25-percent of the total patients. Approximately 21 to 55-percent of the patients come from the County of Santa Cruz while 20 to 60-percent come from out of the County. Table Three, attached to this report, includes a breakdown on the number of patients that live within the City, the County and outside of the County for each dispensary.

A Santa Cruz Medical Marijuana Market Study was submitted with the application materials for the proposed dispensary on Ingalls Street and is attached to this report. The market study used the County population of 250,000 to determine that a total of 3,000 adults or 1.5 percent of the adult population could be potential medical marijuana patients within the County. The study concludes that within the City of Santa Cruz, there would be 670 medical marijuana patients.

Staff reviewed other agencies that have limited the number of dispensaries within their jurisdiction. Table Four, attached to this report, shows a comparison of the jurisdiction's population, limitation of dispensaries and the ratio of dispensaries to population that each City has in place.

The two existing dispensaries operating within their permitted hours of operation provide 144 combined hours available for the potential 670 City patients to purchase medicine six days per week. Based on the number of potential patients within the City and acknowledging the limitations other jurisdictions have placed on dispensaries, staff is recommending that the number of dispensaries that can operate within the City be limited at any one time to two, which will adequately serve the citizens of the City of Santa Cruz.

#### Add Residential Zone Districts to the 600 Foot Setback Siting Criteria.

The two recent applications for new dispensaries have demonstrated the concern regarding the potential location of dispensaries near residential zone districts. Staff has analyzed a 600 foot setback from residential zone districts and determined that areas within the CC and IG zone district of Harvey West, and a small area of CT and CC zone districts adjacent to the Highway 1 and 9 intersection and the IG zone district north of Delaware and east of Natural Bridges will meet the siting criteria. The attached map shows the remaining locations within the City where dispensaries could be located. A 600 foot setback from residential zones will eliminate many potential neighborhood conflicts with the proposed use while maintaining two distinct areas within the City for dispensaries to locate.

Section 24.12.1300-2d allows the Planning Commission and/or City Council to grant an exception to the 600 foot distance requirement if the applicant can show that the public benefit outweighs the concerns regarding the intensity and compatibility of use and public health and safety.

#### Limit the Quantity of Marijuana Dispensaries May Have on Site to Match State Law.

Proposition 215, The Compassionate Use Act, included no limitations on the quantity of medical marijuana that can be grown or possessed. Senate Bill 420, The Medical Marijuana Program Act was approved in 2004 and included possession guidelines as well as the allowance for Counties and Cities to approve amounts that exceed those guidelines. The California Supreme Court recently ruled that state lawmakers were wrong to change provisions of the voter-approved Proposition 215. The high court said that only the voters can change amendments that they've added to California's constitution through the initiative process. In response to this recent court ruling, staff is recommending that dispensaries be limited to possess no more dried marijuana or plants than permitted by State Law and based on the number of members in the collective.

#### Require Dispensaries to Provide an Operations Manual to Show the Collective Will Operate According to Chapter 6.9, Personal Medical Marijuana Use Criteria.

In order to obtain Use Permits, the two existing facilities in the City had to demonstrate to decision makers how the dispensaries would conform to Chapter 6.9 of the Municipal Code, Personal Medical Marijuana Use. To do so, they provided an operation manual that described how the facility would operate in conformance with that section of the Municipal Code. Staff is proposing that the performance standards listed in Section 24.12.1300 include the requirement for the applicant to provide an operations manual in conformance with Chapter 6.9. The operations manual for the Limekiln and Dubois facilities has been attached to this report for your review.

#### Require Access to Dispensary Financial and Operational Information.

The City of Santa Cruz recognizes the status of a medical marijuana provider association when that association is in conformance with State Law and the operation criteria listed in Sections 24.12.1300 and 6.90 the Municipal Code, and when the provider association limits the production and distribution of medical marijuana solely for medical use and not for profit. The Planning Commission, City Council and members of the public have expressed concern that the

current ordinances do not contain a mechanism to ensure that the dispensaries operate as not-for-profit businesses and as patient collectives according to relevant laws and guidelines. City staff has proposed additional language to be inserted under performance standards listed in Section 24.12.1300 as well as an annual report requirement to be included in Section 6.90 Personal Medical Marijuana Use. The proposed language will allow City staff to verify that the dispensaries are operating in compliance with State Law and the Municipal Code.

#### FINDING - SECTION 24.06.040

The City Council must make the following finding in order to adopt amendments to the Zoning Ordinance:

"That the public necessity, the general community welfare, and good zoning practice shall be served and furthered; and that the proposed amendment is in general conformance with the principles, policies and land use designation set forth in the General Plan, Local Coastal Plan and any adopted area or specific plan which may be pertinent."

These ordinance revisions allow public necessity, general community welfare, and good zoning practice to be served and furthered. The proposed amendments will allow the City to provide uniform standards for the operation of medical marijuana dispensaries including allowed quantities, cultivation and siting criteria. The proposed amendments will protect and promote public safety and community welfare while at the same time not unduly restricting the development of an adequate number of medical marijuana dispensaries to serve City residents. The proposed ordinance amendment is in general conformance with the principles, policies and land use designation set forth in the General Plan, Local Coastal Plan and adopted area or specific plans within the City.

#### ENVIRONMENTAL REVIEW

The code amendment has been determined to be exempt from the California Environmental Quality Act (CEQA) in that the activity is covered under the general rule that CEQA applies only to projects, which have the potential for causing significant effect on the environment. The proposed amendments would not result in increased densities or intensification of uses. The amendment is consistent with and serves to implement the City's General Plan and Local Coastal Program. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is exempt from CEQA per Section 15061 (b)(3).

#### SUMMARY

The proposed ordinance amendments quantify and clarify the number and operational characteristics of medical marijuana dispensaries within the City of Santa Cruz. Staff recommends that the City Council adopt the proposed ordinance amendments.

FISCAL IMPACT: Limiting the number of dispensaries in the City will limit potential sales tax revenue.

Prepared by:  
Mike Ferry  
Associate Planner

Submitted by:  
Juliana Rebagliati  
Planning Director

Approved by:  
Richard C. Wilson  
City Manager

ATTACHMENTS:

- Proposed Ordinance Amendment Title 24, Zoning Ordinance
- Proposed Ordinance Amendment Title 6, Personal Medical Marijuana Use
- Minutes to the November 5, 2009 Planning Commission meeting
- Minutes to the November 19, 2009 Planning Commission meeting
- Table One – 2,000 square foot cultivation production estimates
- Table Two – 10,000 square foot cultivation production estimates
- Market Study for medical marijuana dispensary at 401 Ingalls Street
- Table Three – Medical Marijuana Patients
- Table Four - Population and Limitations of dispensaries in other jurisdictions
- GIS Map of existing medical marijuana dispensaries and proposed restricted areas
- Operations Manual for Limekiln Facility
- Operations Manual for Dubois Facility
- City Attorney Opinion
- Letter from Tom Roth
- Letter from ACLU in response to Tom Roth

ORDINANCE NO. 2010-

AN ORDINANCE OF THE CITY OF SANTA CRUZ  
AMENDING TITLE 24 OF THE SANTA CRUZ MUNICIPAL CODE  
AND TO THE LOCAL COASTAL IMPLEMENTATION PLAN MODIFYING STANDARDS  
FOR MEDICAL MARIJUANA DISPENSARIES

BE IT ORDAINED by the City Council of the City of Santa Cruz as follows:

Section 1. Title 24 of the Santa Cruz Municipal Code is hereby amended as follows:

IG Zone District

24.10.1510 USE PERMIT REQUIREMENT.

1. The following uses require an administrative use permit and are subject to other applicable requirements of the Municipal Code. (Numerical references at the end of these categories reflect the general use classifications listed in the city's land use codes. Subcategories of uses within these use categories can be found in the land use codes, but they are not intended to be an exhaustive list of potential uses.)

- a. Agriculture (000);
- b. Auto services and repairs, including trucks, heavy equipment and auto towing, subject to performance standards in Section 24.12.900 (350);
- c. Boat repairs (340D);
- d. Churches (500);
- e. Communication and information services (550);
- f. Community organizations, associations, clubs and meeting halls (570);
- g. Eating and drinking establishments, subject to live entertainment and alcohol regulations of Chapter 24.12 (280);
- h. Educational facilities (public/private) (510);
- i. Fabricated metal products (150);
- j. Food and beverage stores (except liquor and convenience stores) (240);
- k. Forestry services (010);
1. Government and public agencies (530);
- m. Leather tanning (110);
- n. Off-site public/private parking facilities, five or more spaces (930);
- o. Other manufacturing and processing industries (except bulk petroleum, scrap and waste materials) (155);
- p. Parks (700);
- q. Stone, clay, glass products (140);
- r. Temporary structures;
- s. Transportation facilities (560);
- t. Utilities and resources (540);
- u. Wireless telecommunications facilities, subject to the regulations in Part 15 of Chapter 24.12.

2. The following uses require a special use permit and are subject to other applicable requirements of the Municipal Code. All industrial classifications from 125 to 145 shall comply with all performance standards listed in Part 2 of the Environmental Resource Management



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provisions. (Numerical references at the end of these categories reflect the general use classifications listed in the city's land use codes. Subcategories of uses within these use categories can be found in the land use codes, but they are not intended to be an exhaustive list of potential uses.)

- a. Building material/garden supply stores (220) with 40,000 square feet or more including indoor floor area and outdoor storage, display, or sales areas. For building materials/garden supply stores of which 50% or more of the square footage will occupy an existing building, this threshold will be 75,000 square feet including indoor floor area and outdoor storage, display, or sales areas so long as vacant, available space in existing buildings in the IG zone exceeds 400,000 square feet. When the vacant, available square footage is less than 400,000 square feet, the 40,000 square foot threshold will apply;
- b. Chemicals and allied products, subject to performance standards (130);
- c. Large family daycare;
- d. Group quarters (850);
- e. Multiple dwellings or condominiums subject to R-M district regulations (830, 840);
- f. Nightclubs/music halls, subject to live entertainment and alcohol regulations of Chapter 24.12 (630);
- g. Paper and allied products subject to performance standards (125);
- h. Parks and recreation facilities, subject to alcohol regulations in Part 12 of Chapter 24.12 (720);
- i. Primary metals and material subject to performance standards (145);
- j. Rubber, plastic, miscellaneous materials and products subject to performance standards (135);
- k. Medical marijuana provider association dispensaries, as defined in Section 24.22.539 and subject to the siting criteria and performance standards in Section 24.12.1300;
  - l. ~~Horticulture, cultivating, harvesting and processing of medical marijuana by a bona fide medical marijuana provider association provided that: (1) The medical marijuana product is used solely by a bona fide medical marijuana provider association for distribution to its member patients at a legally authorized dispensary operation within the city; (2) security measures satisfactory to the Santa Cruz Police Department are met; (3) off street freight loading and parking requirements of Section 24.12.240(q) are met; and (4) no marijuana product is consumed on site;~~
- m. Single-room occupancy (SRO) housing (860) under the following conditions:
  - (1) The site is located within one-quarter mile, (1,320 feet), of a grocery store.
  - (2) The lot size is less than 6,000 square feet.
  - (3) The SRO is part of a mixed use project, sharing the site and/or building with a use that is allowed under Section 24.10.1505, Principal Permitted Uses, is in conformance with Section 24.10.1540.2, and complies with the following requirements:
    - (a) The SRO development and the mixed use business are under one ownership.
    - (b) The amount of building space occupied by the non-residential use is either at a minimum equal to the SRO or residential use or the non-residential use occupies the entire ground floor of the development.
  - (4) Ambient interior noise levels can be mitigated below 45 decibels.
  - (5) Air quality on and around the site, including odors resulting from adjacent land uses, is not considered a potential health hazard and/or objectionable to residential use.

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(Ord. 2005-30 § 12, 2005: Ord. 2005-15 § 14, 2005: Ord. 2004-27 § 12, 2004: Ord. 2004-24 § 1 (part), 2004: Ord. 2002-02 § 1 (part), 2002: Ord. 2000-12 § 4, 2000: Ord. 96-39 § 23, 1996: Ord. 95-04 § 8, 1995: Ord. 93-21 § 10, 1993; Ord. 89-37 § 2, 1989; Ord. 88-26 § 14, 1988; Ord. 87-22 § 8, 1987: Ord. 85-05 § 1 (part), 1985).

24.10.1830 USE PERMIT REQUIREMENT.

1. The following uses are subject to approval administrative use permit and a design permit:

- a. Daycare and foster homes for children;
- b. Eating and drinking establishments;
- c. Foster family homes;
- d. Guest ranches;
- e. Off-street parking facilities accessory and incidental to an adjacent commercial use;

- f. Temporary structures;
- g. Veterinary hospitals and clinics;
- h. Accessory buildings containing plumbing fixtures subject to the provisions of Section 24.12.140.

2. The following uses are subject to approval of a special use permit and a design permit:

- a. Agricultural processing plant;
- b. Group care homes;
- c. Helipads;
- d. Institutions for children or the aged;
- e. Kennels and riding stables;
- f. Off-street parking facilities serving commercial districts within three hundred (300) feet of the site;

- g. Outdoor theaters, golf driving ranges, and other similar open-air commercial recreation facilities;

- h. Public and private noncommercial recreation areas, buildings and facilities such as parks, country clubs, golf courses, and riding, swimming and tennis clubs;

- i. Public and quasi-public buildings and uses including administrative, recreational, educational, religious, cultural, public utility or public service uses; but not including corporation yards, storage or repair yards, and warehouses;

- j. Quarters, accommodation, or areas for transient labor, such as labor cabins or labor supply camps;

- ~~k. Horticulture, cultivating, harvesting and processing of medical marijuana by a bona fide medical marijuana provider association provided that: (1) The medical marijuana product is used solely by a bona fide medical marijuana provider association for distribution to its member patients at a legally authorized dispensary operation within the city; (2) security measures satisfactory to the Santa Cruz Police Department are met; (3) off-street freight loading and parking requirements of Section 24.12.240(q) are met; and (4) no marijuana product is consumed on-site.~~

(Ord. 2000-12 § 5, 2000: Ord. 88-60 § 29, 1988; Ord. 88-26 § 15, 1988: Ord. 85-05 § 1 (part), 1985).

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24.22.539 MEDICAL MARIJUANA PROVIDER ASSOCIATION DISPENSARIES.

A nonresidential occupancy that is limited to the cultivation, production, acquisition and dispensing of medical marijuana and further by the siting criteria, performance standards and conditions of approval imposed on each establishment by the zoning board and zoning administrator, pursuant to Sections 24.08.040 and 24.12.1300 of this code. In addition, this use shall not be permitted as an accessory use to any other principal, special, or conditional use nor may it be permitted as a home business within any district of the city. (Ord. 2000-12 § 7, 2000).

24.12.1300 SPECIAL USE PERMIT REQUIREMENT FOR MEDICAL MARIJUANA PROVIDER ASSOCIATION DISPENSARIES.

1. Special Use Permit Required. Medical marijuana provider association dispensaries, as defined by Section 24.22.539, may be allowed in C-C (Community Commercial), C-T (Thoroughfare Commercial) and I-G (General Industrial) districts, provided that they meet the siting criteria and performance standards described below and are so authorized pursuant to the procedures described in Section 24.08.040 for a special use permit. Special use permits shall be limited to no more than two dispensaries operating within the City of Santa Cruz and shall include the following conditions and operating procedures, in addition to the other requirements set forth in Sections 24.10.700 through 24.10.750 (for C-C Districts), 24.10.900 through 24.10.950 (for C-T Districts), and 24.10.1500 through 24.10.1540 (for I.G. Districts).

2. Siting Criteria. Applicants for a special use permit for a medical marijuana provider association dispensary must meet the following siting criteria prior to city consideration of a special use permit application:

a. The proposed location shall lie within a Community Commercial (C-C), Thoroughfare Commercial (C-T), or General Industrial (I-G) District.

b. If the proposed location is located within fifty feet of any legal dwelling unit or other residential use, the applicant shall be required to demonstrate to the zoning board that the use would not create an intensity of use that is incompatible with the nearby residential use and that the association would employ security measures that would insure that the use would not adversely affect the security and safety of the ~~neighborhood~~ residential uses.

c. The proposed location shall not be located within six hundred feet of any residential zone district, any other medical marijuana provider association dispensary establishment, any public or private educational establishment serving persons under the age of 18 years, a public park with a children's playground, an alcohol or other drug abuse recovery or treatment facility, or any community care residential facility providing mental health/social rehabilitation services. For the purpose of this subsection, the six-hundred-foot distance requirement shall be measured from the periphery of the property boundary of such establishments. With respect to a public park with children's playground, the six-hundred-foot distance shall be measured from the periphery of the playground area.

d. The ~~zoning board~~ planning commission or the city council on appeal, may grant an exception to the six-hundred-foot distance requirement between the medical marijuana provider association dispensary and the above-referenced uses, except in the case of proximity to public educational uses, only if ~~the applicant can establish~~ findings are made that the general ~~any~~ public benefit that could be served by the issuance of the special use permit would outweigh concerns

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regarding intensity of use, land use compatibility and public health and safety. The burden of proof is on the Applicant to ~~show~~ demonstrate that the overall effect would be positive.

3. Performance Standards. Medical marijuana provider association dispensaries, once permitted, shall meet the following operating procedures and performance standards for the duration of the use:

a. The association shall meet all the operating criteria for the cultivation, production, acquisition and dispensing of medical marijuana ~~dispensing of medical marijuana~~ as may be required of the Santa Cruz city council and police department, including security concerns, and/or the county health department or their designee.

b. The association shall meet all the operating criteria for the cultivation, production, acquisition and dispensing of medical marijuana ~~dispensing of medical marijuana~~ as required by the city council's administrative guidelines for the operation of medical marijuana dispensaries and gardens adopted pursuant to Ordinance 2000-06. (See Chapter 6.90, Personal Medical Marijuana Use.)

~~e. No product shall be grown or harvested on the premises.~~

c. Dispensaries may possess no more dried marijuana or plants per qualified member patient or caregiver than permitted in strict accordance with State Law. The area within the dispensary used for cultivation of marijuana shall be limited to no more than 2,000 square feet of floor area.

d. No product shall be smoked, ingested or otherwise consumed on the premises.

e. The hours of operation shall be limited to no more than 7:00 AM to 7:00 PM, Monday through Friday if located within fifty feet of a residential use, and shall be limited to no more than 7:00 AM to 7:00 PM Monday through Saturday if located at a distance greater than fifty feet from a residential use.

f. Parking shall be provided according to the standard for retail pharmacy use as set forth in Section 24.12.240(aa). In addition to that requirement, whenever feasible, a passenger drop-off and pick-up parking zone shall be provided on the premises or immediately adjacent to the site. In no case shall double-parking by clients, caretakers, visitors or delivery vehicles be permitted.

g. The association shall prohibit loitering by persons outside the establishment, either on the premises or within fifty feet of the premises.

h. The association shall provide litter removal services each day of operation on and in front of the premises and, if necessary, on public sidewalks within fifty feet of the premises.

i. The association shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft.

j. Exterior lighting of the parking area shall be kept at a sufficient intensity so as to provide adequate lighting for patrons, while not disturbing surrounding residential or commercial areas.

k. Signage for the establishment shall be limited to one wall sign not to exceed twenty square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated.

l. The association shall provide the zoning administrator, the chief of police and all neighbors located within fifty feet of the establishment with the name, phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the establishment. The association shall make every good faith effort to encourage neighbors to call this person to try to solve operating

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problems, if any, before any calls or complaints are made to the police department or the zoning administrator.

m. The association shall post a copy of the conditions of approval for the special use permit on the premises in a place where it may be readily viewed by any member of the general public.

n. The association shall meet any specific additional operating procedures and measures as may be imposed as conditions of approval by the zoning board or zoning administrator at the time of issuance of the special use permit in order to insure that the association will be a good neighbor.

o. In addition to the required application materials, the association shall submit an operations manual to describe the operation of the facility in conformance with these performance standards and Chapter 6.90, Personal Medical Marijuana Use.

p. To offset power consumption, the association shall install solar panels to provide as much power as possible for the indoor cultivation of medical marijuana.

q. No association shall operate for profit. Cash and in-kind contributions, reimbursements, and reasonable compensation provided by members towards the associations actual expenses for the growth, cultivation, and provision of medical marijuana shall be allowed provided that they are in strict compliance with State Law. All such cash and in-kind amounts and items shall be fully documented and a report of such shall be submitted to the City in accordance with Section 6.90 of the Municipal Code.

4. Findings. In approving a special use permit, it shall be determined by the hearing body that all of the following apply:

a. The proposed use complies with all of the mandatory requirements of this section and other applicable sections of this code and applicable policies of the General Plan;

b. The proposed use will not adversely affect the health, safety or welfare of area residents or businesses, or uses, or will not result in an undue concentration in any one neighborhood or district and will not be located within proximity of an incompatible use, such as a children's school, day care facility or children's' play area;

c. The operational characteristics of the proposed use, such as hours of operation, noise, odor, amount and location of parking, signage, loitering and litter, will not have a negative impact upon the surrounding area;

d. The proposed use is compatible with the sizes and types of other neighboring uses in the surrounding area, particularly those used primarily by persons under the age of 18;

e. The proposed use is not located in what has been determined by the Santa Cruz police department to be a high-crime area, where a disproportionate number of police service calls occur, or where there is currently parking congestion; and

f. The proposed use, as a nonresidential occupancy, shall meet all the building code requirements for such occupancy and, if proposing to locate in a legal dwelling unit, shall comply with all local standards, requirements and provisions for converting dwelling units to nonresidential use.

5. Conditions. The ~~zoning board~~ planning commission, or city council on appeal, may deny any application which is inconsistent with the above-noted findings, or may impose any additional conditions on the applicant or proposed location reasonably related thereto, or to the health, safety or welfare of the community, in addition to the specific requirements set forth in Section 24.12.1300.

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6. Violations and Abatement. The zoning administrator may issue a cease and desist order or “stop order” for all activities subject to this special use permit for any establishment deemed by the zoning administrator to be in violation of any condition of approval of the special use permit or to otherwise constitute a public nuisance. The stop order shall be in effect immediately, pursuant to the procedures of Section 24.04.221. Upon issuance of the stop order, the zoning administrator shall schedule a public hearing to consider the revocation of the special use permit pursuant to Section 24.04.225. (Ord. 2000-12 § 6, 2000).

Section 2. For areas outside of the Coastal Zone, this Ordinance shall take effect and be in force thirty (30) days after final adoption. For areas inside of the Coastal Zone, this Ordinance shall take effect and be in force upon certification of this Ordinance by the California Coastal Commission.

PASSED FOR PUBLICATION this \_\_\_ day of March, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

PASSED FOR FINAL ADOPTION this \_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

This is to certify that the above and foregoing document is the original of Ordinance No. and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.

\_\_\_\_\_  
City Clerk

ORDINANCE NO. 2010-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF SANTA CRUZ ADDING SECTION 6.90.085 TO THE SANTA CRUZ MUNICIPAL CODE PERTAINING TO ANNUAL REPORTS FROM MEDICAL MARIJUANA PROVIDER ASSOCIATION DISPENSARIES

BE IT ORDAINED by the City of Santa Cruz as follows:

Section 1. Section 6.90.085 is hereby added to the Santa Cruz Municipal Code to read as follows:

6.90.085 ANNUAL REPORTS.

A. Report Requirements/Contents of Report. Each medical marijuana provider association dispensary operating in the City shall, on an annual basis, submit a report to the City Manager. Reports shall be on a calendar year basis and shall be submitted no later than May 31 following the calendar year to which the report pertains (for example, a dispensary's 2010 annual report will be submitted to the City Manager no later than May 31, 2011). The report shall document the dispensary's compliance with the requirements of the Compassionate Use Act (California Health and Safety Code Section 11357 et seq.), the Medical Marijuana Practices Act (California Health and Safety Code Sections 11362.7 et seq.), California Attorney General Guidelines promulgated pursuant to California Health and Safety Code Section 11362.81(d), and this chapter as those statutes, guidelines and ordinances currently read or may hereafter be amended. In addition to verifying legal compliance, the annual reports shall be used by the City to periodically assess the adequacy and level of medical marijuana service available in the City for qualified patients who live in the City. At a minimum, the annual report shall provide the following information for the calendar year to which the report pertains:

1. The number of medical marijuana product sales transacted by the dispensary during the calendar year specifying:
  - (a) The percentage of those sales transacted with qualified patients who live in the City, or their primary caregivers;
  - (b) The percentage of those sales transactions with qualified patients who live in the County of Santa Cruz but outside the City, or their primary caregivers;
  - (c) The percentage of those sales transactions with qualified patients who live outside the County of Santa Cruz, or their primary caregivers;
  - (d) The percentage of those sales transactions in which the price of the product sold was discounted to account for the qualified patient's inability to pay the regular sales price. Of these transactions, the percentage transacted with City residents, non-City residents of the County of Santa Cruz, and out-of-County residents;
  - (e) The percentage of those sale transactions that were conducted on a non-cash or non-credit/debit card basis and an explanation of the consideration provided by the qualified patient or primary caregiver in lieu of cash or credit/debit card.
2. A list of each type of medical marijuana product sold by the dispensary during the calendar year and the price charged for that product by the dispensary.
3. The percentage of the dispensary's revenue for the calendar year which was devoted to the procurement and/or production of the dispensary's medical marijuana products inventory.

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4. The percentage of the dispensary's revenue for the calendar year used to underwrite the dispensary's non-salary/benefit cost overhead and an itemization of those overhead categories.
  5. The percentage of the dispensary's revenue for the calendar year used to underwrite the dispensary's salary and benefit costs for dispensary employees who are not officers, directors or owners of the dispensary.
  6. The percentage of the dispensary's revenue for the calendar year used to underwrite the dispensary's salary and benefit costs for the dispensary's officers, directors and/or owners.
  7. The number of marijuana plants and clones cultivated by the dispensary during the calendar year, if any.
  8. If the dispensary itself is the designated primary caregiver for any of the qualified patients to whom it dispenses medical marijuana products, for each such qualified patient:
    - (a) The date upon which the dispensary first dispensed medical marijuana products to the qualified patient;
    - (b) The date upon which the qualified patient designated the dispensary as the qualified patient's primary caregiver;
    - (c) A list of all services, other than the dispensing of medical marijuana products, that the dispensary provided to the qualified patient during the calendar year and the dates upon which those services were provided; and
    - (d) Whether the qualified patient is a City resident, a non-City resident of the County of Santa Cruz or an out of County resident.
  9. Proof that the dispensary is currently registered with the California Secretary of State as a "collective" or "cooperative" pursuant to the California Corporations Code, that said registration remains active, and that the dispensary remains in good standing with the California Secretary of State.
  10. Proof that the dispensary maintains a current seller's permit issued by the California State Board of Equalization.
  11. Per Attorney General Guideline (August 2008) IV.A.1., proof that:
    - (a) The dispensary is democratically controlled;
    - (b) The dispensary is a not for profit entity and recognized as such by the California Secretary of State;
    - (c) The dispensary's earnings and savings are used for the general welfare of the dispensary's members or are equitably distributed to the dispensary's members in the form of cash, property, credit or services.
  12. Per Attorney General Guidelines (August 2008) IV.B.1., proof that the dispensary obtains its marijuana and marijuana products exclusively from dispensary members.
- B. Confidentiality. To the extent permitted by law the City Manager shall treat the annual reports as confidential documents but shall be authorized to disclose the reports to the City Council. Nothing in this section shall be construed as prohibiting the City from complying with a court order or subpoena or with a Public Records Act or Freedom of Information Act request to the extent that any such order, subpoena or request would legally require disclosure of all or a portion of the report. However, prior to complying with any such order, subpoena or request the City Manager shall give prompt notice thereof to the affected dispensary and thereby afford the dispensary with an opportunity to apply to a court of competent jurisdiction for a protective order prohibiting or limiting disclosure.
- C. Verification. Upon receipt of an annual report called for by this Section, the City



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Manager shall have the authority to require the dispensary submitting the report to produce any documentation in the dispensary's possession upon which the dispensary bases any of the information set forth in the report. Upon review of the documentation and verification of the information in the report for which the documentation was submitted, the City Manager shall return all such documentation to the dispensary and shall not maintain copies of any such documents in City files.

D. Penalty of Perjury. All annual reports, submitted pursuant to this Section shall be signed by an officer, director or owner of the dispensary for which the report was submitted under penalty of perjury verifying that the information set forth in the report is true, correct and complete.

E. City Manager. As used in this Section the term City Manager shall refer to the City Manager or the person designated by the City Manager to perform the duties of the City Manager specified in this Section.

Section 2. This ordinance shall take effect and be in force thirty (30) days after its final adoption.

PASSED FOR PUBLICATION this \_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

ORDINANCE NO. 2010-\_\_\_\_

PASSED FOR FINAL ADOPTION this \_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

This is to certify that the above and foregoing document is the original of Ordinance No. 2010-\_\_\_\_ and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.

\_\_\_\_\_  
City Clerk

**Excerpts of the Action Minutes  
of the Planning Commission  
Meeting of November 5, 2009**

2. **Ordinance Amendment**                      **A09-0003**                      **City-wide**  
Amendment to Title 24 of the Santa Cruz Municipal Code and the Local Coastal Implementation Plan and Title 6 of the Santa Cruz Municipal Code modifying standards for Medical Marijuana Dispensaries and Personal Medical Marijuana Use. (Environmental Determination: Exempt from CEQA) (City of Santa Cruz, applicant, filed: 10/08/09)                      MF

**RECOMMENDATION: That the Planning Commission recommend to the City Council approval of an amendment to the Municipal Code with a finding that said amendment, in accordance with Title 24 and Title 6 of the Municipal Code, serve and further the public necessity, the general community welfare, and good zoning practice; and that the amendment is in general conformance with the principles, policies and land use designation set forth in the General Plan, Local Coastal Plan and any adopted area or specific plan which may be pertinent.**

Assistant Director Khoury introduced Associate Planner Ferry who presented the staff report.

The Commissioners asked questions regarding:

- Sizes of grow houses
- Amounts of electricity needed
- Record keeping
- What population dispensaries serve
- Taxation policies

Chair Quartararo called for a break at 8:20 P.M. The meeting reconvened at 8:30 P.M.

The Public Hearing was opened.

Speakers included:

Lisa Molyneux of Greenway Compassionate Relief  
Stuart Kriege, applicant for a new dispensary  
Mark Sanchez, business owner  
K. E. Sampson of Santa Cruz Patients Collective  
Grant Palmer  
Mark Millenacker, Attorney

The Commissioners asked questions of the speakers and made comments regarding:

- Client confidentiality
- Non-profit organizations and how they are defined
- Audits recommended by staff
- Needs of the citizens of Santa Cruz
- Limitation of two dispensaries creating a monopoly for the existing two
- What benefits come from grow space

- What percentage of patients are from the City of Santa Cruz
- Whether costs to the patient from dispensaries are lower than illegal drugs on the street
- How limits of 2000 square feet affect production
- Whether the current dispensaries are non-profit
- Whether the City can limit the distribution to only City residents

**ACTION:** Commissioner Foster moved and Commissioner Tustin seconded that the Planning Commission recommend approval of the ordinance amendment to the City Council with special care to review more carefully what is happening with non-profits and city monitoring to make certain they are truly nonprofit. The vote was tied at 3-3 with Commissioners Foster, Warner and Tustin voting in favor and Commissioners Quartararo, Daly and Schultz voting against. The motion failed for lack of a majority.

**ACTION:** Commissioner Schultz moved and Commissioner Tustin seconded that the matter be continued to the November 19 meeting with a reading from City Attorney regarding non-profit status and clarification from staff on the potential production numbers associated with grow houses.. The motion carried by a vote of 6-0 with Commissioners Quartararo, Schultz, Daly, Foster, Tustin and Warner voting in favor.



**ACTION: Commissioner Daly moved and Commissioner Warner seconded that the Planning Commission recommend APPROVAL of the ordinance amendment to the City Council with a change in the language of the financial condition to require an annual audit to be provided at a time certain. The motion passed 5-2 with Commissioners Quartararo, Daly, Foster, Tustin and Warner in favor and Commissioners Schultz and Kasparowitz opposed.**

Commissioners Schultz and Kasparowitz both expressed that their opposition to the ordinance was due to the ordinance limitation of 2 dispensaries. Commissioner Kasparowitz also was in opposition to the mandatory requirement for solar panels for grow houses.

# Table One

## 2,000 Square Foot Grow Area (Annual production)

	Processed marijuana	Clones
Limekiln	125 lbs.	20,000
Dubois (Greenway)	150 lbs.	25,000
Sheriff's expert	300 - 432 lbs.	117,504

## Table Two

### 10,000 Square Foot Grow Area (Annual production)

	Processed marijuana	Clones
Limekiln	625 lbs.	100,000
Dubois (Greenway)	750 lbs.	125,000
Sheriff's expert	1,500 – 2,160 lbs.	587,520



# **Santa Cruz Medical Marijuana Market Study**

- 1. County Target Population**
- 2. City Target Population**
- 3. Competition 1 - Greenway Compassionate Relief**
- 4. Competition 2 - Santa Cruz Patient's Collective**
- 5. Competition 3 – Outside of Santa Cruz**

## **1. County Target Population**

The County of Santa Cruz has just over 250,000 residents. According to Federal statistics, 21.7% (54,500) of residents are under age 18. So, the County of Santa Cruz has 195,500 adult residents. An estimate of the number of Medical Marijuana patients as of 2006 was 3000. That makes medical marijuana patients a little over 1.5% of the adult population. Median adjusted gross income from 2004 tax data was 32,000 per year.

## **2. City Target Population**

Santa Cruz City's population is 54,000 with 17.3% being

under the age of 18. That makes the adult population 44,650. At the same 1.5% rate that would make 670 medical marijuana residents patients. There is reason to believe that the percentage of medical marijuana patients in the city could be greater than the percentage in the county.

### 3. Competition 1 – Greenway Compassionate Relief

Opened after a special use permit was granted in Aug. 2005, Greenway had by March 2006 a self-stated 2500 member database and 12 employees. The owner, Lisa Molynaux worked with the City for a year before getting her special use permit. Since opening, she has been a proponent for Medical Marijuana and even ran for City Council. Their location is within 600 feet of Harvey West Park which required an exception to the location criteria of the City of Santa Cruz guidelines for dispensaries. A neighborhood which is considered a problem area because of vagrancy and petty crime. Since their opening they have operated without incident or complaint. They requested an exception to the City Guidelines for Dispensaries which would allow them to offer marijuana clones – which they were denied. They also have proposed to the City (without being granted permission) plans for operating an approved kitchen so they could process edible medicinal marijuana products. The dispensary sees between 150-175 members a day.

### 4. Competition 2 – Santa Cruz Patient's Collective

Ken Sampson was given a special use permit in April 2006 to operate the Santa Cruz Patient's Collective in the Harvey West industrial area, 2.5 blocks from Greenway. There was an appeal to the decision which was rejected by the City

Council. The location has a problematic parking lot which is across the street from the building. The dispensary is noted for it's high grade medicine and high prices. They see between 150-175 member visits each day.

### 5. Competition 3 – Outside of Santa Cruz

Pricing and quality at these dispensaries vary greatly. There is no price or quality incentive for patients to travel outside of Santa Cruz. Any perceived incentive is offset by travel cost and time. The largest factor regarding these competitors is the driving distance. The city of Santa Cruz is 70 miles from the city ordained dispensaries of Oakland and 47 miles from the recently opened (but not permitted) Redwood City dispensaries.

# Table Three

## Medical Marijuana Patients

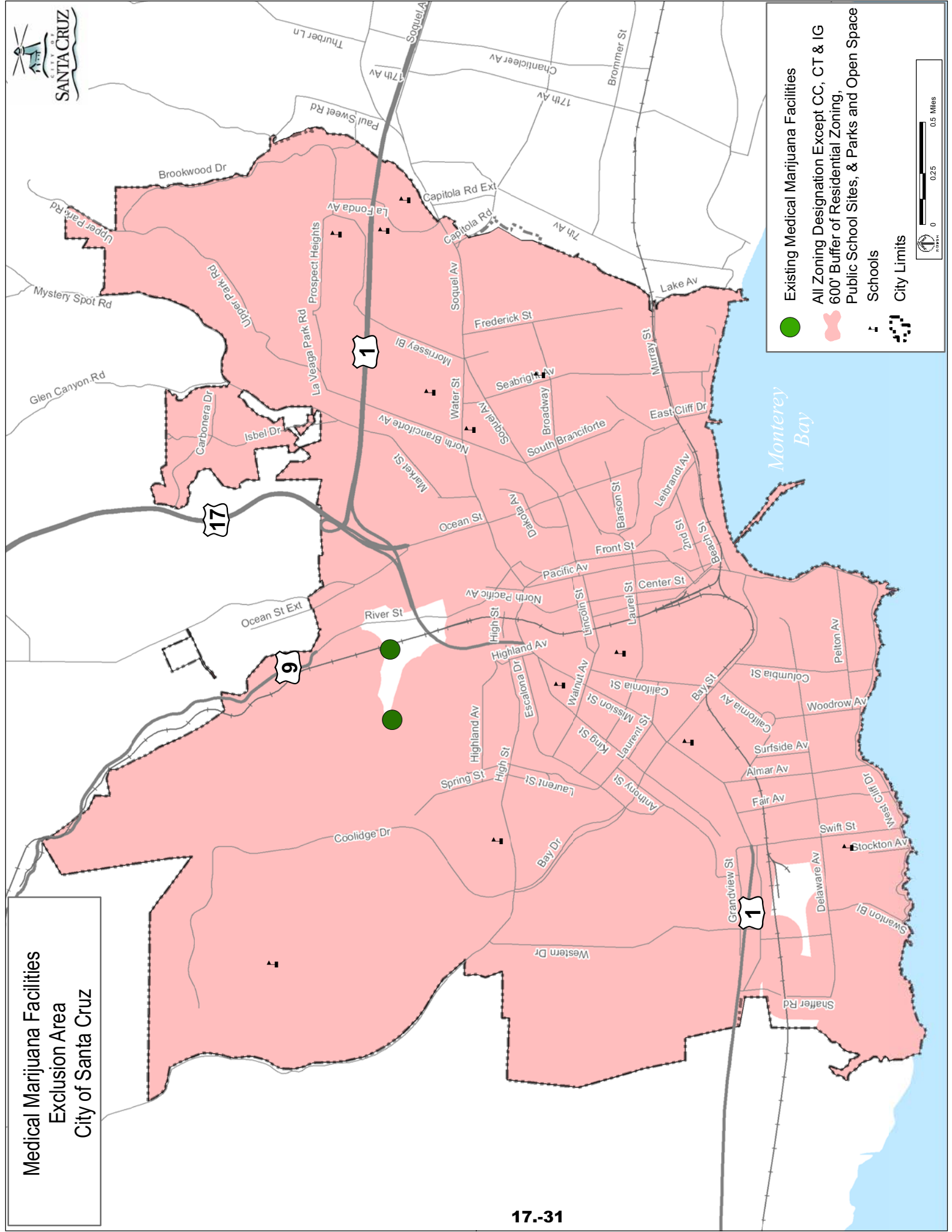
	<b>Dubois</b>		<b>Limekiln</b>	
	Clients	Percent	Clients	Percent
Within City	804	18.1%	350	25%
Within County	954	21.4%	770	55%
Outside County	2,694	60.5%	280	20%
Total	4,452	100%	1400	100%
Distance traveled	1 to 200 miles		1 to 50 miles	

**Table Four**

<b>City</b>	<b>Population</b>	<b>Limitation of Dispensaries</b>	<b>Ratio of dispensaries to population</b>
Berkeley	105,000	3	1:35,000
Oakland	420,000	4	1:105,000
Santa Rosa	161,000	2	1:80,500
Los Angeles	4,001,483	70	1:57,164
Santa Cruz	59,000	2 (proposed)	1:29,500



Medical Marijuana Facilities  
Exclusion Area  
City of Santa Cruz



**Existing Medical Marijuana Facilities**

- Existing Medical Marijuana Facilities
- All Zoning Designation Except CC, CT & IG
- 600' Buffer of Residential Zoning, Public School Sites, & Parks and Open Space
- ▲ Schools
- ⬢ City Limits

0 0.25 0.5 Miles

**SANTA CRUZ  
PATIENTS  
COLLECTIVE**

**OPERATIONS  
MANUAL**

**115 LIMEKILN  
SANTA CRUZ, CA 95060**

**OPEN 10 am to 6pm  
Monday through Saturday**

# **THE SANTA CRUZ PATIENT'S COLLECTIVE**

## **MISSION STATEMENT**

The Santa Cruz Patients Collective was established to provide a safe, comfortable, healing environment for "Santa Cruz County's Qualified Medical Marijuana Patients". In addition to supplying "Organic Medical Grade Marijuana", it is our goal to facilitate a growing personal awareness of holistic healing at all levels of the human experience.

Our "Mission" is to be a positive part of this great community; to adhere strictly to the laws adopted by our local and state leaders; to see each "patient" as an individual with unique needs and to assist them in their healing journey.

The "SCPC" exists as a place to help heal.



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- 10 **DEALING WITH MISUSE OF SERVICES**
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- 12 **SECURITY**
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# 1 DEFINITIONS

For the purpose of this operations manual the following definitions will apply:

1.1 "Qualified Patient" means a seriously ill person, over the age of 18, who obtains a written recommendation from a physician licensed to practice medicine in the state of California to use marijuana for personal medical purposes. In addition, persons currently under the care of a physician for certain medical conditions including, but not limited to, HIV/AIDS, cancer, glaucoma, epilepsy or other spasticity-related illnesses, migraine, anorexia, are presumed to be "qualified patients".

1.2 "Primary Caregiver" is an individual over the age of 18 or organization designated by a "Qualified Patient" who has consistently assumed responsibility for the housing, health or safety or has consistently assumed responsibility for the provision of medical marijuana to the "Qualified Patient".

1.3 "Medical Marijuana Provider Association" means a collective of individuals comprised of qualified patients and primary caregivers, the sole intent of which is to provide education, referral, or network services and to facilitate/assist in the lawful production, acquisition, and provision of medical marijuana to qualified patients.

1.4 "Client/Participant" refers to an individual who participates in a medical marijuana provider association or a unit of individuals comprised of a "Qualified Patient" and the "Qualified Patient's" primary caregiver who jointly participate in a medical marijuana provider association.

1.5 "Cultivator" means a qualified medical marijuana patient or caregiver, a client/participant of a medical marijuana provider association or any other individual(s) cultivating or overseeing cultivation of medical marijuana exclusively for a medical marijuana association.

1.6 "Marijuana", referred to in this manual from here forward as "Medicine", means all parts of the Cannabis plant, whether growing or not; the seed thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalk, oil or cake made from the seeds of the plant, any compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted there from), fiber oil or cake, or the sterilized seed of the plant which is incapable of germination.

## 2 INTRODUCTION and GENERAL INFORMATION

The "Santa Cruz Patients Collective", referred to in this manual from here forward as the "SCPC", was conceived by a group of qualified patients who recognize a need for service to the local medical marijuana patients of Santa Cruz county. Designed to comport with state and local laws permitting collective distribution of medical marijuana, SCPC's goal is to provide the purest organic, medical grade "medicine" available, in a safe, comfortable and supportive environment. Our staff being "Qualified Patients, are in a unique position to serve and care for certain needs of other "Qualified Patients".

The "SCPC" also intends to add services and programs such as peer counseling, massage therapy, nutritional and self healing classes related and pertinent to the "Qualified Patients" who are members at the time. Any services other than the sale of "Medicine" will only be added as the city of Santa Cruz allows.

The following general information will be displayed in the entry lobby in a larger format.

2.1 "SCPC's" hours of operation will be 10am to 6pm Monday through Saturday.

2.2 A "Qualified Patient", "Primary Caregiver" or "Cultivator" can claim qualified status when he/she possesses a valid identification card and/or growing certificate issued by a qualified medical marijuana provider association. The "SCPC" cannot verify doctor's recommendations after 4:30pm Monday through Friday and not at all on Saturdays.

2.3 Only "Qualified Patients", "Primary Caregivers" or "Cultivators" can participate at the "SCPC" dispensary or attend association meetings or classes.

2.4 No loitering on the premises or within 50 feet of premises.

2.5 No medicine shall be grown or harvested on the premises.

2.6 No medicine shall be smoked, vaporized, ingested or otherwise consumed on the premises. Including the parking lot and surrounding public area and sidewalk. This also includes Harvey West Park. ANY PATIENT VIOLATING THIS RULE SHALL LOSE ALL FUTURE PRIVILEGES AT THE SCPC.

2.7 "SCPC" staff will provide litter removal in and around the property, parking lot and sidewalk area as needed, and at least once a day.

2.8 "SCPC" staff will educate all "Qualified Patients/Caregivers" to "SCPC's" rules and expected conduct.

2.9 The "SCPC" will make it a priority to have medicine available to all "Qualified Patients" no matter what their income status.

### **3.0 EMPLOYEE CONDUCT and DRESS CODE**

3.1 All employees and volunteers must be qualified patients and possess a valid California physician's recommendation.

3.2 All employees and volunteers shall wear medical style scrub tops and bottoms in clean condition. The staff will dress in scrubs to emphasize the medical environment they work in. Shoes will be of a solid color and must provide adequate support and a closed toe. Shoes must be comfortable to stand in for long periods (up to two hours).

3.3 Sunglasses (unless prescribed by a doctor) are not allowed to be worn inside the "SCPC" by staff. Cell phone use is not allowed inside the dispensary by staff or "Patients/Caregivers".

3.4 Entry staff will give each new "Qualified Patient" an "SCPC" Intake Statement, which list drug interactions and forms and methods of consumption. Staff will also give each new "Qualified Patient" a list of rules and patient conduct.

3.5 Upon arriving at the counter the patient/caregiver will be greeted with a smile and a sincere desire to assist in any reasonable manner. "Patient/Caregivers" will always be given ample "counter time", space and non medical advice to ensure that they get the medicine that works for them.

3.6 The "SCPC" considers our client service to be our top priority. Any staff member unable to maintain the highest patient/caregiver regard will either be moved to a non-public position or their employment terminated.

3.7 The "SCPC" will always respect patient confidentiality and privacy. Therefore we will never directly inquire about a patient's illness or condition. Also, staff will never ask a patient who their doctor or primary care physician is, unless required for patient qualification verification.

3.8 "SCPC" staff and security personnel will always treat our neighbors and clientele with the utmost respect. As this is an environment for healing; aggressive or unkind behavior will not be tolerated at any level.

#### 4 "QUALIFIED PATIENT" and "CAREGIVER RULES"

The following "Patient/Caregiver" rules will be displayed in the entry room in a larger format.

4.1 "Qualified Patients/Caregivers" will not use cell phones inside the "SCPC". All cellular devices must be turned off before entering the dispensary.

4.2 All "Qualified Patient/Caregivers" will pass through a metal detector upon entry and "wanded" as necessary by security personnel.

4.3 "Qualified Patients/Caregivers" should leave all backpacks, bags or any other carrying device in their vehicle or at home. If this is not an option, security personnel will hold item in the entry room. Items taken will be secured and a numbered tag given. The "SCPC" will not be held responsible for lost or stolen articles.

4.4 "Qualified Patients/Caregivers" visiting the "SCPC" will not be admitted if they have friends waiting in the car or loitering outside.

4.5 "Qualified Patients" must visit the "SCPC" by themselves; unless another party(s) assistance is required for transportation. Qualified patients must leave the premises immediately after purchasing their medicine.

4.6 All patients should consume their medicine at home. If this is not possible, safety and legality must be considered at all times. "Qualified patients should never consume in or around Harvey West Park."

4.7 "Qualified Patients and primary Caregivers" are strictly prohibited from selling, trading or distributing medicine they have acquired from the "SCPC" or any other source.

4.8 No loitering on the premises or within 50 feet of the premises.

4.9 No cameras allowed in or around the "SCPC".

4.10 "Qualified Patient/Caregivers" must be as discrete as possible whenever coming or going from the "SCPC".

4.11 "Qualified Patient/Caregivers" found breaking these rules run the risk of being banned from this facility. The "SCPC" can and will file a complaint with the card issuing organization and that organization can at its own discretion terminate the recommendation. The "SCPC" security staff will also respond as trained if they witness any crimes in progress such as illicit drug transactions.

4.12 If at any time a "Qualified Patient/Caregiver" feels as though they were treated in a disrespectful manner, they should ask to see a manager. Disrespect will not be tolerated in any form.

4.13 "Qualified Patients and Primary Caregivers" are prohibited from joining or participating in any other medical marijuana provider associations or medical marijuana buyers clubs.

## 5 VENDOR QUALIFYING GUIDELINES

5.1 Vendors are "Qualified Patients or Primary Caregivers" that grow for the dispensary and must have a qualifying physicians recommendation, medical ID card or primary caregiver card accompanied by a valid California state drivers license, California ID or passport.

5.2 Vendors will go through the same process as a qualified patient for verification. All information will be destroyed as soon as verification is successful. The "SCPC" will only keep an electronically based Vendor file that records only the qualified patients ID card number and date of expiration of the current physician's recommendation.

5.3 Any and all compensation and/or remuneration made to vendors by the "SCPC" will be for actual expenses, including reasonable compensation incurred for services provided to "Qualified Patients" of the "SCPC" to enable them to use medical cannabis pursuant to the State of California Health and Safety Code 113263.765(c)

5.4 Vendors must sign a statement as to the conditions in their garden and to meet organically grown requirements. Vendor may need to allow the "SCPC" to inspect their garden to insure it is a safe and organic garden.

5.5 Vendors are strictly prohibited from providing or distributing any services other than providing medical marijuana to SCPC and may not participate in any other medical marijuana provider associations or medical marijuana buyers clubs.

5.6 Vendors products must meet certain high quality standards: the medicine that is presented to the "SCPC" must be medical grade; not damp or containing enough moisture so that it loses weight; medicine must be free of mold, fungus, rot and any foreign matter.



5.7 All medicine will be thoroughly tested with green and blue/white LED lights as well as an intra-oral wand. This will allow the highest quality inspection of medicine.

5.8 Vendors found breaking any vendor guidelines or "SCPC" general rules are subject to the exact same actions as a "Qualified Patient". Loss of "SCPC" privileges and further action may be taken by the card administrating body.

## 6 PATIENT QUALIFICATION

6.1 A Qualified patient is anyone meeting the definition set forth in section 1.2 and possesses a valid written physician's recommendation from a valid licensed California physician. Patients possessing any government issued medical cannabis identification card such as State of California medical ID card; Santa Cruz County Department of Health Medical ID card; Mendocino County Sheriff's medical ID card; San Francisco county card; Berkley card; ocbc/Oakland city card; as well as any other, California government medical cannabis card issuing agency.

6.2 On a qualified patient's first visit to the "SCPC", they will have to show their valid medical cannabis association ID card and a State of California ID; or if a qualified patient has only their original physician's recommendation and a State of California drivers license or ID, the "SCPC" will at the managements discretion scan the original recommendation and use the copy to call and verify the patient status.

6.3 Once their physicians recommendation /ID card is verified the qualified patient will be logged into an electronic Point of Sale system that notes only the first and last initial, ID card number and expiration date of the current physicians recommendation. The qualified patient will then be allowed to participate in the "SCPC" dispensary and all the privileges and services that a collective member will be entitled to,

From that point, the qualified patient will only show their valid State of California Drivers License/ID and their valid medical cannabis ID card.

6.4 Once a qualified patients information has been verified, all patient information will be based on external hard drives, with physical and electronic locks and safe guards for the critical data. Page/swap files will be set to erase themselves at shutdown. Encryption will be used whenever possible, including, but not limited to; bio-metric, voice print, and token/one time key pad, and any form appropriate for the application at hand.

6.5 The "SCPC" does not operate or exist to verify patient recommendations. The "SCPC" suggest that all qualified patients obtain a medical cannabis ID card from government issuing body such as the State of California, County of Santa Cruz, the City of Oakland (OCBC), or a Department of County Health Card(SCDP, SFDP). We cannot guarantee that we will be able to verify your physician's statement, therefore it is the patients responsibility to maintain their qualified patient status, and to have in possession his/her valid State of California ID (to establish residency) and a valid government medical cannabis ID card to ensure the safest and swiftest service to qualified patients. Having a government issued medical cannabis ID card gives the bearer in some municipalities' immediate protection from State of California law enforcement, provided the patient is within the County and State guidelines at the time.

## **7 PROCEDURE: PHYSICIAN RECOMMENDATION VERIFICATION; PHYSICIANS STATUS VERIFICATIONS**

7.1 The "SCPC" does not exist to verify patient recommendations. The "SCPC" will never attempt to verify a recommendation after 4:30pm Monday through Friday and will never attempt to verify a recommendation on Saturday. In the event the "SCPC" attempts verification, the procedures listed below will be followed:

7.2 During the attempt to verify a patient's Physician's recommendation, a copy of the original Physician's recommendation will be taken and then the Physician's office that wrote the recommendation will be contacted to confirm the patient's status. Once verified, only the qualified patient's initials, medical cannabis ID card number and recommendation expiration date will be logged into our point of sale system.

7.3 The prescribing Doctor's license will be checked via the Medical Board of California or the Osteopathic Medical Board of California to ensure the physician has a license in good standing to practice medicine or osteopathy in this state.

7.4 Once verified, a qualified patient will be able to participate at the "SCPC" with the rules noted in Section 6, until that qualified patient's current physician's recommendation is no longer valid. No expired physicians recommendations or ID cards will be accepted. Patients that present an expired physician's recommendation/medical cannabis association card and/or expired California ID/Drivers license will not be allowed entry into the dispensary. Patients with expired ID or recommendations will be advised to see their Physician about a new recommendation. Patients under no circumstances will be allowed to participate at the "SCPC" until their recommendation or ID is current.

## 8 SCPC ID CARD and GROWING CERTIFICATE

8.1 The "SCPC" will not provide or create ID cards or growing certificates. The "SCPC" will accept all valid government issued medical cannabis ID cards such as: California State medical marijuana ID card; Santa Cruz County ID card; San Francisco County ID card; City of Oakland (OCBC) ID card; Mendocino Sheriffs medical cannabis ID card; or any other confirmable California association card. The "SCPC" will also accept any government agency issued card in the

future as municipalities within the State issue medical cannabis ID cards.

## 9 EDUCATING PATIENTS TO BE GOOD NEIGHBORS

9.1 The "SCPC" will hand out educational material to all new qualified patients, upon their first visit, which will advise where and when to use their medicine safely. Common drug interactions and forms of consumption will also be described to ensure the safest possible access and use.

9.2 The "SCPC" will also post these same "Good Neighbor"/"Safe Access and Use" guidelines in the entry room, in a larger format.

9.3 Loitering will not be allowed in the "SCPC" private parking lot or surrounding areas.

9.4 No consumption, vaporization or ingestion of any kind are allowed anywhere on the "SCPC" premises or surrounding area, including Harvey West Park.

9.5 Absolutely no trading, reselling or distributing of medicine will be permitted. The "SCPC" security will respond as trained if they witness a felony in progress, such as an illegal drug transaction.

## 10 DEALING WITH QUALIFIED PATIENT AND CAREGIVER MISUSE OF SERVICES

10.1 Misuse of services happens when a qualified patient fails to comply with any of the above posted conditions or misrepresents his/her qualifications for participation.

10.2 If any activity is noticed that seems suspicious, or out of the ordinary, management and security patrol staff will be notified. They will decide how to proceed.

10.3 Staff will follow the procedures that follow:

A If a qualified patient/ caregiver is found to be misusing the "SCPC" services, the "SCPC" staff/security will ask the qualified patient for their medical ID card and write a report as to the incident and attach it to the patient file in the Point of Sale System.

B "SCPC" staff will inform management immediately.

C The qualified patient/caregiver will then lose all privileges at the "SCPC". A complaint report will be sent to the government agency that issued the patient/caregiver card. The issuing agency will be responsible for any further action.

## 11 OPENING and CLOSING PROCEDURE

11.1 "SCPC" Security will be on location 30 minutes in advance of opening, and stay until the last staff member has left, or until being released by the manager. Upon arriving at the "SCPC", Security will conduct a perimeter check for suspicious activity or security breach.

11.2 The manager/owner will unlock front door and disarm the alarm. Security will then conduct a sweep of the dispensary interior, after which, staff will enter and set up for the day's business. All operating and Point of Sale computers will be turned on and readied for business.

11.3 Medicine will be removed from the safe, inventoried to a particular Point of Sale and prepared for dispensing. The amount of medicine will be no more than what will be sold within one hour. The previously mentioned amounts will be forecasted. Staff will keep the

inventory to be dispensed to a minimum. The remainder of stock will remain secured in the safe.

11.4 Pre-counted operating cash will be removed from the safe, credited to a particular Point of Sale and placed in the secured cash drawer.

11.5 after the dispensary is made ready for business and it is no earlier than 10:00 am, the "SCPC" will open it's doors to "Qualified Patients and Caregivers" to receive their medicine.

11.6 At managements discretion, cash/check deposits will be made throughout the day to keep a minimum amount of cash on hand. Until deposits are made, all cash other than needed for minimum operations will be secured in the safe. (secret operating procedure)

11.7 At precisely 6:00pm, incoming "Qualified Patient/Caregivers will be stopped from entering the dispensary. All "Patients/Caregivers" inside the dispensary will be informed that it is closing time and asked to make their final medicinal choices and exit the dispensary as quickly as possible without discomfort.

11.8 The "SCPC" will accept Bank as well as Credit Cards.

11.9 After the last Patient/Caregiver has left the dispensary, Management will inventory all remaining inventory in sales area, as well as perform final count of cash drawer. Inventory and cash data will be entered into the Point of Sale system to conclude the day's transactions. After all accounting is completed, all cash other than operating amounts are removed leaving cash drawers ready for next business day. All cash and medicine are then secured in safe. All computers, including but not limited to Point of Sale are shut down securely.

11.10 After closing and before Staff leaves the building, Security will do a perimeter check and then the Staff will be released from the building. The "SCPC" encourages Staff to have security assist them to their cars. The manager, with Security's presence will then arm the alarm system and secure the entry door.

## 12 SECURITY PROCEDURES

12.1 The "SCPC" will have at least one uniformed Security presence at all times during business hours. If volume or enforcement demands it, additional uniformed personnel will be employed.

12.2 In the entry lobby of the "SCPC" we will have one "SCPC" staff member who will be verifying Patient/Caregiver status and one uniformed Security personnel scrutinizing safety and security concerns.

12.3 As a Patient/Caregiver enters the lobby, they will pass through a metal detector. Security will use a metal detecting wand to further inspect questionable items. Patients will be asked to cooperate with security in this process. Anyone refusing to cooperate will be asked to leave immediately. Backpacks, large carrying bags, oversized jackets, etc. will be detained at the security station. A numbered tag will be given for each item.

12.4 After passing the Security screening, the "Qualified Patient/Caregiver" must provide "SCPC" staff with their approved Government agency medical cannabis card and California ID/drivers license. If the patient/caregiver does not have a Governmental medical cannabis card, verification of Doctor's recommendation will be performed at the discretion of the "SCPC" and within afore mentioned guidelines. (see section 7)

12.5 After the "Qualified Patient/Caregiver" passes security and are verified by the "SCPC" staff, they will be admitted through a secured door into the dispensary area. Inside the dispensary area, "SCPC" security will constantly monitor the room for security and safety for all "Qualified Patient/Caregivers and the "SCPC" staff. No loitering will be allowed inside the dispensary.

12.6 After a Patient/Caregiver has concluded their business with the "SCPC", they must make their way out of the dispensary as quickly as "comfortably" possible. Upon leaving the "SCPC", a Patient/Caregiver is encouraged to ask Security personnel to assist them to their vehicle if they are parked in the "SCPC" parking lot or within 50 feet of the "SCPC" premises.

12.7 "SCPC" security personnel will monitor video feed from cameras located in the entry room, dispensary, upstairs office area, and outside. If security personnel see any questionable activity including loitering in or around the facility, uniformed security personnel will be notified immediately. At that point all entry into the facility will be delayed until the uniformed security personnel has secured the area in question. The "SCPC" will be protected after hours by an interior alarm system with glass breakage, door sensors and motion sensor alerts. The security system will be monitored by a professional security company. The security system will include a "panic" button for emergencies during operating hours.

12.8 Uniformed security will perform regular perimeter and vicinity checks to discourage loitering and questionable activities.

12.9 Accessible windows will be secured by a security bar system. Glass doors will be secured by a metal sliding curtain for after hour security. Medicine/cash safes will be additionally protected by a secured cage. Secured cage will be off limits to all non-managerial staff.

12.10 All medicine purchased by "Qualified Patient/ Caregivers" will be in a food grade plastic heat sealed container. A point of sale bar coded label will be affixed to the medicine container. The label will include weight, the patient/caregivers first and last initials, Medical cannabis card number or "SCPC" identifying number, Dispensary name and phone number, as well a clearly identified as "Medical Marijuana". The goal of the labeling system is to protect Patient/Caregivers and aid law enforcement in determining the validity of "Legal Medicine".

12.11 All procedures outlined in section 12 will be a minimum base for security. Additional measures will be enacted if a need arises or requested by governmental or law enforcement agencies.



## 13 TWENTY FOUR HOUR CONTACT

13.1 The "SCPC" will provide a 24 hour contact number to the Santa Cruz City Police Department and the Santa Cruz County Sheriff's Department that can be called to verify the status on person/s under investigation. All incoming calls to the "SCPC" after hours will be routed to the 24 hour contact number. The "SCPC's" phone number will be affixed to all medicine sold.

13.2 The "SCPC" will provide the zoning administrator, the Santa Cruz Chief of Police, The Santa Cruz County Sheriff, the Santa Cruz Park Department and all neighbors within 600 feet of the establishment with the contact information of an on site community relation's person and encourage them to contact that person if any questions, concerns or complaints arise. A policy of routine contact of all agencies as well as neighbors will be maintained to resolve any issues concerning operations, safety, security as well as a continued effort to educate our community to the need and benefits of a "Medical Marijuana Dispensary. It is our goal to be professional, discrete and secure. The "SCPC" is confident we can control all security and nuisance potentials. We will constantly strive to have zero impact on local law enforcement as well as our community as a whole. All public relations, when at all possible, will be performed in person.

13.3 The "SCPC" public relations person as well as twenty four hour contact will be K.E. Sampson. The contact number is (831)535-8320. Public relations will commence immediately after special use permit approval.

## 14 LEGAL INFORMATION

14.1 The "SCPC" reserves the right to refuse service to anyone for any reason at any time.

14.2 The "SCPC" operates strictly under the provisions of the State of California Health and Safety Code 11362.5 and 11362.7 and City of Santa Cruz Municipal code chapter 6.9 et. seq. as a collective as a collective.

14.3 "Qualified Patient/Caregivers" are governed by the laws of the City and County in which they reside. Since Laws may vary from City/County to City/County, the "SCPC" will not advise "Qualified Patient/Caregivers of Medical Marijuana Laws if they reside outside of the City or County of Santa Cruz. "Qualified Patients/Caregivers doing business with the "SCPC" must know and be responsible for abiding by all Laws concerning the purchase, transportation, administering and consumption of Medical Marijuana.

14.4 Medical Marijuana will have varied effects depending on variety of medicine, preparation, method of consumption, one's personal physical constitution, etc. Each Qualified Patient/Caregiver must discuss with his/her own prescribing Physician as to indications, dosage, side effects, etc. The "SCPC" will not offer medical advice and makes no claim as to the efficacy of medication obtained from our dispensary.

14.5 The "SCPC" will issue to all new Qualified Patient/Caregiver a "SCPC" Qualified Patient/Caregiver Educational Packet

# SANTA CRUZ PATIENTS COLLECTIVE

## “SCPC”

### BUILDING GUIDELINES

The following guidelines are designated to facilitate safe access and a comfortable atmosphere where “Qualified Patient/Caregivers” can procure “Medical Marijuana”, pursuant to their Physician’s recommendation.

\* You must be at least eighteen (18) years old and have a current City, County or State issued Medical Cannabis ID card and A current California ID/Drivers License.

\* You must show your Medical Cannabis ID card and State ID/Drivers License to the “SCPC” Security before entering the building.

\* You may never trade, sell or distribute in any manner the medication you obtain from the “SCPC”. If you do, you will be permanently excluded from participating with the “SCPC”.

\* Please treat everyone in and around the “SCPC” with complete respect. You will be asked to leave the premises if you behave offensively towards anyone.

\* No cell phones or other communication devices will be allowed on or operating during your visit to the “SCPC”.

\* No consumption of medicine in any form will be allowed in or around the “SCPC”, surrounding neighborhood, or Harvey West Park.

\* For your protection please be discreet with the handling and transportation of your Medicine.

\* Absolutely no alcohol, illegal drugs or weapons of any sort allowed in or around the “SCPC”.

\* Any patient who violates the "SCPC's" general rules and building guidelines will be banned from the "SCPC".

\* Any person/s who commits, attempts or threatens an act of violence in or around the "SCPC", may be subject to criminal prosecution.

\* Please be friendly and respectful to our neighbors at all times.

\* Please park in our parking lot whenever possible. Do not park in driveways, neighboring business' parking lots or in a manner which may block traffic.

\* In the event of an emergency inside the dispensary, please notify the "SCPC" and follow instruction from the staff.

\* If you have any questions or concerns about our facility, please contact our staff.

## **"SCPC's" GOOD NEIGHBOR COMMITMENT**

The "SCPC" shares this community with personal residences as well as other business. We commit to the citizens of Santa Cruz as well as our immediate neighbors to be a positive addition to the community.

Keeping in mind, not everyone shares our view of the necessity of Medical Marijuana. Each of us must commit to a very high standard in regards to our behavior and respect for property as well as assumed personal safety to all persons in as well as around the facility.

Remember, the public is closely watching us, so please help us with our mutual goal of moving forward with the acceptance of "Medical Marijuana", by always acting on one's best behavior.

We have promised our neighbors, there will be no loitering, littering, parking problems or conflicts in or around our facility. Please aid our Security personnel in fulfilling our commitment!

Ample parking is furnished in our private parking lot across the street. If for some reason parking is not available, please use discretion and do not block neighboring driveways, park in neighboring business' parking lots or in any manner which may be a safety hazard or block the flow of traffic.

Your safety is very important to us. Be discrete with your medicine while leaving the facility. If for any reason you do not feel safe upon leaving the "SCPC" please ask Security personnel to escort you to your vehicle.

These simple guidelines will ensure the smooth operation of the "SCPC". We wish to be your source for "High Grade" Medical Marijuana for years to come.

Thank you, The Staff and Management of the "SCPC"

## MEMBERSHIP QUALIFICATIONS

The Santa Cruz Patient's Collective (SCPC) exist and operates in strict compliance with State of California Health and Safety codes 11362.5, 11362.7, and City of Santa Cruz Municipal code chapter 6.9 et. seq.. We serve only legally qualified patients and caregivers. Absolutely no services will be provided to persons who are not qualified under California law. You must be a qualified patient or caregiver to obtain services at the "SCPC".

There are two ways to participate at the "SCPC"

1. You may present a valid and unexpired Medical Cannabis ID card issued by the State of California or another approved organization along with state issued ID. Your participation will be valid until your medical cannabis card or state issued ID card expire. Both Medical ID card and state issued ID card must be current.

2. If you do not have a medical cannabis ID card, you must present your original Physicians recommendation for the use of medical cannabis along with the state-issued ID. The "SCPC" does not exist to verify recommendations, and will be unable to offer services if we cannot verify your recommendation. Your participation with the "SCPC" will be pending upon established validity of your recommendation. This process can take up to 5 business days. Upon verification, all copies of Patients information will be destroyed. Participation with the "SCPC" will be possible as long as your Physician's recommendation and California ID are current.

"SCPC" patients may designate a primary caregiver who may receive services on your behalf by completing a primary caregiver designation form. Please be advised that a primary caregiver is someone who has "consistently provided for the housing, safety, welfare, (CA H&S 11362.5 and City of Santa Cruz municipal code chapter 6.9 et. seq.) or procurement of Medical Marijuana for the Patient. Under no circumstances may a primary caregiver obtain services for him/herself

unless he/she is also a legally qualified patient and registered as such with the "SCPC".

Your participation may be terminated if your status as a qualified patient or primary caregiver under California law changes. This includes but is not limited to the expiration of your Medical Cannabis ID card or Physician's recommendation or California ID.

Your participation will be terminated in the event you sell, trade, give away or distribute in any way, medication procured from the "SCPC".

Your participation will be terminated for a serious breach of "SCPC" rules and guidelines or any activity that threatens the safety of the "SCPC" staff, patients or "SCPC's" neighbors.

Medical Cannabis laws in California are still evolving. The "SCPC" may update its participation qualifications from time to time to comply with local and state regulations.

The "SCPC" is committed to protecting your personal information. Under no circumstances will we forward your personal data to any other, individual, corporation or organization.

## **ABOUT THE "SANTA CRUZ PATIENTS COLLECTIVE"**

Welcome to the "Santa Cruz Patient's Collective".

The staff of the "SCPC", all of whom are "Qualified Patients, are fully committed to assist all "Qualified Patients and Caregivers" towards their goals of healing with Medical Marijuana. It has been our privilege to witness many patients successfully use medical marijuana in treating serious maladies. We wish the best of health to all patients we serve.

The "SCPC" does not discriminate in employment, membership or provision of services based on country of origin, sexual orientation, race, religion, gender, age, social or economic status. We are equally committed to all "Qualified Patients" and will not tolerate any negativity or demeaning attitudes towards anyone, patient, staff or otherwise.

The "Santa Cruz Patients Collective" will do everything within our power to protect safe access for all citizens qualified under California's Compassionate Use Act to Organic High Grade Medical Marijuana. Continuing education of our members as well as our community will always remain a high priority.



# GREENWAY COMPASSIONATE RELIEF

## MISSION STATEMENT:

OUR MISSION IS TO BRING SAFE ACCESSIBLE MEDICINE TO THE "QUALIFIED PATIENTS" OF SANTA CRUZ COUNTY AND VISITING "QUALIFIED PATIENTS" IN A CARING, COMPASSIONATE WAY. WE ARE COMMITTED TO PROTECTING AND ACTING FOR 'SAFE ACCESS' FOR THOSE QUALIFIED UNDER CALIFORNIA HEALTH AN SAFETY CODE 11362.5 (PROPOSITION 215). WE WILL SERVE THE COMMUNITY WITH NO DISCRIMINATION IN EMPLOYMENT, MEMBERSHIP OR BASE SERVICES UPON RACE, SEX, HEIGHT, WEIGHT, GENDER, SEXUAL ORIENTATION, MARITAL STAUS, RELIGION, AGE, ETHNICITY OR SOCIAL ECONOMIC STATUS. WE WILL CREATE A HEALING ENVIROMENT THAT TENDS TO THE NEEDS OF ALL "QUALIFIED PATIENTS" IN OUR COMMUNITY. WE WILL EDUCATE OUR MEMBERS AND COMMUNITY AND THROUGH THAT EDUCATION AND FORMATION OF AN ASSOCIATION THAT CARES ABOUT THE NEEDS OF ALL IT'S "QUALIFIED PATIENTS", CAREGIVERS AND IT'S LOCAL COMMUNITY, WE CAN BUILD A COMMUNITY OF "QUALIFIED PATIENTS" THAT CAN FIND RELIEF AND COMFORT FROM THEIR MEDICINE WITHOUT HAVING TO DRIVE LONG DISTANCES OR PROCURE THEIR MEDICINE IN AN UNLAWFUL MANNER OFF THE STREET.

MC 6.90.020(4-o)

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## 1.0 Definitions

Barisone (1)

For the purpose of this manual the following definitions will apply:

- 1.1 "Marijuana", referred to in this manual from here forward as "Medicine", means all parts of the Cannabis plant, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalk, oil or cake made from the seeds of the plant, any compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- 1.2 "Qualified Patient" means a seriously ill person who obtains a written recommendation from a physician licensed to practice medicine in the state California to use marijuana for personal medical purposes. In addition, persons currently under the care of a physician for certain conditions including, but limited to, HIV/AIDS, cancer, glaucoma, epilepsy or other spasticity-related illnesses, migraine, anorexia, are presumed to be qualified patients. Individuals under the age of 18 may participate as qualified patients with a written recommendation from a licensed California physician and with the written consent of the parents or legal guardian  
MC §6.90.010(2)  
Barisone (3a)
- 1.3 "Primary Caregiver" is an individual, over the age of 18, designated by a "qualified patient" who has consistently assumed responsibility for the housing, health or safety of that "qualified patient". Under special circumstances, with the written consent of a parent or guardian and written concurrence of the medical marijuana provider association, a person under the age of 18 years may serve as a primary caregiver.  
MC §6.90.010(1)  
Barisone (3b)

- 1.4 "Client/participant" refers to an individual who participates in a medical marijuana provider association or a unit of individuals comprised of a particular qualified patient and that qualified patient's primary caregiver who jointly participate in a medical marijuana association.
- 1.5 "Cultivator" means a "qualified patient" or "primary caregiver", a "client/participant" of a medical marijuana provider association or any other individual(s) responsible for cultivating or overseeing cultivation of marijuana exclusively for a medical marijuana association.
- 1.6 "Medical marijuana provider association" means a collective of individuals comprised of qualified patients and primary caregivers, the sole intent which is to provide education, referral, or network services and to facilitate/assist in the lawful production, acquisition and provision of medical marijuana to qualified patients.

## **2.0 Introduction and general information**

Greenway was conceived from a personal need and has turned into a community need. The intention is to create a safe place where all qualified patients can acquire their medicine and not feel as if they are breaking the law or being discriminated against. Where the servers are qualified patients, and care about the needs of other qualified patients. The intention is to supply medicine at an affordable cost and have programs in line that will help the low or no income "qualified patient". Services will be added as allowed by the city of Santa Cruz.

General rules for employee's and qualified patients will be posted in a larger, readable format in the lobby.

- 2.1 Greenway hours of operation will be Monday Thru Saturday  
11am to 6pm  
City council condition (c)
- 2.2 A qualified patient, primary caregiver or cultivator can claim qualified status when he/she possesses a valid ID card and/or Growing certificate issued by a qualified medical marijuana provider association  
MC 6.90.020(5)

- 2.3 Only qualified patients, primary caregivers and cultivators can participate at Greenway dispensary or attend association meetings  
MC 6.90.020(4-1)
- 2.4 No loitering on the premises or within 50 feet of premises  
City council condition (g)
- 2.5 No medicine shall be grown or harvested on the premises.  
City council condition (c)
- 2.6 No medicine shall be smoked, ingested or otherwise consumed on the premises. Including the parking lot and surrounding public areas. This definitely includes Harvey West Park.  
City council condition (d)
- 2.7 Greenway staff will provide litter removal in and around the property in the parking area and sidewalk area as needed.  
City council condition (h)
- 2.8 Staff will educate all qualified patients to these rules
- 2.9 Greenway has made it a priority to make medicine available to all qualified patients no matter their income status.  
MC 6.90.020(4-e)

### **3.0 Employee conduct and dress code**

- 3.1 All employees must be qualified patients or caregivers themselves and possess a valid California physician's recommendation  
Barisone (2)
- 3.2 Greet all qualified patients with a 'Hello' and ask them 'what can I do for you?'
- 3.3 All staff will treat all qualified patients with respect, dignity and most of all compassion. If you find this hard to do, then you may be working in the wrong industry.
- 3.4 All qualified patients require different amounts of time at the counter when choosing their medicine. Always give qualified patients the time they need. Never make the qualified patient feel they have been rushed or not treated well.
- 3.5 Employees will act as educators of the qualified patient about being a good neighbor. See section 8.0
- 3.6 All employees will wear a Greenway shirt and nice jeans of any color. The shirts will be provided by Greenway. Shoes should

be what are comfortable for the employee to stand in for long periods of time. 1 to 2 hour stretches.

- 3.7 No employee shall wear sunglasses while working with the public.
- 3.8 All employees should present themselves to the public with grace and professionalism. Never yell or swear at anyone in attendance at Greenway. If you are having a problem with a qualified patient then contact the manager or lobby security to handle the problem.
- 3.9 Employees shall not use cell phones while working the counter, or any other public position, at Greenway
- 3.10 Employees shall never ask a qualified patient about their condition unless asked by the qualified patient for help with medications that might help their particular ailment
- 3.11 Employees shall never ask a qualified patient who their Physician is unless this information is needed for patient qualification

#### **4.0 Qualified Patient and Caregiver rules** (These will also be posted in the lobby)

- 4.1 Qualified patients will not use cell phones while in the Greenway dispensary
- 4.2 All qualified patients will be wand searched by lobby security
- 4.3 Qualified patients should leave all backpacks, bags or any other carrying device in their car or at home. If this is not an option for the qualified patient, they will have to leave it in the lobby with the security officer. Space will be provided and a numbered tag given.
- 4.4 Qualified patients attending Greenway for their medicine should not have friends waiting in the car for them or have anyone loitering outside while you are inside.  
City council condition (g)
- 4.5 Qualified patients should come by themselves, unless 2<sup>nd</sup> party assistance is needed, purchase their medicine and leave the premises immediately.
- 4.6 All qualified patients should consume their medicine at home or in a discrete place if a home is not available. No qualified patients should go to Harvey West Park to consume.

- 4.7 Qualified patients and primary caregivers are strictly prohibited from selling or distributing medicine they have acquired at Greenway.  
MC 6.90.020(4-h)
- 4.8 No loitering on the premises or within 50 feet of premises  
City council condition (g)
- 4.9 No computers or cameras allowed in or around Greenway
- 4.10 Qualified patients should be discrete as possible whenever visiting or leaving the Greenway facility.
- 4.11 Qualified patients found breaking these rules run the risk of being banned from this facility and others. Greenway will contact the institution that dispatched the qualified patients card and that institution will also impose penalties.  
MC 6.90.020(j)

## **5.0 Vendor qualifying guidelines**

- 5.1 Vendors are qualified patients or primary caregivers that grow for the dispensary and must have a qualifying physicians recommendation, medical ID card or primary caregiver card accompanied by a valid California state drivers license, California ID or passport.  
MC 6.90.020(4-f), (4-k)
- 5.2 Vendors will go through the same process as a qualified patient for verification. When verification is accomplished, all information will be destroyed. Greenway will keep only an electronic Vendor file that records only the qualified patients or primary caregiver ID card number and the date of expiration of the current physicians recommendation.  
MC 6.90.020(4-d)
- 5.3 Compensation made to vendors by Greenway will be for actual expenses, including reasonable compensation incurred for services provided to qualified patients of Greenway to enable them to use medical cannabis pursuant to California state Health and Safety code 11362.765(c)  
MC 6.90.020(4-a)  
Barisone (9)
- 5.4 Vendors must sign a statement as to the conditions in their garden and to meet organically grown requirements. Vendors

may need to let Greenway inspect their garden one time to insure it is a safe garden.

MC 6.90.010(3)

- 5.5 Vendors are strictly prohibited from providing or distributing medicine to anyone other than a qualified patient.

MC 6.90.020(4-i)

- 5.6 Vendors found breaking these simple rules are subject to the same action that a qualified patient would suffer. Loss of Greenway privileges and further action taken by the card administrator.

MC 6.90.020(4-j)

## **6.0 Patient qualification**

- 6.1 A qualified patient is anyone meeting the definition set forth in section 1.2 and possesses a valid written physicians recommendation from a valid licensed California Physician. Patients possessing one of the following ID cards will also be recognized by Greenway as valid qualified patients: California medical marijuana ID card, Santa Cruz County card, San Francisco county card, Berkeley card or the OCBC card in Oakland. (The association or county that administered these cards have already done the verification). Greenway will also recognize any other verifiable California association card that does not reside in the bay area. These associations can be confirmed through 'Americans for safe access' or CA NORML.

MC 6.90.020(4-f), (4-k)

- 6.2 Persons under the age of 18 are qualified to participate with the written consent of the parent or guardian and a written physician's recommendation

MC 6.90.020(4-g)

- 6.3 On a qualified patients first visit to Greenway, they will have to show their physician's recommendation or valid association ID card for verification of patient status and a California state ID.

- 6.4 Greenway will scan this and use the copy to call and verify the patient status

- 6.5 Once their physicians recommendation / ID card is verified the qualified patient will be logged into an electronic file that notes only the ID card number and the expiration date of the current



Physicians recommendation. The qualified patient will then be allowed to participate in the Greenway dispensary. From that point, until the current recommendation is expired, the qualified patient will only show their California ID/drivers license and their valid association ID. card / physicians recommendation until that card / physicians recommendation expires. (This date is driven by the original physicians recommendation.)

MC 6.90.020(6)

Barisone (7)

- 6.6 Once the qualified patients information has been verified, the disk containing the information will be destroyed. All computers will be set for encryption if powered down incorrectly.

MC 6.90.020(4-c)

### **Procedure for Physicians recommendation verification and Physicians status verifications:**

1. On the first visit by the patient to Greenway, a copy of the Physicians recommendation will be taken and then the Physicians office that wrote the recommendation will be verified and then contacted to confirm the patients status and that the recommendation is current. Once verified, only the qualified patients I.D. card number will be logged in an electronic file. This file will also contain the current expiration date.  
Barisone (6)
2. The Physicians license will be checked via the medical board of California or the Osteopathic Medical Board of California to make sure the attending Physician has a license in good standing to practice medicine or osteopathy in the state.  
Barisone (6)
3. Once verified, the qualified patient will be able to participate at Greenway with the rules noted above in 6.0 until that qualified patients current physicians recommendation is no longer valid. No expired physicians recommendations or ID cards will be allowed. Qualified patients that present an expired physicians recommendation or ID card will be advised to visit their

Physician to see about a new recommendation. Patients will not be allowed to participate until the recommendation is updated.

Barisone (8)

## **7.0 Greenway I.D. card & growing certificate**

MC 6.90:020(4-b)

Greenway will not provide I.D. cards or growing certificates.

Greenway will accept the following valid ID cards: California medical marijuana ID card, Santa Cruz County card, San Francisco county card, Berkeley card, the OCBC card in Oakland or any other confirmable California association card.

These can be confirmed through 'Americans for safe access' or CA NORML.

Barisone (4,5a)

## **8.0 Educating patients to be "Good Neighbors"**

- 8.1 Greenway will hand out educational material to all qualified patients on where and when to use medicine safely. This material will be handed out the first time a qualified patient attends at Greenway.
- 8.2 Greenway will also post, in its lobby, the same rules for safe access and use.
- 8.3 No loitering in parking lot or surrounding areas, including Harvey West Park
- 8.4 No consumption of medication anywhere on the premises or the surrounding area, including Harvey West Park
- 8.5 No distributing of medication

## **9.0 Dealing with qualified patient misuse of services**

MC 6.90.020(4-j)

- 9.1 Misuse of services is when a qualified patient fails to comply with any of the above posted conditions or misrepresents his/her qualifications for participation

- 9.2 If any activity is noticed that seems suspicious, or out of line, inform management or security. They will decide how to proceed.
- 9.3 Staff will follow the procedures listed below

**\*Procedures for dealing with misuse of services:**

1. If a qualified patient is deemed to be misusing Greenway services, Greenway staff / security will ask the qualified patient for their ID card and write a report as to the incident and attach it to the patient file.
2. Greenway staff / security will inform management immediately
3. That qualified patient will then immediately lose all privileges at Greenway and will be reported to the county office that has processed the patient ID card where further action will be taken.

City council condition (q)

Barisone (10)

**10.0 Opening and closing procedures**

- 10.1 Security will be on site 15 minutes in advance of opening and stay 15 minutes after closing or until all employees are gone.
- 10.2 The owner, or office manager, and the first alarm guard will have the keys and alarm code for beginning and ending of day.
- 10.3 When the office manager arrives, they will make sure that security is on site before opening the door and releasing the alarm. After opening doors, all employees will be allowed inside to set up their day.
- 10.4 The office manager, only, has the keys for the safe and safe cage door. That manager will open the safe and retrieve medicine to be put in the display cases and drawers.
- 10.5 The office manager will also set up the cash drawers at the beginning of the day.
- 10.6 After all this is done, the qualified patients will be allowed to come in and get their medicine.
- 10.7 At closing time, the lobby guard will stop all incoming traffic and lock the door at 5 minutes to 6 pm. any qualified patients

already inside waiting to be served will be served and let out by the lobby guard, as they are finished.

- 10.8 When all qualified patients have been served and let out the lobby door, the lobby security guard will lock the door and wait for the employees to finish their final tasks.
- 10.9 The cash drawers will be counted and made ready for deposit. Some cash will be left in the safe to start to the next day's transactions. If there is a large amount of cash at the 4 pm point in any given day, the office manager will make an extra deposit at that time. This will keep the actual cash on hand to a minimum.
- 10.10 When the medicine and money have been moved to the safe, all security gates will be closed and locked. The last door to be locked will be the front door upon leaving the facility. The security guard will be released from his/her duties at that time also.

## **11.0 Security**

City council condition (i)

- 11.1 There will be one Greenway security personnel at the front door to identify the qualified patients and check ID before they come in the door.
- 11.2 There will be one First Alarm security guard in the lobby that will be a uniform presence. This guard will be responsible for 'wandering' all qualified patients before he lets them into the dispensing area. See procedures in section 5.0
- 11.3 The Lobby guard will also be responsible for determining if a qualified patient needs to be further scrutinized because of baggy clothes or backpacks. If the need arises, the guard will ask the qualified patient to remove their jacket and or backpack and leave it in the lobby. A safe space for these items will be provided in the lobby.
- 11.4 It will be the responsibility of the lobby guards, first alarm and Greenway personnel, to watch the parking area for any loitering or consumption that needs to be addressed. If needed the guard will ask people to leave the area.

- 11.5 It will be the responsibility of the lobby guard to watch camera monitors for the back door area and dispensing area during business hours
- 11.6 There will also be one Greenway security personnel in the dispensary. It will be the responsibility of dispensing area security to contact the lobby guard if any issues arise that need attention

## **12.0 24 hour contact**

- 12.1 Greenway will provide a 24-hour contact number to the city police dept that can be called to verify the status of a person under investigation. That number will also be located on the Greenway issued I.D. card.
- 12.2 Greenway will provide the zoning administrator, the chief of police, the parks dept and all neighbors within 500 feet of the establishment with the contact information of an on-site community relation's person to whom one can provide notice if there are operating problems associated with Greenway. Greenway will make every effort to make the local community aware of this person and encourage them to please contact that person to resolve any complaints before contacting the police or planning dept.  
City council condition (l)
- 12.3 This information will be distributed by hand and will be written on a card that can be placed for easy access.
- 12.4 The public relations person for Greenway will be the owner, Lisa Molyneux. Her personal cell phone number, to be used incase of emergency, is 408-829-9096. A contact card with all required information will be given to all listed above ASAP.  
MC 6.90.060(3)

**From California Health and Safety code §11362.5**

**Proposition 215**

“The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

- (A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the persons health would benefit from the use of marijuana in the treatment of cancer, arthritis, migraine or any other illness for which marijuana provides relief.
- (B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

## Legal Information

Greenway reserves the right to refuse service to anyone.

Greenway operates under the provisions of the California Health and Safety code §11362.5 and §11362.7. However, some local jurisdictions may place additional restrictions on your rights as a medical cannabis patient. You must determine what your local guidelines are.

Cannabis will have variable effects when used by different people and under different circumstances. You must discuss indications and side effects with your doctor. Greenway cannot offer medical advice and makes no claim as to the efficacy of medication obtained here. Please read the "sensible Cannabis Use" guidelines attached.

We are not qualified or equipped to handle medical emergencies. For medical emergencies, call 911.

## BUILDING GUIDELINES

These guidelines are designated to facilitate a safe and enjoyable atmosphere. It is very important that you follow these guidelines so that we can continue to operate for years to come.

- You must be at least 18 years old and have state issued ID to enter the building. Under certain circumstances persons under the age of 18 may qualify to participate at Greenway. Please see the management for details.
- You must show your medical cannabis ID card or Physicians recommendation to the security guard and receptionist when entering the building.
- You may never sell or otherwise distribute medication you obtain at Greenway. You will be permanently excluded from participating at Greenway if you do so.
- You should treat everyone in the building with respect. You may be asked to leave the property if you use offensive or abusive language or behavior.
- No cell phones in the building
- You may not smoke cannabis at Greenway.
- Never consume cannabis in the parking lot or neighborhood.
- For your safety, place all medication out of sight before leaving the building.
- Absolutely no alcohol, hard drugs or weapons are allowed in the building.
- Any patient who commits or threatens an act of violence will be excluded from participating at Greenway and may be subject to criminal prosecution.
- Be friendly to our neighbors
- Only park in legal parking spaces. Never block driveways or park illegally on the street.
- In the event of an emergency, please follow the instructions from our staff.
- If you have questions or concerns about our facility, please ask the staff.



## Good Neighbors

Greenway shares this neighborhood with homes and businesses. We are working hard to establish a positive relationship with our neighbors, the city and the police dept. The most likely cause for trouble in Harvey West Business Park is the complaints by neighbors regarding our operations. Please be respectful of their rights, privacy and property. Remember that not everyone shares our opinion about Medical Cannabis!.

You should be very careful not to park in neighboring driveways or in neighboring parking lots. We have promised our neighbors that there will be no loitering or nuisance behavior near our building. Help us keep this commitment by not loitering in the neighborhood or on the sidewalk. Always be courteous to those who live and work nearby.

We want you to feel safe at Greenway. Please ask us if you need an escort to your car. Let us know if you see any suspicious behavior in the neighborhood.

These simple precautions will Greenway operating smoothly and without legal interference. This will ensure that we are here to serve you for years to come.

Thank you,

Greenway staff and management

## MEMBERSHIP QUALIFICATIONS

Greenway operates in strict compliance with California Health and Safety code §11362.5 and §11362.7. We serve only legally qualified patients and care givers. Under no circumstances whatsoever are services provided to persons who are not qualified under California law. You must be a qualified patient / caregiver to obtain services.

There are two ways to participate at Greenway:

1. You may present a valid and unexpired Medical Cannabis ID card issued by the state of California or another approved organization along with state issued ID. Your participation will be valid until your medical cannabis card expires.
2. If you do not have a medical cannabis ID card, you may present an original copy of your Physicians recommendation for the use of medical cannabis along with state-issued ID. We will make a copy of your recommendation and return the original to you. Your participation will be pending until a Greenway staff member verifies the validity of your recommendation (usually 2 – 3 days). We will destroy our copy of your recommendation following verification. Your participation will be valid until the date on which your recommendation expires.

Greenway patients may designate a primary caregiver who may receive services on your behalf by completing a primary caregiver designation form. Please be advised that a primary caregiver is someone who has “consistently provided for the housing, safety or welfare” of the patient (CA H&S §11362.5). Under no circumstances whatsoever may a primary caregiver obtain services for himself or herself unless he or she is also a legally qualified patient and registered as such at Greenway.

Your participation may be terminated if your status as a qualified patient or primary caregiver under California law changes. This includes the expiration of your medical cannabis ID card or physicians recommendation.

Your participation at Greenway will also be terminated in the event that you sell, barter, give away or otherwise distribute medication to any other person

unless you are designated primary caregiver providing medication to the patient for whom you are registered as a caregiver.

Your participation may also be terminated for a serious breach of Greenway rules or any activity that threatens the safety of Greenway or other patients.

Medical cannabis laws in California are still evolving. Greenway may update its participation qualifications from time to time to comply with local and state regulations.

We are committed to protecting your personal information. We will never give your personal data to any other organization.

## **ABOUT GREENWAY**

Welcome to Greenway. Greenway Compassionate Relief is dedicated to the enhancement and well being of our members. Greenway provides a community to help patients maintain the highest possible level of wellness and self-sufficiency.

Greenway is committed to preserving the dignity, well-being and self-determination of the individual; and to service characterized by competence and integrity. Greenway does not discriminate in employment, membership or provision of services based on county of origin, sexual orientation, religion, age or social economic status.

At Greenway we are just as interested in protecting safe access as we are in providing it. That is why it matters where you get your medicine. Greenway is committed to protecting safe access for those qualified under California Health and Safety code §11362.5 (proposition 215). Educating our members, the community and the elected officials is a high priority.



CITY ATTORNEY

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## M E M O R A N D U M

November 12, 2009

**TO:** Mike Ferry, Associate Planner  
**FROM:** John G. Barisone, City Attorney  
**RE:** Medical Marijuana Collectives-Corporate Requirements

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This will respond to your November 9, 2009 opinion request which was prompted by questions from Planning Commissioners asked at the Commission's November 5, 2009 meeting. Specifically, the Planning Commission's questions pertain to the legal requirements which must be observed in order for a medical marijuana collective to legally function as a non-profit corporation under California law. As was noted in the staff report provided to the Commission, medical marijuana collectives in California must operate on a strictly non-profit basis (Health & Safety Code Section 11362.665).

As a preliminary matter, it must be noted that federal law does not recognize the legality of possessing, selling, cultivating, consuming or transporting marijuana for any purpose and, accordingly, to the extent that California law authorizes the medical use of marijuana to be posited as a legal defense to any of these crimes, federal law and California law are inconsistent. Therefore, while a medical marijuana collective would not be recognized by the federal government and therefore would not qualify for "501(c)(3)" non-profit status under the federal Internal Revenue Code, California's corollary corporate statutes are available to medical marijuana collectives for legally organizing their businesses on this basis. Specifically, California Health & Safety Code Section 11362.775 contemplates the formation of associations "in order [to] collectively or cooperatively...cultivate marijuana for medical purposes..." In turn, these associations may incorporate in accordance with pertinent California statutory requirements.

Under California Corporations Code Section 12201:

...A corporation may be formed under this part for any lawful purpose provided that it shall be organized and shall conduct its business primarily for the mutual benefit of its members as patrons of the corporation. The earnings, savings, or benefits of the corporation shall be used for the general welfare of the members or shall be proportionately and equitably distributed to some or all of its members or its patrons, based upon their patronage...of the corporation, in the form of cash, property, evidences of indebtedness, capital credits, memberships, or services.

Such corporations are democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons...

In other respects, the statutory cooperatives must follow the same strict rules on organization, articles of incorporation, and bylaws that apply to other California corporations including "for profit" corporations.

Pursuant to California Corporations Code Section 12310 a corporation which is formed as a non-profit cooperative must include in its articles of incorporation the following statement "This corporation is a cooperative corporation organized under the Consumer Cooperative Corporation Law. The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under such law." Pursuant to California Corporation Code Section 12311 "The names of all corporations formed under this part shall include 'cooperative'. No corporation shall be formed under this part unless there is affixed or prefixed to its name some word or abbreviation which will indicate that it is a corporation, as distinguished from a natural person, a firm, or an unincorporated association."

In addition to the California statutory legal requirements outlined above, the California Attorney General's Office, August 2008, published "GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE". A copy of this document is attached.

I trust the foregoing is responsive to your opinion request. Please call if I can answer further questions.

Very truly yours,

  
John G. Barisone  
City Attorney

JGB/ang  
Encl.  
cc: Juliana Rebagliati, Community Dev. Dir.

EDMUND G. BROWN JR.  
Attorney General



DEPARTMENT OF JUSTICE  
State of California

**GUIDELINES FOR THE SECURITY AND NON-DIVERSION  
OF MARIJUANA GROWN FOR MEDICAL USE**  
*August 2008*

In 1996, California voters approved an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2003, the Legislature enacted additional legislation relating to medical marijuana. One of those statutes requires the Attorney General to adopt "guidelines to ensure the security and nondiversion of marijuana grown for medical use." (Health & Saf. Code, § 11362.81(d).<sup>1</sup>) To fulfill this mandate, this Office is issuing the following guidelines to (1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law.

**I. SUMMARY OF APPLICABLE LAW**

**A. California Penal Provisions Relating to Marijuana.**

The possession, sale, cultivation, or transportation of marijuana is ordinarily a crime under California law. (See, e.g., § 11357 [possession of marijuana is a misdemeanor]; § 11358 [cultivation of marijuana is a felony]; Veh. Code, § 23222 [possession of less than 1 oz. of marijuana while driving is a misdemeanor]; § 11359 [possession with intent to sell any amount of marijuana is a felony]; § 11360 [transporting, selling, or giving away marijuana in California is a felony; under 28.5 grams is a misdemeanor]; § 11361 [selling or distributing marijuana to minors, or using a minor to transport, sell, or give away marijuana, is a felony].)

**B. Proposition 215 - The Compassionate Use Act of 1996.**

On November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician's recommendation. (§ 11362.5.) Proposition 215 was enacted to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana," and to "ensure that patients and their primary caregivers who obtain and use marijuana for

<sup>1</sup> Unless otherwise noted, all statutory references are to the Health & Safety Code.

medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.” (§ 11362.5(b)(1)(A)-(B).)

The Act further states that “Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient’s primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or verbal recommendation or approval of a physician.” (§ 11362.5(d).) Courts have found an implied defense to the transportation of medical marijuana when the “quantity transported and the method, timing and distance of the transportation are reasonably related to the patient’s current medical needs.” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1551.)

#### C. Senate Bill 420 --The Medical Marijuana Program Act.

On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP), became law. (§§ 11362.7-11362.83.) The MMP, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. (§§ 11362.71(e), 11362.78.)

It is mandatory that all counties participate in the identification card program by (a) providing applications upon request to individuals seeking to join the identification card program; (b) processing completed applications; (c) maintaining certain records; (d) following state implementation protocols; and (e) issuing DPH identification cards to approved applicants and designated primary caregivers. (§ 11362.71(b).)

Participation by patients and primary caregivers in the identification card program is voluntary. However, because identification cards offer the holder protection from arrest, are issued only after verification of the cardholder’s status as a qualified patient or primary caregiver, and are immediately verifiable online or via telephone, they represent one of the best ways to ensure the security and non-diversion of marijuana grown for medical use.

In addition to establishing the identification card program, the MMP also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. (§§ 11362.7, 11362.77, 11362.775.)

#### D. Taxability of Medical Marijuana Transactions.

In February 2007, the California State Board of Equalization (BOE) issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller’s Permit. (<http://www.boe.ca.gov/news/pdf/medseller2007.pdf>.) According to the Notice, having a Seller’s Permit does not allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due. BOE further clarified its policy in a



June 2007 Special Notice that addressed several frequently asked questions concerning taxation of medical marijuana transactions. (<http://www.boe.ca.gov/news/pdf/173.pdf>.)

#### E. Medical Board of California.

The Medical Board of California licenses, investigates, and disciplines California physicians. (Bus. & Prof. Code, § 2000, et seq.) Although state law prohibits punishing a physician simply for recommending marijuana for treatment of a serious medical condition (§ 11362.5(c)), the Medical Board can and does take disciplinary action against physicians who fail to comply with accepted medical standards when recommending marijuana. In a May 13, 2004 press release, the Medical Board clarified that these accepted standards are the same ones that a reasonable and prudent physician would follow when recommending or approving any medication. They include the following:

1. Taking a history and conducting a good faith examination of the patient;
2. Developing a treatment plan with objectives;
3. Providing informed consent, including discussion of side effects;
4. Periodically reviewing the treatment's efficacy;
5. Consultations, as necessary; and
6. Keeping proper records supporting the decision to recommend the use of medical marijuana.

([http://www.mbc.ca.gov/board/media/releases\\_2004\\_05-13\\_marijuana.html](http://www.mbc.ca.gov/board/media/releases_2004_05-13_marijuana.html).)

Complaints about physicians should be addressed to the Medical Board (1-800-633-2322 or [www.mbc.ca.gov](http://www.mbc.ca.gov)), which investigates and prosecutes alleged licensing violations in conjunction with the Attorney General's Office.

#### F. The Federal Controlled Substances Act.

Adopted in 1970, the Controlled Substances Act (CSA) established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. (21 U.S.C. § 801, et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243, 271-273.) The CSA reflects the federal government's view that marijuana is a drug with "no currently accepted medical use." (21 U.S.C. § 812(b)(1).) Accordingly, the manufacture, distribution, or possession of marijuana is a federal criminal offense. (*Id.* at §§ 841(a)(1), 844(a).)

The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (*County of San Diego v. San Diego NORML* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2930117.) Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. (21 U.S.C. § 903.) Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (See *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 371-373, 381-382.)

In light of California's decision to remove the use and cultivation of physician-recommended marijuana from the scope of the state's drug laws, this Office recommends that state and local law enforcement officers not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's medical marijuana laws.

## II. DEFINITIONS

A. **Physician's Recommendation:** Physicians may not prescribe marijuana because the federal Food and Drug Administration regulates prescription drugs and, under the CSA, marijuana is a Schedule I drug, meaning that it has no recognized medical use. Physicians may, however, lawfully issue a verbal or written recommendation under California law indicating that marijuana would be a beneficial treatment for a serious medical condition. (§ 11362.5(d); *Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 632.)

B. **Primary Caregiver:** A primary caregiver is a person who is designated by a qualified patient and "has consistently assumed responsibility for the housing, health, or safety" of the patient. (§ 11362.5(e).) California courts have emphasized the consistency element of the patient-caregiver relationship. Although a "primary caregiver who consistently grows and supplies . . . medicinal marijuana for a section 11362.5 patient is serving a health need of the patient," someone who merely maintains a source of marijuana does not automatically become the party "who has consistently assumed responsibility for the housing, health, or safety" of that purchaser. (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390, 1400.) A person may serve as primary caregiver to "more than one" patient, provided that the patients and caregiver all reside in the same city or county. (§ 11362.7(d)(2).) Primary caregivers also may receive certain compensation for their services. (§ 11362.765(c) ["A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided . . . to enable [a patient] to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, . . . shall not, on the sole basis of that fact, be subject to prosecution" for possessing or transporting marijuana].)

C. **Qualified Patient:** A qualified patient is a person whose physician has recommended the use of marijuana to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. (§ 11362.5(b)(1)(A).)

D. **Recommending Physician:** A recommending physician is a person who (1) possesses a license in good standing to practice medicine in California; (2) has taken responsibility for some aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient; and (3) has complied with accepted medical standards (as described by the Medical Board of California in its May 13, 2004 press release) that a reasonable and prudent physician would follow when recommending or approving medical marijuana for the treatment of his or her patient.

### III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

#### A. State Law Compliance Guidelines.

1. **Physician Recommendation:** Patients must have a written or verbal recommendation for medical marijuana from a licensed physician. (§ 11362.5(d).)

2. **State of California Medical Marijuana Identification Card:** Under the MMP, qualified patients and their primary caregivers may voluntarily apply for a card issued by DPH identifying them as a person who is authorized to use, possess, or transport marijuana grown for medical purposes. To help law enforcement officers verify the cardholder's identity, each card bears a unique identification number, and a verification database is available online ([www.calmmp.ca.gov](http://www.calmmp.ca.gov)). In addition, the cards contain the name of the county health department that approved the application, a 24-hour verification telephone number, and an expiration date. (§§ 11362.71(a); 11362.735(a)(3)-(4); 11362.745.)

3. **Proof of Qualified Patient Status:** Although verbal recommendations are technically permitted under Proposition 215, patients should obtain and carry written proof of their physician recommendations to help them avoid arrest. A state identification card is the best form of proof, because it is easily verifiable and provides immunity from arrest if certain conditions are met (see section III.B.4, below). The next best forms of proof are a city- or county-issued patient identification card, or a written recommendation from a physician.

#### 4. Possession Guidelines:

a) **MMP:**<sup>2</sup> Qualified patients and primary caregivers who possess a state-issued identification card may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient. (§ 11362.77(a).) But, if "a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs." (§ 11362.77(b).) Only the dried mature processed flowers or buds of the female cannabis plant should be considered when determining allowable quantities of medical marijuana for purposes of the MMP. (§ 11362.77(d).)

b) **Local Possession Guidelines:** Counties and cities may adopt regulations that allow qualified patients or primary caregivers to possess

<sup>2</sup> On May 22, 2008, California's Second District Court of Appeal severed Health & Safety Code § 11362.77 from the MMP on the ground that the statute's possession guidelines were an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient may possess. (See *People v. Kelly* (2008) 163 Cal.App.4th 124, 77 Cal.Rptr.3d 390.) The Third District Court of Appeal recently reached a similar conclusion in *People v. Phomphakdy* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2931369. The California Supreme Court has granted review in *Kelly* and the Attorney General intends to seek review in *Phomphakdy*.

medical marijuana in amounts that exceed the MMP's possession guidelines. (§ 11362.77(c).)

c) **Proposition 215:** Qualified patients claiming protection under Proposition 215 may possess an amount of marijuana that is "reasonably related to [their] current medical needs." (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549.)

**B. Enforcement Guidelines.**

1. **Location of Use:** Medical marijuana may not be smoked (a) where smoking is prohibited by law, (b) at or within 1000 feet of a school, recreation center, or youth center (unless the medical use occurs within a residence), (c) on a school bus, or (d) in a moving motor vehicle or boat. (§ 11362.79.)

2. **Use of Medical Marijuana in the Workplace or at Correctional Facilities:** The medical use of marijuana need not be accommodated in the workplace, during work hours, or at any jail, correctional facility, or other penal institution. (§ 11362.785(a); *Ross v. RagingWire Telecomms., Inc.* (2008) 42 Cal.4th 920, 933 [under the Fair Employment and Housing Act, an employer may terminate an employee who tests positive for marijuana use].)

3. **Criminal Defendants, Probationers, and Parolees:** Criminal defendants and probationers may request court approval to use medical marijuana while they are released on bail or probation. The court's decision and reasoning must be stated on the record and in the minutes of the court. Likewise, parolees who are eligible to use medical marijuana may request that they be allowed to continue such use during the period of parole. The written conditions of parole must reflect whether the request was granted or denied. (§ 11362.795.)

4. **State of California Medical Marijuana Identification Cardholders:** When a person invokes the protections of Proposition 215 or the MMP and he or she possesses a state medical marijuana identification card, officers should:

a) Review the identification card and verify its validity either by calling the telephone number printed on the card, or by accessing DPH's card verification website (<http://www.calmmp.ca.gov>); and

b) If the card is valid and not being used fraudulently, there are no other indicia of illegal activity (weapons, illicit drugs, or excessive amounts of cash), and the person is within the state or local possession guidelines, the individual should be released and the marijuana should not be seized. Under the MMP, "no person or designated primary caregiver in possession of a valid state medical marijuana identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana." (§ 11362.71(e).) Further, a "state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer

has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently." (§ 11362.78.)

5. **Non-Cardholders:** When a person claims protection under Proposition 215 or the MMP and only has a locally-issued (i.e., non-state) patient identification card, or a written (or verbal) recommendation from a licensed physician, officers should use their sound professional judgment to assess the validity of the person's medical-use claim:

a) Officers need not abandon their search or investigation. The standard search and seizure rules apply to the enforcement of marijuana-related violations. Reasonable suspicion is required for detention, while probable cause is required for search, seizure, and arrest.

b) Officers should review any written documentation for validity. It may contain the physician's name, telephone number, address, and license number.

c) If the officer reasonably believes that the medical-use claim is valid based upon the totality of the circumstances (including the quantity of marijuana, packaging for sale, the presence of weapons, illicit drugs, or large amounts of cash), and the person is within the state or local possession guidelines or has an amount consistent with their current medical needs, the person should be released and the marijuana should not be seized.

d) Alternatively, if the officer has probable cause to doubt the validity of a person's medical marijuana claim based upon the facts and circumstances, the person may be arrested and the marijuana may be seized. It will then be up to the person to establish his or her medical marijuana defense in court.

e) Officers are not obligated to accept a person's claim of having a verbal physician's recommendation that cannot be readily verified with the physician at the time of detention.

6. **Exceeding Possession Guidelines:** If a person has what appears to be valid medical marijuana documentation, but exceeds the applicable possession guidelines identified above, all marijuana may be seized.

7. **Return of Seized Medical Marijuana:** If a person whose marijuana is seized by law enforcement successfully establishes a medical marijuana defense in court, or the case is not prosecuted, he or she may file a motion for return of the marijuana. If a court grants the motion and orders the return of marijuana seized incident to an arrest, the individual or entity subject to the order must return the property. State law enforcement officers who handle controlled substances in the course of their official duties are immune from liability under the CSA. (21 U.S.C. § 885(d).) Once the marijuana is returned, federal authorities are free to exercise jurisdiction over it. (21 U.S.C. §§ 812(c)(10), 844(a); *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 369, 386, 391.)

#### IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

Under California law, medical marijuana patients and primary caregivers may “associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes.” (§ 11362.775.) The following guidelines are meant to apply to qualified patients and primary caregivers who come together to collectively or cooperatively cultivate physician-recommended marijuana.

**A. Business Forms:** Any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes should be organized and operated in a manner that ensures the security of the crop and safeguards against diversion for non-medical purposes. The following are guidelines to help cooperatives and collectives operate within the law, and to help law enforcement determine whether they are doing so.

1. **Statutory Cooperatives:** A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a “cooperative” (or “coop”) unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (*Id.* at § 12311(b).) Cooperative corporations are “democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons.” (*Id.* at § 12201.) The earnings and savings of the business must be used for the general welfare of its members or equitably distributed to members in the form of cash, property, credits, or services. (*Ibid.*) Cooperatives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year. (See *id.* at § 12200, et seq.) Agricultural cooperatives are likewise nonprofit corporate entities “since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.” (Food & Agric. Code, § 54033.) Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., *id.* at § 54002, et seq.) Cooperatives should not purchase marijuana from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.

2. **Collectives:** California law does not define collectives, but the dictionary defines them as “a business, farm, etc., jointly owned and operated by the members of a group.” (*Random House Unabridged Dictionary*; Random House, Inc. © 2006.) Applying this definition, a collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues. As such, a collective is not a statutory entity, but as a practical matter it might have to organize as some form of business to carry out its activities. The collective should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members.

**B. Guidelines for the Lawful Operation of a Cooperative or Collective:**

Collectives and cooperatives should be organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with all state and local laws. The following are some suggested guidelines and practices for operating collective growing operations to help ensure lawful operation.

1. **Non-Profit Operation:** Nothing in Proposition 215 or the MMP authorizes collectives, cooperatives, or individuals to profit from the sale or distribution of marijuana. (See, e.g., § 11362.765(a) ["nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit"].)

2. **Business Licenses, Sales Tax, and Seller's Permits:** The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller's Permit. Some cities and counties also require dispensing collectives and cooperatives to obtain business licenses.

3. **Membership Application and Verification:** When a patient or primary caregiver wishes to join a collective or cooperative, the group can help prevent the diversion of marijuana for non-medical use by having potential members complete a written membership application. The following application guidelines should be followed to help ensure that marijuana grown for medical use is not diverted to illicit markets:

a) Verify the individual's status as a qualified patient or primary caregiver. Unless he or she has a valid state medical marijuana identification card, this should involve personal contact with the recommending physician (or his or her agent), verification of the physician's identity, as well as his or her state licensing status. Verification of primary caregiver status should include contact with the qualified patient, as well as validation of the patient's recommendation. Copies should be made of the physician's recommendation or identification card, if any;

b) Have the individual agree not to distribute marijuana to non-members;

c) Have the individual agree not to use the marijuana for other than medical purposes;

d) Maintain membership records on-site or have them reasonably available;

e) Track when members' medical marijuana recommendation and/or identification cards expire; and

f) Enforce conditions of membership by excluding members whose identification card or physician recommendation are invalid or have expired, or who are caught diverting marijuana for non-medical use.

4. **Collectives Should Acquire, Possess, and Distribute Only Lawfully Cultivated Marijuana:** Collectives and cooperatives should acquire marijuana only from their constituent members, because only marijuana grown by a qualified patient or his or her primary caregiver may lawfully be transported by, or distributed to, other members of a collective or cooperative. (§§ 11362.765, 11362.775.) The collective or cooperative may then allocate it to other members of the group. Nothing allows marijuana to be purchased from outside the collective or cooperative for distribution to its members. Instead, the cycle should be a closed-circuit of marijuana cultivation and consumption with no purchases or sales to or from non-members. To help prevent diversion of medical marijuana to non-medical markets, collectives and cooperatives should document each member's contribution of labor, resources, or money to the enterprise. They also should track and record the source of their marijuana.

5. **Distribution and Sales to Non-Members are Prohibited:** State law allows primary caregivers to be reimbursed for certain services (including marijuana cultivation), but nothing allows individuals or groups to sell or distribute marijuana to non-members. Accordingly, a collective or cooperative may not distribute medical marijuana to any person who is not a member in good standing of the organization. A dispensing collective or cooperative may credit its members for marijuana they provide to the collective, which it may then allocate to other members. (§ 11362.765(c).) Members also may reimburse the collective or cooperative for marijuana that has been allocated to them. Any monetary reimbursement that members provide to the collective or cooperative should only be an amount necessary to cover overhead costs and operating expenses.

6. **Permissible Reimbursements and Allocations:** Marijuana grown at a collective or cooperative for medical purposes may be:

- a) Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;
- b) Provided in exchange for services rendered to the entity;
- c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or
- d) Any combination of the above.

7. **Possession and Cultivation Guidelines:** If a person is acting as primary caregiver to more than one patient under section 11362.7(d)(2), he or she may aggregate the possession and cultivation limits for each patient. For example, applying the MMP's basic possession guidelines, if a caregiver is responsible for three patients, he or she may possess up to 24 oz. of marijuana (8 oz. per patient) and may grow 18 mature or 36 immature plants. Similarly, collectives and cooperatives may cultivate and transport marijuana in aggregate amounts tied to its membership numbers. Any patient or primary caregiver exceeding individual possession guidelines should have supporting records readily available when:

- a) Operating a location for cultivation;
- b) Transporting the group's medical marijuana; and
- c) Operating a location for distribution to members of the collective or cooperative.



8. **Security:** Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime. Further, to maintain security, prevent fraud, and deter robberies, collectives and cooperatives should keep accurate records and follow accepted cash handling practices, including regular bank runs and cash drops, and maintain a general ledger of cash transactions.

C. **Enforcement Guidelines:** Depending upon the facts and circumstances, deviations from the guidelines outlined above, or other indicia that marijuana is not for medical use, may give rise to probable cause for arrest and seizure. The following are additional guidelines to help identify medical marijuana collectives and cooperatives that are operating outside of state law.

1. **Storefront Dispensaries:** Although medical marijuana "dispensaries" have been operating in California for years, dispensaries, as such, are not recognized under the law. As noted above, the only recognized group entities are cooperatives and collectives. (§ 11362.775.) It is the opinion of this Office that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines set forth in sections IV(A) and (B), above, are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver – and then offering marijuana in exchange for cash "donations" – are likely unlawful. (*Peron, supra*, 59 Cal.App.4th at p. 1400 [cannabis club owner was not the primary caregiver to thousands of patients where he did not consistently assume responsibility for their housing, health, or safety].)

2. **Indicia of Unlawful Operation:** When investigating collectives or cooperatives, law enforcement officers should be alert for signs of mass production or illegal sales, including (a) excessive amounts of marijuana, (b) excessive amounts of cash, (c) failure to follow local and state laws applicable to similar businesses, such as maintenance of any required licenses and payment of any required taxes, including sales taxes, (d) weapons, (e) illicit drugs, (f) purchases from, or sales or distribution to, non-members, or (g) distribution outside of California.

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November 17, 2009

By Fax

Planning Commission  
City of Santa Cruz  
809 Center Street  
Santa Cruz, California 95060

Re: Planning Commission Agenda Item  
(Ordinance Amendment A09-0003);  
11/19/09; Supplemental Comments

Dear Planning Commissioners:

This firm represents the Center for Balanced Land Use, Inc., a California not-for-profit corporation, which seeks to bring fairness and balance back to California land use decisions (CBLU).

CBLU and its members oppose proposed Ordinance Amendment A09-0003 for the following reasons.

**The City's Proposed Medical Marijuana Ordinance Is Unlawful and Void Because It Ignores Federal Law.**

Under the laws of the United States, the only effect of California's Compassionate Use Act (CUA) is that it provides a defense to California criminal charges. (See *Ross v. Ragingwire Telecommunications, Inc.* (2008) 42 Cal.4th 920, 928-929.) It does not make marijuana "legal" in any sense or for any purpose.

The CUA<sup>1</sup> does not authorize or legalize the use of marijuana because the drug remains illegal under federal law (21 U.S.C. §§ 812, 844(a)) – even for medical users.

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<sup>1</sup> There is another flaw in the state regulatory scheme. The Compassionate Use Act can be amended only with voters' approval. Voters did not approve the Medical Marijuana Program Act and thus its provisions are void as an amendment of the Compassionate Use Act, since it is unconstitutional. This in turn renders relevant portions of the City Ordinance invalid.

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The California voters did nothing more than provide a limited defense to state criminal liability for certain medical users and their primary caregivers.

The CUA does not, and cannot, exempt from federal law the prohibition against any group, association, entity or "collective" from setting up a store to dispense an illegal drug. Federal law does not recognize marijuana as having any medical use.

The City cannot pretend that the federal law prohibition does not exist. Any Planning Commission or City approval in the face of the federal prohibition would be unlawful, void, ultra vires and of no force and effect.

Likewise, the City's medical marijuana ordinance runs counter to federal law because it purports to establish, authorize and legitimize premises and facilities that allow the possession and distribution of a drug that is deemed illegal under federal law.

It is important to note that the recent October 19, 2009 Memorandum from the Office of the Attorney General, U.S. Department of Justice in no way changed federal law. Indeed, the memo states clearly that "Congress has determined that marijuana is a dangerous drug, and the illegal distribution and sale of marijuana is a serious crime and provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels." It also notes that "marijuana distribution in the United States remains the single largest source of revenue for the Mexican cartels." The memo makes clear that "no State can authorize violations of federal law." The memo simply states that federal prosecutors have discretion to not pursue individual caregivers dispensing marijuana to patients with cancer. It does not in any way legitimize dispensaries or collectives of the type that have arisen in Los Angeles. The memo is solely a guide to individual prosecutors. Individual prosecutors can indeed ignore it. Thus, the memo does not serve as any basis for the City to now attempt to legitimize the illegal use of marijuana under federal law.

**The City's Medical Marijuana Ordinance Is Unlawful and Void Because the Ordinance Is Preempted by Federal Law.**

The City cannot issue a use permit or any other approval for a use that is flatly illegal under federal law, because to do so creates a direct conflict with federal law and in such case federal law preempts state and local law.

Likewise, the City's medical marijuana ordinance runs counter to federal law because it purports to establish, authorize and legitimize premises and facilities that allow the possession and distribution of a drug that is deemed illegal under federal law. In the case of such a conflict, federal law trumps state and local law and renders it void and ultra vires.

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**The City's Proposed Medical Marijuana Ordinance Runs Counter to the Coastal Act Which Does Not Authorize Land Uses in Violation of Federal Law.**

The City proposed amendment to its LCP is unlawful in that it would purport to authorize a use that is illegal under federal law, contrary to the authority of the Coastal Act.

**Studies Demonstrate That Pot Dispensaries and Collectives Result in a Increase in Crime in the Immediate Surrounding Areas of the Facilities.**

Local jurisdictions in California have reported that in areas immediately surrounding where medical pot dispensaries/collectives have been allowed there is frequently an increase in (1) illegal drug activity and sales; (2) robberies and related crimes; (3) sales of pot obtained from a dispensary purportedly for medical purposes, but used for recreational use instead; and (4) negative impacts on surrounding businesses, including the loss of long-standing tenants due to the questionable activities and pot odor.

**The City's Approval Is Unlawful Because It Constitutes, or Results in, a Nuisance.**

As noted, local jurisdictions in California have reported that in areas where medical pot dispensaries/collectives have been allowed there is an increase in (1) illegal drug activity and sales; (2) increased robberies; (3) re-sales of pot obtained from a dispensary; and (4) negative impacts on surrounding businesses and citizens. Here, businesses and citizens surrounding the proposed facility will suffer significant adverse effects from the facility.

Governmental tort liability may be based on a nuisance theory. Other local jurisdiction's experience with medical pot facilities puts the City on notice of the types of danger and problems that are likely here, which may subject the City to a nuisance action.

**Any City Approval Is Unlawful Because It Constitutes, or Results in, a Nuisance Per Se.**

A place where a public statute is openly, publicly, repeatedly, consistently, and intentionally violated is a public nuisance. (Cal. Jur. 3d § 10, p. 270.) Further, every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance constitutes a nuisance. (Cal. Health and Safety Code § 11570.)

The possession, selling or distribution of illegal drugs is illegal. Federal law prohibits these activities with respect to pot which makes them a nuisance per se

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under the law. Under this legal concept, no other proof of nuisance is necessary. City efforts to authorize activity which is clearly unlawful under federal law may subject the City to a nuisance per se action and corresponding liability for damages.

**In Light of the Known Dangers That Such Facilities Bring to Neighboring Businesses, City Approval of a Pot Dispensary That Is In Violation of Federal Law Would Be Negligent and May Subject the City to Liability.**

If the City approves the pot dispensary in contravention of federal law, resulting in placing neighboring businesses in peril, and subjecting them and their tenants to an increased risk of harm, the City will be liable for damages under a theory of negligence. Establishment of these types of facilities has resulted in increased crime, drug use and drug sales around the facility, to the detriment of the public, the neighborhood and surrounding businesses. Thus, the risk of harm by approving the pot dispensary is clearly foreseeable.

Rather than approve a facility which is on its face in violation of federal drug laws, and which is known to result in increased crime, the City owes a duty of care to the surrounding neighboring businesses. The City should use its police powers to reject the pot facility and to insure the safety of businesses.

**The City's Proposed Medical Marijuana Ordinance Is Internally Inconsistent, Contradictory, Misleading, Confusing and Unduly Vague.**

The City's medical marijuana ordinance is internally inconsistent and vague. For instance, the proposed Ordinance allows enforcement of a nuisance. But the entire Ordinance purports to allow activity which is violation of federal law, i.e., a nuisance per se. Thus, the Ordinance purports to allow an activity but at the same time authorizes shutting the use down for no other reason than engaging in activity supposedly authorized. This is internally inconsistent and make it impossible for applicants and neighbors alike to understand what exactly the City is authorizing.

**The City Has Not Adequately Complied with CEQA Given That the Proposed Amendments Would Result in Significant Adverse Impacts to the Environment.**

Prior to adopting any amendment along the lines proposed, the City must first undertake a full environmental impact report, with full circulation to the public. The proposed amendment would result in a number of significant impacts to the environment that the City must consider prior to adopting the ordinance amendment.

By way of example, the proposed amendment would "require production houses to utilize solar panels." According to University of California-San Diego geochemistry professor Ray Weiss, solar panels are a source of nitrogen trifluoride, known as "NF." NF is a greenhouse gas that is 17,000 times more effective than

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carbon dioxide at trapping atmospheric heat. Atmospheric NF has been increasing by 11 percent a year, due to widespread production and use of solar cells. Increased use of solar panels may lead to significant global warming with drastic consequences for Santa Cruz as a coastal city.

The City is not entitled to rely on any exemptions from CEQA, either statutory or categorical. Here, the City has no effective Ordinance that purports to authorize these facilities. This is especially true regarding "production houses," which will have more significant and different impacts from collectives or dispensaries.

These facilities have adverse environmental impacts on the surrounding areas, including increased crime, drug use, conflicts with other land uses, noise, odors, parking conflicts, and increased traffic from patrons and delivery of pot.

Further, there are exceptions to categorical exemptions such as being near sensitive uses, or unusual circumstances where there is a reasonable possibility that the activity will have a significant effect. Even with a buffer, these facilities will be too close to sensitive uses including neighborhoods, schools and half way houses or jails. Being even within a mile of a school increases the possibility of adverse effects on its students. The Ordinance allows exemptions from the buffer, and yet those impacts are being considered prior to adoption as required by CEQA. The exceptions to categorical exclusions ensure that the CEs are not used when an activity might have a significant effect on the environment.

For these reasons, the City will violate CEQA if it adopts this Ordinance without a CEQA study.

**To the Extent That the Ordinance Relies on the State Attorney General Guidelines, It Is Invalid.**

The State Attorney General Guidelines have not been updated to take into consideration more recent court rulings. As a result, they are out of date and thus to the extent that the City relies on them, the Ordinance is invalid.

**To the Extent That the Ordinance Purports to Authorize "Sales," It is Inconsistent with State Law and Thus Invalid.**

If the Ordinance in its final form authorizes sales, it will be inconsistent with state law as currently interpreted by state courts.

**The Ordinance Exceeds the Authority of the City Under State Law.**

By the Committee members' own admission, this Ordinance "pushes the boundaries" of what is permissible under state law, in terms of the types of arrangement, transportation authorized, the nature of the transactions and the

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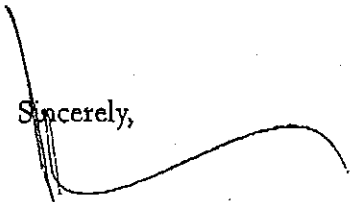
organizational structure of the "collectives." Indeed, it exceeds what is allowed by state law.

**The City Has No Authority to Authorize Baked Goods or Food  
Containing a Substance Banned by Federal Law.**

The City has no authority to authorize baked goods or food containing a substance banned by Federal law.

For all of these reasons, CBLU encourages the Planning Commission to vote against the proposed amendment.

Sincerely,



Tom Roth



November 24, 2009

John Barisone  
Santa Cruz City Attorney  
Atchison, Barisone, Condotti & Kovacevich  
333 Church Street  
Santa Cruz, CA 95060

Mr. Barisone,

We appreciate the opportunity to submit this letter to the City Council in response to Thomas Roth's November 4, 2009 letter regarding proposed ordinance A09-003. We take no position on the wisdom or merits of the proposed ordinance. However, as we explain in detail below, the Roth letter contains a number of incorrect assertions, and we hope to provide the Council with a more accurate assessment of the issues Mr. Roth raises. Whatever decision the Council makes, it should be with a full and accurate understanding of the legal landscape.

Though the Roth letter contains numerous headings, its concerns can be succinctly addressed in three categories—(1) issues regarding the validity of medical marijuana laws in general; (2) issues regarding negligence, nuisance and the effect of marijuana dispensaries on the surrounding areas; and (3) environmental concerns. We address each in turn.

### **(1) The legality of California's medical marijuana laws**

The Roth letter suggests—erroneously—that the City's proposed ordinance would be preempted by federal law. Specifically, the Roth letter suggests that “the City's medical marijuana ordinance runs counter to federal law because it purports to establish, authorize and legitimize . . . the possession and distribution of a drug that is deemed illegal under federal law,” and that authorizing a dispensary would be in “direct conflict with federal law.” Roth Letter at 2. The California courts have rejected both these arguments, in decisions whose applications of established principles of federalism were so routine that the California Supreme Court and United States Supreme Court declined to review them. *See County of San Diego v. San Diego NORML*, 165 Cal. App. 4th 798, 825-28 (Cal. Ct. App. 2008), *review denied*, Oct. 16, 2008, *cert. denied*, 129 S. Ct. 2380 (2009); *City of Garden Grove v. Superior Court*, 157 Cal. App. 4th 355, 383-86 (Cal. Ct. App. 2007), *review denied*, Mar. 19, 2008, *cert. denied*, 129 S. Ct. 623 (2008). The Roth letter provides no hint of authority to the contrary.

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Nor should the City fear federal enforcement, as long as local dispensaries are complying with state law: a recent Justice Department memorandum makes clear that federal authorities will not be directing their resources to enforcing federal marijuana laws against individuals in compliance with state law. *See* Memo. from David W. Ogden, Deputy Attorney General, re: Investigations and Prosecutions in States Authorizing the Use of Medical Marijuana, Oct. 19, 2009. And as a federal court recently recognized in the WAMM case, the Tenth Amendment provides the City with additional protection against federal enforcement polices that seek to undermine state policies. *County of Santa Cruz v. Gonzales*, No. C 03-01802, slip. op. at 3-5 (N.D. Cal. Aug. 20, 2009).

The Roth letter also suggests that California's Medical Marijuana Program Act ("MMP"), which the City is seeking to implement, is itself an unconstitutional amendment of the voter-enacted Compassionate Use Act ("CUA"). This contention has been squarely rejected by the courts. *See San Diego NORML*, 165 Cal. App. 4th at 830. While a California Court of Appeal struck down last year, as an unconstitutional amendment, a specific MMP provision setting limits on the amount of marijuana an individual may possess, the state Supreme Court subsequently vacated that decision by granting review, and a final decision is still pending. *See People v. Kelly*, 163 Cal. App. 4th 124 (Cal. Ct. App.), *review granted*, 82 Cal. Rptr. 3d 167 (Cal. 2008). In any event, the arguments in Mr. Roth's letter do not implicate the limited question currently under review by the Supreme Court in the *Kelly* case.

For these reasons, the City need not be concerned about Mr. Roth's unfounded assertions that the proposed ordinance is unlawful because of some deficiency in California law.

## **(2) Negligence and nuisance**

Mr. Roth makes four separate contentions to the effect that the proposed ordinance would constitute or result in negligence or nuisance. In particular, he claims:

1. Studies demonstrate that pot dispensaries and collectives result in a [sic] increase in crime in the immediate surrounding areas of the facilities.
2. The city's approval is unlawful because it constitutes, or results in a nuisance.
3. Any city approval is unlawful because it constitutes, or results in a nuisance per se.
4. In light of the known dangers that such facilities bring to neighboring businesses, city approval of a pot dispensary that is in violation of federal law would be negligent and may subject the city to liability.

Roth Letter at 2-3. Mr. Roth's four claims are really just two—first, that the proposed ordinance will increase crime and, second, that it will subject the city to tort liability.

The first contention is easily dispensed with. The proposed ordinance limits the number of associations in the city to two and eliminates marijuana “production houses” from a permitted zoning use. Thus the proposed ordinance places more controls, not fewer, on medical marijuana provider association dispensaries (“associations”) in Santa Cruz. Even if Mr. Roth's claim that medical marijuana associations increase crime was correct, there could not be an increase in crime related to the ordinance because the ordinance prohibits new medical marijuana associations or production houses.

In this regard it is also worth noting that similar claims made by San Diego County District Attorney Bonnie Dumanis have been solidly refuted by the investigative reporting of a local newspaper. Responding to Dumanis' assertion that “Residents living near some of the storefronts have complained to law enforcement and local government about an increase in crimes associated with the dispensaries—including robberies and vandalism,” the San Diego City Beat reported the following:

Using the San Diego Regional Justice Information Systems—an online service that records and maps all criminal complaints—CityBeat searched for vandalism (often classified as “malicious mischief”) and robberies within a quarter-mile of each dispensary and found no significant change in crime. For example, Total Herbal Care's 'hood (4600 block of Cass Street), saw a drop from 11 vandalism cases and three robberies to three cases of vandalism and two robberies between July and September. The 3500 block of Ashford Street, home of Nature's Rx, saw three cases of vandalism and no robberies in the beginning of the year but zero cases of either crime between April and September.

The complete story is available online at:

[http://ww2.sdcitybeat.com/cms/story/detail/checking\\_bonnie\\_s\\_facts/8628/](http://ww2.sdcitybeat.com/cms/story/detail/checking_bonnie_s_facts/8628/)

We also understand that this specific issue has been considered previously by the Santa Cruz City Council, and you have determined that there is no evidence of increased crime in the vicinities of the two dispensaries currently operating in the City.

Mr. Roth also claims that licensing medical marijuana collectives will subject the city to nuisance or negligence tort liability. Roth Letter at 3. But under the Government Claims Act, cities are only liable for torts if a state statute expressly declares them liable, *Guzman v. County of Monterey*,

46 Cal. 4th 887, 897 (Cal. 2009), and no statute provides that local governments are liable for the licensing of marijuana dispensaries. Quite the contrary: the Government Claims Act provides broad immunity to public entities and officials who perform discretionary public policy duties, such as enacting ordinances and issuing licenses. Cal. Gov't Code §§ 818.2–821.2. Specifically, “[a] public employee is not liable for an injury caused by his adoption of or failure to adopt an enactment or by his failure to enforce an enactment”; the same is true of public entities. Cal. Gov't Code §§ 818.2, 821; *see also Land Waste Mgmt. v. Contra Costa County Bd. of Supervisors*, 222 Cal. App. 3d 950, 963 (Cal. Ct. App. 1990)). Without a clear statute to the contrary, the city council cannot be held liable for either enacting or failing to enact any ordinance, or issuing or failing to issue a business license.

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Mr. Roth’s suggestion that liability could be founded on Cal. Health and Safety Code § 11570 (defining a building used for “unlawfully selling” controlled substances as a nuisance) is flawed in several respects. First, the City does not propose to license any activity that is “unlawful” under state law. In fact, the MMP specifically “exempted those qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes from . . . the laws declaring the use of property for these purposes a nuisance.” *People v. Urziceanu*, 132 Cal. App. 4th 747, 785 (Cal. Ct. App. 2005). In August of 2008, the California Attorney General interpreted the language of the MMP and determined that medical marijuana collectives and cooperatives organized as storefronts “may be lawful.” Cal. Dept. of Justice, Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use 11 (Aug. 2008). Second, a municipality cannot be liable unless the statute setting forth its liability is extremely specific: according to the California Supreme Court, such a statute must “must impose a duty on the specific public entity sought to be held liable” and “provide[] implementing guidelines.” *Guzman*, 46 Cal. 4th at 894, 898. The statute Mr. Roth cites imposes no specific duty on any particular person or entity and contains no guidelines of the type suggesting a mandatory duty on a public entity.<sup>1</sup> The MMP, which is the only California legislation related to medical marijuana, does not impose government tort liability, but rather allows nonprofit medical marijuana businesses and authorizes local regulations. *See* Cal. Health and Safety Code 11362.7–11362.83.

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<sup>1</sup> The statute provides in full: “Every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance, precursor, or analog specified in this division, and every building or place wherein or upon which those acts take place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.” Cal. Health and Safety Code § 11570.

In sum, the proposed ordinance would neither increase crime nor subject the city to tort liability because it bans new medical marijuana businesses. Nor would the ordinance subject the City to tort liability, because of the immunities provided in the Government Claims Act, and because no statute imposes a specific, mandatory duty on the City not to authorize marijuana collectives.

### (3) Environmental concerns

Finally, the Roth letter is simply incorrect in suggesting that the City's proposed ordinance will require extensive environmental impact studies or is unlawful under California's environmental laws. As to "the Coastal Act," the Roth letter does not specify whether it is referring to state law, *see* Cal. Pub. Res. Code 30000 et seq. (California Coastal Act), or federal law, *see* 16 U.S.C. § 1451 et seq. (federal Coastal Zone Management Act), but neither one contains any provision supporting the Roth letter's assertion that it is illegal to "authorize a use that is illegal under federal law." Roth Letter at 2. As with its preemption claims, the letter's lack of citation to supporting authority is notable.

The letter's contention that the City must undertake an environmental impact statement under the California Environmental Quality Act ("CEQA") is equally mistaken. Not every proposed land use requires a full-fledged "environmental impact report" ("EIR"), as the letter suggests. If the City finds there is no environmental impact, a report is unnecessary. *See* CEQA App. G ("Environmental Checklist Form"), *available at* [http://ceres.ca.gov/ceqa/guidelines/Appendix\\_G.html](http://ceres.ca.gov/ceqa/guidelines/Appendix_G.html); *see also* Cal. Code Regs. tit. 14, § 15061(b)(3) ("Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."). The Roth letter discusses potential environmental concerns with solar panels and uses the words "By way of example" to insinuate that this aspect of the proposed ordinance is one of several potential environmental issues that could require an EIR. In fact, the solar panel provision is the only one with even a potential for an environmental impact, and the City is perfectly competent to assess the effect of the use of solar panels and determine that it should not be expected to have an impact.<sup>2</sup>

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<sup>2</sup> Although undersigned counsel are not scientific experts, it is worth noting that the greenhouse gas of which the Roth letter warns, nitrogen trifluoride, is created when certain solar cells are manufactured, not when they are used, and that NASA reported in 2008 that this gas "contribute[d] only about 0.04 percent of the total global warming effect caused by current human-produced carbon dioxide emissions." *See* Nat'l Aeronautics & Space Admin., Potent Greenhouse Gas More Common in Atmosphere Than Estimated (Oct. 23, 2008), *available at* [http://www.nasa.gov/home/hqnews/2008/oct/HQ\\_08-268\\_Greenhouse\\_gas.html](http://www.nasa.gov/home/hqnews/2008/oct/HQ_08-268_Greenhouse_gas.html).

## Conclusion

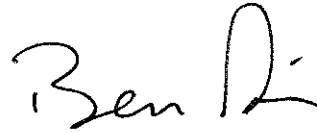
Whatever your views on the underlying merits of the proposed ordinance, we would urge that the Commission not be swayed in your decision-making by Mr. Roth's concerns, which as we have demonstrated are unfounded. Thank you for your consideration and for the opportunity to address these weighty issues. We would welcome the opportunity to address the Council further if you have any questions about this letter.

Sincerely,

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION



Allen Hopper  
Litigation Director  
ACLU Drug Law Reform Project



Benjamin Rice  
Attorney at Law



City Council Meeting Calendar March 1, 2010

Date	Time	Location	Topic
March 23, 2010	1:30 p.m.	Courtyard Conf. Room	Regular Council/Agency Closed Session
	3:00 p.m. and 7:00 p.m.	Council Chambers	Regular Council/Redevelopment Agency Open Sessions
April 13, 2010	1:30 p.m.	Courtyard Conf. Room	Regular Council/Agency Closed Session
	3:00 p.m. and 7:00 p.m.	Council Chambers	Regular Council/Redevelopment Agency Open Sessions
April 20, 2010	4:00 p.m.	Council Chambers	Special City Council Meeting – Capital Improvement Program Budget Review
April 27, 2010	1:30 p.m.	Courtyard Conf. Room	Regular Council/Agency Closed Session
	3:00 p.m. and 7:00 p.m.	Council Chambers	Regular Council/Redevelopment Agency Open Sessions
May 11, 2010	1:30 p.m.	Courtyard Conf. Room	Regular Council/Agency Closed Session
	3:00 p.m. and 7:00 p.m.	Council Chambers	Regular Council/Redevelopment Agency Open Sessions
May 25, 2010	1:30 p.m.	Courtyard Conf. Room	Regular Council/Agency Closed Session
	3:00 p.m. and 7:00 p.m.	Council Chambers	Regular Council/Redevelopment Agency Open Sessions
June 7, 2010 and June 9, 2010 (if necessary)	8:30 a.m. – 5:00 p.m.  1:00 p.m. – 5:00 p.m.	Council Chambers	Special Meeting – Budget Hearings
June 8, 2010	1:30 p.m.	Courtyard Conf. Room	Regular Council/Agency Closed Session
	3:00 p.m. and 7:00 p.m.	Council Chambers	Regular Council/Redevelopment Agency Open Sessions
June 22, 2010	1:30 p.m.	Courtyard Conf. Room	Regular Council/Agency Closed Session
	3:00 p.m. and 7:00 p.m.	Council Chambers	Regular Council/Redevelopment Agency Open Sessions
July 13, 2010	1:30 p.m.	Courtyard Conf. Room	Regular Council/Agency Closed Session
	3:00 p.m. and 7:00 p.m.	Council Chambers	Regular Council/Redevelopment Agency Open Sessions
July 27, 2010	1:30 p.m.	Courtyard Conf. Room	Regular Council/Agency Closed Session
	3:00 p.m. and 7:00 p.m.	Council Chambers	Regular Council/Redevelopment Agency Open Sessions

**Council Membership in City Groups and Outside Agencies**

Councilmembers will have the opportunity to present oral updates to Council and the public. Councilmembers may provide direction, request additional information or that a topic raised be agendized for future Council action. The Presiding Officer may request oral updates from Council ad hoc Committees.

The Presiding Officer will ask representatives of each entity if there is any oral update.

<b>Name of Agency/Organization</b>	<b>Currently Serving</b>
Association of Monterey Bay Area Governments (AMBAG)	L. Robinson, T. Madrigal (alternate)
City of Santa Cruz/Soquel Creek Water District (SqCWD) Desalination Project	D. Lane, M. Rotkin, R. Coonerty (Alt.)
City Schools Committee (Ad Hoc)	C. Mathews, T. Madrigal, R. Coonerty
Community Action Board	T. Madrigal, David Sweet (alternate)
Conference and Visitors' Council	C. Mathews, L. Robinson
Cultural Council Board City Representative	K. Beiers
Downtown Management Corporation	C. Mathews, L. Robinson
Economic Development Council (Mayor/Vice Mayor)	R. Coonerty, D. Lane, C. Mathews
Library Joint Powers Authority Board	K. Beiers, M. Rotkin, C. Mathews (alt.)
Library Financing Authority	M. Rotkin
Local Agency Formation Commission (LAFCO)	D. Lane
Monterey Bay Unified Air Pollution Control District	2010 City of Watsonville
Public Safety Committee	D. Lane, M. Rotkin, L. Robinson
Sanctuary Inter-Agency Task Force	K. Beiers, C. Mathews
Santa Cruz County Children's Network	D. Shoemaker, C. Scurich (alt.)
Santa Cruz Community Farmers Market, Inc.	L. Robinson
SC County Integrated Waste Management Local Task Force	M. Rotkin, Alan Schlenger (alternate) Bob Nelson, Mary Arman (alternate)
Santa Cruz Metropolitan Transit District Board	M. Rotkin, L. Robinson
SC County Regional Transportation Commission (SCCRTC)	D. Lane, L. Robinson (alternate)
Social Services Program Committee	R. Coonerty, C. Mathews, L. Robinson

Public comment on the reports given will be heard at a time to be determined by the Presiding Officer.