



LINDSAY CITY COUNCIL REGULAR MEETING AGENDA

City Hall, 251 E. Honolulu St., Lindsay, CA 93247

Notice is hereby given that the Lindsay City Council will hold a Regular Meeting on **August 08, 2023**, at **6:00 PM** in person and via webinar. The webinar address for members of the public is <https://zoom.us/j/99279557087>. Those who would like to make a public comment during the public comment portion of the agenda may do so by utilizing the raise hand feature or indicating they would like to make a comment in the chat.

Persons with disabilities who may need assistance should contact the City Clerk prior to the meeting at (559) 562-7102 ext. 8034 or via email at lindsay.cityclerk@lindsay.ca.us.

1. CALL TO ORDER

2. PLEDGE

Led by Council Member Sanchez.

3. ROLL CALL

4. APPROVAL OF AGENDA

5. PUBLIC COMMENT

The public is invited to comment on any subject under the jurisdiction of the Lindsay City Council. Please note that speakers that wish to comment on a Regular Item or Public Hearing on tonight's agenda will have an opportunity to speak when public comment for that item is requested by the Mayor. Comments shall be limited to three (3) minutes per person, with thirty (30) minutes for the total comment period, unless otherwise indicated by the Mayor. The public may also choose to submit a comment before the meeting via email. Public comments received via email will be distributed to the Council prior to the start of the meeting and incorporated into the official minutes; however, they will not be read aloud. Under state law, matters presented under public comment cannot be acted upon by the Council at this time.

6. COUNCIL REPORT

7. CITY MANAGER REPORT

8. PRESENTATION ITEMS

- 8.1 Update Regarding 2023-2024 California State Budget and Review of California State Senator Melissa Hurtado's Pending Legislation (pp. 5 – 8)

Presented by Eric Coyne, Representative for Senator Melissa Hurtado

- 8.2 Introduction of New Director of Finance Salvador Guzman

Presented by Joseph M. Tanner, City Manager

9. DISCUSSION ITEMS

9.1 Review of Lindsay City Charter (pp. 9 – 36)

Item Requested by Mayor Cerros

Presented by Francesca Quintana, City Clerk & Assistant to the City Manager

10. STUDY SESSION(S)

10.1 Downtown Lindsay Commercial Community Facilities District

Presented by Joseph M. Tanner, City Manager

10.2 Fiscal Year 2023-2024 Operating Budget Workshop

Presented by Joseph M. Tanner, City Manager

11. CONSENT CALENDAR

Routine items approved in one motion unless an item is pulled for discussion.

11.1 Minutes from July 25, 2023, Regular Meeting (pp. 37 – 41)

11.2 Warrant List for July 17, 2023, through July 30, 2023 (pp. 42 – 45)

11.3 Treasurer's Report for July 2023 (p. 46)

11.4 Consider the Minute Order Approval of Letters of Support for Senate Bill 231, Senate Bill 265, and Senate Bill 577 (pp. 47 – 57)

11.5 Consider Approval of **Resolution 23-31**, A Resolution of the City Council of the City of Lindsay Superseding Resolution No. 22-45, Clarifying Language within the Resolution Relative to the Authorization of Overtime and Portal to Portal Pay for Employees Providing Mutual Aid Responses Under the Approved California Fire Assistance Agreement (pp. 58 – 65)

11.6 Consider the Approval of **Resolution No. 23-32**, A Resolution of the City Council of the City of Lindsay, California Declaring the Properties at 100 East Honolulu Street (APN 205-236-014), 122 East Honolulu Street (APN 205-236-013), and 190 South Elmwood Avenue (APN 205-236-020), all in Lindsay California 93247 to be Surplus Property (pp. 66 – 72)

11.7 Consider the Minute Order Approval of Amended Job Title, Job Description, and Job Classification for the City Services Deputy Director Job Position (pp. 73 – 78)

11.8 Consider Approval of **Resolution No. 23-33**, A Resolution of the City Council of the City of Lindsay Affirming the City Manager's Authority to Enter Into and Execute a Memorandum of Understanding (MOU) By and Between the City of Lindsay and the Lindsay City Employees' Association (pp. 79 – 85)

11.9 Consider Minute Order Approval of Amendments and Revisions to the City Lindsay Personnel Rules and Regulations (pp. 86 – 208)

11.10 Consider the Approval of **Resolution No. 23-35**, A Resolution of the City Council of the City of Lindsay Authorizing the Delegation of Authority to Make Decision on Applications for Disability Retirement (pp. 209 – 212)

12. ACTION ITEMS

12.1 Consider the Designation of Voting Delegate and Alternate(s) for the League of California Cities Annual Conference and Expo (pp. 213 – 219)

Presented by Francesca Quintana, City Clerk & Assistant to the City Manager

12.2 Consider the Selection of Dates and Times for City Council Brown Act, Harassment, and Ethics in Public Service Training (pp. 220 – 324)

Presented by Francesca Quintana, City Clerk & Assistant to the City Manager

13. PUBLIC HEARING ITEMS

13.1 Public Hearing to Consider the Approval of **Resolution No. 23-34** A Resolution of the City Council of the City of Lindsay Approving General Plan Amendment No. 23-01, Planned Unit Development No. 2023-02, and Adopting an Initial Study/Mitigated Negative Declaration (IS/MND) for General Plan Amendment No. 2023-01, Zone Change No. 2023-01, and Planned Unit Development (PUD) No. 2023-02, A Request by Francisco Acevedo to Change the Land Use Designation from Low-Density Residential to Medium-Density Residential for A 2.5-Acre Portion of A Site Bound to the North by West Hickory Street, to the East By Parkside Avenue, to the South by Ono City Parkway, and the West by Sequoia Avenue/Road 214 (APNs 201-230-003 to -009) (pp. 325 – 452)

Presented by Curtis Cannon, Planning Manager

13.2 First Reading of **Ordinance No. 612**, An Ordinance of the City Council of the City of Lindsay Amending the Zoning Designation From R-1-7 To RM-3 for a 2.5-Acre Portion of a Site Bound to the North By West Hickory Street, to the East by Parkside Avenue, to the South by Ono City Parkway, and the West by Sequoia Avenue/Road 214 (APNs 201-230-003 To -009), and the Lindsay Zoning Map as Adopted by Ordinance 437 of the City of Lindsay and Authorization to Waive Full Reading of Said Ordinance and Authorize Reading by Title Only (pp. 453 – 459)

Presented by Curtis Cannon, Planning Manager

13.3 Special Event Permit (pp. 460 – 488)

- A. Continued First Reading of **Ordinance No. 606**, An Ordinance of the City Council of the City of Lindsay Amending Titles Five (5), Eight (8), and Eighteen (18) In Regards to the Special Event Permit and Authorization to Waive Full Reading of Said Ordinance and Authorize Reading by Title Only (pp. 460 – 484)

- B. Continued Public Hearing to Consider the Approval of **Resolution No 23-29**, A Resolution of the City Council of the City of Lindsay Amending Special Event Permit Fees and Charges and Repealing All Other Resolutions Relative to Special Event Permit Fees and Charges Thereto (pp. 485 – 488)

Presented by Araceli Mejia, Assistant City Planner

14. REQUEST FOR FUTURE ITEMS

Council requests for future agenda items, can be called for by any Councilmember during the ‘Request for Future Items’ section of a regular meeting. Immediately following the request of an item, a vote will be taken on the item. If a majority of the City Council supports further study of the item, then a full staff analysis will be prepared within a reasonable time as determined by the City Manager unless otherwise directed by a majority of the City Council. Discussion shall be limited to whether an item should be added to an agenda, not the merit of the item.

15. ADJOURNMENT

Lindsay City Council meetings are held in the City Council Chambers at 251 E. Honolulu Street in Lindsay, California beginning at 6:00 P.M. on the second and fourth Tuesday of every month unless otherwise noticed. Materials related to an Agenda item submitted to the legislative body after distribution of the Agenda Packet are available for public inspection in the office of the City Clerk during normal business hours. Complete agenda is available at www.lindsay.ca.us. In compliance with the Americans with Disabilities Act & Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the office of the City Clerk at (559) 562-7102 x 8034. Notification 48 hours prior to the meeting will enable the City to ensure accessibility to this meeting and/or provision of an alternative format of the agenda and documents in the agenda packet.

The next Regular Meeting of the Lindsay City Council is scheduled to be held on September 12, 2023.

Senate Bill 231

Amended, June 16, 2023

SUMMARY

Senate Bill 231 requires the Department of Water Resources (DWR) to adopt key recommendations made by the independent California State Auditor. These recommendations stem from a recently released audit which examined DWR's management of the state's water supply. Specifically, SB 231 would require DWR to

- Establish a formal process to annually evaluate the accuracy of its water supply forecasts and establish plans to improve those forecasts.
- Adopt a new water supply forecasting model and implement procedures that address the effects of climate change.
- Implement a formal policy and procedures for documenting DWR's operational plans for the state's water supply. The Department of Water Resources is also required to address the rationale for its operating procedures.
- Develop a comprehensive, long-term plan for mitigating and responding to the effects of drought

PROBLEM

Due to the impacts of climate change, accuracy in modeling is imperative to managing water resources properly. During Water Year 2021, DWR's modeling errors resulted in the excessive release of around 700,000 acre-feet of water from California reservoirs. Billions of gallons of water were released into the Sacramento-San

Joaquin Delta without benefiting humans or wildlife. This loss of water had severe consequences for California due to the significantly lower runoff than anticipated

BACKGROUND

In March 2022, former Assemblymember Gray submitted a letter requesting an audit of the Department of Water Resources investigating the management and administration of surface water. This audit included investigations into the accuracy of data collection, predictive models, and procedures used by the state. The findings of the audit can help ensure forecast modeling mistakes are avoided in future water years. In addition, improved transparency by the DWR may offer clarity and a better understanding of the policies it implements.

SOLUTION

SB 231 requires DWR to update its policies and procedures to better combat the impacts of climate change. The bill also requires DWR to document and address the decisions behind its water operating decisions. Accurate water data collection, planning, and accountability will ensure water stays a vital resource for the public for generations to come.

FOR MORE INFORMATION

Harrison Pardini, Legislative Aide
Harrison.Pardini@sen.ca.gov
(916) 651-4016

Senate Bill 265
The Critical Infrastructure Cybersecurity Preparedness Act
As Amended June 19, 2023

SUMMARY

SB 265 takes action to combat the growing issue of cyber threats and cyberattacks by directing the California Office of Emergency Services (Cal-OES) and the California Cybersecurity Integration Center (Cal-CSIC) to develop outreach and funding plans to improve cybersecurity preparedness in California's critical infrastructure sectors.

PROBLEM

Recent reports regarding various cybersecurity attacks in the education, health care, energy, and financial sectors have demonstrated that California's critical infrastructure sectors are vulnerable to attack and suffer from a stark lack of cybersecurity preparedness.

Research has shown an increase in the number of cyberattacks targeting critical infrastructure sectors. These cyberattacks are predominantly made up of phishing attempts and ransomware.

In December 2022, the California Department of Finance, itself, was hit by a cybersecurity threat that took several days to control. And, in September 2022, the Los Angeles Unified School District experienced a cybersecurity attack where attackers threatened to release highly confidential information.

This lack of preparedness threatens California's economy and the livelihood of those who rely on these sectors. Unless at-risk companies and systems begin to prioritize their cybersecurity, any cyber threats they face will have the potential to harm not only California's economy, but also the well-being of individual Californians.

BACKGROUND

In 2018, Governor Brown signed legislation which defined and established the California Cybersecurity Integration Center (Cal-CSIC). Cal-CSIC operates under the Office of Emergency Services (Cal-OES), and is responsible for planning California's cybersecurity strategy and coordinating with both federal and state government entities to execute that strategy. Cal-CSIC continues to build California's cybersecurity strategy, and work with individual state departments to ensure individual infrastructure sectors have cybersecurity policies and protocols.

In 2022, Governor Newsom signed similar legislation which requires Cal-OES to direct the California Cybersecurity Integration Center (Cal-CSIC) to prepare a multi-year outreach plan to assist the agriculture and water industries specifically in efforts to improve cybersecurity, and options for providing grants and other support to improve cybersecurity preparedness.

SOLUTION

SB 265 expands on previous work by requiring Cal-OES and Cal-CSIC to develop cybersecurity preparedness plans for California's critical infrastructure sectors. The plans must include a strategic, multiyear outreach strategy focusing on methods for coordinating with other state and federal agencies, nonprofit organizations, and associations that provide cybersecurity services or resources in the critical infrastructure sector, as well as plans outlining the funding options necessary to achieve this outreach.

State Fire Training Accessibility Act

Introduced, February 15, 2023

SUMMARY

SB 577 allows the State Fire Marshal to accept additional funding sources for the California Fire Service Training and Education Program. The bill would make the same change relative to the California Fire and Arson Training Act. Permitting the State Fire Marshall to receive additional funding sources for training programs will help to mitigate rising fees for those seeking fire training certification.

PROBLEM

California State Fire Training (SFT) provides curriculum and certification to current fire department, firefighters, and individuals seeking a career in the fire service. These courses meet or exceed National Fire Protection Association and National Wildfire Coordination Group standards. This training is provided to over 23,000 paid and volunteer firefighters every year.

When SFT was established, it only allowed for user fees to recover the cost of staff, course development and certification. Over the years the fire service has become more professional and certifications are now required for every position in the fire service. To generate enough revenue, fees needed to be raised by over 200% and in some cases 400%. This has resulted in courses and certification becoming unaffordable to volunteer firefighters and individuals seeking entry level positions.

BACKGROUND

The California Fire Service Training and Education) Division under the CAL FIRE – Office of the State Fire Marshal provides an essential need for a diverse California fire service. It is responsible for rules and regulations, course development, oversight of course delivery, certification, instructor registration, evaluator registration, and certification testing. This division is vital to the fire service because it provides the course curriculum for over 160 different courses and 26 certification levels, including some nationally accredited certifications.

In the era of climate change, the fire service is regularly responding to mass conflagration wildfires and the need for well-trained fire personnel has never been greater. Central to achieving this goal is making SFT courses both accessible and affordable to all fire personnel, especially the next generation of firefighters. Historically, SFT has been able to provide these services at a minimal cost to its users. However, doing so in an increasingly complex and expanding arena of fire protection has resulted in funding shortfalls, requiring a significant increase in their fees.

Solution

SB 577 allows the State Fire Marshal to accept additional funding sources for the California Fire Service Training and Education Program. The bill would make the same change relative to the California Fire and Arson Training Act. Given the enormous risk of fire and other disasters that face California, we must make SFT an affordable solution for our paid and volunteer firefighters,

as well as students wishing to enter the fire service. Permitting the State Fire Marshall to receive additional funding sources for training programs will help to mitigate rising fees for those seeking fire training certification. The financial obstacles the fee increases have created for students and fire departments demands a legislative solution.

2023–24 Budget Wins

\$5M for the City of McFarland for a new police station

\$1M for the City of Hanford for Hanford Fire Department to purchase fire engines

\$1M for the City of Avenal for public safety equipment & roof repairs of the police department & Veterans Hall

\$1M for the City of Tulare for Tulare Fire Department fire engine replacement

\$5M to the City of Wasco Police Department, for the City of Wasco Police Station

\$350,000 for the City of Kingsburg for a new fire ladder truck

\$350,000 for the City of Orange Cove for a planning study for a new fire station

\$1M for the County of Tulare for road paving in unincorporated communities

\$1M to Kings Community Action Organization Food Bank and Housing

\$10.5M for the Fentanyl Addiction & Overdose Prevention Task Force in Kern County

\$500,000 to the County of Kern – Kern Behavioral Health & Recovery Services, for the Kern County Fentanyl Awareness Campaign

\$500,000 to the County of Tulare, for the Tulare County Homeless Housing





STAFF REPORT

TO: Lindsay City Council
FROM: Francesca Quintana, City Clerk & Assistant to the City Manager
DEPARTMENT: City Manager
ITEM NO.: 9.1
MEETING DATE: August 08, 2023

ACTION & RECOMMENDATION

Review of Lindsay City Charter.

This is an informational item only at this time with the purpose of facilitating a discussion among the City Council as it relates to the Lindsay City Charter.

BACKGROUND | ANALYSIS

At the June 27, 2023, Regular Meeting of the Lindsay City Council, the City Council unanimously approved to place a discussion item regarding the Lindsay City Charter on a future City Council agenda. Attached to this report is the Lindsay City Charter which defines the organization, powers, functions, and essential procedures, et al. of Lindsay's City government.

The following sections relative to Charter Amendment read as follows:

Section 12.01 Charter Amendment

Amendments to this Charter shall be approved by a majority of the voters of the City at an election on a date as determined by the City Council.

Section 12.02 How Amended

- A. **Amendments.** Amendments to this Charter may be framed and proposed in any manner provided by law or by any of:
- B. **Council Ordinance.** An ordinance of the City Council containing the full text of the proposed amendment;
- C. **Initiative.** An initiative by the voters of the City; or
- D. **Charter Commission.** A report with specific full text as prepared by a duly elected Charter Commission as created pursuant to State law.

Section 12.03 Amendment Election

If a majority of the voters of the City voting on a proposed Charter amendment vote in favor of such amendment, the amendment shall become effective at the time fixed in the amendment. but if no time is therein fixed. at the time the approved amendment is tiled with the California Secretary of State by the City Clerk and chaptered by the Secretary of State. The City Clerk shall

file the results of a Charter amendment election with the Secretary of State within 30 days following the election.

FISCAL IMPACT

No fiscal impact associated with this item as it is informational only and does not require action at this time.

ATTACHMENTS

- Lindsay City Charter

**CHARTER OF THE
CITY OF LINDSAY**

January 8, 1996

Sections:

**ARTICLE I
NAME, BOUNDARIES AND
FORM OF GOVERNMENT**

- 1.01 Name.**
- 1.02 Boundaries.**
- 1.03 Form of Government.**

**ARTICLE II
POWERS, DUTIES AND
OBLIGATIONS OF THE CITY**

- 2.01 Powers of the City.**
- 2.02 General Law Powers.**
- 2.03 Municipal Affairs.**
- 2.04 Intergovernmental Powers.**
- 2.05 Liberal Interpretation.**
- 2.06 Duties and Obligations of the
City Council.**

**ARTICLE III
MAYOR AND CITY COUNCIL**

- 3.01 City Council.**
- 3.02 Judge of Qualifications.**
- 3.03 Vacancies and Forfeiture of
Office.**
- 3.04 Filling of Council Vacancies.**
- 3.05 Compensation and Expenses.**
- 3.06 Powers and Duties of the City
Council.**
- 3.07 Council Procedure.**
- 3.08 Actions Requiring an
Ordinance.**
- 3.09 Ordinances in General.**
- 3.10 Emergency Ordinances.**
- 3.11 Ordinance Authentication,
Recording and Codes.**
- 3.12 Mayor.**
- 3.13 Mayor Pro Tem.**
- 3.14 Prohibitions on City Council.**
- 3.15 Independent Audit.**

**ARTICLE IV
CITY MANAGER**

- 4.01 City Manager Appointment.**
- 4.02 Acting City Manager.**
- 4.03 Powers and Duties of City
Manager.**

**ARTICLE V
CITY CLERK**

- 5.01 Office of City Clerk.**
- 5.02 Duties of City Clerk.**

**ARTICLE VI
CITY ATTORNEY**

- 6.01 Office of City Attorney.**
- 6.02 Duties of City Attorney.**
- 6.03 Special Counsel.**

**ARTICLE VII
DEPARTMENTS, AGENCIES
AND EMPLOYEES**

- 7.01 Departments.**
- 7.02 Department Heads.**
- 7.03 Personnel System.**
- 7.04 Boards, Commissions and
Committees.**

**ARTICLE VIII
FINANCIAL PROCEDURES**

- 8.01 Financial Systems.**
- 8.02 Submission of Budget and
Budget Message.**
- 8.03 Annual Budget.**
- 8.04 City Council Review of Budget.**
- 8.05 Adoption of Budget.**
- 8.06 Budget Amendments After
Adoption.**
- 8.07 Overexpenditures Prohibited.**
- 8.08 Lapse of Appropriations.**
- 8.09 Capital Program and Budget.**
- 8.10 Public Documents.**
- 8.11 Purchasing and Contracting.**
- 8.12 Miscellaneous Fiscal
Procedures.**

**ARTICLE IX
TAXATION, REVENUES AND DEBT**

- 9.01 Property Taxation.**
- 9.02 Tax Limit.**
- 9.03 Balanced Revenue System.**
- 9.04 Annual Review of Rates & Fees.**
- 9.05 Debt.**
- 9.06 Depositories and Investments.**

**ARTICLE X
ELECTIONS**

- 10.01 Election Procedures.**
- 10.02 Special Elections.**
- 10.03 Initiative, Referendum and Recall.**

**ARTICLE XI
GENERAL PROVISIONS**

- 11.01 Conflicts of Interest.**
- 11.02 Franchises.**
- 11.03 Violations.**
- 11.04 Definitions.**

**ARTICLE XII
CHARTER AMENDMENT**

- 12.01 Charter Amendment.**
- 12.02 How Amended.**
- 12.03 Amendment Election.**

**ARTICLE XIII
TRANSITION AND SEVERABILITY**

- 13.01 Transition.**
- 13.02 Severability.**
- 13.03 Transition of Current Elected Officials.**
- 13.04 Continuity of Laws, Officers and Employees.**

**CHARTER OF THE
CITY OF LINDSAY, CALIFORNIA
January 8, 1996**

Vision Statement:

The citizens of the City of Lindsay do enact this Charter to form a better City government for all citizens of the City, to provide for the public health, safety, welfare and morals of its residents, property owners and businesses, and to preserve and to enhance the quality of life for ourselves, our families, our neighbors, and our businesses, for now and the future.

ARTICLE I

**NAME, BOUNDARIES AND FORM OF
GOVERNMENT**

Section 1.01 Name.

The municipal corporation now existing and known as the City of Lindsay shall remain and continue to exist as a municipal corporation under the name "City of Lindsay", but as a California Constitution Home Rule Charter City.

Section 1.02 Boundaries.

The boundaries of the City of Lindsay shall be as now established, and may be changed in the future as provided by law, by this Charter, or by ordinance.

Section 1.03 Form of Government.

The organizational form of government under which the City of Lindsay shall operate shall be that which is commonly known as "The Council-Manager Plan".

ARTICLE II

**POWERS, DUTIES AND OBLIGATIONS OF
THE CITY**

Section 2.01 Powers of the City.

The City shall have all powers possible for a city to have under the Constitution and laws of the United

States and of the State of California as fully and completely as though those powers were specifically enumerated in this Charter.

Section 2.02 General Law Powers.

Nothing in this Charter shall be construed to prevent or restrict the City from exercising any and all rights, powers and privileges heretofore or hereafter granted or prescribed by the General Laws of the State of California. All General Law powers of cities in California are hereby declared to be possessed by the City.

Section 2.03 Municipal Affairs.

The City may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in this Charter and applicable United States and California Constitution provisions, and decisions of courts with competent jurisdiction. As regards municipal affairs, and all powers granted herein and hereby, this Charter shall supersede all laws inconsistent therewith.

Section 2.04 Intergovernmental Powers.

The City may exercise and perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states or any agency of the State of California, or any governmental jurisdiction or non-profit corporation thereof, or the United States or any of its agencies.

Section 2.05 Liberal Interpretation.

The powers of the City under this Charter shall be construed liberally in favor of the City, and the specific mention of particular powers in the Charter shall not be construed as limiting in any way any of the powers granted by this Charter.

Section 2.06 Duties and Obligations of the City Council.

A. Duties. The City Council shall have the power and it shall be the duty, obligation and responsibility of the City Council to develop plans and programs, provide adequate financial and physical re-

sources for, and to implement fully such plans and programs as it finds necessary to accomplish the duties and obligations set out in this Charter, and State and federal law.

B. Balanced Programs. The City Council shall make provision for, budget for, and at all times provide adequate financial resources and physical facilities for and shall have the power to maintain a balanced and full range of quality City services, activities and facilities to provide equitably for the quality of life for all economic, social, ethnic and age groups and geographical areas within the City.

ARTICLE III

MAYOR AND CITY COUNCIL

Section 3.01 City Council.

A. The Council. There shall be a City Council composed of five Councilmembers elected by the voters of the City at large.

B. Eligibility. Only registered voters of the City residing within the corporate boundaries of the City shall be eligible to file for, run for, and to hold the office of Councilmember.

C. Regular Election. The regular election of Councilmembers shall be held on the first Tuesday after the first Monday of November in even numbered years, unless such date is changed by ordinance.

D. Election of Councilmembers. A regular Council election shall be held in November of 1996, at which election three Councilmembers shall be elected. A regular Council election shall be held in November of 1998, at which election two Councilmembers shall be elected.

E. Who Elected. The winner or winners in each election in which the office of Councilmember is to be filled shall be those candidates receiving the highest number of votes, in descending order, until all vacant Councilmember positions are filled.

F. Term. Councilmembers shall serve for four years or until their successor is elected and qualified, except as set out hereinafter in this Charter. The terms of Councilmembers shall begin as soon as pos-

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sible after canvass of the election is certified and each Councilmember elected files all required disclosure or other statements required by law or ordinance.

G. Non-Prohibition. The prohibition referred to in Article III, Section 3.14 A shall not apply to any person who holds the office of Councilmember at the time of the adoption of this Charter.

Section 3.02 Judge of Qualifications.

A. Additional Standards of Conduct. The City Council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of office. The Council shall have the power to set additional standards of conduct for its members beyond those specified in this Charter or by State law, and may provide for such penalties as it deems appropriate, including forfeiture of office.

B. Exercise of Qualification Powers. To exercise the judge of qualifications powers the Council shall have power to subpoena witnesses, administer oaths and require the production of evidence. A Councilmember charged with conduct constituting grounds for forfeiture of office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in a newspaper of general circulation within the City at least one week in advance of the hearing.

C. Decision Subject to Judicial Review. Decisions made by the Council under this Section shall be subject to judicial review.

Section 3.03 Vacancies and Forfeiture of Office.

A. Vacancies. The office of a Councilmember shall become vacant upon the Councilmember's death, resignation, removal from office or forfeiture of office in any manner prescribed by law or by ordinance.

B. Forfeiture of Office. A Councilmember shall forfeit that office if the Councilmember:

1. Lacks at any time during the term of office for which elected any qualification for the office prescribed by this Charter or by law;

2. Violates any express provision or prohibition of this Charter;

3. Is convicted of a crime involving moral turpitude, or;

4. Fails to attend three consecutive regular meetings of the Council without being excused by the Council.

5. Establishes residence outside the City.

Section 3.04 Filling of Council Vacancies.

A. Vacancy. Should a vacancy in the City Council occur more than 90 days prior to the election at which Councilmembers are to be elected the vacancy shall be filled by majority vote of the remaining members of the City Council by the appointment of a qualified person to fill the remainder of the unexpired term.

B. Filling Vacancy By Regular Election. No appointment shall be made if the vacancy occurs less than 90 days prior to such election, in which case the vacancy shall be filled through the regular election process for the remainder of the unexpired term, if any.

C. Procedure to Fill Vacancy by Appointment. Within 15 working days of the occurrence of the Council vacancy, following a published notification of such vacancy, persons who are eligible for and interested in filling the vacancy shall file a standard application with the City Clerk. On the 16th working day following the creation of the vacancy, the City Clerk shall provide to the remaining Councilmembers the applications of all eligible applicants. Within 30 calendar days of receipt of said applications by the City Council the Council shall make an appointment from among the eligible applicants.

Section 3.05 Compensation and Expenses.

The City Council may determine the annual salary of the Mayor and Councilmembers by ordinance, but no ordinance increasing such salary shall become effective until the date of the commencement of the terms of Councilmembers elected at the next regular election. The Mayor and Councilmembers shall receive their actual and necessary expenses incurred in the performance of their duties of office.

Section 3.06 Powers and Duties of the City Council.

A. Powers. All powers of the City shall be vested in the City Council except as otherwise provided by law or this Charter, and the Council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the City by law and by this Charter.

B. Duties of the City Council. The Council shall make policy for the City and, additionally, shall be responsible to the people of Lindsay for, but not limited to the following duties and responsibilities:

1. Considering ordinances and resolutions and adopting those which it determines to be necessary for the governance, proper administration and adequate financing of the City;
2. Providing oversight of the City Manager and all municipal activities under his/her purview;
3. Carrying out all provisions of this Charter, City ordinances and applicable State and federal laws;
4. Conducting such reviews and taking such actions as may be required for the effective governance and financing of the City;
5. Performing such other duties as may by State law, ordinance or resolution be assigned to the City Council, but in no way conflict with the duties of the City Manager as set out in this Charter or by ordinance.

Section 3.07 Council Procedure.

A. Regular Meetings. The Council shall meet regularly at least once in every month at such times and places as the Council may by ordinance prescribe, and may provide for more frequent meetings as it shall determine.

B. Special Meetings. Special meetings of the Council may be held on the call of the Mayor or of three or more members of the City Council.

C. Notice and Agendas for Meetings. Notice of all meetings of the City Council shall be provided and all meeting agendas shall be prepared and all meetings held pursuant to State law and procedures established by the Council by ordinance.

D. Rules and Minutes. The City Council shall determine its own rules and order of business by ordinance.

E. Minute Book. The City Clerk shall keep a minute book of the proceedings of the Council, which book shall be a public record.

F. Voting. Voting on ordinances and resolutions shall be as determined by ordinance. All votes shall be recorded in the minute book. The number of votes required to adopt any issue before the Council shall be as determined by the rules of the Council.

G. Quorum. Three members of the Council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the Council.

Section 3.08 Actions Requiring an Ordinance.

A. Acts Required By Ordinance. In addition to other acts required by law or by this Charter to be done by ordinance, those acts of the City Council shall be by ordinance which:

1. Adopt or amend an administrative code or establish, alter or abolish any City department, office, agency, authority or corporation;
2. Levy taxes;
3. Provide for a fine or other penalty or establish a rule or regulation for which a fine or other penalty is imposed;
4. Grant, renew or extend a franchise;
5. Authorize the borrowing of money except as provided elsewhere in this Charter;
6. Convey title to or lease or authorize the conveyance or lease of any lands owned by the City;
7. Regulate land use and development; and,
8. Amend or repeal any ordinance previously adopted.

B. Other Acts. Acts other than those referred to in the preceding Sub-Section may be taken by ordinance, resolution or motion, as determined by the rules of the Council.

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Section 3.09 Ordinances in General.

A. Form. Every proposed ordinance shall be introduced in writing in the final form required for adoption as prescribed in the Council rules, and shall be enacted or repealed in the form: "The City Council of the City of Lindsay does ordain".

B. In Writing. A copy of any proposed ordinance shall be provided to the City Clerk a minimum of three days prior to the meeting at which such ordinance is proposed to be introduced. The City Clerk immediately shall distribute a copy of such proposed ordinance to each Councilmember, the City Manager and City Attorney, and any member of the public who requests such.

C. One Subject. No ordinance shall contain more than one subject, which shall be clearly expressed in its title.

D. Procedure. An ordinance may be introduced by any Councilmember at any regular, special or adjourned meeting of the Council, subject to the time limitations of this Section.

E. Reading and Adoption. An ordinance may be read by title only at the time of its introduction, and must be available to the public in full text in the office of the City Clerk when introduced. The second reading and adoption of the introduced ordinance shall be held at a regular, special or adjourned meeting of the Council, which meeting shall be not less than five calendar days after its introduction. The ordinance may be read by title only at the second reading.

F. Ordinance Effective Date. Except as otherwise provided in this Charter, by State law and by ordinance, every adopted ordinance shall become effective at the expiration of 30 days after adoption, or at any later date specified in the ordinance.

G. Adoption of Standard Codes. The Council may adopt standard codes, compilations and codifications by reference thereto in an adopting ordinance, without specific verbatim publication or codification in the City Code. Such Codes shall be:

1. Adopted by ordinance by the procedure and requirements prescribed for ordinances generally, except that:

a.) The requirement for distribution and filing of copies of the ordinance shall be construed to include copies of the specific standard Code as well as of the adopting ordinance, and;

b.) A copy of each adopted standard Code as well as of the adopting ordinance shall be authenticated and recorded by the City Clerk and maintained as a matter of public record in the office of the City Clerk;

2. Made available by the City Clerk for distribution or for purchase at a reasonable price.

H. Ordinance Publication. The City Clerk shall publish every ordinance adopted by the City Council, in full text or as a brief summary thereof, within 20 days following such adoption, in a newspaper of general circulation in the City or, if there is no newspaper of general circulation in the City, by posting in three established public places.

Section 3.10 Emergency Ordinances.

A. Emergency Defined. To meet a public emergency affecting life, health, property or the public peace, the City Council may adopt one or more emergency ordinances.

B. Manner of Adoption. Emergency ordinances shall be:

1. Introduced in the form and manner prescribed for ordinances generally;

2. Plainly designated as an emergency ordinance, including after the enacting clause a declaration stating that an emergency exists and describing it in clear and specific terms;

3. Introduced with or without the provision of copies three days in advance;

4. Adopted after reading in entirety, with or without amendment, or rejected, at the meeting at which it is introduced;

5. Adopted only by a four fifths affirmative vote of the City Council if the Council consists of five members, three Councilmembers if the Council consists of only four members, and all three members if the Council consists of only three members;

6. Effective upon adoption or at such later time as stated in the ordinance;

7. Published and printed as prescribed for other adopted ordinances;

C. Manner of Repeal. Emergency ordinances automatically shall be repealed as of the 61st day following the date on which it was adopted, but such automatic repeal shall not prevent reenactment of the ordinance in the manner specified in this Charter if the emergency still exists, or:

1. Repealed or replaced by adoption of another ordinance in the manner specified in this Charter; or

2. Repealed by adoption of a repealing ordinance in the same manner specified in this Section for adoption of emergency ordinances.

Section 3.11 Ordinance Authentication, Recording and Codes.

A. Recordation. The City Clerk shall authenticate by signing and shall record in full in properly indexed books kept for the purpose, each ordinance and resolution adopted by the City Council.

B. Codification. Within three years after adoption of this Charter, and at least every ten years thereafter, the City Council shall provide for and the City Clerk shall prepare or have prepared a general codification of all City Ordinances having the force and effect of law.

C. Codification Adoption. The general codification shall be adopted by the Council by ordinance and shall be reproduced promptly in bound or loose-leaf form, together with this Charter and any amendments thereto, and such Codes adopted by reference and such other rules, regulations and resolutions of the City as the Council may specify.

D. Code Name and Availability. The codification shall be cited officially as the Lindsay City Code. Copies of the Code shall be furnished to City officers, placed in libraries and public offices for free public reference, and made available for purchase at a reasonable price as fixed by the City Council.

E. Reproduction of Ordinances. The City Clerk shall cause each ordinance and each amendment to this Charter to be reproduced promptly following its adoption, and such ordinances and charter amendments shall be distributed or sold to the public at reasonable prices as fixed by the City Council.

F. Reproduction of Code. Following reproduction and distribution of the first Lindsay City Code, and at all times thereafter, the ordinances and Charter shall be reproduced in substantially the same style as the Code currently in effect, and shall be suitable in form for integration therein.

G. Distribution. The Council shall make such arrangements as it deems desirable with respect to reproduction and distribution of any current changes in or additions to the provisions of the City standard codes adopted by reference.

Section 3.12 Mayor.

A. Office of Mayor. The office of Mayor is hereby created. The City Council shall elect from among its members a Mayor who shall serve at the pleasure of the City Council.

B. Duties of Mayor. The duties of the Mayor shall be assigned by the Council by ordinance, which shall include but not be limited to the duties listed in this Sub-Section:

1. Preside at meetings of the City Council;

2. Represent the City in intergovernmental relationships;

3. Be recognized as the head of the City government for all ceremonial purposes and by the Governor for purposes of military law;

C. No Administrative Duties. The Mayor shall have no administrative duties.

D. Process of Selection. The process for the selection of Mayor and Mayor Pro Tem shall be included in and as set out in the rules of the Council.

Section 3.13 Mayor Pro Tem.

The office of Mayor Pro Tem is hereby created. The City Council shall elect from among its members a Mayor Pro Tem who shall serve at the pleasure of the City Council. The Mayor Pro Tem shall act as Mayor during the Mayor's absence or disability.

Section 3.14 Prohibitions on City Council.

A. Future City Employment. No former Councilmember shall hold any compensated appointive office or employment with the City of Lindsay until

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four years after the expiration of the term for which the Councilmember was elected to the Council.

B. Exception. Nothing in this Section shall be construed to prohibit the Council from selecting any current or former Councilmember to represent the City on the governing board of any regional or other intergovernmental agency.

C. Employee Appointments and Removals. Neither the City Council nor any of its members shall in any manner control or influence the appointment or removal of any City department head or employee whom the City Manager or any subordinate of the City Manager is empowered to appoint.

D. Expression of Views. Nothing in this Section shall be construed to limit the ability of the City Council or of Councilmembers to express its and their views and fully and freely discuss with the City Manager anything pertaining to appointment and removal of City department heads and employees.

E. Interference with Administration. The Council and Councilmembers shall deal with City department heads and employees who are subject to the direction and supervision of the City Manager solely through the City Manager, and neither the Council nor any Councilmember shall give orders to any such department head or employee, either publicly or privately.

Section 3.15 Independent Audit.

A. Order of Audit. The City Council shall provide for an annual independent audit of all City accounts and may provide for more frequent audits as it deems necessary.

B. Restrictions. Such audits shall be made by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the City government or any of its officers. The person or firm selected by the City Council shall be experienced in the audit of California city governments.

C. Designation of Audit Firm. The City Council may, without requiring competitive bids, designate such accountants or firm to conduct the audit annually or for a period not exceeding three years, but the designation for any particular fiscal year shall be

made not later than 30 days prior to the close of the fiscal year to be audited.

ARTICLE IV

CITY MANAGER

Section 4.01 City Manager Appointment.

A. Office of City Manager. The office of City Manager is hereby created. The City Council by majority vote shall appoint a City Manager through the mechanism of an employment agreement.

B. Qualifications. The City Manager shall be selected and appointed solely on the basis of executive and administrative qualifications.

C. Requirements. The City Manager:

1. Shall serve at the pleasure of the City Council;

2. Shall be the chief executive and administrative officer of the City, all its agencies, authorities and corporations;

3. Shall be paid such salary, receive such benefits and have such expenses paid by the City on his/her behalf as are commensurate with and necessary to execute the responsibilities of the position and as shall be fixed by the Council;

D. Restrictions on Employment Agreement. The City Manager employment agreement shall set out the terms and conditions of employment, pay, benefits, goals and objectives, a requirement for periodic and regular performance evaluations, obligations, and termination compensation. The agreement shall be for an indefinite term, and shall be a public record.

E. Reduction of Salary and Benefits. The salary and benefits of the City Manager shall not be reduced by the City Council at any time unless the salaries and benefits of all City employees are reduced in the same percentage as proposed for the City Manager.

Section 4.02 Acting City Manager.

By letter filed with the City Clerk, the City Manager shall designate a City department head or employee to exercise the powers and perform the duties of City Manager on those occasions the City Manager will be absent from the City for longer than 48

hours. The City Council shall designate an Acting City Manager in the event of the disability of the City Manager or at the request of the City Manager.

Section 4.03 Powers and Duties of City Manager.

A. Chief Executive Officer. The City Manager shall be responsible to the City Council for the administration of all City affairs placed in the City Manager’s charge by ordinance or this Charter.

B. Duties By Ordinance. The duties of the City Manager shall be established by ordinance, which duties shall include but not be limited to the duties assigned by this Charter.

C. Charter Duties. The City Manager shall:

1. Appoint, remove and discipline all employees of the City pursuant to requirements set out in this Charter and an ordinance establishing a merit system of appointment and employment;

2. Delegate the appointment, removal and discipline of subordinate employees to the department heads to which those employees are assigned, but shall approve, modify or disapprove all recommendations for appointment, removal and disciplinary actions taken against employees by department heads, pursuant to the terms of this Charter and the City Personnel Ordinance;

3. Direct and supervise the administration of all departments, offices, agencies, authorities, corporations, utilities and enterprises of the City;

4. Attend all City Council meetings, both public and closed, at which the City Manager shall have the right to take part in discussion but shall have no vote but, absent a directive to the contrary, the City Manager shall not be entitled to attend any closed session of the Council when suspension, dismissal or any disciplinary action against the City Manager is discussed;

5. Prepare annually, submit and administer the budget, capital improvement plan and other plans and programs of the City as required by and set out in this Charter or by ordinance;

6. Keep the Council informed of the financial condition, current and future needs of the City, and make recommendations to the Council concerning

the affairs of the City as he/she shall deem necessary or desirable;

7. Provide for enforcement and faithful execution of all laws, regulations and rules of the City, all Charter provisions, all acts of the Council, and administration of all contracts to which the City is a party;

8. Submit to the City Council and make available to the public for an appropriate fee, a complete report on the finances and administrative activities of the City and of all its agencies, authorities and corporations, utilities and enterprises as of the end of each fiscal year;

9. Make such other reports as the City Council may require concerning the needs and operations of all City departments, offices, agencies, authorities, corporations, utilities and enterprises;

10. Provide staff support to the Mayor and Councilmembers;

11. Coordinate, cooperate with, and oversee and supervise the work of the City Clerk and City Attorney;

12. Engage in no incompatible business, occupation or activity;

13. Receive notice of all meetings of the City Council and all City boards, committees, commissions, agencies, authorities, corporations, utilities and enterprises;

14. Be entitled to participate in the deliberations of any City board, committee, commission, agency, authority and corporation, but shall have no vote therein; and,

15. Perform such other duties consistent with this Charter as may be required by the City Council by ordinance, resolution, minute order or contract.

ARTICLE V

CITY CLERK

Section 5.01 Office of City Clerk.

The office of City Clerk is hereby created. The City Manager shall recommend the person to be appointed and the Council shall appoint and, if neces-

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sary, may remove the City Clerk. The City Clerk may be either full or part time.

Section 5.02 Duties of City Clerk.

A. Duties. The duties of the City Clerk shall be established by ordinance, which duties shall include but not be limited to the duties assigned by this Charter.

B. Charter Duties. The City Clerk shall:

1. Act as Clerk to the City Council and all other City agencies, authorities and corporations;
2. Maintain the minute book, book of ordinances, book of resolutions, and all other documents and records of the City Council;
3. Conduct, supervise the conduct of, or oversee the contract conduct of all City elections;
4. Maintain the integrity of and provide for public access to, safety of, and inspection of all City public records;
5. Perform and fulfill all duties assigned to the City Clerk by this Charter;
6. Cooperate with and coordinate the work of the City Clerk with that of the City Manager, all City department heads, and the City Attorney; and,
7. Perform such other duties consistent with this Charter as may be required by the City Council by ordinance, resolution or motion; and,
8. May be designated as a department head, at the discretion of the City Manager.

C. Statutory Duties. Perform all duties required of a City Clerk by State law.

ARTICLE VI

CITY ATTORNEY

Section 6.01 Office of City Attorney.

The office of City Attorney is hereby created. The City Council shall appoint and, if necessary, may remove the City Attorney. The City Attorney may be either full or part time, or retained under contract.

Section 6.02 Duties of City Attorney.

A. Duties. The duties of the City Attorney shall be established by ordinance, which duties shall in-

clude but not be limited to the duties assigned by this Charter.

B. Charter Duties. The City Attorney shall be the chief legal officer of the City, whose duties shall include but not be limited to:

1. Advising the City Council, individual Councilmembers, the City Manager and his/her assistants, and department heads regarding the law relating to City matters, provided, however, that the City Attorney shall not be required to advise any of these officials concerning his/her liabilities relating to personal conflicts of interest;
2. Representing the City in legal proceedings;
3. Preparing, or reviewing and approving as to form, all ordinances, contracts and other needed City legal documents;
4. Select and retain specialist counsel when there is a need for such specialized legal services, subject to approval of the City Council;
5. Cooperate with and coordinate the work of the City Attorney with that of the City Manager, all City department heads, and the City Clerk;
6. Perform all duties required of a City Attorney by State law; and,
7. Perform such other duties consistent with this Charter as may be required by the City Council by ordinance, resolution, minute order or contract.

Section 6.03 Special Counsel.

The City Council may retain special counsel when representation by the City Attorney would create an impermissible conflict.

ARTICLE VII

DEPARTMENTS, AGENCIES AND EMPLOYEES

Section 7.01 Departments.

A. Creation of Departments. The City Manager shall recommend and the City Council shall by ordinance create, reorganize and abolish City departments, divisions, offices, agencies, authorities and corporations as necessary for the effective manage-

ment of the City, in addition to those created by this Charter.

B. Functions. The functions of all City departments, divisions, offices, agencies, authorities and corporations shall be determined and assigned by ordinance.

C. Prohibition on Revision. No function assigned by this Charter to a particular department or office may be discontinued or, unless this Charter specifically so provides, assigned to any other.

D. Direction. All departments, offices, agencies, authorities and corporations of the City government shall be under the direction and supervision of the City Manager.

E. City Manager as Department Head. With consent of the Council, the City Manager may serve as the head of one or more such departments, offices, agencies, authorities or corporations, or may appoint one person as the head of two or more departments.

Section 7.02 Department Heads.

A. Appointment. The City Manager shall appoint a department head for each department, which person shall be qualified in the field of expertise encompassed within the assigned department.

B. Removal. All department heads shall serve at the pleasure of the City Manager and be subject to his/her direction and supervision.

C. Requirements. All department heads shall be City employees for the purposes of powers and duties, and be provided employment agreements by the City Manager setting out the terms and conditions of employment, pay, benefits, goals and objectives, a requirement for periodic and regular performance evaluations, obligations, and termination. Such agreements shall not exceed four years and shall be a public record.

D. Restrictions. No department head may engage in any incompatible business, occupation or activity.

Section 7.03 Personnel System.

A. By Ordinance. The City Council shall adopt a City Personnel Ordinance providing for the establishment, regulation and maintenance of a personnel

system governing those City human resource policies and procedures available to the City Manager or his/her designee for the effective administration of the employees of the City.

B. Merit System. In making appointments and promotions of City employees the appointing authority shall be guided by the requirements set out in the City Personnel Ordinance.

C. Personnel System Components. The City Personnel Ordinance shall include, but not be limited to the following:

1. An integrated classification and pay plan, force reduction procedures, working conditions, discipline and dismissal, in-service training, grievances, relationships with employee organizations, regular and periodic employee performance evaluations, and incentive plans; and,

2. Open, publicly posted and competitive employee selection processes utilizing, where and when feasible, validated examinations at entry level and objective evaluative processes for all other classifications; and,

3. Such other personnel and human resource management provisions as shall be deemed to be necessary, adopted by resolution.

D. Fair Employment Practices. The City personnel system shall in all manner and respects comply fully with all federal and State laws governing fair employment practices and prohibiting discrimination in all forms.

Section 7.04 Boards, Commissions and Committees.

A. How Created. The City Council by ordinance or resolution may create, modify, combine and abolish such boards, commissions and committees as it shall determine.

B. Appointments. Boards, commissions and committees established by ordinance shall consist of members nominated by the Mayor and approved by the Council. Boards, commissions and committees established by resolution shall be appointed by the Mayor from nominees presented to him/her by the Council.

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C. Powers and Duties. The ordinance shall prescribe their powers and duties, determine the number and qualifications of the members, their method of selection, term of office and removal, and fix their compensation, if any.

D. Limitation. All boards, commissions and committees only shall be advisory to the City Council, and may not exercise any administrative or management powers.

ARTICLE VIII

FINANCIAL PROCEDURES

Section 8.01 Financial Systems.

A. By Ordinance. The City Council by ordinance shall provide for, assure implementation of, and enforce an integrated budgeting and financial management system for the City which shall include, but not be limited to the following:

B. Financing the Budget. The provision in the annual budget of information for each fund, agency, authority and corporation, indicating that for any fund the total of proposed expenditures shall not exceed the total of estimated income plus carried forward fund balance, plus the use of appropriated reserves;

C. Fiscal Year. The establishment of the time span of a fiscal year; and,

D. Other Matters. Such other matters as determined as necessary and appropriate to secure the financial, service and administrative goals of the City, expressed in financial terms as recommended by the City Manager and as set out in this Charter.

Section 8.02 Submission of Budget and Budget Message.

A. Budget Calendar. On or before the first day of the last month of each fiscal year the City Manager shall submit to the City Council a budget for the ensuing fiscal year, and an accompanying message.

B. Budget Message. The City Manager’s budget message shall explain the budget both in fiscal terms and in terms of the work program. Additionally, it shall:

1. Outline the proposed financial policies of the City for the ensuing fiscal year;
2. Describe the important features of the budget;
3. Indicate any major changes from the current year in financial policies, expenditures and revenues, together with the reasons for such changes;
4. Summarize the City’s debt position; and,
5. Include such other material as the City Manager deems desirable.

Section 8.03 Annual Budget.

A. Contents. The annual budget presented by the City Manager shall contain but not be restricted to the following:

B. Comprehensive Financial Plan. A complete financial plan for all City funds, offices, departments, agencies, authorities, corporations, utilities, enterprises and activities for the ensuing fiscal year;

C. Summaries. Summaries and totals adequate to provide a comprehensive and consolidated view of the City’s financial condition;

D. Contents of Budget. Sections of the budget shall provide for and contain:

1. The goals and objectives proposed to be achieved by appropriations during the ensuing fiscal year, detailed for each fund by organization unit, program, purpose or activity, and the method of financing such proposed appropriations;
2. Comparative amounts for actual and estimated revenues and expenditures for the current fiscal year and actual revenues and expenditures for the preceding fiscal year;
3. Proposed capital expenditures during the ensuing fiscal year and the proposed method of financing of each such capital expenditure; and,
4. Anticipated revenues, expenses, balances and reserves, and the purpose of said reserve, for each City fund, including all utility, enterprise, reserve, and internal service funds, and for each City agency, authority, corporation, utility and enterprise.

Section 8.04 City Council Review of Budget.

A. City Council. Immediately on receiving the recommended budget from the City Manager the City Council shall:

B. Consideration. At either regular or special meetings receive, study and consider the City Manager’s recommended budget and budget message;

C. Notice and Hearing. Cause to be published in a newspaper of general circulation or, if no such newspaper exists, to post in three established public places in the City the general summary of the budget as presented by the City Manager, and a notice stating:

1. The places and times where copies of the budget and message are available for inspection by the public; and,

2. The time and place, not less than five days after such publication, for a public hearing on the budget;

D. Amendments. Amend the recommended budget as the Council shall see fit, except that no revisions shall be made contrary to the provisions of this Charter;

E. Prohibited Amendments. Amend the budget to add to or increase programs or amounts or to delete or decrease any programs or amounts, except expenditures required by law or for debt service, but no amendment to the budget shall increase the authorized expenditures for any fund to an amount greater than total estimated income and carried forward fund balances, plus appropriated reserves.

Section 8.05 Adoption of Budget.

The City Council shall adopt the budget on or before the last day of the last month of the fiscal year currently ending. If the Council fails to adopt the budget by the date prescribed in this Charter then the budget as recommended by the City Manager shall go into effect.

Section 8.06 Budget Amendments After Adoption.

A. Amount of Budget. If during the fiscal year the City Manager certifies in writing to the City Council that there are available for appropriation

revenues in excess of those contained in the adopted budget, the City Council may make supplemental appropriations for the year up to the amount of the excess.

B. Emergency Appropriations. To meet a public emergency affecting life, health, property or the public peace, the City Council may make emergency appropriations. Any such emergency appropriation shall be made by resolution stating the exact nature of the emergency.

C. Reduction of Appropriations. If at any time during the fiscal year it appears probable to the City Manager that the revenues or fund balances available and anticipated by the adopted budget will be insufficient to finance the expenditures for which appropriations have been made, the City Manager shall:

1. Report such a condition in writing to the City Council without delay, indicating the estimated amount of the deficit;

2. Report any remedial action taken by the City Manager; and,

3. Make recommendations to the City Council for further actions to be taken.

D. Prevention of Deficit. The City Council shall take such actions as it determines necessary to prevent any budget deficit and, for that purpose it may reduce one or more appropriations to assure that a budget deficit is prevented.

E. Budgetary Transfers. The City Manager may transfer monies between departments, divisions, programs and accounts within funds and departments, but within dollar or percentage of fund limits set by the Council annually as a part of the budget, but only the Council by resolution may transfer monies between funds and from unappropriated or fund balances or reserves to any fund or appropriations account. All budgetary transfers made by the City Manager shall be reported in writing quarterly to the City Council.

Section 8.07 Overexpenditures Prohibited.

A. Total of Budget. The total of proposed expenditures shall not exceed the total of estimated revenues plus carried forward fund balance and appropriated reserves, for any fund.

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B. **Payment Restrictions.** No payment shall be made or obligation incurred against any appropriation except in accordance with appropriations duly made by the Council and unless the City Manager or his/her designee first certifies that there is a sufficient unencumbered balance in such appropriation and that sufficient monies therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable.

C. **Illegal Payment.** Any authorization of payment or incurring of obligation in violation of the provisions of this Charter shall be void and any payment so made illegal.

D. **Securities Exception.** Nothing in this Charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or in part by the issuance of municipal securities, or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year provided such contract or lease is not explicitly prohibited by the provisions of the California Constitution.

E. **Constitutional Limitation.** The status of the City budget and finances shall in all respects at all times be in compliance with California Constitution Article XVI, Section 18.

Section 8.08 Lapse of Appropriations.

A. **When Lapse.** Every appropriation, except as provided for herein, shall lapse at the end of the fiscal year to the extent that it has not been expended or encumbered.

B. **Capital Outlay Appropriations.** All appropriations for capital outlay items shall continue in force until expended, revised or repealed. The purpose of any such capital outlay appropriation shall be deemed abandoned after three years pass without disbursement from or encumbrance against the appropriation.

C. **Other Exemptions.** Appropriations involving trust and agency accounts and reserves shall not lapse until specifically provided either by the annual budget or separate resolution.

Section 8.09 Capital Program and Budget.

A. **Five Year Program.** The City Manager annually shall prepare and submit to the City Council a five year Capital Program, which Program shall be submitted as a separate part of but be considered by the Council concurrent with the Annual Budget.

B. **Program Contents.** The Capital Program shall include but not be limited to the following:

1. A general summary of its contents;
2. A list of all capital improvements and other capital expenditures which are proposed to be undertaken during the five fiscal years next ensuing, with appropriate supporting information as to the necessity for each improvement or proposed expenditure;
3. Cost estimates and recommended time schedules for each improvement or other capital expenditure;
4. Method of financing for each improvement or other capital expenditure; and,
5. The estimated annual cost of operating and maintaining the facilities or equipment to be constructed or acquired.

C. **Capital Program Adoption.** The Capital Program shall be a part of and adopted as part of the Annual Budget.

Section 8.10 Public Documents.

Copies of the annual budget and message, the annual audit, the annual financial report if it be a separate document, and all appropriate summarizing documents shall be filed with the City Clerk as permanent public records, and shall be made available to the public for inspection and review.

Section 8.11 Purchasing and Contracting.

A. **By Ordinance.** The Council by ordinance shall provide for a purchasing and contracting system assuring a maximum of competition for the lowest price consistent with a stated level of quality.

B. **The Basic System.** The Purchasing and Contracting Ordinance shall provide for and comply with all provisions of this Section and of this Charter, but not be limited to:

1. Control of the system by the City Manager, who shall be empowered to make purchases and to

award contracts for amounts of \$25,000 or less, annually adjusted in amount as set out herein;

2. Delegation of responsibility by the City Manager to any appointed subordinate;

3. A requirement that should contracts or purchases in amount of \$25,000 or less be awarded to any one vendor or contractor cumulatively totalling \$75,000 in any three year period then, in that event, the competitive process set out herein shall be followed prior to the award of subsequent contracts to such vendor or contractor, should such process otherwise be required;

4. An informal bid solicitation process for purchases and contracts in amount between \$25,001 and \$74,999, which amounts shall be adjusted annually in amount as set out herein;

5. The acquisition of the services of professional service providers in such a manner that specialized abilities and knowledge shall be considered in addition to quality and price and, if appropriate as determined by the City Manager, without the competitive processes set out herein;

6. Additional procedures and requirements to fulfill the provisions of this Section and this Charter; and,

7. Such other matters as shall be determined to be required by the City Council.

C. Award of Contracts and Purchases. Award of contracts and purchases shall be made to the lowest responsible bidder or vendor meeting specifications, except as provided herein and in the Purchasing and Contracting Ordinance.

D. Sealed Competitive Bids. Sealed bids for competitive purchases involving the expenditure of \$75,000 or more shall be secured, but this amount and all dollar amounts set out in this Section shall be revised by the Council annually as part of the annual budget by a revision factor determined by utilizing published reliable indicators or indices of price changes.

E. Waiver of Bids. Waiver of competitive bidding for purchase of non-competitive items and contracting for services is permitted in emergencies, for copyrighted and patented items and services, and for professional or specialized services for which a writ-

ten finding is filed with the City Clerk regarding the reason for such non-competitive, emergency or sole source acquisition.

F. Prohibitions. Splitting contracts or purchases to avoid dollar limits is prohibited.

G. Rejections. The City Council may reject any and all bids for any good or service.

H. Bid Bonds. A bid bond or cashiers check shall be required for all sealed bids.

I. Public Notification. The City Manager shall cause full public notification of all calls for sealed bids by providing ten days notice through publications appropriate to the subject of the call for bids.

J. Public Works Determination. The Purchasing and Contracting Ordinance shall set out a procedure for determination of which public works or improvement projects are to be performed by City forces and which are to be let to contract.

K. Bidding and Wages. The City Council may by ordinance or resolution adopt prevailing wage, geographic boundaries and other guidelines and restrictions, including local bidding preference, governing public works and other City contracts.

Section 8.12 Miscellaneous Fiscal Procedures.

A. By Ordinance. The City Council by ordinance shall provide for the following, and other appropriate and necessary fiscal and financial procedures, which procedures shall comply with State law unless the ordinance specifies otherwise:

B. Petty Cash. The creation, administration and control of petty cash accounts;

C. Claims and Demands. The receipt and disposition of claims and demands against the City;

D. Warrants and Checks. Issuance and redemption of warrants, if any, and checks drawn on the City treasury, and;

E. Actions. Legal actions against the City.

ARTICLE IX

TAXATION, REVENUES AND DEBT

Section 9.01 Property Taxation.

A. Council Shall Not Levy. The City Council shall not levy an ad valorem property tax for general municipal purposes in excess of the maximum rate applicable to the City on the effective date of this Charter, provided, however, that an ad valorem property tax in excess thereof may be levied if authorized by the California Constitution, State law or this Charter.

B. Separate Taxing Areas. The City Council may establish by ordinance separate taxing areas within the City for the levy of a tax in excess of any rate, if authorized by the California Constitution or State law by the affirmative vote of the requisite number of voters within the area voting on a proposition to impose or to increase such levy.

C. Ad Valorem Levies. The City Council may seek and the voters of the City may vote on a proposition to authorize or to increase ad valorem taxes provided such vote and such tax comply with all provisions of the California Constitution, State law or this Charter.

D. Procedure for Assessment. The procedure and authority for the assessment, levy and collection of taxes and assessments may be prescribed by ordinance and, in the absence of such an ordinance, the procedure and authority applicable thereto shall be that prescribed by State law.

Section 9.02 Tax Limit.

A. Vote Required. No City tax shall be imposed or increased in rate by the City Council without an affirming vote of a majority of the voters, except as provided in this Section.

B. Adjustments to Tax Limit. The City Council shall have the authority to impose and to increase taxes without the affirming vote set out herein to raise revenues to the level that City revenues existed in fiscal year 1988-1989 but which, during or subsequent to such year, were removed from the City by action of the State or federal governments; provided,

however, that should the State or federal governments reinstate such previous City revenues, then, to the extent of the reinstatement, City taxes shall be reduced.

C. Adjustment for Mandates. No affirming vote as set out herein shall be required for any tax increase in amount sufficient to meet the official estimate of cost for any State or federal mandate for which no State or federal revenue or grant has been provided, for which neither of a fee nor charge may be collected in amount adequate to meet the financial requirements of the mandate.

D. Adjustment for Inflation and Deflation. For computational purposes of this Section, tax rates and revenue amounts shall be adjusted annually, starting with fiscal year 1988-1989, by the California Constitution Article XIII B and Proposition 133 annual percentage increase in appropriation limitation applicable to the City.

Section 9.03 Balanced Revenue System.

The City Council shall maintain a revenue structure adequate to meet City financial requirements for execution of the balanced programs determined by the City Council necessary to carry out the duties, obligations and mandates of this Charter, which revenue structure shall be balanced equitably between taxes, fees, utility and enterprise charges, and assessments insofar as the City Council is legally permitted, and comply with the judicially-determined requirements, definitions and intent of California Constitution Articles XIII A and B.

Section 9.04 Annual Review of Rates & Fees.

A. Annual Review of Costs. Annually and concurrently with, or at such time prior to the presentation of the annual budget as he/she shall determine, the City Manager each year shall present a report to the City Council containing a comprehensive review of the costs of all City services, utilities and enterprises.

B. Consideration of Report. As part of the annual budget consideration, the City Council shall set such fees and rates as it shall determine appropriate to recover the costs reasonably borne necessary to

provide each such service, utility and enterprise provided by the City, pursuant to the provisions of Article XIII B of the California Constitution.

C. Failure to Act. If the Council shall fail to act as required in this Section, then such rates as are required to comply with this Section shall go into effect automatically at such time as is designated in the annual report of costs of services, utilities and enterprises for each individual service, utility and enterprise.

D. Repeal by Council. Prior to the adoption of the annual budget the Council may by resolution specifically repeal any such automatic fee, rate or charge increases or decreases as would be caused by its inaction, provided, however, that such resolution shall contain adequate reasoning and justification for such repeal as is necessary to explain why such City service costs reasonably borne are not being met in full or are producing excess revenues over costs reasonably borne.

Section 9.05 Debt.

A. By Ordinance. The City by ordinance may issue all manner of securities and incur all manner of indebtedness.

B. General Obligation Debt Limit. Indebtedness of the City as evidenced by issued general obligation bonds shall at no time exceed ten percent of the assessed valuation of all property taxable by the City.

Section 9.06 Depositories and Investments.

A. By Ordinance. The City Manager shall recommend and the City Council shall provide by ordinance for the receipt and accounting of all revenues, monies and assets received by the City or any of its agencies, authorities, corporations, utilities and enterprises, from any and all sources.

B. Written Investment Policy. The City Manager shall recommend and the City Council by resolution shall adopt a policy to govern the investment of all City monies, which policy shall include but not be limited to the following:

1. Provision for the investment of all monies in such a manner as to assure the preservation and safety of principal and the integrity of record keeping;

2. Types of allowable investments;

3. Safekeeping of securities.

C. Compliance With State Law. The investment of City monies at all times shall be in compliance with all provisions of State law governing the receipt, processing, deposit, accounting, security and reporting of public monies. The City investment policy may be more conservative or restrictive than State law, but in no manner shall the investment policy be less restrictive.

D. Custody of Monies. The Financial Custody and Investment Ordinance shall establish the City department which shall have custody of all City monies and investments, which department shall deposit all monies and investments in such depository or depositories as may be designated by resolution of the Council or, if no such resolution be adopted, then in such depository or depositories as may be designated in writing by the City Manager.

E. Security of Deposits. The Ordinance, resolution and depository system shall provide for the regular deposit of City monies and appropriate safeguards and systems to assure a minimum of risk, maximum safety, and a high level of collateralized or federally-insured security, without exception, for such City monies and securities held by any depository, agent or agency.

F. Audit. A review of the City investment policy, procedures and security shall be made as a part of the annual audit, and the contracted audit firm shall make appropriate observations and recommendations to the City Council.

ARTICLE X

ELECTIONS

Section 10.01 Election Procedures.

Unless otherwise provided by ordinance, all elections shall be held in accordance with the provisions of the California Elections Code for the holding of municipal elections, so far as the same are not in conflict with this Charter.

CHARTER

Section 10.02 Special Elections.

The City Council may call special elections for such purposes as the Council may prescribe. A special election may be held on any date specified by the Council.

Section 10.03 Initiative, Referendum and Recall.

The electors of the City reserve to themselves the powers of initiative and referendum and the recall of elective officers, to be exercised in the manner prescribed by the California Constitution and State law.

ARTICLE XI

GENERAL PROVISIONS

Section 11.01 Conflicts of Interest.

A. Prohibition. The use of public office or employment for private gain is prohibited.

B. Implementation. The Council shall implement this Section by ordinance adopting and assuring compliance with the laws of the State of California and the common law principles regarding such conflicts, which ordinance also shall prohibit, but not be limited to prohibiting those activities set out in this Section.

C. Appearances For Influence. Appearances by or statements made to, or influence exercised by City officials or employees to, before or to any City officer, department or employee, or any City agency, authority or corporation on behalf of private interests are prohibited.

D. Compensated Influence. A former Councilmember or City officer or employee may not be compensated in any way for attempting to influence any action of the Council or City for two years after the end of service on the Council or with the City.

E. Application and Interpretation. In interpreting this Section the general common law conflict of interest rule shall be applied, which rule strictly requires public officers and employees to avoid placing themselves in a position in which personal interest may come into conflict with their duty to the public.

F. Violations. In addition to any fines or other punishments for violations of conflict of interest ordinance provisions or regulations issued thereunder promulgated under this Section or State law, any person convicted of a violation of this Section, or of any equivalent State law or regulation, shall be ineligible for a period of five years following such conviction to hold any City office or employment and, if currently holding office or employment, shall be deemed to have automatically forfeited his or her office or position of employment.

Section 11.02 Franchises.

A. Granting of Franchise. The City Council may grant a franchise to any person, partnership, corporation or other legal entity capable of exercising the privilege conferred, whether operating under an existing franchise or not, and may prescribe the terms, conditions and limitations of such grant, including the compensation to be paid to the City for such franchise grant.

B. Franchise Ordinance. The Council may prescribe by ordinance the method and procedure for granting franchises, together with additional terms and conditions for making such grants.

C. Franchise Procedure. No person, partnership, corporation or other legal entity shall furnish the City or its inhabitants or properties lying within the City limits, or any portion of the City, with any service which uses any portion of the public streets, ways, easements, alleys, rights-of-way or places in the City as the same may now exist or may hereafter exist, for any purpose, without a City franchise secured under the procedures set out hereunder, except insofar as he/she or it may be entitled to do so by direct authority of the California Constitution, the Constitution or laws of the United States, or final decisions of courts of competent jurisdiction.

D. Limit. Nothing in this Section shall be construed to limit the ability of the City to seek, to accept and to grant easements for specific purposes over specific parcels of public property for limited purposes.

E. Franchise Term. The term of the franchise shall be determined by the City Council by ordi-

nance. All franchises shall include a provision which reserves to the City the right to take over at any time the works, plant and property constructed under the franchise grant at their depreciated physical valuation and without compensation for franchise or goodwill.

F. Acquisition. No franchise shall in any way or to any extent impair or affect the right of the City to acquire the property of the possessor thereof by purchase or exercise of the power of eminent domain, and nothing therein shall be construed to contract away or to modify or abridge, either for a term or for perpetuity, the City’s right of eminent domain with respect to the property of the possessor of any franchise.

G. Franchise Condition. Every franchise granted by the City is granted upon the condition, whether expressed in the grant or not, that such franchise shall not be given any value before any court or other public authority or agency, in any administrative or judicial proceeding, in excess of any amount actually paid by the grantee to the City at the time of the franchise grant.

H. Resolution of Intent. Before granting any franchise the City Council shall adopt a resolution declaring its intention to do so, stating the name of the proposed grantee, the character of the proposed franchise, and the terms and conditions upon which it is proposed to be granted. Such resolution shall fix the day, hour and place when and where any person having an interest in or objecting to the granting of such franchise may appear before the Council to be heard thereon. Said resolution shall be published at least once, not less than ten days prior to said hearing, in a newspaper of general circulation in the City or, if there is no newspaper of general circulation in the City, by posting in three established public places.

I. Franchise Adoption. After hearing all persons desiring to be heard, the Council may deny or, by ordinance may grant the franchise on the terms and conditions specified in the resolution.

Section 11.03 Violations.

A. Misdemeanor. A violation of any ordinance of the City shall constitute a misdemeanor unless, by ordinance, it is made an infraction.

B. Maximum Fine. The maximum fine or penalty for a misdemeanor or infraction shall be the same as established by the general laws, unless a contrary intention is expressed in the City ordinance.

C. Enforcement. Violations of City ordinances or of provisions of this Charter may be prosecuted in the name of the People of the State of California or redressed by civil action.

D. Charter Compliance. Compliance with any mandated duty prescribed in this Charter may be had through civil action or, if appropriate, criminal proceedings.

E. Violation of Charter. Notwithstanding the criminal penalties provided for above, a Councilmember shall forfeit office pursuant to this Charter if a court of law has found that the Councilmember has violated this Charter or any provision thereof, or willfully has failed to carry out any provision of this Charter.

Section 11.04 Definitions.

Unless the provisions or the context otherwise requires, as used in this Charter:

A. “Shall” is mandatory and “may” is permissive;

B. “City” is the City of Lindsay and “department”, “commission”, “agency”, “committee”, “board”, “authority”, “corporation”, “division”, “program”, “utility”, “enterprise”, “non-profit corporation”, “officer”, or “employee” is a department, commission, agency, committee, board, authority, corporation, division, program, utility, enterprise, non-profit corporation, officer, or employee, as the case may be, of the City of Lindsay;

C. “Council” is the City Council of the City of Lindsay;

D. “Councilmember” is a member of the City Council of the City of Lindsay;

E. “Law” includes ordinance;

F. “State” is the State of California;

G. “Federal” is the government of the United States of America;

H. “Voter” shall be as defined by State law;

I. “He/she”, “his/her”, “he” and “she” shall be interchangeable without regard to gender; and,

CHARTER

J. “Ad Valorem” shall mean “according to value” as defined by State law.

ARTICLE XII

CHARTER AMENDMENT

Section 12.01 Charter Amendment.

Amendments to this Charter shall be approved by a majority of the voters of the City at an election on a date as determined by the City Council.

Section 12.02 How Amended.

A. Amendments. Amendments to this Charter may be framed and proposed in any manner provided by law or by any of:

B. Council Ordinance. An ordinance of the City Council containing the full text of the proposed amendment;

C. Initiative. An initiative by the voters of the City; or

D. Charter Commission. A report with specific full text as prepared by a duly elected Charter Commission as created pursuant to State law.

Section 12.03 Amendment Election.

If a majority of the voters of the City voting on a proposed Charter amendment vote in favor of such amendment, the amendment shall become effective at the time fixed in the amendment, but if no time is therein fixed, at the time the approved amendment is filed with the California Secretary of State by the City Clerk and chaptered by the Secretary of State. The City Clerk shall file the results of a Charter amendment election with the Secretary of State within 30 days following the election.

ARTICLE XIII

TRANSITION AND SEVERABILITY

Section 13.01 Transition.

All City ordinances, resolutions, orders, rules and regulations which are in force when this Charter becomes effective shall remain in effect until repealed,

except to the extent that they are inconsistent, disagree in any respect with, or interfere with the effective operation of this Charter or of ordinances adopted pursuant thereto.

Section 13.02 Severability.

If any provision of this Charter is held to be invalid the other provisions of this Charter shall not be affected thereby. If the application of the Charter or any of its provisions to any person or circumstance is held invalid the application of this Charter and its provisions or circumstances shall not be affected thereby.

Section 13.03 Transition of Current Elected Officials.

A. Existing City Council. At the time of the adoption of this Charter Councilmembers then serving shall serve until the end of the term for which they have been elected, and until their successors have been elected and qualified.

B. Elected City Clerk. The elected City Clerk shall have the option of remaining in the elected position until the end of the current term for which he/she has been elected or at such time as the office shall be vacated, or of resigning from such elected position and seeking the position of appointed City Clerk.

C. Elected City Treasurer. The elected City Treasurer shall remain in the elected position until the end of the current term for which he/she has been elected or at such time as the office shall be vacated.

Section 13.04 Continuity of Laws, Officers and Employees.

A. Continuation of Rights. The City shall continue to own, possess and control all rights and property of every kind and nature owned, possessed or controlled by it on the effective date of this Charter, and shall be subject to all its debts, obligations and liabilities.

B. Continuation of Acts. All lawful ordinances, resolutions, orders, rules and regulations in force on the effective date of this Charter and not in conflict or inconsistent with this Charter herewith are continued in force until repealed or amended.

C. Continuation of Officers and Employees. The present officers of the City shall retain their respective offices and employment subject to the provisions of this Charter, and an employee holding a City position at the time this Charter takes effect, who was serving in that same or a comparable position at the time of its adoption, shall not be subject to any employee selection or evaluation process as a condition of continuance in the same position, but in all other respects shall be subject to the Personnel Ordinance provided for in Section 7.03 of this Charter.

D. Non-Interference With Court Orders. Nothing herein shall be construed to interfere with or to modify any order or decision of any court of competent jurisdiction provided, however, that this Charter shall in all respects supersede any such court order or decision which does not apply specifically to home rule charter cities under the California Constitution or the United States Constitution.

E. Transfer of Powers. If a City department, office or agency is abolished by this Charter, the powers and duties given it by law shall be transferred

to the City department, office or agency designated by this Charter or, if the Charter makes no provision, designated by the City Council by ordinance.

F. Transfer of Property and Records. All property, records and equipment of any department, office or agency existing when this Charter is adopted shall be transferred to the department, office or agency assuming its powers and duties but, in the event that the powers or duties are to be discontinued or divided between units, or in the event that any conflict arises regarding a transfer, such property, records or equipment shall be transferred to one or more departments, offices or agencies designated by the City Council.

G. Rights and Claims. All rights, claims, actions, orders, contracts and legal or administrative proceedings shall continue, except as modified pursuant to the provisions of this Charter and in each case shall be maintained, carried on or dealt with by the City department, office or agency appropriate under this Charter.

END

PROPOSED AND SUBMITTED BY THE CITY COUNCIL
OF THE CITY OF LINDSAY, CALIFORNIA
FOR VOTER APPROVAL
on this 8th day of January, 1996

Valeriano Saucedo, Mayor
Chair, Charter Commission

Cynthia Rios, Mayor Pro Tem
Vice Chair, Charter Commission

Ellen Hendricks, Councilmember
Member, Charter Commission

John Hill, Councilmember
Member, Charter Commission

John Stava, Councilmember
Member, Charter Commission

CHARTER

CITY OF LINDSAY
CITIZENS CHARTER ADVISORY COMMITTEE

Recommended to the Lindsay City Council and Lindsay Charter Commission for adoption and placement on the April 9, 1996 City Election ballot:

Vahnn Blue, Member

Tom Elson, Member

Josie Figueroa, Member

Janet Kliegl, Member

Herman Landers, Member

Paul Leavens, Member

Ed Murray, Member

Richard E. Pitcher, Member

Ben Rivas, Member

Derrill Roberts, Member

Leonor Serna, Member

Tom Spurlock, Member

Robert Tienken, Member

STAFF TO
LINDSAY CHARTER COMMISSION
LINDSAY CITIZENS CHARTER ADVISORY COMMITTEE

William Drennen, City Manager

Bobbi Paul, City Clerk

Walter McCormick, City Attorney

Douglas W. Ayres
Executive Director

Pamela S. Swift
Deputy Executive Director and Secretary

Lindsay Charter Commission
Lindsay Citizens Charter Advisory Committee

(Resolution calling election follows, when adopted)

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SUPPLEMENT NO. 3
INSERTION GUIDE
LINDSAY MUNICIPAL CODE

February, 2007

(Covering Ordinances through 522)

This supplement consists of reprinted pages replacing existing pages in the Lindsay Municipal Code.

Remove pages listed in the column headed "Remove Pages" and in their places insert the pages listed in the column headed "Insert Pages."

This Guide for Insertion should be retained as a permanent record of pages supplemented and should be inserted in the front of the code.

Remove Pages

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**LINDSAY CITY COUNCIL
REGULAR MEETING AGENDA
MINUTES**

City Hall, 251 E. Honolulu St., Lindsay, CA 93247

Notice is hereby given that the Lindsay City Council will hold a Regular Meeting on **July 25, 2023**, at **6:00 PM** in person and via webinar. The webinar address for members of the public is <https://zoom.us/j/99279557087>. Those who would like to make a public comment during the public comment portion of the agenda may do so by utilizing the raise hand feature or indicating they would like to make a comment in the chat.

Persons with disabilities who may need assistance should contact the City Clerk prior to the meeting at (559) 562-7102 ext. 8034 or via email at lindsay.cityclerk@lindsay.ca.us.

1. CALL TO ORDER

2. PLEDGE

Led by Mayor CERROS.

3. ROLL CALL

Present	Mayor Cerros Mayor Pro Tem Flores Council Member Sanchez Council Member Serna
Absent	*Council Member Caudillo

**Absent with notice.*

4. APPROVAL OF AGENDA

Motion to Approve Agenda							
1 st	2 nd	Result	SERNA	FLORES	CAUDILLO	CERROS	SANCHEZ
CERROS	FLORES	(4-0)	AYE	AYE	ABSENT	AYE	AYE

5. PUBLIC COMMENT

The public is invited to comment on any subject under the jurisdiction of the Lindsay City Council. Please note that speakers that wish to comment on a Regular Item or Public Hearing on tonight’s agenda will have an opportunity to speak when public comment for that item is requested by the Mayor. Comments shall be limited to three (3) minutes per person, with thirty (30) minutes for the total comment period, unless

otherwise indicated by the Mayor. The public may also choose to submit a comment before the meeting via email. Public comments received via email will be distributed to the Council prior to the start of the meeting and incorporated into the official minutes; however, they will not be read aloud. Under state law, matters presented under public comment cannot be acted upon by the Council at this time.

- No public comment received in-person or via teleconference.

6. COUNCIL REPORT

- Councilmember SANCHEZ shared that she was happy to see everyone at meeting and hopes all are staying safe from the heat.
- Councilmember SERNA shared that it is good to be back as well as the current need for blood donations in the Central Valley. SERNA participated in a blood drive in Visalia and urged all to consider donating. SERNA shared that Pastor Adam Perez is holding a Summer Vacation Bible School at Breakthrough Church and saw close to 100 participants as well as many volunteers.
- Mayor Pro Tem FLORES gave kudos to the Lindsay Department of Public Safety for providing relief from the heat by spraying water from the fire truck hose on the Youth Football and Cheer teams. No further report.
- Mayor CERROS attended the TCRTA meeting, networked with Mayors of surrounding Cities regarding clean water. CERROS attended the San Joaquin Valley California Cities dinner event and thanked Woodlake Mayor for the invitation. CERROS is preparing to represent the City as a Delegate in Ono, Japan for the Sister City trip and interviewed with the Japan Times. CERROS thanked the Lindsay Department of Public Safety under the leadership of Chief Carrillo for providing relief from the heat by spraying water from the fire truck hose on the Youth Football and Cheer teams. CERROS congratulated Officer Duron for completing her training.

7. CITY MANAGER REPORT

- CITY MANAGER reported that there is currently many things going on throughout the City.
- CITY MANAGER reported that RECREATION SERVICES DIRECTOR requested a re-allocation of Hospital District Funds which had already been granted to the City to be allocated to Pickleball Courts and ADA accessible doors et al.
- CITY MANAGER reported that PLHA funding is slowly moving along, once final documents are approved, then funds will be allocated for the Mt. Whitney rehabilitation project.
- CITY MANAGER shared that the City is pending confirmation from Senator Feinstein's Office regarding the \$1.75M in funds that were requested for the City.
- CITY MANAGER shared that the City is also pending confirmation from Congressman Valadao's Office regarding the \$400k that was requested for the City.
- CITY MANAGER shared that several candidates are in the background process for the Lindsay Public Safety Department.
- CITY MANAGER shared that National Night Out will be held on August 1, 2023, at 6:00 pm at the Lindsay Wellness Center.
- CITY MANAGER shared that the Citizens Police Academy will begin accepting application some time next month.
- CITY MANAGER congratulated Sergeant Dempsie on being awarded the Lindsay Kiwanis Public Safety Employee of the Quarter Award.
- CITY MANAGER shared that thanks to the \$14k officer wellness grant that the Lindsay Public Safety Department received, a CrossFit gym has been established in the Public Safety Bay.
- CITY MANAGER informed that the Tulare Road Well Cleanup and Filling process has begun.
- CITY MANAGER shared that the Linda Vista Project is currently on schedule.

- CITY MANAGER informed that the Downtown Fire Project is expected to commence in August.

8. DISCUSSION ITEMS

8.1 Beautification of City Roundabouts

Requested by Mayor Cerros

Presented by Neyba Amezcua, Director of City Services & Planning

- Mayor opened item up for public comment.
- One in-person public comment was received from Roxanne Serna. SERNA shared that she liked ‘Option B’ in regard to the proposed Roundabout Art.

9. CONSENT CALENDAR

Routine items approved in one motion unless an item is pulled for discussion.

9.1 Minutes from July 11, 2023, Regular Meeting (pp. 4 – 9)

9.2 Warrant List for July 03, 2023, through July 16, 2023 (pp. 10 – 11)

9.3 Consider the Minute Order Approval of **Resolution No. 23-30**, A Resolution of the City Council of the City of Lindsay Amending the City of Lindsay Records Retention Policy and Repealing and Superseding All Other Resolutions Relative to Records Retention Thereto (pp. 12 – 39)

9.4 Consider the Minute Order Approval of Platinum Level Sponsorship and Expenditure Thereto for the Lindsay Youth Football and Cheer Program for the 2023 Season (pp. 40 – 41)

- Item 9.3 was pulled for discussion. CITY CLERK, CITY ATTORNEY, and CITY MANAGER answered questions from the Council. Council unanimously agreed to remove Item 9.3 from the consent calendar and vote on the item separately.

Motion to Approve Consent Calendar with Item 9.3 Removed							
1 st	2 nd	Result	SERNA	FLORES	CAUDILLO	CERROS	SANCHEZ
CERROS	SERNA	(4-0)	AYE	AYE	ABSENT	AYE	AYE

Motion to Approve Item 9.3 with Email Retention Set to Eighteen (18) Months							
1 st	2 nd	Result	SERNA	FLORES	CAUDILLO	CERROS	SANCHEZ
CERROS	SANCHEZ	(3-1)	AYE	NAY	ABSENT	AYE	AYE

10. ACTION ITEMS

10.1 Consider the Approval of **Resolution No. 23-28**, A Resolution of the City Council of the City of Lindsay Certifying the Lindsay Professional Firefighters’ Association, Teamsters Local 856, as the Recognized and Designated Employee Organization and Exclusive Bargaining Representative of “All Firemen” Employed by the City, as Specifically Defined by Title 2.40.040 of the City of Lindsay Municipal Code (pp. 42 – 58)

Presented by Shelline Bennett, Liebert Cassidy Whitmore

Motion to Approve Item 10.1							
1 st	2 nd	Result	SERNA	FLORES	CAUDILLO	CERROS	SANCHEZ
CERROS	FLORES	(4-0)	AYE	AYE	ABSENT	AYE	AYE

11. PUBLIC HEARING ITEMS

11.1 Special Event Permit (pp. 59 – 87)

A. First Reading of **Ordinance No. 606**, An Ordinance of the City Council of the City of Lindsay Amending Titles Five (5), Eight (8), and Eighteen (18) In Regards to the Special Event Permit and Authorization to Waive Full Reading of Said Ordinance and Authorize Reading by Title Only (pp. 59 – 83)

- Mayor opened the public hearing at 6:53 PM.
- In-person public comment from Roxanne Serna. SERNA stated that she has found the SEP does not work as it should, it is hard to wait for the Council to approve ABC licenses then have to get the paperwork signed by the Chief. SERNA shared that she feels the process to be a bit backwards. SERNA voiced her concerns regarding having to still pay SEP fees to rent a public venue and referenced the Lindsay Memorial building.
- Mayor closed the public hearing at 7:13 PM.

Motion to Continue Item 11.1A to the Next Regular Meeting Scheduled for August 8, 2023							
1 st	2 nd	Result	SERNA	FLORES	CAUDILLO	CERROS	SANCHEZ
CERROS	FLORES	(4-0)	AYE	AYE	ABSENT	AYE	AYE

B. Public Hearing to Consider the Approval of **Resolution No 23-29**, A Resolution of the City Council of the City of Lindsay Amending Special Event Permit Fees and Charges and Repealing All Other Resolutions Relative to Special Event Permit Fees and Charges Thereto (pp. 84 – 87)

Presented by Araceli Mejia, Assistant City Planner

- Mayor opened the public hearing at 7:14 PM.

- Receiving no public comment, Mayor closed he public hearing at 7:15.

Motion to Continue Item 11.1B to the Next Regular Meeting Scheduled for August 8, 2023							
1 st	2 nd	Result	SERNA	FLORES	CAUDILLO	CERROS	SANCHEZ
SERNA	FLORES	(4-0)	AYE	AYE	ABSENT	AYE	AYE

12. EXECUTIVE (CLOSED) SESSION

12.1 Conference with Labor Negotiators Pursuant to Cal Gov. Code § 54957.6

Agency Designated Representative: Joseph M. Tanner, City of Lindsay

Employee Organization: The Lindsay City Employees’ Association; ‘Service Employees International Union (SEIU)’

- No reportable action taken out of closed session.

13. REQUEST FOR FUTURE ITEMS

Council requests for future agenda items, can be called for by any Councilmember during the ‘Request for Future Items’ section of a regular meeting. Immediately following the request of an item, a vote will be taken on the item. If a majority of the City Council supports further study of the item, then a full staff analysis will be prepared within a reasonable time as determined by the City Manager unless otherwise directed by a majority of the City Council. Discussion shall be limited to whether an item should be added to an agenda, not the merit of the item.

- No requests for future items were made.

14. ADJOURNMENT

Lindsay City Council meetings are held in the City Council Chambers at 251 E. Honolulu Street in Lindsay, California beginning at 6:00 P.M. on the second and fourth Tuesday of every month unless otherwise noticed. Materials related to an Agenda item submitted to the legislative body after distribution of the Agenda Packet are available for public inspection in the office of the City Clerk during normal business hours. Complete agenda is available at www.lindsay.ca.us. In compliance with the Americans with Disabilities Act & Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the office of the City Clerk at (559) 562-7102 x 8034. Notification 48 hours prior to the meeting will enable the City to ensure accessibility to this meeting and/or provision of an alternative format of the agenda and documents in the agenda packet.

The next Regular Meeting of the Lindsay City Council is scheduled to be held on August 08, 2023.

- Mayor adjourned the meeting at 7:44 PM.

Check#	Fund	Date	Vendor #	Vendor Name	Description	Amount
24005						\$250.00
	101 - GENERAL FUND	7/20/2023	6602	RAMIRO SERNA	JULY COUNCIL STIPEND	250.00
24007						\$250.00
	101 - GENERAL FUND	7/20/2023	6603	RAMONA CAUDILLO	JULY COUNCIL STIPEND	250.00
24008						\$300.00
	101 - GENERAL FUND	7/20/2023	6604	HIPOLITO CERROS	JULY COUNCIL STIPEND	300.00
24009						\$250.00
	101 - GENERAL FUND	7/20/2023	5511	ROSAENA SANCHEZ	JULY COUNCIL STIPEND	250.00
24010						\$275.00
	101 - GENERAL FUND	7/20/2023	4068	YOLANDA FLORES	JULY COUNCIL STIPEND	275.00
24012						\$255,860.00
	101 - GENERAL FUND	7/20/2023	7110	PRISM	GENERAL LIABILITY	57,942.23
	101 - GENERAL FUND	7/20/2023	7110	PRISM	GENERAL LIABILITY	15,447.88
	101 - GENERAL FUND	7/20/2023	7110	PRISM	GENERAL LIABILITY	5,064.88
	101 - GENERAL FUND	7/20/2023	7110	PRISM	PREMIUM	598.54
	101 - GENERAL FUND	7/20/2023	7110	PRISM	PREMIUM	159.58
	101 - GENERAL FUND	7/20/2023	7110	PRISM	PREMIUM	52.32
	261 - GAS TAX FUND	7/20/2023	7110	PRISM	GENERAL LIABILITY	3,317.50
	261 - GAS TAX FUND	7/20/2023	7110	PRISM	PREMIUM	34.27
	400 - WELLNESS CENTER	7/20/2023	7110	PRISM	GENERAL LIABILITY	77,391.37
	400 - WELLNESS CENTER	7/20/2023	7110	PRISM	PREMIUM	799.45
	552 - WATER	7/20/2023	7110	PRISM	GENERAL LIABILITY	44,292.38
	552 - WATER	7/20/2023	7110	PRISM	PREMIUM	457.54
	553 - SEWER	7/20/2023	7110	PRISM	GENERAL LIABILITY	44,343.01
	553 - SEWER	7/20/2023	7110	PRISM	PREMIUM	458.06
	554 - REFUSE	7/20/2023	7110	PRISM	GENERAL LIABILITY	5,444.75
	554 - REFUSE	7/20/2023	7110	PRISM	PREMIUM	56.24
24013						\$70,753.38
	101 - GENERAL FUND	7/20/2023	6100	KEENAN & ASSOCIATES	JULY PPO RETIREE	2,892.93
	101 - GENERAL FUND	7/20/2023	6100	KEENAN & ASSOCIATES	JULY PPO 250	67,860.45
24014						\$27.50
	101 - GENERAL FUND	7/20/2023	6681	FRANCESCA QUINTANA	MILEAGE	27.50
24015						\$200.00
	101 - GENERAL FUND	7/20/2023	7050	BRENDAN DIAZ	S-290 FIRE TRAINING	200.00
24016						\$100.00
	101 - GENERAL FUND	7/20/2023	7050	BRENDAN DIAZ	S-234 ENGINE BOSS 8/9,8/10	100.00
24017						\$300.00
	101 - GENERAL FUND	7/20/2023	6710	PRECISION TRAINING GROUP	BRENDAN D. FIRE TRAINING	300.00
24018						\$167.00
	101 - GENERAL FUND	7/20/2023	7114	KENNETH CLIFFORD	ARPOC 2023 CONFERENCE	167.00
24019						\$1,800.00
	400 - WELLNESS CENTER	7/20/2023	6260	LLEON SERVICES	W.C. JULY CHEM. BALANCING	1,800.00
24020						\$956.24
	101 - GENERAL FUND	7/20/2023	6600	AMERICAN HERITAGE LIFE INSURANCE CO	JULY ACCIDENT PLAN	956.24
24021						\$425.00
	101 - GENERAL FUND	7/20/2023	6346	JEFF PFEIFFER	JULY SQUIRREL TREATMENT	425.00
24022						\$100.00
	101 - GENERAL FUND	7/20/2023	7099	LEGOLVAN LAW	LEGAL FEES	100.00
24023						\$2,000.00
	552 - WATER	7/20/2023	5399	MARCOS LOYA	TOODS HILL CLEAN UP	2,000.00
24024						\$3,186.70
	101 - GENERAL FUND	7/20/2023	6991	PREMIER ACCESS INSURANCE COMPANY	JULY 2023 DENTAL PLANS	3,186.70
24025						\$457.09
	101 - GENERAL FUND	7/20/2023	5625	NGLIC-SUPERIOR VISION INC.	JULY 2023 VISION PLAN	457.09
24026						\$332.92
	400 - WELLNESS CENTER	7/20/2023	6500	CHARTER COMMUNICATIONS	JULY W.C. INTERNET	332.92
24027						\$4,506.34
	101 - GENERAL FUND	7/20/2023	6146	SUPERION, LLC	JULY 2023 SUPERION	1,126.58
	552 - WATER	7/20/2023	6146	SUPERION, LLC	JULY 2023 SUPERION	1,126.59
	553 - SEWER	7/20/2023	6146	SUPERION, LLC	JULY 2023 SUPERION	1,126.59
	554 - REFUSE	7/20/2023	6146	SUPERION, LLC	JULY 2023 SUPERION	1,126.58
24028						\$4,772.01
	101 - GENERAL FUND	7/20/2023	2421	TULARE COUNTY LAFCO	FY23/24 LAFCO COSTS	4,772.01
24029						\$850.00
	552 - WATER	7/20/2023	6118	CVIN LLC D.B.A VAST NETWORK	7/1/23-7/31/23	283.34
	553 - SEWER	7/20/2023	6118	CVIN LLC D.B.A VAST NETWORK	7/1/23-7/30/23	283.33
	554 - REFUSE	7/20/2023	6118	CVIN LLC D.B.A VAST NETWORK	7/1/23-7/30/23	283.33
24030						\$480.60
	400 - WELLNESS CENTER	7/20/2023	1858	ALL PRO FIRE AND SAFETY	DRY CHEM RECHARGE CITY POOL	480.60
24031						\$6,285.50
	101 - GENERAL FUND	7/20/2023	5803	EMD NETWORKING SERVICES, INC.	JULY 2023 IT SERVICES	6,285.50
24032						\$668.00
	779 - 00-HOME-0487	7/20/2023	5284	FARMERS	HOME POLICY-99625-8328	668.00
24033						\$2,172.00
	552 - WATER	7/20/2023	137	FRIANT WATER AUTHORITY	AUG BILLING	2,172.00
24034						\$214.85
	552 - WATER	7/20/2023	7116	SANTAMARIA SANDRA	226 E TULARE RD	214.85
24035						\$1,500.00
	101 - GENERAL FUND	7/21/2023	2498	VIRGINIA LOYA	CUP REIMBURSEMENT	1,500.00

24036						\$1,250.00
	101 - GENERAL FUND	7/21/2023	7115	FLOCK SAFETY	6/9/2023-3/15/2025	1,250.00
24037						\$175.00
	400 - WELLNESS CENTER	7/21/2023	6093	GFIT	CHAIR CLASSES	25.00
	400 - WELLNESS CENTER	7/21/2023	6093	GFIT	CHAIR CLASSES	150.00
24038						\$125.00
	400 - WELLNESS CENTER	7/21/2023	5912	YVETTER DURAN	JUNE POUND CLASSES	125.00
24039						\$300.00
	400 - WELLNESS CENTER	7/21/2023	3208	SHANNON PATTERSON	JUNE STRENGTH&BALANCE	300.00
24040						\$600.00
	400 - WELLNESS CENTER	7/21/2023	6998	RONALD ERIK HANSEN	MONTHLY MAINTENANCE	600.00
24041						\$200.00
	400 - WELLNESS CENTER	7/21/2023	6807	MARISOL DIAZ VELASQUEZ	JUNE POUND&SPIN CLASSES	200.00
24042						\$425.00
	400 - WELLNESS CENTER	7/21/2023	6973	ELIZABETH GUND	JUNE VINYASA FLOW, YOGA	425.00
24043						\$175.00
	400 - WELLNESS CENTER	7/21/2023	5819	ANITA GUTIERREZ	JUNE ZUMBA CLASSES	175.00
24044						\$75.00
	400 - WELLNESS CENTER	7/21/2023	6097	ANGELICA BERMUDEZ	JUNE ZUMBA CLASSES	75.00
24045						\$9,600.00
	101 - GENERAL FUND	7/21/2023	6579	MV CHENG & ASSOCIATES INC	JUNE 2023-F.D. CONSULT	9,600.00
24046						\$4,649.00
	101 - GENERAL FUND	7/24/2023	2771	DEPARTMENT OF MOTOR VEHICLE	1FM5K8AB9PGA64386- DMV FEES	4,649.00
24047						\$4,649.00
	101 - GENERAL FUND	7/24/2023	2771	DEPARTMENT OF MOTOR VEHICLE	1FM5K8AB4PGA63971- DMV FEES	4,649.00
24048						\$4,649.00
	101 - GENERAL FUND	7/24/2023	2771	DEPARTMENT OF MOTOR VEHICLE	1FM5K8AB2PGA64181- DMV FEES	4,649.00
24049						\$4,649.00
	101 - GENERAL FUND	7/24/2023	2771	DEPARTMENT OF MOTOR VEHICLE	1FM5K8AB0PGA64213- DMV FEES	4,649.00
24050						\$4,649.00
	101 - GENERAL FUND	7/24/2023	2771	DEPARTMENT OF MOTOR VEHICLE	1FM5K8AB6PGA64488- DMV FEES	4,649.00
24051						\$844.09
	101 - GENERAL FUND	7/25/2023	4067	LINCOLN NAT'L INSURANCE CO.	JULY 2023 LIFE PLAN	844.09
24052						\$20.00
	101 - GENERAL FUND	7/25/2023	6015	TULARE COUNTY CLERK	LIEN RELEASE-480 N HARVARD	20.00
24053						\$58.00
	101 - GENERAL FUND	7/25/2023	6015	TULARE COUNTY CLERK	ELEVATE LLC CUP 23-02 APN:205-282-009-000	58.00
24054						\$58.00
	101 - GENERAL FUND	7/25/2023	6015	TULARE COUNTY CLERK	WTP FILTER BANK D 729 E. HONOLULU	58.00
24055						\$100.00
	101 - GENERAL FUND	7/25/2023	078	TULARE COUNTY CLERK	BLOSSOM ANNUAL MEMBERSHIP	100.00
24056						\$78,649.79
	600 - CAPITAL IMPROVEMENT	7/25/2023	7119	SEAL RITE PAVING AND GRADING	VALENCIA ST & LINDA VISTA DR	78,649.79
24057						\$982.24
	101 - GENERAL FUND	7/26/2023	6600	AMERICAN HERITAGE LIFE INSURANCE CO	JUNE ACCIDENT PLAN	982.24
24058						\$88.45
	101 - GENERAL FUND	7/26/2023	6551	CHARTER COMMUNICATIONS	106076601061423 JUNE	88.45
24059						\$19,068.50
	552 - WATER	7/26/2023	2960	UNITED STATES BUREAU OF RECLAMATION	5-07-20 W428-LTR1-P	19,068.50
24060						\$1,217.44
	781 - CAL HOME RLF	7/26/2023	2540	DEPT. OF HOUSING & COMMUNITY DEVELOP	CALHOME 6/30/23 TO HCD	1,217.44
24061						\$2,108.10
	720 - HOME REVOLVING LN FUND	7/26/2023	2540	DEPT. OF HOUSING & COMMUNITY DEVELOP	6/30/23 HOME TO HCD	2,108.10
24062						\$13,945.69
	700 - CDBG REVOLVING LN FUND	7/26/2023	2540	DEPT. OF HOUSING & COMMUNITY DEVELOP	CDBG 6/30/23 TO HCG	13,945.69
24063						\$1,346.13
	101 - GENERAL FUND	7/26/2023	6010	FRONTIER COMMUNICATIONS	209-151-2650	21.52
	101 - GENERAL FUND	7/26/2023	6010	FRONTIER COMMUNICATIONS	209-151-2652	43.04
	101 - GENERAL FUND	7/26/2023	6010	FRONTIER COMMUNICATIONS	209-151-2656	43.04
	101 - GENERAL FUND	7/26/2023	6010	FRONTIER COMMUNICATIONS	209-151-2662	56.91
	101 - GENERAL FUND	7/26/2023	6010	FRONTIER COMMUNICATIONS	209-188-3200	5.07
	101 - GENERAL FUND	7/26/2023	6010	FRONTIER COMMUNICATIONS	562-2512	176.03
	101 - GENERAL FUND	7/26/2023	6010	FRONTIER COMMUNICATIONS	209-151-2650	21.52
	101 - GENERAL FUND	7/26/2023	6010	FRONTIER COMMUNICATIONS	209-042-9309	1.99
	101 - GENERAL FUND	7/26/2023	6010	FRONTIER COMMUNICATIONS	209-188-3200	5.07
	552 - WATER	7/26/2023	6010	FRONTIER COMMUNICATIONS	209-150-2936	78.33
	552 - WATER	7/26/2023	6010	FRONTIER COMMUNICATIONS	209-151-2650	21.52
	552 - WATER	7/26/2023	6010	FRONTIER COMMUNICATIONS	209-188-3200	5.07
	552 - WATER	7/26/2023	6010	FRONTIER COMMUNICATIONS	562-1552	126.48
	552 - WATER	7/26/2023	6010	FRONTIER COMMUNICATIONS	562-7131	158.09
	553 - SEWER	7/26/2023	6010	FRONTIER COMMUNICATIONS	209-150-3621	111.33
	553 - SEWER	7/26/2023	6010	FRONTIER COMMUNICATIONS	209-151-2650	21.52
	553 - SEWER	7/26/2023	6010	FRONTIER COMMUNICATIONS	209-151-2654	43.04
	553 - SEWER	7/26/2023	6010	FRONTIER COMMUNICATIONS	209-151-2655	43.04
	553 - SEWER	7/26/2023	6010	FRONTIER COMMUNICATIONS	209-188-3200	5.07
	553 - SEWER	7/26/2023	6010	FRONTIER COMMUNICATIONS	562-7132	358.45
24064						\$100.00
	101 - GENERAL FUND	7/26/2023	7117	HEATHER BLATTNER	ARBOR DEPOSIT REFUND	100.00

24065						\$2,512.54
	306 - COVID-19 ARPA FUND	7/26/2023 7013	KOSMONT CAMPANIES	6/1/23-6/30/23 HBU		2,512.54
24066						\$2,088.01
	101 - GENERAL FUND	7/28/2023 6425	LINDSAY TIRE & AUTO CARE CENTER	GARDEN TRAILER-TIRE		325.00
	101 - GENERAL FUND	7/28/2023 6425	LINDSAY TIRE & AUTO CARE CENTER	GARDENING TRAILER-TIRES		573.01
	101 - GENERAL FUND	7/28/2023 6425	LINDSAY TIRE & AUTO CARE CENTER	TRAILER-NEW TIRES		260.00
	552 - WATER	7/28/2023 6425	LINDSAY TIRE & AUTO CARE CENTER	LIC#1051245-NEW TIRES		110.00
	552 - WATER	7/28/2023 6425	LINDSAY TIRE & AUTO CARE CENTER	LIC#1400809-FLAT REPAIR		40.00
	552 - WATER	7/28/2023 6425	LINDSAY TIRE & AUTO CARE CENTER	LIC#1456093-TIRES		780.00
24067						\$234.90
	101 - GENERAL FUND	7/26/2023 2933	MALLORY CO.	LATEX GLOVES		234.90
24068						\$13,000.00
	101 - GENERAL FUND	7/26/2023 6947	MOSS, LEVY & HARTZHEIM LLP	AUDIT WORK FY END 6/30/22		13,000.00
24069						\$2,149.17
	552 - WATER	7/26/2023 6673	PACE SUPPLY CORP	BRASS COUPLINGS		592.64
	552 - WATER	7/26/2023 6673	PACE SUPPLY CORP	REPAIR CLAMPS		1,556.53
24070						\$44,285.04
	101 - GENERAL FUND	7/27/2023 310	SOUTHERN CA. EDISON CO.	268 N SWEETBRIAR		4.47
	101 - GENERAL FUND	7/27/2023 310	SOUTHERN CA. EDISON CO.	60001505934		183.75
	101 - GENERAL FUND	7/27/2023 310	SOUTHERN CA. EDISON CO.	60001505934		1,604.15
	101 - GENERAL FUND	7/27/2023 310	SOUTHERN CA. EDISON CO.	60001505934		1,816.11
	101 - GENERAL FUND	7/27/2023 310	SOUTHERN CA. EDISON CO.	60001505934		44.02
	101 - GENERAL FUND	7/27/2023 310	SOUTHERN CA. EDISON CO.	60001505934		1,476.30
	261 - GAS TAX FUND	7/27/2023 310	SOUTHERN CA. EDISON CO.	108 HERMOSA ST PED		109.07
	261 - GAS TAX FUND	7/27/2023 310	SOUTHERN CA. EDISON CO.	108 W HERMOSA		20.12
	261 - GAS TAX FUND	7/27/2023 310	SOUTHERN CA. EDISON CO.	135 W HONOLULU LS3A		128.62
	261 - GAS TAX FUND	7/27/2023 310	SOUTHERN CA. EDISON CO.	151 W SAMOA ST LS3D		75.06
	261 - GAS TAX FUND	7/27/2023 310	SOUTHERN CA. EDISON CO.	157 N MIRAGE AVE LED		53.72
	261 - GAS TAX FUND	7/27/2023 310	SOUTHERN CA. EDISON CO.	269 N SWEETBRIAR		60.46
	261 - GAS TAX FUND	7/27/2023 310	SOUTHERN CA. EDISON CO.	700482892316		210.51
	261 - GAS TAX FUND	7/27/2023 310	SOUTHERN CA. EDISON CO.	113 W HICKORY		41.06
	261 - GAS TAX FUND	7/27/2023 310	SOUTHERN CA. EDISON CO.	60001505934		6,278.70
	552 - WATER	7/27/2023 310	SOUTHERN CA. EDISON CO.	60001505934		26,259.97
	553 - SEWER	7/27/2023 310	SOUTHERN CA. EDISON CO.	23611 RD 196-WWTP		2,989.01
	553 - SEWER	7/27/2023 310	SOUTHERN CA. EDISON CO.	60001505934		527.39
	556 - VITA-PAKT	7/27/2023 310	SOUTHERN CA. EDISON CO.	60001505934		1,076.06
	883 - SIERRA VIEW ASSESSMENT	7/27/2023 310	SOUTHERN CA. EDISON CO.	60001505934		423.23
	884 - HERITAGE ASSESSMENT DIST	7/27/2023 310	SOUTHERN CA. EDISON CO.	60001505934		96.22
	886 - SAMOA	7/27/2023 310	SOUTHERN CA. EDISON CO.	60001505934		15.55
	887 - SWEETBRIER TOWNHOUSES	7/27/2023 310	SOUTHERN CA. EDISON CO.	60001505934		25.62
	888 - PARKSIDE	7/27/2023 310	SOUTHERN CA. EDISON CO.	60001505934		96.22
	889 - SIERRA VISTA ASSESSMENT	7/27/2023 310	SOUTHERN CA. EDISON CO.	60001505934		67.50
	890 - MAPLE VALLEY ASSESSMENT	7/27/2023 310	SOUTHERN CA. EDISON CO.	60001505934		98.55
	891 - PELOUS RANCH	7/27/2023 310	SOUTHERN CA. EDISON CO.	1250 PARKSIDE IRR.		15.04
	891 - PELOUS RANCH	7/27/2023 310	SOUTHERN CA. EDISON CO.	60001505934		488.56
24071						\$402.87
	400 - WELLNESS CENTER	7/27/2023 1776	SMART & FINAL	2023 KIDS DAY-HOT DOGS		402.87
24072						\$535.00
	101 - GENERAL FUND	7/27/2023 6123	TOW PRO	LIC#1366732 TOW SERVICE		200.00
	101 - GENERAL FUND	7/27/2023 6123	TOW PRO	LIC#7EB2511 EVIDENCE VEHICLE		335.00
24073						\$48.93
	101 - GENERAL FUND	7/27/2023 144	THE GAS COMPANY	139 N SWEETBRIAR AVE		16.85
	400 - WELLNESS CENTER	7/27/2023 144	THE GAS COMPANY	740 SEQUOIA BLDG		32.08
24074						\$1,215.88
	101 - GENERAL FUND	7/27/2023 1041	VERIZON WIRELESS	642065758-00003 JUNE		41.98
	101 - GENERAL FUND	7/27/2023 1041	VERIZON WIRELESS	642065758-00001 JUNE		125.31
	101 - GENERAL FUND	7/27/2023 1041	VERIZON WIRELESS	642065758-00004 JUNE		915.46
	101 - GENERAL FUND	7/27/2023 1041	VERIZON WIRELESS	642065758-00003 JUNE		22.19
	101 - GENERAL FUND	7/27/2023 1041	VERIZON WIRELESS	642065758-00003 JUNE		22.19
	101 - GENERAL FUND	7/27/2023 1041	VERIZON WIRELESS	642065758-00003 JUNE		22.19
	552 - WATER	7/27/2023 1041	VERIZON WIRELESS	642065758-00003 JUNE		22.19
	553 - SEWER	7/27/2023 1041	VERIZON WIRELESS	642065758-00003 JUNE		22.19
	554 - REFUSE	7/27/2023 1041	VERIZON WIRELESS	642065758-00003 JUNE		22.18
24075						\$100.00
	553 - SEWER	7/27/2023 5901	WORLD OIL ENVIRONMENTAL SERVICES	USED OIL SVC CHARGE		100.00
24076						\$643.00
	101 - GENERAL FUND	7/27/2023 6504	ADVENTIST HEALTH TOXICOLOGY	JUNE TOXICOLOGY SVCS		643.00
24077						\$320.00
	101 - GENERAL FUND	7/27/2023 3898	AMERICAN INCORPORATED	P.S. ANNUAL HVAC SVC		320.00
24078						\$248.11
	101 - GENERAL FUND	7/27/2023 5457	AUTO ZONE COMMERCIAL	BATTERY CHARGER		67.85
	101 - GENERAL FUND	7/27/2023 5457	AUTO ZONE COMMERCIAL	DIESEL EXHAUST FLUID		58.70
	553 - SEWER	7/27/2023 5457	AUTO ZONE COMMERCIAL	LOW FLOOR JACK		121.56
24079						\$24.50
	101 - GENERAL FUND	7/27/2023 6362	AMERICAN BUSINESS MACHINES	H.R. #17684 TONER		15.00
	101 - GENERAL FUND	7/27/2023 6362	AMERICAN BUSINESS MACHINES	FINANCE CHARGE		9.50
24080						\$4,300.00
	305 - EMERGENCY OPERATIONS	7/27/2023 7071	A PLUS ROOFING COMPANY	W.C.-2 WATER TEST & REPAIRS		4,300.00
24081						\$3,339.89
	552 - WATER	7/27/2023 051	BSK	DRINKING WATER-KELLER WEGLEY		2,036.14
	553 - SEWER	7/27/2023 051	BSK	WASTE WATER-WEEKLY, MONTHLY		810.00
	556 - VITA-PAKT	7/27/2023 051	BSK	VITA-PAKT WASTE WATER		493.75

24082						\$127.18
	400 - WELLNESS CENTER	7/27/2023	5832	CINTAS CORPORATION #621	W.C. CLEANER/DISINFCT	127.18
24083						\$283.15
	101 - GENERAL FUND	7/27/2023	4567	COUNTY OF TULARE IT RADIO COMM.	JUNE-ORDER#20230433	283.15
24084						\$1,350.00
	101 - GENERAL FUND	7/27/2023	6521	CENTRAL VALLEY FORENSIC NURSING SPE	IRIARTE-CASE#23L01096	1,200.00
	101 - GENERAL FUND	7/27/2023	6521	CENTRAL VALLEY FORENSIC NURSING SPE	SOLANO-CASE#23L-01298	150.00
24085						\$409.00
	101 - GENERAL FUND	7/27/2023	4155	CALIFORNIA DIESEL COMPLIANCE	PSIP-STATEWIDE SMOKE TEST	409.00
24086						\$4,681.00
	400 - WELLNESS CENTER	7/27/2023	6090	CLEAN CUT LANDSCAPE MANAGEMENT INC.	W.C. JUNE LANDSCAPE	975.00
	400 - WELLNESS CENTER	7/27/2023	6090	CLEAN CUT LANDSCAPE MANAGEMENT INC.	W.C. MAY LANDSCAPE	431.00
	883 - SIERRA VIEW ASSESSMENT	7/27/2023	6090	CLEAN CUT LANDSCAPE MANAGEMENT INC.	JUNE LANDSCAPE	1,298.00
	884 - HERITAGE ASSESSMENT DIST	7/27/2023	6090	CLEAN CUT LANDSCAPE MANAGEMENT INC.	JUNE LANDSCAPE	315.00
	886 - SAMOA	7/27/2023	6090	CLEAN CUT LANDSCAPE MANAGEMENT INC.	JUNE LANDSCAPE	154.00
	887 - SWEETBRIER TOWNHOUSES	7/27/2023	6090	CLEAN CUT LANDSCAPE MANAGEMENT INC.	JUNE LANDSCAPE	546.00
	888 - PARKSIDE	7/27/2023	6090	CLEAN CUT LANDSCAPE MANAGEMENT INC.	JUNE LANDSCAPE	225.00
	889 - SIERRA VISTA ASSESSMENT	7/27/2023	6090	CLEAN CUT LANDSCAPE MANAGEMENT INC.	JUNE LANDSCAPE	97.00
	890 - MAPLE VALLEY ASSESSMENT	7/27/2023	6090	CLEAN CUT LANDSCAPE MANAGEMENT INC.	JUNE LANDSCAPE	55.00
	891 - PELOUS RANCH	7/27/2023	6090	CLEAN CUT LANDSCAPE MANAGEMENT INC.	JUNE LANDSCAPE	585.00
24087						\$912.05
	101 - GENERAL FUND	7/27/2023	6351	CANON FINANCIAL SERVICES, INC	H.R.-#C257IF	182.41
	101 - GENERAL FUND	7/27/2023	6351	CANON FINANCIAL SERVICES, INC	C.M.-#C5550I	182.41
	101 - GENERAL FUND	7/27/2023	6351	CANON FINANCIAL SERVICES, INC	F.D.-#C5560I	182.41
	101 - GENERAL FUND	7/27/2023	6351	CANON FINANCIAL SERVICES, INC	P.S.-#C256IF	182.41
	101 - GENERAL FUND	7/27/2023	6351	CANON FINANCIAL SERVICES, INC	C.S.-#4535I	182.41
24088						\$175.09
	101 - GENERAL FUND	7/27/2023	2258	CROUZET IRRIGATION SUPPLY, INC.	32" METER KEY-LANDSCAPE	150.44
	889 - SIERRA VISTA ASSESSMENT	7/27/2023	2258	CROUZET IRRIGATION SUPPLY, INC.	IRRITROL ADJUSTABLE	24.65
24089						\$12,968.91
	306 - COVID-19 ARPA FUND	7/27/2023	7118	ALLIANT INSURANCE SERVICES,	POLICY#H23NGP227396-00	12,968.91
24090						\$389,562.00
	101 - GENERAL FUND	7/28/2023	7110	PRISM	EXCESS WORKERS COMPENSATION	246,694.00
	101 - GENERAL FUND	7/28/2023	7110	PRISM	WORKERS COMPENSATION	142,868.00
NAVIA3						\$1,330.80
	101 - GENERAL FUND	03/22/23	4924	NAVIA BENEFIT SOLUT	SEC125 FUNDING DEPO	1,330.80
SUMMARY BY FUNDING SOURCE						
	101 - GENERAL FUND					624,001.77
	261 - GAS TAX FUND					10,329.09
	305 - EMERGENCY OPERATIONS					4,300.00
	306 - COVID-19 ARPA FUND					15,481.45
	400 - WELLNESS CENTER					84,847.47
	552 - WATER					101,402.16
	553 - SEWER					51,363.59
	554 - REFUSE					6,933.08
	556 - VITA-PAKT					1,569.81
	600 - CAPITAL IMPROVEMENT					78,649.79
	700 - CDBG REVOLVING LN FUND					13,945.69
	720 - HOME REVOLVING LN FUND					2,108.10
	779 - 00-HOME-0487					668.00
	781 - CAL HOME RLF					1,217.44
	883 - SIERRA VIEW ASSESSMENT					1,721.23
	884 - HERITAGE ASSESSMENT DIST					411.22
	886 - SAMOA					169.55
	887 - SWEETBRIER TOWNHOUSES					571.62
	888 - PARKSIDE					321.22
	889 - SIERRA VISTA ASSESSMENT					189.15
	890 - MAPLE VALLEY ASSESSMENT					153.55
	891 - PELOUS RANCH					1,088.60
TOTAL						\$ 1,001,443.58



Monthly Treasurer's Report

July 31, 2023

Cash Balances Classified by Depository

CASH RESOURCES

LOCATION	GL ACCOUNT #	TYPE	BALANCE
Cash Register Funds (City Hall & Wellness)	100-102	RES	\$700
Bank of the Sierra- Depository Account	100-114	GEN	\$2,894,287
Bank of the Sierra - AP/Operating	100-100	GEN	\$11,700
Bank of the Sierra - Payroll	100-106	GEN	\$357,411
Bank of the Sierra - Wellness Center	100-500	GEN	\$1,088,806
Bank of the Sierra - Impound Account	100-120	RES	\$14,937
LAIF Savings: City & Successor Agency	100-103	INV-RES	\$6,090,699
MBS Investments	100-700	INV-RES	5,545,643
TOTAL			\$16,004,183

CASH EXPENDED

ACCOUNTS PAYABLE & PAYROLL	AMOUNT
Accounts Payable	\$1,001,444
Payroll (July 14 Payday)	\$287,627
Payroll (July 28 Payday)	\$292,849
TOTAL	\$ 1,581,919

DEBT SERVICE	AMOUNT
2015 Bonds	\$700,043
Wellness Center	\$94,430
TOTAL	\$ 794,473

INVESTMENTS

INVESTMENT POLICY COMPLIANCE

As of the end of the month, the investments were in compliance with the requirements of the City's investment policy. This report reflects all cash and investments of the City of Lindsay (O/S checks not reflected in End Cash Balance).

INVESTED FUNDS	\$11,636,342
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Respectfully submitted,

Joseph Tanner

City Manager
City of Lindsay

ABBREVIATIONS

GEN: GENERAL UNRESTF
RES: RESTRICTED ACTIVI
INV: INVESTMENT



STAFF REPORT

TO: Lindsay City Council
FROM: Francesca Quintana, City Clerk & Assistant to the City Manager
DEPARTMENT: City Manager
ITEM NO.: 11.4
MEETING DATE: August 08, 2023

ACTION & RECOMMENDATION

Consider the Minute Order Approval of Letters Support for Senate Bill 231, Senate Bill 265, and Senate Bill 577.

Staff recommends that the City Council consider the approval of providing letters of Support on behalf of the City of Lindsay for Senate Bill 231, Senate Bill 265, and Senate Bill 577 as the bills aim to combat climate change, develop cybersecurity preparedness plans for California's critical infrastructure sectors, and accept additional funding sources for the California Service Training and Education program.

BACKGROUND | ANALYSIS

Senate Bill 231 requires the Department of Water Resources (DWR) to adopt key recommendations made by the independent California State Auditor. These recommendations stem from a recently released audit which examined DWR's management of the state's water supply. Specifically, SB 231 would require DWR to:

- Establish a formal process to annually evaluate the accuracy of its water supply forecasts and establish plans to improve those forecasts.
- Adopt a new water supply forecasting model and implement procedures that address the effects of climate change.
- Implement a formal policy and procedures for documenting DWR's operational plans for the state's water supply. The Department of Water Resources is also required to address the rationale for its operating procedures.
- Develop a comprehensive, long-term plan for mitigating and responding to the effects of drought.

Senate Bill 265 takes action to combat the growing issue of cyber threats and cyberattacks by directing the California Office of Emergency Services (Cal-OES) and the California Cybersecurity Integration Center (Cal-CSIC) to develop outreach and funding plans to improve cybersecurity preparedness in California's critical infrastructure sectors.

Senate Bill (SB) 577 allows the State Fire Marshal to accept additional funding sources for the California Fire Service Training and Education Program. The bill would make the same change relative to the California Fire and Arson Training Act. Permitting the State Fire Marshall to receive additional funding sources for training programs will help to mitigate rising fees for those seeking fire training certification.

Attached to this report are letters of support for all three (3) bills. Should the City Council approve of providing letters of support, then the letters of support will be signed by the Mayor and provided to the Chair of the California Assembly Appropriations Committee.

FISCAL IMPACT

No fiscal impact associated with this action.

ATTACHMENTS

- SB 231 Fact Sheet
- Letter of Support for SB 231
- SB 265 Fact Sheet
- Letter of Support for SB 265
- SB 577 Fact Sheet
- Letter of Support for SB 577



Senate Bill 231

Amended, June 16, 2023

SUMMARY

Senate Bill 231 requires the Department of Water Resources (DWR) to adopt key recommendations made by the independent California State Auditor. These recommendations stem from a recently released audit which examined DWR's management of the state's water supply. Specifically, SB 231 would require DWR to

- Establish a formal process to annually evaluate the accuracy of its water supply forecasts and establish plans to improve those forecasts.
- Adopt a new water supply forecasting model and implement procedures that address the effects of climate change.
- Implement a formal policy and procedures for documenting DWR's operational plans for the state's water supply. The Department of Water Resources is also required to address the rationale for its operating procedures.
- Develop a comprehensive, long-term plan for mitigating and responding to the effects of drought

PROBLEM

Due to the impacts of climate change, accuracy in modeling is imperative to managing water resources properly. During Water Year 2021, DWR's modeling errors resulted in the excessive release of around 700,000 acre-feet of water from California reservoirs. Billions of gallons of water were released into the Sacramento-San

Joaquin Delta without benefiting humans or wildlife. This loss of water had severe consequences for California due to the significantly lower runoff than anticipated

BACKGROUND

In March 2022, former Assemblymember Gray submitted a letter requesting an audit of the Department of Water Resources investigating the management and administration of surface water. This audit included investigations into the accuracy of data collection, predictive models, and procedures used by the state. The findings of the audit can help ensure forecast modeling mistakes are avoided in future water years. In addition, improved transparency by the DWR may offer clarity and a better understanding of the policies it implements.

SOLUTION

SB 231 requires DWR to update its policies and procedures to better combat the impacts of climate change. The bill also requires DWR to document and address the decisions behind its water operating decisions. Accurate water data collection, planning, and accountability will ensure water stays a vital resource for the public for generations to come.

FOR MORE INFORMATION

Harrison Pardini, Legislative Aide
Harrison.Pardini@sen.ca.gov
(916) 651-4016



City of Lindsay

P.O. Box 369 — Lindsay, California 93247 — 251 Honolulu Street

August 08, 2022

Via E-mail

To: The Honorable Assembly Member Chris Holden
Chair, Assembly Appropriations Committee
1021 O Street, Suite 8220
Sacramento, CA 95814

Re: Senate Bill 231 (Hurtado) —Dept. of Water Resources: Water Supply Forecasting —SUPPORT

Dear Chair Holden,

The City of Lindsay is pleased to support SB 231 (Hurtado) which would require the Department of Water Resources to adopt key recommendations made by the independent California State Auditor regarding surface water management. These recommendations would update DWR's policies and procedures surrounding water supply forecasts, operational plans for state water supply, and its plans for mitigating and responding to droughts.

The City of Lindsay encompasses approximately 1,747 acres and is home to nearly 14,000 residents. Lindsay residents are 78% Latino and primarily agricultural workers. The City of Lindsay proudly supports measures that aim to combat climate change.

Due to the impacts of climate change, accuracy in modeling is imperative to managing water resources properly. In Water Year 2021 significant modeling errors by DWR led to the over-release of an estimated 700,000 acre-feet of water from California reservoirs. Billions of gallons of water were released into the Sacramento-San Joaquin Delta at times when it had no positive impact for humans or wildlife. This wasted water would have proved invaluable as the predicted runoff fell vastly short of expectations.

SB 231 requires DWR to update its policies and procedures to better combat the impacts of climate change. The bill also requires DWR to document and address the decisions behind its water operating decisions. Improved transparency may offer clarity and a better understanding of DWR's reasoning for the policies and water management decisions it implements. Millions of Californians depend on DWR's management of the State Water Project, and it is imperative that there is accurate water data collection, planning, and accountability to ensure water stays a vital resource for the public for generations to come. For these reasons, the City of Lindsay supports SB 231 (Hurtado) and respectfully asks for your AYE vote in the Assembly Water, Parks, and Wildlife Committee.

Sincerely,

Hipolito A. Cerros
Mayor

Cc: Members, Assembly Appropriations Committee
Senator Melissa Hurtado, *Author*





Senate Bill 265
The Critical Infrastructure Cybersecurity Preparedness Act
As Amended June 19, 2023

SUMMARY

SB 265 takes action to combat the growing issue of cyber threats and cyberattacks by directing the California Office of Emergency Services (Cal-OES) and the California Cybersecurity Integration Center (Cal-CSIC) to develop outreach and funding plans to improve cybersecurity preparedness in California’s critical infrastructure sectors.

PROBLEM

Recent reports regarding various cybersecurity attacks in the education, health care, energy, and financial sectors have demonstrated that California’s critical infrastructure sectors are vulnerable to attack and suffer from a stark lack of cybersecurity preparedness.

Research has shown an increase in the number of cyberattacks targeting critical infrastructure sectors. These cyberattacks are predominantly made up of phishing attempts and ransomware.

In December 2022, the California Department of Finance, itself, was hit by a cybersecurity threat that took several days to control. And, in September 2022, the Los Angeles Unified School District experienced a cybersecurity attack where attackers threatened to release highly confidential information.

This lack of preparedness threatens California’s economy and the livelihood of those who rely on these sectors. Unless at-risk companies and systems begin to prioritize their cybersecurity, any cyber threats they face will have the potential to harm not only California’s economy, but also the well-being of individual Californians.

BACKGROUND

In 2018, Governor Brown signed legislation which defined and established the California Cybersecurity Integration Center (Cal-CSIC). Cal-CSIC operates under the Office of Emergency Services (Cal-OES), and is responsible for planning California’s cybersecurity strategy and coordinating with both federal and state government entities to execute that strategy. Cal-CSIC continues to build California’s cybersecurity strategy, and work with individual state departments to ensure individual infrastructure sectors have cybersecurity policies and protocols.

In 2022, Governor Newsom signed similar legislation which requires Cal-OES to direct the California Cybersecurity Integration Center (Cal-CSIC) to prepare a multi-year outreach plan to assist the agriculture and water industries specifically in efforts to improve cybersecurity, and options for providing grants and other support to improve cybersecurity preparedness.

SOLUTION

SB 265 expands on previous work by requiring Cal-OES and Cal-CSIC to develop cybersecurity preparedness plans for California’s critical infrastructure sectors. The plans must include a strategic, multiyear outreach strategy focusing on methods for coordinating with other state and federal agencies, nonprofit organizations, and associations that provide cybersecurity services or resources in the critical infrastructure sector, as well as plans outlining the funding options necessary to achieve this outreach.



MELISSA HURTADO

— CA STATE SENATOR • 16TH DISTRICT —

SUPPORT

California Water Association
City of Dinuba
City of Lindsay
City of Porterville
County of Tulare
Cybersecurity Center at CSU, San Bernardino
Los Angeles County Sanitation Districts
OACYS Technology
Porterville Chamber of Commerce

FOR MORE INFORMATION

Juan Carlos Martir, Legislative Aide
Office of Senator Melissa Hurtado
JuanCarlos.Martir@sen.ca.gov
(916) 651-4016



City of Lindsay

P.O. Box 369 — Lindsay, California 93247 — 251 Honolulu Street

August 08, 2022

Via E-mail

To: The Honorable Assembly Member Chris Holden
Chair, Assembly Appropriations Committee
1021 O Street, Suite 8220
Sacramento, CA 95814

Re: Senate Bill (SB) 265 (Hurtado) —The Critical Infrastructure Cybersecurity Preparedness Act —SUPPORT

Dear Chair Holden,

The City of Lindsay is pleased to support SB 265 (Hurtado) which expands on previous work by requiring Cal-OES and Cal-CSIC to develop cybersecurity preparedness plans for California's critical infrastructure sectors.

The City of Lindsay encompasses approximately 1,747 acres and is home to nearly 14,000 residents. Lindsay residents are 78% Latino and primarily agricultural workers. The City of Lindsay proudly supports measures that aim to increase cybersecurity protections.

Recent reports regarding various cybersecurity attacks in the education, health care, energy, and financial sectors have demonstrated that California's critical infrastructure sectors are vulnerable to attack and suffer from a stark lack of cybersecurity preparedness. Research has continued to show an increase in the number of cyberattacks targeting critical infrastructure sectors. These cyberattacks are predominantly made up of phishing attempts and ransomware. Phishing attacks aim to steal a user's login credentials, and ransomware locks a user out of a system until a fee is paid to regain access. Both provide intruders with access to technology systems, money, and sensitive data and information, and not only do they threaten California's economy, but also the health and safety of Californians across the state. SB 265 aims to increase cybersecurity protections in all of California's critical infrastructure sectors, including but not limited to, California's emergency services sector, education sector, energy sector, financial services sector and healthcare sector. Additionally, SB 265 directs Cal-OES and CSIC to develop plans to increase outreach for cybersecurity preparedness, as well as identify potential funding sources that support efforts bolstering cybersecurity preparedness.

For these reasons, the City of Lindsay supports SB 265 (Hurtado) and respectfully asks for your AYE vote in the Senate Governmental Organization Committee.

Sincerely,

Hipolito A. Cerros
Mayor

Cc: Members, Assembly Emergency Management Committee
Senator Melissa Hurtado, *Author*





Senate Bill 577

State Fire Training Accessibility Act

Introduced, February 15, 2023

SUMMARY

SB 577 allows the State Fire Marshal to accept additional funding sources for the California Fire Service Training and Education Program. The bill would make the same change relative to the California Fire and Arson Training Act. Permitting the State Fire Marshall to receive additional funding sources for training programs will help to mitigate rising fees for those seeking fire training certification.

PROBLEM

California State Fire Training (SFT) provides curriculum and certification to current fire department, firefighters, and individuals seeking a career in the fire service. These courses meet or exceed National Fire Protection Association and National Wildfire Coordination Group standards. This training is provided to over 23,000 paid and volunteer firefighters every year.

When SFT was established, it only allowed for user fees to recover the cost of staff, course development and certification. Over the years the fire service has become more professional and certifications are now required for every position in the fire service. To generate enough revenue, fees needed to be raised by over 200% and in some cases 400%. This has resulted in courses and certification becoming unaffordable to volunteer firefighters and individuals seeking entry level positions.

BACKGROUND

The California Fire Service Training and Education) Division under the CAL FIRE – Office of the State Fire Marshal provides an essential need for a diverse California fire service. It is responsible for rules and regulations, course development, oversight of course delivery, certification, instructor registration, evaluator registration, and certification testing. This division is vital to the fire service because it provides the course curriculum for over 160 different courses and 26 certification levels, including some nationally accredited certifications.

In the era of climate change, the fire service is regularly responding to mass conflagration wildfires and the need for well-trained fire personnel has never been greater. Central to achieving this goal is making SFT courses both accessible and affordable to all fire personnel, especially the next generation of firefighters. Historically, SFT has been able to provide these services at a minimal cost to its users. However, doing so in an increasingly complex and expanding arena of fire protection has resulted in funding shortfalls, requiring a significant increase in their fees.

Solution

SB 577 allows the State Fire Marshal to accept additional funding sources for the California Fire Service Training and Education Program. The bill would make the same change relative to the California Fire and Arson Training Act. Given the enormous risk of fire and other disasters that face California, we must make SFT an affordable solution for our paid and volunteer firefighters,

as well as students wishing to enter the fire service. Permitting the State Fire Marshall to receive additional funding sources for training programs will help to mitigate rising fees for those seeking fire training certification. The financial obstacles the fee increases have created for students and fire departments demands a legislative solution.

FOR MORE INFORMATION

Harrison Pardini, Legislative Aide
Office of Senator Melissa Hurtado
Harrison.Pardini@sen.ca.gov
(916) 651-4016

Economic Equity Statement

When the State Fire Training (SFT) program was established in California, it relied on user fees to recover the cost of staff, course development and certification. Over the years the fire service has become more professional and certifications are now required for every position in the fire service. To generate enough revenue, fees needed to be raised by over 200% and in some cases 400%. This sharp rise in costs has resulted in courses and certification becoming unaffordable to volunteer firefighters and individuals seeking entry level positions.

SB 577 allows the State Fire Marshal to accept additional funding sources for the California Fire Service Training and Education Program. The bill would make the same change relative to the California Fire and Arson Training Act. Senate Bill 577 aims to address the escalating costs of fire training programs, and ensure that individuals who were priced out of the fire service are afforded equitable opportunities. By mitigating the financial burden associated with fire training and certification, this bill seeks to foster accessibility to this field regardless of an individual's financial situation.



City of Lindsay

P.O. Box 369 — Lindsay, California 93247 — 251 Honolulu Street

August 08, 2022

Via E-mail

To: The Honorable Assembly Member Chris Holden
Chair, Assembly Appropriations Committee
1021 O Street, Suite 8220
Sacramento, CA 95814

Re: Senate Bill 231 (Hurtado) —Dept. of Water Resources: Water Supply Forecasting —SUPPORT

Dear Chair Holden,

The City of Lindsay is pleased to support SB 577 (Hurtado) which would allow the State Fire Marshal to accept additional funding sources for the California Fire Service Training and Education Program. The bill would make the same change relative to the California Fire and Arson Training Act. Permitting the State Fire Marshall to receive additional funding sources for training programs will help to mitigate rising fees for those seeking fire training certification.

The City of Lindsay encompasses approximately 1,747 acres and is home to nearly 14,000 residents. Lindsay residents are 78% Latino and primarily agricultural workers. The City of Lindsay proudly supports measures that aim to increase funding for fire personnel training.

California State Fire Training (SFT) provides curriculum and certification to current fire department firefighters, and individuals seeking a career in the fire service. Over the years the fire service has become more professional, and certifications are now required for every position in the fire service. To generate enough revenue, fees needed to be raised by over 200% and in some cases as high as 400%. This has resulted in courses and certification becoming unaffordable to volunteer firefighters and for individuals seeking entry level positions. SB 577 allows the State Fire Marshal to accept additional funding sources for the California Fire Service Training and Education Program. The bill would make the same change relative to the California Fire and Arson Training Act. Due to the enormous risk of fire and other disasters that face California, we must make State Fire Training an affordable solution for our paid and volunteer firefighters, as well as students wishing to enter the fire service.

For these reasons, the City of Lindsay supports SB 577 (Hurtado) and respectfully asks for your AYE vote in the Senate Committee on Appropriations.

Sincerely,

Hipolito A. Cerros
Mayor

Cc: Members, Senate Committee on Appropriations
Senator Melissa Hurtado, *Author*





STAFF REPORT

TO: Lindsay City Council
FROM: Ryan Heinks, Public Safety Lieutenant
DEPARTMENT: Public Safety
ITEM NO.: 11.5
MEETING DATE: August 08, 2023

ACTION & RECOMMENDATION

Consider Approval of Resolution 23-31, A Resolution of the City Council of the City of Lindsay Superseding Resolution No. 22-45, Clarifying Language within the Resolution Relative to the Authorization of Overtime and Portal to Portal Pay for Employees Providing Mutual Aid Responses Under the Approved California Fire Assistance Agreement.

It is recommended that the City Council approve the Governing Body Resolution No. 23-31 attached to this report. This agreement was entered into between the City of Lindsay and the California Office of Emergency Services in 2022 and this Resolution seeks to continue that agreement and clarify certain language from the prior year.

BACKGROUND | ANALYSIS

On July 26, 2023, the Lindsay City Council passed and adopted Resolution No. 22-45 identifying and approving the terms and conditions for mutual aid under the California Fire Assistance Program. In compliance with the Agreement for Local Government Fire and Emergency Assistance to the State of California and Federal Agencies, known as the California Fire Assistance Agreement (CFAA), the Lindsay Department of Public Safety must have on file a Governing Body Resolution identifying the terms and conditions for fire department response away from their official duty station in support of mutual aid requests.

If the City does not have a Governing Body Resolution on file with the CFAA, the City of Lindsay will not be reimbursed for such mutual aid for all future fire incident assistance. Member agencies of the CFAA include the California Department of Forestry and Fire Protection, California Bureau of Land Management, California Bureau of Indian Affairs, USDA Forest Service, National Park Service, California Department of Fish and Wildlife.

Mutual Aid is covered by the State's Master Mutual Aid Agreement, and Resolution No. 23-31 simply allows the city to recover all the costs associated with sending equipment and personnel out of the City, instead of being liable for about 33% of the cost. This Resolution does not mandate that the City send resources when called, as we can still refuse based on the needs of the City and its residents.

Resolution No. 23-31 identifies and makes the following findings listed below:

1. Identifies the terms and conditions for reimbursement under the California Fire Assistance Agreement when the Lindsay Department of Public Safety- Fire Services Division is assigned to an emergency incident as recognized in the California Fire Assistance Agreement; and
2. Finds that personnel shall be compensated according to a Memorandum of Understanding, Personnel Rules and Regulations, and/or another directive that identifies personnel compensation in the workplace; and
3. Finds that in the event a personnel classification does not have an assigned compensation rate, a “Base Rate” as set forth in an organizational policy, administrative directive or similar document will compensate such personnel; and
4. Finds that the Lindsay Fire Department will maintain a current salary survey or acknowledgement of acceptance of the “Base Rate” on file with the California Governor’s Office of Emergency Services, Fire Rescue Division; and
5. Finds that fire suppression personnel and non-fire suppression personnel will be compensated (portal to portal) beginning at the time of dispatch to the return to their official duty station when equipment and personnel are in service and available for agency response; and
6. Finds that fire department response personnel include: Fire Chief, Deputy Chief, Assistant Chief, Division Chief, Battalion Chief, Fire Captain, Lieutenant, Engineer/Apparatus Operator, Firefighter.
- 7 The Department of Public Safety staff respectfully recommends that the City Council pass and adopt Resolution No. 23-31.

FISCAL IMPACT

Resolution No. 23-31 enables full (Portal to Portal) reimbursement under the terms and conditions of the California Fire Assistance Agreement. Without the Resolution, the City of Lindsay will not be reimbursed for all recognized mutual aid costs.

ATTACHMENTS

- CalOES Salary Survey
- Resolution No. 22-45
- Resolution No. 23-31

SALARY SURVEY

for

AGREEMENT FOR LOCAL GOVERNMENT FIRE AND EMERGENCY ASSISTANCE TO

THE STATE OF CALIFORNIA AND FEDERAL FIRE AGENCIES

(California Fire Assistance Agreement)

Start Date: 07/20/2023

End Date:

Status: Reviewed


Agency 3-Letter MACS I.D.:	Agency / Department Name:
LNS	Lindsay Fire Department

All information provided on this form is subject to audit by Cal OES, CAL FIRE, and the Federal Fire Agencies signatory to the California Fire Assistance Agreement. The chart below reflects the hourly Salary Rate, or Base Rate submitted for each classification used by your agency.

Classification Title	Base Rates	Are you Utilizing the Base Rate?	Are you adding WC/UI?	Salary Rate (ST)
Chief	\$34.59	Yes	No	\$34.59
Deputy Chief	\$34.59	Yes	No	\$34.59
Division Chief	\$34.59	Yes	No	\$34.59
Assistant Chief	\$34.59	Yes	No	\$34.59
Battalion Chief	\$34.59	No	No	\$55.82
Co. Officer/Capt./Lt.	\$27.77	No	No	\$43.05
App. Officer/Eng	\$27.77	No	No	\$35.36
Firefighter/FF-PMedic	\$27.77	No	No	\$32.12

NOTE: These rates are not effective until the date they are received by Cal OES. What is reported on this form constitutes direct salary costs for employees.

As an authorized representative of my agency/dept., I certify to the best of my knowledge and belief, and under penalty of perjury that this information is correct. Furthermore, my signature below represents acceptance by my agency/dept., as a cooperator, to comply with the authorities, terms and conditions of the CFAA. I also agree to comply with all cooperator agency internal accounting and expense reimbursement standards.

Name	Authorized Representative	Date
Nicholas Nave		07/20/2023



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

NUMBER 22-45

TITLE A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY IDENTIFYING AND APPROVING THE TERMS AND CONDITIONS FOR OUT OF JURISDICTION MUTUAL AID UNDER THE CALIFORNIA FIRE ASSISTANCE AGREEMENT

MEETING At a regularly scheduled meeting of the City of Lindsay City Council held on July 26, 2022, at 6:00 PM at 251 E. Honolulu Street, Lindsay, CA 93247

WHEREAS, the Lindsay Department of Public Safety is a public agency in the County of Tulare, State of California; and

WHEREAS, the Lindsay Department of Public Safety- Fire Services Division routinely responds to requests for assistance outside their jurisdiction; and

WHEREAS, the Lindsay Department of Public Safety may be compensated for resources provided or reimbursed for response to requests for assistance to incidents outside their jurisdiction; and

WHEREAS, it is the desire of the Lindsay Department of Public Safety to provide fair and legal payment to all its employees for time worked; and

WHEREAS, the Lindsay Department of Public Safety has in its employ; Director of Public Safety, Public Safety Lieutenant, Fire Lieutenant, Fire Apparatus Engineer, Firefighter, Public Safety Officer, and Non-Fire Suppression employees; and

WHEREAS, the Lindsay Department of Public Safety will compensate its employees Portal to Portal while in the course of their employment away from their official duties and assigned to an emergency incident, in support of an emergency incident, or pre-positioned for emergency response; and

WHEREAS, the Lindsay Department of Public Safety will compensate its employees overtime in accordance with a current Memorandum of Understanding while in the course of their employment away from their official duties and assigned to an emergency incident, in support of an emergency incident, or pre-positioned for emergency response.



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LINDSAY DOES
HEREBY RESOLVE AS FOLLOWS:**

- SECTION 1. Personnel shall be compensated according to a current Memorandum of Understanding, Personnel Rules and Regulations, and/or another directive that identifies personnel compensation in the workplace.
- SECTION 2. In the event a personnel classification does not have an assigned compensation rate, a “Base Rate” as set forth in an organizational policy, administrative directive or similar document will compensate such personnel.
- SECTION 3. The Lindsay Department of Public Safety- Fire Services Division will maintain a current salary survey or acknowledgement of acceptance of the “Base Rate” on file with the California Governor’s Office of Emergency Services, Fire Rescue Division.
- SECTION 4. Fire suppression personnel and non-fire suppression personnel will be compensated (Portal to Portal) beginning at the time of dispatch to the return to jurisdiction when equipment and personnel are in service and available for agency response.
- SECTION 5. Fire Department response personnel include Director of Public Safety, Public Safety Lieutenant, Fire Lieutenant, Fire Apparatus Engineer, Firefighter, Public Safety Officers, Financial and Support Staff.



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

PASSED AND ADOPTED by the City Council of the City of Lindsay as follows:

MEETING DATE	July 26, 2022
MOTION	CERROS
SECOND MOTION	CAUDILLO
AYES	CERROS, CAUDILLO, SERNA, FLORES, SANCHEZ
ABSENT	
ABSTAIN	
NAYS	

CERTIFICATION OF THE FOREGOING RESOLUTION AS FULL, TRUE, PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF LINDSAY AS DETAILED.

FRANCESCA QUINTANA
CITY CLERK

RAMONA CAUDILLO
MAYOR



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

NUMBER 23-31

TITLE A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY SUPERSEDING RESOLUTION NO. 22-45, CLARIFYING LANGUAGE WITHIN THE RESOLUTION RELATIVE TO THE AUTHORIZATION OF OVERTIME AND PORTAL TO PORTAL PAY FOR EMPLOYEES PROVIDING MUTUAL AID RESPONSES UNDER THE APPROVED CALIFORNIA FIRE ASSISTANCE AGREEMENT

MEETING At a regularly scheduled meeting of the City of Lindsay City Council held on August 08, 2023, at 6:00 PM at 251 E. Honolulu Street, Lindsay, CA 93247

WHEREAS, the Lindsay Fire Department is a public agency located in the County of Tulare, State of California, and

WHEREAS, it is the City of Lindsay’s desire to provide fair and legal payment to all its employees for time worked; and

WHEREAS, the Lindsay Fire Department has in its employ, Fire department response personnel including: Fire Chief, Deputy Chief, Assistant Chief, Division Chief, Battalion Chief, Fire Captain, Lieutenant, Engineer, Apparatus Operator, Firefighter; and

WHEREAS, the Lindsay Fire Department will compensate its employees portal to portal while in the course of their employment and away from their official duty station and assigned to an emergency incident, in support of an emergency incident, or pre-positioned for emergency response; and

WHEREAS, the Lindsay Fire Department will compensate its employees overtime in accordance with their current Memorandum of Understanding while in the course of their employment and away from their official duty station and assigned to an emergency incident, in support of an emergency incident, or pre-positioned for emergency response.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LINDSAY DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Personnel shall be compensated according to Memorandum of Understanding (MOU), Personnel Rules and Regulations, and/or other directive that identifies personnel compensation in the workplace.

SECTION 2. In the event a personnel classification does not have an assigned compensation rate, a “Base Rate” as set forth in an organizational policy, administrative directive or similar document will serve to compensate such personnel.



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

- SECTION 3. The fire department will maintain a current salary survey or acknowledgement of acceptance of the “base rate” on file with the California Governor’s Office of Emergency Services, Fire Rescue Division.
- SECTION 4. Personnel will be compensated (portal to portal) beginning at the time of dispatch to the return to the official duty station when equipment and personnel are in service and available for agency response.
- SECTION 5. Fire department response personnel include: Fire Chief, Deputy Chief, Assistant Chief, Division Chief, Battalion Chief, Fire Captain, Lieutenant, Engineer/Apparatus/Equipment Operator, Firefighter.

PASSED AND ADOPTED by the City Council of the City of Lindsay as follows:

MEETING DATE	August 08, 2023
MOTION	
SECOND MOTION	
AYES	
ABSENT	
ABSTAIN	
NAYS	

CERTIFICATION OF THE FOREGOING RESOLUTION AS FULL, TRUE, PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF LINDSAY AS DETAILED.

FRANCESCA QUINTANA
CITY CLERK

HIPOLITO A. CERROS
MAYOR



STAFF REPORT

TO: Lindsay City Council
FROM: Francesca Quintana, City Clerk & Assistant to the City Manager
DEPARTMENT: City Manager
ITEM NO.: 11.6
MEETING DATE: August 08, 2023

ACTION & RECOMMENDATION

Consider the Approval of Resolution No. 23-32, A Resolution of the City Council of the City of Lindsay, California Declaring the Properties at 100 East Honolulu Street (APN 205-236-014), 122 East Honolulu Street (APN 205-236-013), and 190 South Elmwood Avenue (APN 205-236-020), all in Lindsay California 93247 to be Surplus Property.

City staff recommends that the City Council pass and adopt Resolution No. 23-32, so that Staff may begin the Surplus Property declaration process in accordance with California State Law.

BACKGROUND | ANALYSIS

At the July 11, 2023, Regular Meeting of the Lindsay City Council, the City Council discussed the downtown properties currently owned by the City of Lindsay and directed City Staff to declare the properties located at 100 East Honolulu Street, 122 East Honolulu Street, and 190 South Elmwood Avenue in the Lindsay downtown area as surplus property.

Therefore, City Staff has begun the process to declare the land as surplus property. A summary of said process is outlined below.

- Lindsay City Council adopts a Resolution declaring the properties surplus.
- City prepares Notices of Availability (NOA) under Surplus Land Act and submits the NOAs to eligible government agencies and housing sponsors. More than one hundred entities will receive the NOAs.
- If none of the notified parties respond to the NOA within sixty (60) days of distribution, the City may negotiate with private parties for the sale of the properties.
- If one of the notified parties expresses interest in one of the properties, the City is obligated to negotiate in good faith up to ninety (90) days with that party.
- Prior to execution of one or more Purchase & Sale Agreements (PSAs) for the properties, the City must submit required information, including copies of draft PSAs, to Housing and Community Development (HCD) for review and approval. HCD will have thirty (30) days to respond.
- The City may execute the PSAs once HCD approves the sales.
- Prior to the close of escrow, an Affordability Covenant must be recorded against each of the properties to satisfy SLA requirements. The Covenant will state that if more than ten residential units are developed, not less than fifteen percent of the units must be sold or rented at affordable

housing costs. The Covenant is required regardless of how the properties are zoned and whether ten units may be developed on each of the properties.

FISCAL IMPACT

No fiscal impact associated with this action at this time.

ATTACHMENTS

- Resolution No. 23-32 with Exhibits



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

NUMBER 23-32

TITLE A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY, CALIFORNIA DECLARING THE PROPERTIES AT 100 EAST HONOLULU STREET (APN 205-236-014), 122 EAST HONOLULU STREET (APN 205-236-013), AND 190 SOUTH ELMWOOD AVENUE (APN 205-236-020), ALL IN LINDSAY CALIFORNIA 93247 TO BE SURPLUS PROPERTY

MEETING At a regularly scheduled meeting of the City of Lindsay City Council held on August 08, 2023, at 6:00 PM at 251 E. Honolulu Street, Lindsay, CA 93247

WHEREAS, the City of Lindsay (“City”) owns the properties located at 100 East Honolulu Street (APN 205-236-014), 122 East Honolulu Street (APN 205-236-013), and 190 South Elmwood Avenue (APN 205-236-020), all in Lindsay California 93247 (“Properties”); and

WHEREAS, the legal description of the property located at 100 East Honolulu Street (APN 205-236-014) is attached hereto as Exhibit “A”, the legal description of the property located at 122 East Honolulu Street (APN 205-236-013) is attached hereto as Exhibit “B”, and the legal description of the property located at 190 South Elmwood Avenue (APN 205-236-020) is attached hereto as Exhibit “C,” which are incorporated herein by reference; and

WHEREAS, the Properties are currently vacant and do not currently serve a purpose for the public.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Lindsay hereby declares the Properties to be surplus.

RESOLVED FURTHER, the City Manager or their designee are hereby authorized and directed to send a written offer (“Surplus Property Notice”) to sell or lease the Property to those public agencies identified in Government Code Section 54222.

RESOLVED FURTHER, the City Manager or their designee shall, in accordance with surplus property provisions of the Government Code, negotiate the terms of sale or lease of the Property with any public agency that responds to the Surplus Property Notice and expresses an interest in the properties.

RESOLVED FURTHER, if no agency or entity that receives the Surplus Property Notice desires to purchase or lease the Properties or if the City is unable to successfully negotiate a sale or lease with an interested agency or entity, the City Manager or their designee is hereby authorized and directed to negotiate the sale of the Properties to one or more private parties.



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

RESOLVED FURTHER, the City Manager or their designee are directed to provide the Council, for its review and approval, those terms that the City Manager or their designee negotiates in accordance with this Resolution.

RESOLVED FURTHER, the Properties will not be sold or leased until applicable terms are approved by the City Council.

PASSED AND ADOPTED by the City Council of the City of Lindsay as follows:

MEETING DATE	August 08, 2023
MOTION	
SECOND MOTION	
AYES	
ABSENT	
ABSTAIN	
NAYS	

CERTIFICATION OF THE FOREGOING RESOLUTION AS FULL, TRUE, PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF LINDSAY AS DETAILED.

FRANCESCA QUINTANA
CITY CLERK

HIPOLITO A. CERROS
MAYOR

Exhibit "A"

**Legal Description of Property Located at 100 East Honolulu Street Lindsay, California
(APN 205-236-014)**

The Westerly 25 feet of Lots 30, 31 and 32 in Block 16 of the City of Lindsay, County of Tulare, State of California, as per Map recorded in Book 2, Page 91 of Maps, in the Office of the County Recorder of said County.

Exhibit “B”

Legal Description of Property Located at 122 East Honolulu Street Lindsay, California (APN 205-236-013)

Parcel 1

The Easterly 50 feet of the Westerly 75 feet of Lots 30, 31 and 32 and the Westerly 75 feet of Lots 27, 28 and 29 in Block 16 of the City of Lindsay, in the County of Tulare, State of California as per Map recorded in Book 17 of Maps, Page 57.

Parcel 2

An easement for an alleyway over the Southerly 12 feet of the Easterly 75 feet of Lot 27 in Block 16, in the City of Lindsay, as per Map recorded in Book 17 of Maps, Page 57 in the Office of the County Recorder of said County, as granted to W Roy Bledsoe and Kate B Bledsoe, husband and wife, as joint tenants, by Deed recorded December 22, 1939 in Book 882, Page 17 of Official Records, Document No 18133.

Exhibit “C”

**Legal Description of Property Located at 190 South Elmwood Avenue Lindsay, California
(APN 205-236-020)**

Lots 17 through 22, inclusive in Block 16 of the City of Lindsay, County of Tulare, State of California, as per map recorded in Book 17, Page 57 of maps in the Office of the County Recorder of Tulare County.



STAFF REPORT

TO: Lindsay City Council
FROM: Neyba Amezcua, Director of City Services & Planning
Mari Carrillo, Human Resources Manager
DEPARTMENT: City Services & City Manager
ITEM NO.: 11.7
MEETING DATE: August 08, 2023

ACTION & RECOMMENDATION

Consider the Minute Order Approval of Amended Job Title, Job Description, and Job Classification for the City Services Deputy Director Job Position.

City Staff recommends that the City Council approve amending the job title, job description, and job classification for what is currently the City Services Assistant Director job position so that Staff may begin the recruitment process under the amended title, description, and class of Deputy Director of City Services.

BACKGROUND | ANALYSIS

The City Services Deputy Director is a full-time, mid-management, exempt, position who will work under the direction of the Director of City Services & Planning. The City plans to begin recruitment efforts for a City Services Deputy Director *immediately upon approval of this item by the City Council.*

The essential duties and responsibilities of the City Services Deputy Director include, but are not limited to:

- Performs a variety of complex engineering and planning, supervisory, administrative, and professional work.
- Serves as a Project Manager, organizing, directing, and supervising the City Services Department projects, facilities, and programs.
- Oversees environmental, transit, water, sewer, storm drain, street programs, traffic controls, lighting, parks, and open spaces.
- Supervises department administration, managers, support staff, clerical, and maintenance as assigned.
- Oversees the development or update of the City Transportation Improvement Program (T.I.P.), Comprehensive Sewer Plan, Comprehensive Water Plan, Capital Improvement Program, and other plans involving the municipal infrastructure.
- Oversees the preparation of engineering plans and specifications, bidding, competency of contractors and vendors, and the selection criteria for public contracts.

Benefits associated with the mid-management position are the following: 10 Vacation Days, 10 Days Mid-Management Leave, 13 Holidays, 10 Sick Leave days, 100% Employee Only Medical, Dental, and Vision Plans, Life Insurance, Cal Pers Retirement (Classic and PEPRAs tiers depending on hire date) Deferred Comp City Match (Up to 6%), Aflac and Cafeteria Plan. Please refer to the Human Resources page on the City of Lindsay Website for further benefit details.

It is the policy of the City of Lindsay to screen for any potential conflicts of interest in the recruitment process and adequately mitigate against the appearance of any bias, real or perceivable.

As a mid-management level job position, said position is subject to the provisions within City Council Resolution No. 22-60 authorizing the wage and related benefits for employees of the mid-management group.

FISCAL IMPACT

The fiscal impact for the City Services Deputy Director will be the difference between what it is currently funded at under the City Services Assistant Director classification and what it is proposed to be funded at under the City Services Deputy Director. A summary of the approximate fiscal impact should this item be approved is below.

Tier 1 (hired before July 01, 2018)

- Increase of approximately \$38,729.60 per year in salary and benefits.

Tier 2 (hired after July 01, 2018)

- Increase of approximately \$24,731.20 per year in salary and benefits.

The salary and benefits for this position will be sourced from the following funds: 25% from 101-General Fund; 12% from 261-Gas Tax; 12% from 263-Transportation Fund; 20% from 552-Water Fund; 16% from 553-Sewer Fund; 13% from 554-Refuse Fund; and 3% 556-VitaPakt Fund.

ATTACHMENTS

- City Services Deputy Director Job Description



City of Lindsay
Job Description
City Services Deputy Director

Class Title:	City Services Deputy Director	Salary:	Tier 1: \$34.80 - \$46.63 Hourly Tier 2: \$34.80 - \$42.78 Hourly
Department:	City Services	Step Range:	1-7
Location:	150 N. Mirage. Lindsay, CA. 93247	Status:	Full-time/ Exempt
Date:	MM/DD/YYYY	Union:	Mid-Management

GENERAL PURPOSE: Performs a variety of complex engineering, planning, supervisory, administrative, and professional work. Serves as a Project Manager, -, organizing, directing, and supervising the City Services Department, including environmental, transit, water, sewer, storm drain, street programs, traffic controls, lighting, parks, and open spaces and other public works projects, facilities, and programs.

SUPERVISION RECEIVED: Works under the broad policy guidance and direction of the City Services & Planning Director.

SUPERVISION EXERCISED: Exercises supervision over clerical, administrative, maintenance, professional staff and consultants as assigned.

ESSENTIAL DUTIES AND RESPONSIBILITIES:

- Supervises department managers and department support staff, either directly or through subordinates.
- Determines work procedures, prepares work schedules, and expedites workflow.
- Issues written and oral instructions. Assigns duties and examines work for exactness, neatness, and conformance to policies and procedures.
- Studies and standardizes department policies and procedures to improve the efficiency and effectiveness of operations.
- Maintains harmony among workers and resolves grievances.
- Prepares composite reports from individual reports of subordinates.
- Addresses errors and complaints.
- Assists with the preparation and documents budget requests; administers adopted budget in assigned area of responsibility.
- Plans, organizes, coordinates, supervises, and evaluates programs, plans, services, staffing, equipment, and infrastructure of the City Services & Planning Department.
- Evaluates public works needs and formulates short- and long-range plans to meet needs in all areas of responsibility, including transit, water, sewer, storm drain, street programs, traffic controls, lighting, parks and open spaces, and other public works projects, facilities, and programs.
- Supervises the review of private project development plans for compliance with codes, regulations, and standards, adequacy of applications for permits, and compliance with approved plans.



City of Lindsay Job Description City Services Deputy Director

- Oversees the development or update of the City Transportation Improvement Program (T.I.P.), Comprehensive Sewer Plan, Comprehensive Water Plan, Capital Improvement Program, and other plans involving the municipal infrastructure.
- Determines applicable codes, regulations, and requirements for assigned projects.
- Oversees the preparation of engineering plans and specifications, bidding, competency of contractors and vendors, and the selection criteria for public contracts.
- Oversees project management for the construction of municipal public works projects. Oversees assigned projects to ensure contractor compliance with time and budget parameters for the project.
- Coordinates the preparation of reviews and updates of the sanitary sewer, water, storm drainage, and street system maps, database, and comprehensive plans.
- Oversees the maintenance of infrastructure and other records.
- Responds to public or other inquiries relative to department policies and procedures. Evaluates issues and options regarding municipal public works and make recommendations.
- Maintains regular contact with consulting engineers, construction project engineers, City, County, State, and Federal agencies, professional and technical groups, and the general public regarding department activities and services. Monitors inter-governmental actions affecting public works.
- Other duties as assigned.

PERIPHERAL DUTIES: Assists in the training of city personnel in city services systems and techniques.

DESIRED MINIMUM QUALIFICATIONS:

Education and Experience:

- (A) Graduation from a four-year college or university with a degree in civil engineering, public administration, or a closely related field; and
- (B) Minimum of five years of previous public works experience including at least two years utilities; or
- (C) Any equivalent combination of education and experience.

Necessary Knowledge, Skills, and Abilities:

- (A) Considerable knowledge of civil engineering principles, practices, and methods as applicable to a municipal setting; thorough knowledge of applicable City policies, laws, and regulations affecting Department activities;
- (B) Skill in operating the listed tools and equipment;
- (C) Ability to communicate effectively, orally and in writing, with employees, consultants, other governmental agency representatives, City officials, and the general public;
- (D) Ability to conduct necessary engineering research and compile comprehensive reports.



City of Lindsay
Job Description
City Services Deputy Director

SPECIAL REQUIREMENTS: (A) Must possess a valid State driver's license or have the ability to obtain one before employment;(B) Registration as a Professional Engineer is desired.

TOOLS AND EQUIPMENT USED: Personal computer, including word processing, spreadsheet, and database; motor vehicle; phone; radio; fax and copy machine; AutoCAD & Geographic information System (GIS).

PHYSICAL DEMANDS: The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform essential functions. Work is performed mostly in office settings. Some outdoor work is required in the inspection of various land use developments, construction sites, or public works facilities. Hand-eye coordination is necessary to operate computers and various pieces of office equipment. While performing the duties of this job, the employee is occasionally required to stand; walk; use hands to finger, handle, feel, or operate objects, tools, or controls; and reach with hands and arms. The employee is occasionally required to sit; climb or balance; stoop, kneel, crouch, or crawl; talk or hear; and smell. The employee must occasionally lift and/or move up to 40 pounds. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception, and the ability to adjust focus.

WORK ENVIRONMENT: The work environment characteristics described here are representative of those an employee encounter while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform essential functions. While performing the duties of this job, the employee occasionally works in outside weather conditions. The employee is occasionally exposed to wet and/or humid conditions, or airborne particles. The noise level in the work environment is usually quiet in the office, and moderate in the field.

SELECTION GUIDELINES & APPLICATION PROCESS: A formal employment application and resume must be submitted. A resume may not be submitted in lieu of a completed application.

Rating of education and experience; an oral interview, and a reference check; job-related tests may be required. The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position. The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

The appointment is subject to successfully passing a pre-employment physical, live-scan, background, and criminal history check. Before starting work, applicants must present



City of Lindsay Job Description City Services Deputy Director

documentation of their identity, authorization to work in the United States, and a DMV driving record. Following the appointment, a 12-month probationary period may be required as the final phase of the appointment process.

BENEFITS: *MID-MANAGEMENT –10 Vacation Days, 10 Days Mid-Management Leave, 13 Holidays, 10 Sick Leave days, 100% Employee Only Medical, Dental, and Vision Plans, Life Insurance, Cal Pers Retirement (Classic and PEPRA tiers depending on hire date) Deferred Comp City Match (Up to 6%), Aflac and Cafeteria Plan. Please view the City of Lindsay’s website Human Resource page for further benefit details.*



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

NUMBER 23-33

TITLE A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY AFFIRMING THE CITY MANAGER’S AUTHORITY TO ENTER INTO AND EXECUTE A MEMORANDUM OF UNDERSTANDING (MOU) BY AND BETWEEN THE CITY OF LINDSAY AND THE LINDSAY CITY EMPLOYEES’ ASSOCIATION

MEETING At a regularly scheduled meeting of the City of Lindsay City Council held on August 08, 2023, at 6:00 PM at 251 E. Honolulu Street, Lindsay, CA 93247

WHEREAS, the City of Lindsay negotiated in good faith with the Lindsay City Employees Miscellaneous Bargaining Unit represented by the Service Employees International Union to adopt a mutually agreed upon Memorandum of Understanding (MOU) attached hereto as Exhibit “A”; and

WHEREAS, the provisions of the Memorandum of Understanding (MOU) will commence on the date in which said document is signed by all parties, thus considered fully executed, and will remain in effect until December 31, 2024.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LINDSAY DOES HEREBY RESOLVE AS FOLLOWS:

- SECTION 1. The above recitals are true and correct.
- SECTION 2. The Lindsay City Council hereby affirms the City Manager’s authority to sign the Memorandum of Understanding (MOU) on behalf of the City as the City authorized representative.
- SECTION 3. This Resolution is effective immediately upon its adoption.



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

PASSED AND ADOPTED by the City Council of the City of Lindsay as follows:

MEETING DATE	August 08, 2023
MOTION	
SECOND MOTION	
AYES	
ABSENT	
ABSTAIN	
NAYS	

CERTIFICATION OF THE FOREGOING RESOLUTION AS FULL, TRUE, PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF LINDSAY AS DETAILED.

FRANCESCA QUINTANA
CITY CLERK


HIPOLITO A. CERROS
MAYOR

TENTATIVE AGREEMENT

CITY OF LINDSAY/ SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU) NEGOTIATIONS July 13, 2023

This proposal is in concept format; final language will be drafted as appropriate. This proposal is a comprehensive package/proposal. The provisions contained herein are not separate proposals, but are part of a package, which ultimately for final approval by the City Council, must be accepted in its entirety or it shall be deemed rejected. MOU language not changed in this comprehensive proposal shall remain unchanged; however, language that has sunset will be deleted. This proposal is not retroactive and is effective on a go forward basis.

1. Article 9 – Dues Check off —See below language.
2. Article 18 – Bilingual Pay – City agrees to \$30 per month increase - from \$40 per month to \$70 per month_(to be reflected in an amount per pay period).
3. Article 20 – Longevity Pay – City agrees to delete Tier 1 and Tier 2 sentences.
4. Article 21 – Increment Advancement - City agrees to delete Tier 2.
5. Article 22 – Clothing – City agrees to add rubber boots, community service officer, and “or two shirts and one sweater annually,” and to delete last paragraph re “trial basis.”
6. Article 23 – Vacation Buy-Back – City and SEIU agree to revise to make legally compliant with IRS regulation re Constructive Receipt doctrine via irrevocable election process. (Also include correction of any compensatory time off constructive receipt issues.)
7. Article 23 – Holidays – City agrees to list out all status quo holidays and add Juneteenth – June 19th as a holiday.
8. Article 27 – Education Incentive Amount – City agrees to \$10 increase from \$240 to \$250.
9. Article 28 – Furlough and Layoff - Delete from MOU and include in updated personnel rules.
10. Article 29 – Retirement – City agrees to lower PEPRA employees’ PERS contribution toward Employer Rate by 2.00 percentage points - from 3.00 to 1.00.



11. Article 31 – Salary – City agrees to a 2% base wage increase effective the first full pay period including ~~July 1, 2023~~; and 2% effective 1/1/24.

June 1, 2023

12. Article 35 – Term – City agrees to a term through Dec. 31, 2024.

13. New Employee Orientation – See below counter language.

14. Union Paid Release Time (SB 1085) – See below counter language.

Article 9 Counter language:

Delete current language in Article 9 and replace with:

DUES AND DEDUCTIONS

The Union shall have the regular dues and voluntary deductions of its bargaining unit members deducted from their paychecks under procedures as follows:

The Union is solely responsible for distributing to, and collecting from, employees the dues and voluntary deduction authorization forms. It is the employees' responsibility to submit requests to start or stop deductions directly to the Union and not to the City. The Union is responsible for maintaining the deduction forms from individual employees. Copies of an individual employee's deduction authorization need not be provided to the City unless a dispute arises about the existence or terms of the authorization. Questions regarding Union membership, dues amounts, and payroll deductions must be directed to the Union and not the City.

The Union will keep the City currently informed and updated with a certified deduction list of bargaining unit members and deduction amounts for those employees who have provided written authorization for deductions. The City will make deductions for only those employees who are in the bargaining unit in accordance with such certified list. The Union will notify the City of any change to an employee's deductions, including starting and stopping deductions, or validly cancelling or revoking a deduction authorization, and will provide the City an updated, certified deduction list noting any specific changes from the last list provided to the City within one week of such change. The City will implement the change(s) in the pay period following the City's receipt of such notification. The City will electronically transmit the balance of funds to the Union no later than thirty (30) days after the deductions occur.

The Union shall indemnify, defend, and hold the City, its Council, officers, agents, and employees individually and collectively harmless from and against any and all claims, demands, losses, damages, defense costs, suits, or other action or liability of any kind or nature arising from this Article, including, claims for or related to employee authorizations, revocations, deductions made, cancelled, or changed in reliance on the Union's representations and certifications regarding employee dues deduction authorizations. The Union agrees to pay to the City all legal fees and legal costs incurred in defending the City or its Council against any court action and/or administrative action challenging the legality or constitutionality of the provisions of this Article or its implementation.

This section of the MOU is not grievable.

New Employee Orientations language:

If on file in the City's payroll system and if the employee has not opted out, the City will supply the Union with the names, job titles, departments, work locations, work, home, and personal cellular telephone numbers, home addresses, and personal email addresses of each new employee within 30 days of hiring the employee, and once quarterly for all employees in the bargaining unit.

The Union will be given 10 days' notice of any group orientation meetings, and a representative of the Union will be introduced at the conclusion of such meeting. The SEIU representative may then meet with the new SEIU represented unit employees in the orientation meeting room for up to thirty (30) minutes after the conclusion of the orientation meeting.

Pursuant to SB 191, effective through June 30, 2025, if a newly-hired employee does not attend an in-person new employee orientation within 30 days of the employee's date of hire, and the new employee is working in person, a representative from SEIU may

request an in-person meeting with the employee. Requests for in-person meetings will be made in writing by SEIU to the City. After the City has received the request in writing, the City will arrange an appropriate onsite meeting space for the new employee in-person meeting within seven (7) days of receiving the request from SEIU.

If the State of California or a local public health agency issues an order limiting the size of gatherings or prohibiting gatherings and this order prevents the City from conducting an in-person new employee orientation, an SEIU representative and the City shall schedule an in-person meeting(s) with SEIU and the employee that did not attend an in-person new employee orientation, once the order is lifted or modified.

The date and time shall be agreed upon by SEIU and the City.

The meeting will be scheduled to take place during an employee's regularly scheduled work hours. Employees in the meeting shall be relieved of other duties to attend the meeting, during which an SEIU representative would be authorized to communicate with newly hired employees in the applicable bargaining unit for up to thirty (30) minutes on paid City time.

Union Paid Release Time language (SB 1085):

Union Representative Leave of Absence (SB 1085/Government Code 3558.8):


Pursuant to the provisions of SB 1085/Government Code section 3558.8, the City shall grant an employee, upon written request of the Union, a reasonable leave of absence without loss of compensation or other benefits for the purpose of enabling employees to serve as stewards or officers of the Union. Leave may be granted on a full-time, part-time, periodic, or intermittent basis under the following procedures:

1. The Union officer or steward shall submit a written request to the City at least 15 business days in advance of the requested leave. The request shall include dates/duration and classification.
2. No more than two (2) employees shall be on leave at the same time; and employees must have a minimum overall satisfactory evaluation rating for the most recent evaluation period, and employees cannot be in any probationary status and/or on administrative leave. For any employee going on leave, who is on a medical leave, SEIU will ensure compliance with all medical restrictions.
3. The Union shall reimburse the City for all benefits and compensation paid to and earned/realized by the employee on leave, including but not limited to all wages and benefits.

4. Reimbursement by the Union shall occur within 30 days of City billing the Union.
5. The leave of absence will be approved if it does not interfere with the performance of City services and department operations. If the leave is denied, the City will provide the Union with written notification of impacted operational needs. The Union shall provide the City with alternate leave dates for the leave to occur.

At the conclusion or termination of the leave granted under this section, the officer or steward shall have a right to reinstatement to the same position and location they held prior to such leave, or if not feasible, a substantially similar position without loss of seniority, rank, or classification.

The City shall not be liable for any act, omission, or injury suffered by any employee of the City if that act, omission or injury occurs during the course and scope of the employee's leave under this section to work for the Union. To the extent that the City is held liable for any such act, omission or injury, the Union shall indemnify and hold harmless the City.



City



SEIU

July 13, 2023

Date

07-13-2023

Date



STAFF REPORT

TO: Lindsay City Council
FROM: Shelline Bennett, Liebert Cassidy Whitmore
DEPARTMENT: City Attorney
ITEM NO.: 11.9
MEETING DATE: August 08, 2023

ACTION & RECOMMENDATION

Consider Minute Order Approval of Amendments and Revisions to the City Lindsay Personnel Rules and Regulations.

BACKGROUND | ANALYSIS

Based on legal review of the City of Lindsay Personnel Rules and Regulations (“Personnel Rules”), the City proposes that the City Council consider approval of updated Personnel Rules, which are attached to this report. Proposed modifications include but are not limited to the following: verbiage clean up to ensure compliance with all applicable laws and regulations, probationary period, hours of work, leaves, disciplinary procedures, and miscellaneous rules.

Recognized employee union groups were provided with the draft modifications to the Personnel Rules and allowed opportunity for input and meet and confer; following the same, the updated Personnel Rules now come to the City Council for approval consideration.

FISCAL IMPACT

There is no fiscal impact associated with this action.

ATTACHMENTS

- City of Lindsay Personnel Rules and Regulations – Redline Copy



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City of Lindsay Personnel Rules and Regulations

CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

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MERIT PERSONNEL SYSTEM

Section 1.1 Purpose

The purpose of this personnel system is to:

1. Establish an equitable and uniform procedure for dealing with personnel matters;
2. Attract the most competent and desirable persons available for employment;
3. Assure that appointment and advancement of employees are based on merit and ability; and
4. Provide reasonable security for qualified employees.

The objectives of these personnel rules and regulations are to facilitate efficient and economical service to the public and provide for a fair and equitable system of personnel management in the municipal government. These rules and regulations set forth those procedures and policies which ensure similar treatment for those who compete for original and promotional employment and define certain obligations, rights privileges, benefits, and prohibitions which are placed upon all employees in the service of the City.

Section 1.2 Personnel System Organization

The City Manager has final responsibility for all personnel actions, except those reserved to the City Council. Each department head exercises direct line authority for personnel functions described in these rules and regulations. The City Manager shall administer the personnel system. He/she may delegate personnel duties for the effective administration of the system to the Personnel Director, his/her designee, or Finance Director.

Section 1.3 Merit Employment Policy

It is the policy of the city to provide for an employment system, which assures that employees are selected, ~~promoted~~promoted, and retained on the basis of merit. It is the intent of this system to provide fair and equitable treatment to all applicants for employment. The screening and selection of the employees shall be on a specific ~~job-related~~job-related basis. The potential and actual performance of employees within the city shall guide employment decisions with the goal of providing a ~~high-performance~~high-performance work force for the residents of the City.

Section 1.4 Intent of the Personnel System

1. Employment Standards: The City Council and all the ~~residents~~ citizens of Lindsay have the right to expect that the City will employ the best qualified persons available, that the tenure of every City employee will be based on a demonstrated need for the work performed, availability of funds, competent effective performance, proper personal conduct, and continuing fitness for the position.
2. City Responsibility to employees: Each employee of the City of Lindsay has the right to expect: To be fully informed of his or her duties and

CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

responsibilities; to be provided with adequate administrative and supervisory direction; to be informed of job expectations and desired work behaviors; that promotions will be made on the basis of merit and ability; and progressively improved work performance over an extended period will be recognized and rewarded; that incompetence and misconduct will not be tolerated; and that suspensions, demotions, terminations, and other disciplinary actions will be administered in a fair and impartial manner.

Section 1.5 Prior Policies Repealed

If the terms and provisions of these personnel rules and regulations are inconsistent or in conflict with the terms and provisions of any prior City of Lindsay (“City”) personnel rules and regulations this policy shall prevail and such inconsistent or conflicting provisions or prior resolutions, rules and regulations this policy shall prevail and such inconsistent or conflicting provisions or prior resolutions, rules and regulations are hereby repealed.

Section 1.6 Priority of Collective Bargaining Agreements

If a provision of these rules conflicts with any provision of an applicable collective bargaining agreement entered into by the City and a recognized employee organization, to the extent of such conflict, the provision of the collective bargaining agreement shall be deemed controlling unless the provision of these rules has been negotiated more recently.

Section 1.7 Terms of Personnel ~~Manual~~ Rules

These personnel rules and regulations shall take effect when approved by the City Manager of the City. The ~~manual rules~~ shall remain in effect unless repealed, in whole or part, by the City Manager. The City Manager may in his/her sole discretion add to, delete or otherwise modify these personnel rules and regulations, subject to the following paragraph.

Prior to amendment of these personnel rules and regulations, the City Manager shall consult with City employees or, if required, upon request, meet and confer with affected recognized employee organizations.

Section 1.8 Non-Discrimination

The City shall comply with applicable federal and state laws governing fair employment practice and equal opportunity. The City strictly prohibits unlawful discrimination. This includes discrimination on the basis of sex, sexual orientation, gender identity, national origin, race, color, ancestry, religious creed, physical or mental disability, medical condition, age, marital status, citizenship status, uniformed service member status or any other protected class under applicable law.

Section 1.9 Application of Personnel Rules and Regulations

These personnel rules and regulations have been developed to serve the City of Lindsay and all employees of the City of Lindsay unless specifically excluded. Its contents and all appropriate references represent the rules and practices to which all employees of the City are held accountable.

CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

Section 1.10 Violations of Rules and Regulations

Violation of the provisions of these rules and regulations shall constitute grounds for disciplinary action. A violation shall not make disciplinary action mandatory but shall be given such weight as shall be appropriate in view of all the circumstances.

Section 1.11 Employee Responsibility

It shall be the responsibility of each employee to become aware and be knowledgeable of these personnel rules and regulations.

Section 1.12 Administrative-Department Policies and Procedures

The City Manager or individual city department heads may develop and administer supplemental written department policies and procedures as deemed necessary for the efficient, safe and orderly administration of the City or department. However, no such policies or procedures shall conflict with or supersede these personnel rules and regulations, other Council resolutions and ordinances, or existing laws. Copies of department policies and procedures should be ~~distributed made available~~ available to each employee of the department.

Section 1.13 Distribution of Personnel Policies

A copy of these personnel rules and regulations shall be ~~distributed made available~~ available to each City employee and each recognized employee organization. Newly hired employees shall receive a copy upon hire. Copies of these personnel rules and regulations shall also be ~~distributed made available~~ available to each department of the City. Department heads shall make them accessible to employees. ~~Copies shall be available in the personnel office.~~ Employees with questions about these personnel rules and regulations may direct them to ~~his or her~~ their immediate supervisor, the department head, the personnel office, or Finance Director.

Section 1.14 No Contract Created

These rules do not create any contract of employment, expressed or implied, or any rights in the nature of a contract.

Section 1.15 Severability Clause

If any provision, or the application(s) of any provision of these personnel rules and regulations is implemented is rendered or declared invalid by any final court action or by reason of any preemptive legislation, the remaining provisions of these personnel rules and regulation shall remain in full force and effect. Nothing these personnel rules and regulations shall be construed to deny any person or employee the rights granted by federal and state law. The rights, powers and authority of the City Manager in all matters, including the right to maintain any legal action shall not be modified or restricted by these regulations.

DEFINITION OF TERMS

Section 2.1 **Definitions**

Unless the context indicates otherwise the terms used in these personnel rules and regulations are defined as follows:

Abandonment of Position – The failure to report to work for three consecutive regular work shifts without notification by the employee and approval of the City.

Acting Appointment – An appointment of a person who possesses at least the minimum qualifications established for a particular class and who is appointed to a position in that class in the absence of available eligible incumbents, or on an interim basis pending later appointment of an eligible person.

Advancement – A salary increase within the limits of pay range established for a class.

Allocation – The assignment of a single position to its proper class in accordance with the duties performed, and the authority and responsibilities exercised.

Anniversary Date – One calendar year from the date of the employee’s probationary appointment with the City and each succeeding year thereafter, unless the probationary period was extended. An employee’s anniversary date shall be determined by applying the continuity of service requirements of these rules.

Appeal – A written request by an employee for consideration in matters relating to grievance and/or discipline as set forth in these rules.

Appointment – The offer to, and acceptance by, an individual for a position in the competitive service.

Applicant – Any person submitting a formal completed application for employment with the City.

Appointing Authority – The City Manager is the appointing authority for all City employees and the City Council shall appoint the City Manager. The City Manager may delegate appointing authority. Further delegations of appointing authority must be approved by the City Manager.

Authorized Position – A specific work position within a job classification that is or may be held by an employee.

Benefit Date – For the purpose of sick and vacation leave accrued, the benefit date is defined as follows for all employees: (a) if the first working day of the pay period was worked, the benefit date will be the first day of that pay period. (b) if the employee started anytime after the first working day of the pay period, then the benefit date will be the first day of the following pay period. (c) if an employee is absent without pay for any period of time his or her benefit date will be adjusted to reflect the deduction of the period of time in which the employees was absent without pay.

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Break in Continuous Service – Separation of the employee from City employment initiated by either the City or the employee for any period without pay.

Bulletin Board – The official posting place for public notices.

Certification – The furnishing of names by the personnel officer of eligible, available candidates for employment, from an employment list in the manner prescribed in these rules.

Class – A result of grouping together those positions that are similar in duties, authority, and responsibility, so that the same requirements as to education, general knowledge, and ability may be required of incumbents, and permit grouping under a common title with common standards of selection, and with the same schedule of compensation. Individual positions in the same class may be assigned different duties and responsibilities.

Class Specification – The official description of a class including (1) title, (2) a definition, (3) a statement of the duties and responsibilities, and (4) the employment standards, such as education, experience, knowledge and skills, and abilities which may be required of applicants.

Classification Plan – The arrangement of positions in classes, together with the title and specifications describing each class.

Compensation – Salary, wages, fees, benefits, allowances or any other consideration paid to an employee for performing the duties or exercising the responsibilities of a position.

Compensatory Time – Time off from work in lieu of monetary payment for overtime work.

Continuous Service – Employment in a regular position that is uninterrupted from the effective date of the appointment except an authorized absence with pay or as required by law.

Contract Employees – Contract employees are those individuals employed by the City pursuant to the terms of an individual employment contract that sets forth terms and conditions of employment. Unless expressly stated herein, the provisions of these personnel rules and regulations shall not be applicable to contract employees.

Days – Means calendar days unless otherwise stated.

Demotion – The movement of an employee from a position in one class to another class, the next class having a lower maximum base rate of pay.

Department – A major administrative branch of the City involving a general line of work with one or more employees under the charge of one or more individuals known as supervisors.

Department Head – The individual designated as the administrative head of a City department. The City Manager is the Department Head of the other departments heads.

Disciplinary Action – The termination, demotion, reduction in pay, or suspension of a regular employee for cause.

Eligible – A person whose name is on an employment list.

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Employee – A person who is legally occupying a position in the City’s service or who is on an authorized leave of absence for such position.

Employee (Emergency) - A person employed by the City for a temporary period of time to meet emergencies, which threaten life, property, or the general welfare of the City. An emergency employee serves at the will of the City Manager or designee and may be removed at any time without cause.

Employee (Part-Time) – A person employed by the City for specifically designated hours less than full time. A part time employee serves at the will of the City Manager or designee and may be removed at any time without cause.

Employee (Probationary) – A person employed by the City in a regular full-time position who has not completed the probationary period.

Employee (Regular) – A person employed by the City in a full-time capacity who has successfully completed his/her probationary period and has been retained according to the provisions of these rules. The term does not include an elected official.

Employee (Temporary) – A person employed by the City full-time or part-time for some specific work that is temporary in nature. A temporary employee serves at the will of the City Manager or designee and may be removed at any time without cause.

Employee (Extra Help) - An employee who is appointed to a position with less than year-round funding. Extra-help employees shall be compensated on an hourly basis shall not be eligible for participation in any benefit plans except as required by law and serves at the will of the City Manager or designee and may be removed at any time without cause.

Employment Date – Date on which an employee was hired to fill a position with the City.

Employment List – A list of names of persons who may be considered for employment with the City under specified conditions. Employment lists will be prepared as needed under the direction of the Personnel Director or their designee.

Evaluation Date – For the purpose of step advancement, this term shall mean the date upon which the employee’s most recent step advancement occurred.

Examination – An examination for a particular class, which is open to persons meeting the qualifications for the class.

Exempt Employee – The City Manager, department heads, executive or professional staff, administrative technical staff, and others whose duties and responsibilities allow them to be “exempt” from the overtime pay provisions as provided by the Federal Fair Labor Standards Act (FLSA) and any applicable state laws.

Fiscal Year – The fiscal year for the City begins on July 1 and ends on June 30 of the next year.

Full-time Position – A budgeted position in which an employee of the City is regularly scheduled to work at least forty (40) hours per week and/or no less than two thousand eighty hours per year.

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Grievance – The formal allegation made by an employee that the City, or one of its representatives has violated, misinterpreted, or misapplied the provisions of the Memorandum of Understanding and/or City personnel ordinances, rules and regulations, or administrative directives.

Grievance Procedure – The systematic means set forth in these personnel rules and regulations by which an employee may obtain consideration of a grievance.

Job Description – Description of duties, responsibilities, and minimum qualification requirements of the positions included in the class.

Lay-off – The separation of employees from the active ~~work force~~workforce due to a shortage of work or funds, or due to the abolition of positions by the City Manager and/or City Council for the above reasons or due to organization changes.

Leave of Absence – An authorized absence from duty for a specified period.

Memorandum of Understanding (M.O.U.) – ~~(M.O.U.)~~–An understanding reached with a recognized employee organization as a result of meeting and conferring on hours, wages, and working conditions in accordance with State law and City ordinances, resolutions, and rules.

Minimum Qualifications – The minimum qualifications deemed necessary for a candidate to possess for selection to fill a vacancy and to maintain employment with the City.

Oral Interview or Qualifications Appraisal Board – Part of an examination conducted by a competent board to evaluate the candidate's education, experience, and general qualifications pertinent to the position for which examined.

Out-of-Class Pay – The salary an employee shall receive for working in a classification having a higher salary range than the one to which that employee was appointed during a period of time or these rules. .

Overtime – Time worked in excess of 40 hours in a work week or as provided in an applicable M.O.U.

Part-time Position – A position in which an employee of the City is regularly scheduled to work less than forty (40) hours per week and/or less than two thousand eighty hours per year.

Performance Evaluation – A review and evaluation of an employee's performance and capabilities in the employee's authorized position by the employee's immediate supervisor and/or ~~other member~~other members of management at designated intervals and filed in the employee's official personnel file; minimum of one evaluation annually.

Personnel Director – The employee of the City designated to manage the personnel function of the City. The Personnel Director may delegate one or more of those functions to subordinates.

Personnel Rules and Regulations Manual - This Group of personnel rules and regulations concerning employment with the City of Lindsay.

Personnel Records – The official records of the City for each employee, maintained by and in the personnel office, except records that may be required to be maintained in other locations.

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Position – A specific office or employment provided by the budget, whether occupied or vacant, of ~~limited term~~limited-term or regular, and requiring the performance of certain duties and responsibilities assigned or delegated by the appointing authority.

Probationary Period – A period from original date of hire to be considered an integral part of the examination, recruiting, testing and selection process during which an employee is required to demonstrate fitness for the position to which the employee is appointed by actual performance of duties of the position.

Professional Employee – Management, supervisory and technical employees engaged in work requiring specialized knowledge and skills as so designated by the City.

Promotion – The movement of an employee from a position of one class to a position in another class having a higher maximum salary rate, generally with an increase in duties and responsibilities over the employee's present class.

~~**Promotion** – The movement of an employee from a position of one class to a position in another class having a higher maximum salary rate, generally with an increase in duties and responsibilities over the employee's present class.~~

Promotional Probationary Period – The initial period of service by an employee in a promotion position, this period to be considered an integral part of the examination, testing and selection process during which an employee is required to demonstrate fitness for the position to which promoted by actual performance.

Reclassification – Modification of job title and corresponding salary range adjustment supported by an appropriate classification analysis prepared under the direction of the Personnel Director, or designee which identifies a change in level of difficulty and/or responsibilities between the existing job description and actual job duties.

Reduction in Pay – A temporary or permanent decrease in salary.

Regular Position – A budgeted position, the duties of which do not terminate at any stated time.

Reinstatement – The restoration without examination of a former regular employee to a classification in which the employee formerly served as a regular non-probationary employee within one year of separation from the City.

Rejection – The termination or demotion of an employee during a probationary period.

Relief of Duty – The temporary assignment of an employee to a status of administrative leave with pay.

Reprimand – An oral or written notification to an employee regarding a censure made as a disciplinary action.

Resignation – Voluntary termination of employment by an employee, including the abandonment of the position.

Salary – The wages paid for services performed.

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Salary Increase – An increase in salary for a classification as a result of the meet-and-confer process and/or City Manager or City Council action.

Salary Range – Categories, which determine the minimum and maximum salary with appropriate steps for each employment classification.

Seniority – Precedence of one employee over another based on length of service within the classification, department, and City to be determined by continuous employment from the date of hire into a regular position.

Separation – The voluntary or involuntary end of City employment.

Smoking – Includes any lighted cigarette, [vaporizer](#), [e-cigarette](#), cigar, or pipe.

Standard Work Week – Any consecutive seven (7) day period, as determined by the City, beginning at 12:01 A.M. on the first day, and ending at 12:00 midnight on the seventh day, and consisting of forty (40) hours.

Step Increase – A salary increase of one or more steps within the limits of the salary range established for a class.

Supervisor – A person having authority in the interest of the City to direct employees, or to adjust grievances, or effectively ~~to~~ recommend any such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Suspension – The temporary separation, without pay, from service of an employee for disciplinary purposes.

Termination – Separation from City employment for disciplinary reasons or as a result of rejection during a probationary period.

Transfer – The movement of an employee within a department or between departments from one position to another position in the same class or another class having the same maximum salary.

Vacancy – An unfilled authorized position in the City of Lindsay employment.

Work Shifts – The days of the week and the hours on each of those days that an employee is assigned to work on a regular basis.

Section 2.2 Construction In General

The provisions of these rules and regulations and proceedings under them shall be construed with the view to affect their purpose and to promote justice.

Section 2.3 Prohibited Acts Include Causing or Permitting

Any act or omission, which is unlawful under these rules, includes ~~ing~~ causing, permitting, aiding, abetting, suffering, or concealing the act or omission.

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Section 2.4 Reference to Rules Includes Amendments

When a reference is made to a portion of these rules and regulations, or to an ordinance of the City, the reference applies to each amendment and addition, which may be made to it.

Section 2.5 “Shall” and “May”

| As used in these rules. “~~S~~shall” is mandatory and “~~M~~may” is permissive.

GENERAL PROVISION

Section 3.1 Fair Employment

During the selection process, the City will not attempt to elicit information concerning race, color, ancestry, national origin, sexual orientation and/or gender identity, marital status, physical or mental disability, medical condition, age, citizenship status, political or religious opinions or affiliations of an applicant. Appointment or removal from a position shall not be affected or influenced by consideration of race, color, ancestry, national origin, sexual orientation, and/or gender identity, marital status, physical or mental disability, medical condition, age, citizenship status, political or religious opinion or affiliation or other category protected by law.

Section 3.2 Violation of Rules and Regulations

Violation of these rules is grounds for suspension, demotion, dismissal or other disciplinary action appropriate under the circumstances.

Section 3.3 Amendment and Revision of Rules and Regulations

It is fully recognized that rules and regulations, practices, procedures and policies may require modification to reflect changing needs and more effective methods as they are developed. These rules and regulations may be appropriately revised to reflect such needed changes.

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CLASSIFICATIONS

Section 4.1 Purpose

The classification plan provides a complete inventory of all positions in the competitive service and an accurate description and specification for each class of employment. The plan standardizes titles, each of which is indicative of a definite range of duties and responsibilities.

Section 4.2 Classification Plan

The classification plan consists of classes and positions defined by class specification, including the title. The classification plan shall be maintained so that all positions substantially similar with respect to duties, responsibilities, authority, and character of work are included within the same class, and that the same schedule of compensation may be made to apply with equity under similar working conditions to all positions in the same class.

Section 4.3 Administration

The Personnel Director or designee will continually review the classification plan based on the job analysis. The Personnel Director or designee shall ascertain and record the duties and responsibilities of all positions in the competitive service, and make a recommendation to the City Council or City Manager of a classification for such positions. Changes in classifications, which result in a salary that falls outside the limits of the department budget, shall be approved by the City Manager.

Section 4.4 Classification of Positions

Each position shall be allocated to the appropriate class in accordance with the character, difficulty, and responsibility of its assigned duties. Positions in a single class shall be sufficiently similar to permit substantially the same level of skill, knowledge, ability, and other qualifications required of incumbents, the same or similar selection method and the same schedule of compensation.

Section 4.5 Classification of New Positions

All new full-time positions require City Council authorization. The Personnel Director or designee shall recommend the proper assignment of any new positions to a class in the classification plan, or when appropriate, create a new class. When a new position is created and is classified before it is occupied, such position shall be subject to review by the Personnel Director or designee after it is occupied to determine if the incumbent is performing the duties of the class.

Section 4.6 Reclassification

The classification plan may be amended from time to time. The assigned duties of positions, which have been materially changed over time by the City so as ~~to~~ necessitate reclassification, whether new or already created, shall be allocated by the City Manager to a more appropriate class. Reclassification shall not be used for the purpose of avoiding restrictions concerning demotions and promotions, nor to effect a change in salary in the absence of a significant change in assigned duties and responsibilities. During the process of consideration, any recognized

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employee organization affected shall be advised. Amendments and revisions of the plan may be suggested by any interested party, including any recognized employee organization and shall be submitted to the City Manager.

The City Manager may approve the reallocation of a position to a different class or approve the creation of a new class whenever the duties of the position change materially over time. This may occur upon the recommendation of the department head, or upon the request of an employee and with the concurrence of the department head. When any change is made within a Department, which significantly affects the duties and responsibilities of any position, the appointing authority shall report these facts in writing to the Personnel Director. The Personnel Director or designee shall make a classification study of the duties and responsibilities and the relationship to other classes or positions. The Personnel Director may study the allocation of any position in the Classification Plan and make recommendations to the City Manager for a change in class or the allocation to a more appropriate class. The department head shall be consulted before a classification study is begun in his or her department. Studies may be initiated in the following manner:

1. Written request, submitted by the department head, due to reorganization of a department caused by a lack of funds, lack of work, or where the department reorganization would be for the betterment of the delivery of services or when the duties of a position have materially changed over time.
2. Referral from the City Manager.
3. When possible authorization of a new position is indicated.
4. Regular, periodic maintenance of the Classification Plan or when the Personnel Director identifies a need to study an existing position.

A change in classification on an occupied position shall affect the status of the incumbent in the following manner:

1. When a position is moved to a class with the same or higher salary range, the incumbent may retain the same status in the new class that was held in the prior class. The duties should have evolved over a period of time and be basically the same duties and responsibilities as were performed by the incumbent.
2. When a position is reallocated to a class in a related series with a lower salary range, incumbents may choose to retain the position by accepting voluntary demotion or may request a transfer, if available, for the class from which the position was moved. If neither of the foregoing is chosen, the normal layoff procedures will be followed.

Section 4.7 Job Descriptions (Specifications)

The Personnel Director or designee with the assistance of the department heads shall prepare written specifications for each class of positions. The official copy of the specifications for each class shall be maintained in the personnel office and shall indicate the date of approval or last revision.

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Each specification shall include the class, title, a brief description of the scope, nature, and responsibility of the class, a description of the tasks or duties ordinarily performed in the positions allocated to the class; a statement of the minimum qualifications considered necessary for proficient performance of the work, including education, experience, training, knowledge, skills, physical characteristics, and any additional factors considered pertinent. Specifications are not restrictive. A department head may temporarily assign other related duties and responsibilities or otherwise direct the work of employees.

No person shall be appointed to any position unless that person meets the minimum qualifications set forth in the currently approved class specification for that position or meets the permissible equivalency provisions of these rules.

Section 4.8 Vacancies

When a permanent vacancy occurs in an authorized position, the department head may fill the vacant position with an existing employee or someone who is not currently employed. The department head may determine that it is in the City's best interest to leave the position vacant. Individuals will be chosen to fill the vacancy based on merit.

Section 4.9 Evaluations

All personnel of the City of Lindsay are subject to periodic evaluations of their work performance. Each person will be rated by his or her immediate supervisor and/or past supervisor depending on the length of time a person has been assigned to a particular supervisor. Each probationary employee shall be rated at the end of the third, sixth, ninth, and eleventh months of his/her probationary period, while each regular employee shall be rated thirty days prior to the employee's anniversary date. Performance evaluations will consist of both a written evaluation report and an evaluation interview. The written report will be prepared and used as a guide during the evaluation interview. Each supervisor shall use the City form obtained from the Personnel Director or designee. The completed form will be dated and signed by the supervisor and the employee after the interview. The completed form will then be forwarded to the department head who in turn will supply the original to the Personnel Director.

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RULE V

COMPENSATION

Section 5.1 Preparation of Salary and Wage Plan

Upon request of the City Manager, the Personnel Director shall recommend a wage and salary plan. The Personnel Director shall consult with each department head and give consideration to prevailing rates of pay and working conditions for comparable work in other public and private employment, the difficulty and responsibility of the work, current costs of living, suggestions of department heads, the City's financial condition and other relevant factors.

Section 5.2 Adoption and Application of Plan

The City Council shall adopt a salary and wage plan and may amend it from time to time. At the time the City Council considers it, interested persons may appear and shall be heard. Suggested changes may be submitted to the City Council through the City Manager. Said adoption will be accomplished during the budget process.

Section 5.3 New Employees

A new employee shall be appointed to the first step of the salary range to which his/her class is assigned, except as follows: where it is difficult to locate qualified personnel, or when it appears that the education and previous training or experience of a proposed employee is substantially superior to those required at the beginning level of the class and justify a beginning salary in excess of minimum compensation. The City Manager may authorize hiring at a higher step in such cases.

Section 5.3.1 Advancement Within Salary Range

Advancement within the salary range is not automatic. An increase is made on the basis of merit as established by the employees' work performance and after written recommendation of the department head. The department head shall set forth the source of funding for the raise, and show that adequate funds are available for the raise when given and in the coming fiscal years. Any advancement must be approved by the City Manager or designee. An employee who fails to receive in-grade salary advancement shall be notified in writing as to the reason.

Section 5.3.2 Special Salary Adjustments

In order to correct gross inequities or to reward outstanding achievement and performance, (exceptional service) the City Manager may upon recommendation of the department head adjust the salary rate of an employee to any step in his/her existing salary range or up to 10% above the range if the employee is at the top step. ~~(See 5.5)~~

The factor of exceptional service is intended to recognize exceptional performance in which an employee is performing service substantially above the level of proficiency normally expected in the class or is producing results consistently superior to that normally expected of employees in the class. It does not include unusual acts or results caused by unusual conditions beyond the control of the employee, to which he/she demonstrated a normal reaction under the circumstances. This award may not be used in an attempt to solve a pay or classification inequity.

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Section 5.3.3 Applicable Pay Rates

- (1) Following promotion. When promoted, an employee begins at step A of the range into which promoted or one step higher than his/her current salary, whichever is higher. The new anniversary date is the date of promotion.
- (2) Following demotion. In the case of the demotion to a class with a lower maximum salary, an employee shall be assigned to the same salary step in the new class, assuming that his/her service has been continuous in the new class. The employee shall retain his/her previous anniversary date.
- (3) Following transfer. Where an employee is transferred from one position to another in the same class or to another class to which the same pay range is applicable, the employee retains the same pay step and anniversary date.
- (4) Following salary range increases and decreases. Where a pay range is revised upward or downward, the incumbent of a position in the affected class is entitled to a pay adjustment to the same relative step in the new pay range. The anniversary date does not change.

Section 5.4 Deductions

Each deduction from an employee's wages shall be made in accordance with prevailing laws, contracts, rules and regulations.

Section 5.4.1 Deductions Required by Law and Contracts

Deductions include federal withholding tax, state withholding tax, social security tax, city retirement premium, paid family leave, and SDI.

Section 5.4.2 Written Authorization From Employee

Authorization is required for group medical, dental, hospitalization, disability, life insurance premiums, credit union, and any other deduction approved by the City Manager.

Section 5.4.3 Claims

Claims for non-payment of debts for the purpose of garnishing employees' wages shall be made to the Director of Finance under Section 710 of the Code of Civil Procedure.

~~Section 5.5 Salary Adjustment~~

~~The factor of exceptional service is intended to recognize exceptional performance in which an employee is performing service substantially above the level of proficiency normally expected in the class or is producing results consistently superior to that normally expected of employees in the class. It does not include unusual acts or results caused by unusual conditions beyond the control of the employee, to which he/she demonstrated a normal reaction under the circumstances. This award may not be used in an attempt to solve a pay or classification inequity. We suggest you move this paragraph to Section 5.3.2~~

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Section ~~5.6~~ 5.5 “Acting” Capacity

An employee, who temporarily assumes the duties of a superior position for an extended period of usually one (1) month or more, may upon approval of the City Manager receive premium pay commensurate with the duties assumed.

Section ~~5.7~~ 5.6 Terminal Pay

An employee who is terminated is entitled to terminal pay:

- (1) That portion of the final pay period from the first day of the final pay period to the effective date of separation. The day of separation is either the working day specified for separation or the last day of the pay period if no date is specified.
- (2) Accrued vacation actually earned but not taken.
- (3) Accrued overtime.

Section ~~5.7~~ 6.1 Employees’ Death

An employee may, in a writing filed with Human Resources, designate a person to receive the employee’s final paycheck in the event of the employee’s death. The employee may change the designation from time to time. A person so designated may claim the employee’s terminal pay upon proof of identity. A “person” for purposes of this section can include a corporation, trust, or estate.

An employee’s surviving spouse may claim compensation due to a deceased employee by providing the City a sworn affidavit or declaration as described in Probate Code section 13601.

Absent a designated beneficiary or receipt of a qualifying claim by a surviving spouse, terminal pay will be paid to the employee’s estate.

In case of employee’s death the City shall pay the employee’s beneficiary the sums set forth in 5.7 if he or she has so designated one; otherwise, terminal pay is paid to his or her estate.

Section ~~5.7~~ 2 City Property

All City property in the employee’s possession must be returned prior to separation, including keys, key fobs, identification cards, equipment, credit cards, gas cards, laptops, cell phones, pagers, and any other City equipment. Terminal pay is paid to an employee only upon submission by the employee of all city owned property in his/her possession including keys, badges, etc.

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RULE VI

APPLICATIONS AND APPLICANTS

Section 6.1 Employment Standards

It is the policy of the City to employ the best-qualified and most competent person available. Selection is made on the basis of merit and such applicable standards as demonstrated ability, skills and experience, training aptitude, intelligence, and character.

Section 6.2 Applications

The City shall make official application forms available in a manner, which will facilitate effective recruiting. The form shall require information covering training, education, experience, and other pertinent information, and may include references. The applicant must sign the application.

Section 6.3 Application Filing

Each person participating in a scheduled selection process for employment shall have completed and filed an official application form for that recruitment. The personnel office must receive the official application form no later than the date and time of the last filing deadline as published in the announcement. Each applicant must sign the application form certifying that all statements are correct. Persons applying for a position must comply with the following conditions:

1. Meet the general conditions pertaining to the filing of an application.
2. Meet the specific requirements as shown on the announcement for a particular position;
3. Meet the right-to-work in the United States or citizenship requirement, and
4. Be willing and able to accept the employment in the present vacant position or a future similar vacant position, if employment were offered.

The name of persons applying for City positions or the evaluation of their participation in any selection process shall not be made public. Applications will be accepted when recruitment has begun for a position.

~~Section 6.3.1~~ 6.4 Evidence of Good Character

The City may require an applicant to furnish evidence of good character.

~~Section 6.3.2~~ 6.5 Physical and Psychiatrist Examination

The City may require an applicant to undergo physical and/or psychiatric examination at the City's expense.

~~Section 6.3.3~~ 6.6 Credit Rating

The City may require satisfactory credit ratings of applicants and/or employees.

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Section ~~6.3.4~~ 6.7 Residency

Residence in the City at the time of application is not a requirement. However, the City Manager or department head may require certain classes of employees to live within a specified response time of the City.

Sections ~~6.4 – Standards~~ 6.8 – Operation of Motor Vehicle

If driving a vehicle is required for the job the applicant must be able to show:

- (a) The ability to possess a valid California driver's license
- (b) The ability to drive safely
- (c) The ability to operate a motor vehicle in all types of weather conditions

Section ~~6.4.1~~ 6.9 Personal Integrity

The City will consider evidence of personal integrity such as:

- (a) Refusing to yield to the temptation of bribes, gratuities, pay offs, etc.
- (b) Refusing to tolerate unethical or illegal conduct on the part of other personnel.
- (c) Showing strong moral character and integrity in dealing with the public.
- (d) Being honest in dealing with the public.

Section ~~6.4.2~~ 6.10 Dependability

The City will consider evidence of dependability such as:

- (a) Having a record of submitting reports or completing assignments on time and not malingering on jobs.
- (b) A record of being motivated to perform well.
- (c) A record of dependability and ability to follow through on assignments.
- (d) A history of taking the extra effort required for complete accuracy in all details of work.
- (e) A willingness to work the hours needed to complete a job.

Section ~~6.5~~ 6.11 Disqualification of Applicant

The Personnel Director may eliminate from the selection process, remove from the eligible list, or refuse to certify the name of any person:

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- (a) Who does not meet the minimum qualifications established for the class or position to which they seek appointment;
- (b) Who has made a false statement, misrepresentation, or omission of a material fact or actual or attempted deception, fraud or misconduct in connection with his or her application
- (c) Who has improperly used or attempted to use any personal or political influence to further his or her eligibility for appointment;
- (d) Who has been terminated for good cause from previous employment.
- (e) Who has failed to submit an application correctly within the prescribed time limit;
- (f) Who has directly or indirectly obtained information regarding examinations to which applicants are not entitled;
- (g) Who has failed any part of the selection process for the same position within the last six months
- (h) Who is physically or psychologically -unfit for the performance of essential functions of the position and such unfitness cannot be reasonably accommodated.
- (i) Who has been convicted, including pleas of guilty and nolo contendere, of any felony or a misdemeanor, which was of such a nature as to reflect adversely and substantially on the applicant's ability to perform the duties of the position. The City Manager may disregard such convictions if it is found and determined by the City Manager that mitigating circumstances exist.
- (j) For any other material cause which in the judgment of the Personnel Director would render the applicant unsuitable for the position, including a prior resignation from the City, termination from the City, or a significant disciplinary action.

CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

RULE VII

EXAMINATIONS AND ELIGIBLE LISTS

Section 7.1 Conduct of Examinations

The Personnel Director is responsible for examinations except when the City Manager determines that an examination for a particular class should be conducted by the department concerned.

Section 7.2 Nature and Types of Examination

The selection techniques used in the examination process shall be impartial and related to those subjects which, in the opinion of the department head, fairly measure the relative capacities of the person examined to execute the duties and responsibilities of the class to which employed. Such techniques include: personal interview, written examination, performance tests, work samples, physical agility tests, evaluation of training and experience, physical examination, psychological tests, background investigation, or any combination of these or other tests. The probationary period shall be considered as a portion of the examination process. Examinations shall be designed to provide equal opportunity to all candidates by being based on an analysis of the essential requirements of the class, covering only factors related to such requirements.

Section 7.2.1 Continuous Examinations

Open-Competitive examinations may be administered periodically for a single class, as the needs of the service require.

Section 7.2.2 Promotional Examinations

It is the policy of the City to give open and competitive examinations for all positions except when the City Manager finds that there are a sufficient number of qualified candidates in city service or that the position requires special knowledge and familiarization. Promotional examinations may include any of the selection techniques mentioned in section 7.2 of this rule. Only employees who meet the requirements set forth in the examination announcements may compete.

Section 7.3 Scoring Examination and Qualifying Scores

A candidate's score in a given examination shall be the total of his or her scores on each competitive part of the examination weighted as determined for the selection process. Failure in one part of the examination shall be grounds for declaring such applicant as failing the entire examination or as disqualified for subsequent parts of an examination.

Section 7.4 Notice of Examination Results

Applicants shall be notified by mail concerning the results of their participation in the selection process. Said notification shall indicate whether or not the applicant has been placed on the employment list.

CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

Section 7.5 Establishment of Eligible List

As soon as possible after the completion of an examination, the Personnel Director or designee shall score the examination and prepare an eligible list in numerical ranking based on the candidate's grade. One of the candidates with the top five highest test scores should be appointed. If the department head chooses to appoint an individual who is not in the top five written justification shall be made to the Personnel Director. The Personnel Director shall review the written justification and recommend approval or denial to the City Manager for final action.

Section 7.5.1 Duration of List

An eligible list other than one resulting from a continuous examination remains in effect for one year, unless abolished, exhausted, or extended by the City Manager. Any extension shall be for an additional period of not more than three (3) months.

Section 7.5.2 Re-employment List

The name of each regular employee who has been laid off shall be placed on an appropriate re-employment list in the order of total continuous cumulative time served in probationary and regular status. The names remain for three (3) months unless the persons are sooner re-employed.

Section 7.6 Removal of Name From List

The Personnel Director may remove the name of an eligible applicant from the employment list:

- (1) For ground set forth in Rule VI, Section 6.4, entitled Disqualification of applicants;
- (2) On receipt of a statement from the eligible applicant indicating a lack of interest in the class or employment.
- (3) On evidence that the eligible applicant cannot be located;
- (4) On evidence that the eligible applicant fails to respond to a notice mailed to the last designated address within five (5) working days following the mailing of notice;
- (5) On report of an unsatisfactory background investigation;
- (6) If on a promotional list and separated from employment.

The person affected shall be notified of the removal of the name by a notice mailed to the last known address.

APPOINTMENTS

Section 8.1 Types of Appointments

A vacancy is filled by original appointment, reinstatement, re-employment, transfer, promotion, or demotion.

Section 8.2 Request to Fill Vacancy

The Personnel Director shall be notified when a vacancy is to be filled.

Section 8.3 Method of Appointment

The Personnel Director may send the list of eligibles to the department head as set forth in Rule VII, Section 7.5.1. If the department head; after interview desires, to make the appointment, he/she may do so subject to the approval of the City Manager. The department head may fill a vacancy by reinstatement, transfer, demotion, promotion, or re-employment, if permissible under these rules. This request shall be made prior to the Personnel Director undertaking any other method of appointment or establishing an eligibility list. If the Personnel Director (or City Manager if the employee is reinstated) grants permission to proceed with filling the vacancy in this manner, the Personnel Director shall notify the person, not the department head. If the person is offered the appointment and does not accept the appointment in writing, or present himself/herself for duty as prescribed, the appointment is considered rejected.

Section 8.4 Reinstatement

A regular employee who resigns in good standing may within one (1) year of his or her resignation be reinstated in a position in the class in which he or she previously had served or in a comparable class. A person may be reinstated only if a vacancy exists, the department head recommends reinstatement, and the City Manager approves. An employee reinstated is in a probationary status and is considered a new employee for purposes of vacation, sick leave and salary increases. If the Employee returns and is granted reinstatement within thirty (30) days, employment will resume as though ~~uninterrupted~~uninterrupted, and the employee will not be required to serve a probationary period.

Section 8.5 Re-employment After Lay-Off

A regular employee who is laid off in accordance with these rules is entitled to preference in filling a vacancy in the class or position previously held by that employee for a period of (3) months. An employee so re-employed retains all benefits accrued in prior service with the city. During the lay-off, no benefits ~~accrue~~accrue, and the anniversary date shall be adjusted if the lay-off time exceeds thirty (30) days.

Section 8.6 Transfer

An employee may be transferred from a class in one department to a position of the same class in another department. Such transfer does not result in a loss to the employee of accumulated vacation, sick ~~leave~~leave, or overtime.

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Section 8.7 Demotion

A position may be filled by demotion of an employee in accordance with these rules and regulations. An employee may be demoted in preference to being laid off.

Section 8.8 Nepotism

No person may be appointed or transferred into a position in the ~~city~~ City contrary to the provisions of Section 22.9 of these Rules in which a relative by blood, marriage or domestic partnership is employed. The City Manager may waive this prohibition based on the needs of the city.

Section 8.9 Temporary or Part-Time Appointments

Time spent under temporary or part-time appointment is not credited to the probationary period or counted toward salary eligibility. Time spent under temporary or part-time appointment is not credited to vacation, sick leave, or retirement benefits.

Section 8.10 Offer of Employment

Only the Personnel Director may extend offers of employment to selected candidates. Employment offers for all positions shall be made in writing and shall include starting salary on an hourly, weekly, or monthly basis. An employment offer made in terms of annual salary shall not imply a yearly contract.

All appointments shall be classified as full-time, part-time, or temporary and are defined as exempt or non-exempt for overtime pay. Employees will not change from part-time or temporary status to another status unless specifically informed of such a change, in writing by the Personnel Director. ~~Part-time~~ Part-time and temporary employees serve at the will and may be terminated at any time without cause or an opportunity for a hearing.

Section 8.11 Fingerprints / Live Scan

As a condition of employment, the City Manager may require a person seeking employment by the City to be fingerprinted prior to beginning employment or immediately thereafter. Refusal of an employee to be fingerprinted or failure to report for fingerprinting shall be sufficient cause for disqualification from employment or termination from employment. The Personnel Director shall establish and maintain a system for fingerprinting of employees. Fingerprint cards or live scan documents shall become a part of the employee's personnel folder to be cleared through the Bureau of Criminal Identification and Investigation of the State of California and other agencies as deemed appropriate. The fingerprint cards or live scan prints for law enforcement applicants shall be processed immediately.

Section 8.12 Medical Examination

Following a conditional offer of employment, prospective employees shall be required to complete a ~~job-related~~ job-related pre-placement physical and/or psychological examination. Conditional offers of employment are made contingent upon passing this examination; however,

CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

the city shall make reasonable accommodations to the special needs of any disabled individual as required by law. A licensed physician chosen by the City without cost to the prospective employee shall perform such examination. The prospective employee shall be required to complete a medical history questionnaire and a medical records release as necessary to facilitate the examination. The physician will indicate the employee's fitness for employment on the examination form. In the event the examination is not completed prior to the employee's scheduled start date, only a tentative appointment may be made. The final appointment will be contingent on a satisfactory examination result.

Depending on the job-related physical characteristics required, a medical examination may be required for:

- (1) Entering ~~employees;~~employees.
- (2) Employees seeking a transfer from one position requiring general physical abilities to another position requiring different physical abilities ~~and;~~and.
- (3) Employees returning to work from a medical leave of absence.

The physician conducting the medical examination shall be supplied with a current job description indicating the job-related duties and requirements of the position. The results of all medical examinations shall be confidential. Examination results for entering employees and employees transferring to another position shall **not** be kept in the employee's **personnel** file. No employee shall hold any position in which the employee is not able to perform the essential functions of the job **with or without reasonable accommodation if disabled**. The City Manager may require that employees take a psychological or a medical examination as it deems necessary in order to determine employees to be mentally and physically capable of performing the job without significant risk to the health or safety of themselves or others.

Section 8.13 Driver's License and Driving Record

Employees who are required to drive are required to possess a valid California driver's license and maintain a satisfactory driving record as a condition of employment. Employees must immediately report to the Personnel Director any changes in driving privileges. Failure to do so may result in disciplinary actions.

Section 8.14 Employment Oath

In accordance with Article XX, Section 3 of the Constitution of the State of California and California Government Code Section 3102, All-all employees of the City (except legally employed non-citizens) shall complete and sign the Oath or Affirmation of Allegiance of Public Officers and Employees on the first day of employment~~in accordance with Article XX, Section 3 of the Constitution of the State of California~~. The City Clerk or other designated individual shall administer the Oath and a signed copy shall be included in the employee's personnel file.

Section 8.15 Identification Cards

The Personnel Director or department head shall issue employee identification cards to all employees of the City. Employee identification cards are to be used by employees in conducting business on behalf of the City. Employee identification cards are the property of the City and shall be surrendered to the City upon demand or separation from employment and prior to

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receiving payment of salary due at separation. Employees shall be required to immediately report lost or stolen identification cards to the Personnel Director.

Section 8.16 Keys

Keys to City facilities will be issued to employees so designated by the City Manager or his designee. Keys are the property of the City and shall be surrendered to the City upon separation from employment and prior to receiving payment of salary due at separation. Employees shall be required to immediately report lost or stolen keys to the Personnel Director.

Section 8.17 Other City Property

Other property issued to the employee belonging to the City shall be surrendered to the City upon demand or upon separation. The final salary due may be adjusted for failure to return issued property.

PROBATIONARY PERIOD

Section 9.1 Purpose

The probationary period is the final step in the selection process. It is an extension of the examination process and the employee’s performance shall be closely observed for securing the most effective adjustment of a new employee to his or her position.

Section 9.2 Duration of Probationary Period

Each original and promotional appointment made to a position in the competitive service shall be subject to a probationary period. The length of the probationary period shall be twelve (12) months of continuous service for all employees. The probationary period shall not include time served in any employment capacity except that of a regular full-time position. The probationary period may be for a longer period of time if extended or as established in the job description.

Section 9.3 Successful Completion of Probationary Period

The Personnel Director or designee shall notify the department head two weeks prior to ~~the end of any probationary period~~ the due date of a probationary employee’s eleven-twelve-month performance evaluation. If the employee’s performance has been satisfactory to the department head and advancement to regular status is warranted, the department head shall so state in the employee’s probationary performance evaluation report. The employee shall then be advanced to regular status on his or her anniversary date. If the employee’s performance has not been satisfactory and the department head recommends release from probation, the department head shall so state in the evaluation report. If such a statement is not filed, the employee will be deemed to have satisfactorily completed his or her probationary period.

Section 9.4 Rejection of Probationer

During the probationary period, an employee is considered “at will” and may be rejected at any time by the City Manager (at the recommendation of the department head) ~~for failure to satisfactorily complete the probationary period~~ without cause or reason, without prior notice, and without any right to appeal or grievance. The probationary employee will be notified prior to the expiration of the probationary period that they have been rejected from probation. Notification of rejection by the department head shall be served on the probationer.

Section 9.5 Rejection Following Promotion

A promoted employee who does not successfully complete a probationary period shall be restored, providing a vacancy exists, to the same or similar position in the same class from which promoted unless charges are filed and employee is terminated in the manner provided for in the these rules.

Section 9.6 Promotion, Demotion, and Transfer Probationary Period

A new probationary period shall be required following demotion or transfer. When an employee transfers or demotes from one department to another department, a new probationary period shall be served in the latter department.

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Section 9.7 Reemployment and Reinstatement -Probationary Period

Persons appointed to positions by reemployment must serve a new probationary period, unless the appointment is to the same class in the same department where a probationary period has been previously served. Persons appointed to positions by reinstatement must serve a new probationary period. No credit for former employment shall be granted.

Section 9.8 Interrupted Probationary Period

When the probationary period of an employee is interrupted because of a leave of absence or appointment to another class and the employee later returns to the former class in the same or a different department, a new probationary period shall be served. Credit for all or part of the previous probationary period may be granted to the employee by recommendation of the department head, and approval by the City Manager. (See 9.2).

Section 9.9 Extension of Probationary Period

At the discretion of the department head and with the approval of the City Manager, the probationary period may be extended for a maximum of six (6) months and a new anniversary date will be established.

If an employee's probationary period is interrupted due to illness or injury for thirty (30) days or more the employee's probationary period will be automatically extended for the period of absence and a new anniversary date will be established.

CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

RULE
X

HOURS OF WORK; OVERTIME; HOLIDAYS

Section 10.1 Hours of Work

The provisions in this section govern hours of work for employees. However, this provision shall not interfere with the essential services of a department. Under no condition shall regularly scheduled hours for a full-time employee for the City ~~consist of work~~ less than 40 hours per week within five (5) consecutive days. Shifts vary as required to meet the operational requirements of the department where the employee works. When desirable, the City Manager may designate other working hours for employees whose specific duties require it.

Section 10.2 Attendance

Employees shall be in attendance at their work in accordance with the rules regarding hours of work, ~~holiday~~ holidays, and leaves. All departments shall keep daily attendance record of employees, which shall be reported to the finance office in the form and on the dates specified.

~~Failure on the part of an employee, absent without leave, to return to duty within three consecutive work shifts is cause for immediate discharge, and such employee automatically waives all rights under these rules and regulations.~~

Section 10.2.1 Job Abandonment

~~An employee is deemed to have resigned from their position if they are absent for three (3) consecutive scheduled work shifts without prior authorization and without notification during the period of the absence. The employee will be given written notice, at their address of record, of the circumstances of the job abandonment, and an opportunity to provide an explanation for the employee's unauthorized absence. An employee who promptly responds to the agency's written notice, within the timeframe set forth in the written notice, can arrange for an appointment with the Personnel Director before final action is taken, to explain the unauthorized absence and failure of notification. An employee separated for job abandonment will be reinstated upon proof of justification for such absence, such as severe accident, severe illness, false arrest, or mental or physical impairment which prevented notification. No employee separated for job abandonment has the right to a post-separation appeal.~~

Section 10.3 Holidays

The holidays observed in the City shall be posted each year. See specific M.O.U. Memorandum of Understanding.

Section 10.3.1 Paid Holiday

~~Paid~~ A paid holiday is paid time off for certain designated holidays or pay in lieu of holidays for personnel who are assigned to work on holidays. If any supervisor deems that adequate need exists and requests an employee to work on a holiday, the employee has no right to decline. An employee who is required to work on a paid holiday will receive an extra day of pay for the holiday worked, or the day may be taken at a later time as the employee and the department head

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see fit. As far as practical, holiday work shall be equally distributed among employees. No department head or supervisor is free to leave his department to observe a holiday until a necessary level of staffing has been achieved.

Section 10.3.2 Holiday Falling On Weekend

When a holiday falls on a Sunday, ~~the holiday will be observed on the following regular business day (typically Monday)~~ the following Monday is a holiday. If a holiday falls on a Saturday, ~~the holiday will be observed on the preceding regular business day (typically Friday)~~ preceding Friday is a holiday.

Section 10.3.3 Overtime Compensation for Holidays Worked

Employees who work on a holiday, ~~because it occurs during their regular work schedule in addition to regular pay~~ because it occurs during their regular work schedule in addition to regular pay are entitled to either pay at straight time or one day's compensatory time.

All other overtime compensation for time worked on holidays shall be paid the rate of 1-1/2 times the hourly rate based on the employee's monthly salary, ~~unless an~~ employee prefers compensatory time.

Section 10.3.4 Employee Request

A city employee who wishes to observe holidays ~~peculiar specific~~ peculiar specific to his or her ~~race-culture,~~ national origin, or religion may do so with the approval of his/her department head. This time off is charged to compensatory time or vacation.

Section 10.4 Overtime

It is the policy of the City's to compensate non-exempt employees who work authorized overtime either by payment of wages for each hour worked over forty (40) in a work week or as agreed in the applicable Memorandum of Understanding (M.O.U.), or by the allowance of accrual of compensatory time off. Overtime is compensated at one and ~~one-half~~ one-half times the Fair Labor Standards Act regular rate of pay. In order to qualify for either, the employee must make the appropriate entry on the time sheet, as soon as practical after overtime is worked.

Section 10.5 Compensatory Time Off Policy

Section 10.5.1 Supervisor Approval Required Before Work

A non-exempt employee may opt to accrue compensatory time-off ("CTO") in lieu of cash payment for overtime worked if his or her supervisor agrees prior to overtime work being performed.

Section 10.5.2 Accrual Rate

CTO accrues at the rate of 1.5 hours for each hour worked over 40 hours of actual work in the employee's work week. CTO cannot be accumulated in excess of ~~{100}~~ hours at any given time.

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Section 10.5.3 Employee Requests to Use CTO

The City will grant an employee’s request to use accumulated CTO provided that: (1) the department can accommodate the use of CTO on the day requested without undue disruption; and (2) the employee makes the request in writing to the supervisor no later than five days prior to the date requested. If the employee does not provide five days’ notice, or if the department cannot accommodate the time off, the City will provide the employee the opportunity to cash out the CTO requested at the end of the current pay period.

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Section 10.5.4 City Cash Out

The City reserves the right to cash out accumulated CTO at any time.

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Section 10.5.5 Employee Cash Out

During employment, CTO is cashed out at the employee’s current FLSA regular rate of pay (including all FLSA-applicable salary differentials). Employees separating from City service shall be compensated for all accrued, unused compensatory hours at the current FLSA regular rate of pay, or the average regular rate for the prior three years, whichever is higher.

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Section 10.6 General Overtime Policy

No non-exempt employee is authorized to “volunteer” work time to the Department. All requests to work overtime shall be approved in advance by a supervisor. If circumstances do not permit prior approval, then approval shall be sought as soon as practical during the overtime period or immediately thereafter. Working overtime without approval is grounds for discipline.

Section 10.7 Employees Responsibility

Employees shall complete the requests immediately after working the overtime and turn them in to their immediate supervisor.

Section 10.8 Supervisors Responsibility

The supervisor who verifies the overtime earned shall approve the request. After the entry has been made on the employee’s time sheet, the time sheet shall be forwarded to the department head for final approval.

Section 10.9 Accounting for Overtime Worked

Employees are to record the actual time worked in an overtime status. In some cases, an M.O.U. or other contract provides that minimum time will be paid, (-e.g. two hours, for call out). The supervisor will enter the actual time worked.

Section 10.10 Accounting for Portions of an Hour

Partial hours for overtime worked are to be accounted for in quarters of an hour. One quarter is equivalent to fifteen minutes as indicated by the following chart.

TIME WORKED

INDICATE ON TIMESHEET

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1 – 15 Minutes	¼ hour
16 – 30 Minutes	½ hour
31 – 45 Minutes	¾ hour
46 – 60 Minutes	1 hour

Section 10.11 Variations in Time Reported

Where two or more employees are assigned to the same activity and the amount of time for which payment is requested varies from that reported by the other employee, the supervisor may require each employee to include the reason for variation on the back of the overtime payment request.

Section 10.12 Off-Duty Employment

No City employee may accept gainful employment during off-duty hours unless prior approval is obtained from department head and City Manager.

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**RULE
XI**

LEAVES OF ABSENCE

Section 11.1 Vacation Leave of Employee

Full time employees receive ten (10) days of vacation for the first five years of employment. Full time employees with five (5) years of continuous service will receive eleven (11) days per year. Full time employees with seven (7) years of continuous service will receive thirteen (13) days per year of vacation. Full time employees with ten (10) years of continuous service will receive fifteen (15) days per year of vacation.

Section 11.1.1 When Vacation Leave is Earned

Full time employees accrue vacation leave while in paid status, including while on paid sick leave or other forms of paid leave.

(a) A full time employee on sick leave with pay;

(b) An employee on paid leave of absence on account of disability created by on the job accident while working for the city.

An employee on jury leave. It is not earned by an employee on unpaid leave of absence, nor by one on leave covered by a private disability insurance plan.

No vacation leave is earned while an employee is on an unpaid leave of absence, or a leave by one on leave covered by a private disability insurance plan.

Temporary, emergency, or extra help employees do not earn vacation leave.

Part time employees only earn pro-rated vacation leave after 5 years of uninterrupted service.

Section 11.1.2 Effect of Holiday on Vacation Leave

An employee is not charged vacation leave for a holiday occurring during his vacation leave.

Section 11.1.3 Changing Vacation Leave to Sick Leave

Vacation leave may be changed to sick leave upon submission of a doctor's certificate stating that the employee is ill and unable to work. Such change in leave shall be approved by the City Manager.

Section 11.2 Sick Leave

The purpose of this section is to provide an orderly methods of furthering the health and safety of city employees. Sick leave is not a right, which an employee can use at his or her discretion, but a privilege which is allowed only in the case of illness, bodily injury, exposure to contagious disease, medical or dental appointment or attendance upon an ill or injured member of employee's immediate family. Sick leave may not be granted for absence caused by intoxication

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~~or excessive use of alcoholic beverages. To be paid for sick leave, an employee must notify his supervisor before the time for beginning his/her daily duties. Section 11.4 covers leave of absence caused by on the job injuries. The finance office shall maintain sick leave records for all city employees. Sick leave is paid leave from work that an employee may use for the following purposes:~~

- ~~(a) Diagnosis, care, or treatment of an existing health condition of, or preventative care for the employee themselves or any of the following family members of the employee: a child of any age or dependency status; a parent; a parent-in-law; a spouse; a registered domestic partner; a grandparent; a grandchild; or a sibling; or~~
- ~~(a)(b) For an employee who is a victim of domestic violence, sexual assault, stalking, or other crime in order for the employee to engage in any of the following activities: (1) obtain or attempt to obtain a temporary restraining order or other court assistance to help ensure the health safety or welfare of the employee or their child; (2) obtain medical attention or psychological counseling, services from a shelter, program or crisis center, or (3) participate in safety planning or other actions to increase safety.~~

Section 11.2.1 Accrual of Sick Leave

~~Regular employees accrue A regular employee accrues sick leave beginning on the first day of employment at the rate of 3.08 hours per pay period (10 days per year; sick leave hours may be used beginning on the 90th day of employment. Sick leave is accrued at the rate of 3.08 hours per pay period (10 days per year). Upon separation from City service sick leave is lost.~~

~~All other employees who have worked for the City for thirty or more days within a year will accrue one hour of paid sick leave for every 30 hours worked. Accrued and unused sick leave carries over to the following year of employment but the employee will stop earning sick leave once they have accrued 48 hours or six work days/shifts, whichever is greater.~~

~~Part-Time Employees Sick Leave / Healthy Workplace Healthy Family Act of 2014 (AB 1522)~~

~~An employee who, on or after July 1, 2015, works in California for 30 or more days within a year from the beginning of employment, is entitled to paid sick leave. Employees, including part-time and temporary employees, will earn at least one hour of paid leave for every 30 hours worked. Accrual begins on the first day of employment or July 1, 2015, whichever is later.~~

~~**Exceptions:** Employees covered by qualifying collective bargaining agreements, In-Home Supportive Services providers, and certain employees of air carriers are not covered by this law.~~

~~An employer may limit the amount of paid sick leave an employee can use in one year to 24 hours or three days. Accrued paid sick leave may be carried over to the next year, but it may be capped at 48 hours or six days.~~

~~An employee may use accrued paid sick days beginning on the 90th day of employment. An employee may request paid sick days in writing or verbally. An employee can take paid leave for employee's own or a family member for the diagnosis, care or treatment of~~

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~~an existing health condition or preventive care or for specified purposes for an employee who is a victim of domestic violence, sexual assault or stalking.~~

Section 11.2.2 ~~When Right to Take Sick Leave Begins~~ Use of Sick Leave

~~An employee may use accrued sick leave, in a minimum increment of two hours, beginning on the 90th day after the first day of employment with the City, subject to the limits and request provisions in this policy. A regular employee may take paid sick leave beginning the seventh month of employment.~~

Section 11.2.3 ~~Use of Sick Leave~~ Sick Leave Request

~~An employee with approval of the department head may use accumulated sick leave for dental or medical appointments during working hours not exceeding four (4) hours at one time. An employee is not charged sick leave for an appointment if time absent is less than one (1) hour. An employee, with prior approval of the department head, may use accumulated sick leave to attend an ill or injured member of his/her immediate family, up to a maximum of five (5) days a year. This includes time off in order to take a member of his immediate family to or from the hospital. In addition, another three (3) days accumulated sick leave may be used with prior approval of department head for critical illness in the immediate family when death appears to be imminent. Sick leave granted under this subsection shall be indicated on employee's time sheet and his personnel records shall be noted accordingly.~~

~~If the need for leave is foreseeable, an employee must give their immediate supervisor reasonable advance written or oral notice. If the need for sick leave is not foreseeable, the employee shall provide written or oral notice of the need for the leave as soon as practicable. If the employee is required to be absent on sick leave for more than one day, the employee must keep the immediate supervisor informed each day as to the date the employee expects to return to work and the purpose of the leave. Failure to request sick leave as required by this policy without good reason, may result in the employee being treated as absent without leave.~~

Section 11.2.4 ~~Return to Employment After Sick Leave~~ Certification of Sick Leave

~~The department head or Personnel Director may require a physician's certification to support any absence due to illness or injury for more than three calendar days, or if the City suspects there is an abuse of sick leave. Employees who use paid leave to address issues related to domestic violence, sexual assault, stalking, or other crimes and who cannot provide advance notice of their need for leave must provide certification of the need for leave within a reasonable time thereafter, as outlined in Labor Code section 230, subsection (d).~~

~~When an employee returns to duty after an absence of three days or more chargeable to sick leave, the department head or Personnel Director may require an affidavit showing the nature of the cause of sickness or injury. If absence is five (5) days or longer, the department head or Personnel Director may require a signed statement from a doctor or dentist that the employee was incapacitated and unable to perform his or her duties throughout the entire period of sick leave, unless the City Manager grants a waiver. In case of frequent use of sick leave, an employee may be requested to file a physician's statement for each illness regardless of duration.~~

Section 11.2.5 ~~Return to Employment after Sick Leave~~

~~On return to duty after a leave of absence due to illness or injury, an An employee may be required to take an examination by a physician designated by the City to determine the~~

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employee's fitness for duty. On the basis of authoritative medical advice, the City Manager shall determine whether an employee is physically fit to perform for the duties of his/her position and when the employee can be reasonably accommodated if disabled and may take the action he/she considers appropriate.

Section 11.2.6 Sick Leave on Separation from Employment

Unused sick leave is not cashed out upon termination, resignation, retirement, or other separation from employment. Unused sick leave may be converted to retirement service credits only as may be permitted under applicable retirement system laws and regulations.

Employees shall not be permitted to exhaust sick leave in order to extend the effective date of a disability retirement. Employees who are qualified for a disability retirement, regardless of whether the disability retirement application is employer or employee originated, may be retired by the City immediately without exhausting their sick leave.

If an employee separates and is rehired within one year from separation, accrued and unused sick leave, to a maximum of six (6) days or 48 hours, whichever is greater, will be reinstated. An employee who worked at least 90 days in the initial employment with the City may immediately use reinstated sick leave. An employee who had not worked 90 days in the initial employment with the City must work the remaining amount of the 90 day-qualifying period to be able to use accrued sick leave.

Section 11.3 Extended Medical Leave

In the case of an employee's continued illness after the expiration of sick leave, his or her absences may then be charged to compensatory time accrued or vacation leave accrued with the approval of department head. ~~Upon the complete use of sick leave, vacation and compensatory time accrued, the City Manager may grant a medical leave of absence without pay upon written request of the employee, setting for the reason for the request. The approval by the City Manager shall be in writing. If the employee is not able to return to work by the end of that period, he/she may request further medical leave and the City Manager may grant or deny the request. If no further leave is granted, failure on the part of the employee on leave to report promptly at its expiration shall be cause for immediate discharge. Employees may also be entitled to extended medical leave under state or federal law, or in appropriate cases as an accommodation for a qualifying disability. The City may, to the extent permitted by law, run paid leave accruals concurrently with statutory leave rights.~~

Section 11.4 On-Duty/On-Duty Injuries

The purpose of this policy is to provide for the reporting of on-duty injuries or death to Risk Management, ensure proper medical attention is received, and document the circumstances of the incident. An employee injured in the course of his/her employment must report the accident to his supervisor as promptly as possible. The employee must be given the State "Employee's Claim for Workers' Compensation Benefits" form within twenty-four (24) hours of notification by the employee. The form must be given out regardless of whether or not the employee receives first aid, seeks medical ~~treatment~~ treatment, or loses any time from work.

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Section 11.4.1 Pay

An employee is entitled to receive a full day's pay for the day injured. Thereafter the injured employee may use sick leave or other accrued leaves. If the employee has exhausted or elects not to use accrued leaves, the City may place the employee on unpaid industrial accident leave. provisions in subsection 11.4.2 apply.

~~Section 11.4.2 Accumulated Sick Leave~~

~~Upon expiration of sick leave, he/she is on unpaid industrial accident leave. If the employee is not eligible for sick leave pay, he/she is on unpaid industrial accident leave effective the day after the injury.~~

Section ~~11.5~~11.4.2 Injuries Requiring Medical Care

All ~~work-related~~work-related injuries requiring medical care must be reported to the City of Lindsay Risk Management Office and a claim form shall be provided to the injured employee within 24 hours from the time the injury was discovered, excluding weekends and holidays.

Section ~~11.6~~11.4.3 Liability For Failure To Comply

Labor Code section 5400 makes failure to comply with the 24-hour reporting procedure a misdemeanor. Additionally, disciplinary action may be taken for an employee's failure to comply with this procedure.

Section ~~11.7~~ 11.4.4 Accident Defined

"Accident" is defined as any occurrence from which bodily injury or property damage may result, regardless of whether any injury or damage actually does occur, e.g. exposure where no immediate injury is apparent.

Section ~~11.8~~ 11.4.5 Employee's Responsibility

Any employee sustaining any work-related injury or involved in any accident while on duty shall report such injury or accident as soon as practical to his/her supervisor. An employee who fails to promptly report an accident to his supervisor within a specified time may be ineligible for paid industrial accident leave.

Any employee observing or learning of a potentially hazardous condition is to promptly report the condition to his/her immediate supervisor.

Any employee sustaining a work-related injury that requires relief from duty is required to be examined/treated by a doctor.

When appropriate, an employee being treated for an on-duty injury is to advise the attending physician that "light duty" may be available.

An injured employee shall report as soon as practical to their immediate supervisor the medical findings concerning the injury and the extent and duration of any work restrictions if they are known.

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Section ~~11.9~~ 11.4.6 Supervisor’s Responsibility

The supervisor is responsible for promptly notifying the finance office and Personnel Director, submitting a statement signed by the employee or supervisor giving all details.

For work-related accidents or injuries not requiring professional medical care, A City of Lindsay “Supervisor’s Report of Injury” form shall be completed in triplicate. All copies of the completed form shall be forwarded to Risk Management.

When accident or injury is reported initially on the “Supervisor’s Report of Injury” form and the employee subsequently requires professional medical care, the State of California Employer’s Report of Occupational Injury or Illness” form shall then be completed. The injured employee shall also sign the form in the appropriate location.

Every injured employee must be provided with an “Employee’s Claim for Workers’ Compensation Benefits Form” (DWC-1) within 24 hours, regardless of the nature of illness or injury.

Copies of any reports documenting the accident or injury should be forwarded to Risk Management as soon as they are completed.

A supervisor who fails to report an accident after being notified by the employee is subject to disciplinary action.

Section ~~11.10~~ 11.4.7 Department Head’s Responsibility

The department head shall review and forward copies of the report to the personnel department and retain a copy in the employee’s personnel file.

Section ~~11.11~~ 11.4.8 Injuries Requiring No Medical Attention

Those injuries not requiring medical attention shall be recorded on a Supervisor’s Report of injury, a city form. This form shall be completed and signed by a supervisor.

This form shall be signed by the affected employee, indicating that he/she desired no medical attention at the time of the report. By signing this form, the employee will not preclude his/her ability to seek medical attention later.

Section ~~11.12~~ 11.4.9 Injury Caused by Other

When an employee sustains work-related injuries caused by ~~other person~~ another person, and is then approached by such person or an agent, insurance company or attorney, and offered a settlement of claims, that employee shall take no action other than to make a written report of this contact to his/her supervisor as soon as possible.

Section ~~11.13~~ 11.4.10 No Settlement Without Prior Approval

In no case shall the employee accept a settlement without receiving prior approval of the Director of Personnel. It must first be determined that the offered settlement will not affect any claim the

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City of Lindsay may have regarding payment for damage(s) to equipment or reimbursement for wages against the person who caused the accident or injury. The objective of this policy is to protect the City's right of subrogation, while ensuring that the employee's rights to receive compensation for injuries are not affected.

Section 11.5 Bereavement Leave

Section 11.14 Leaves of Absence Due to Death of Family Member

All regular employees, and all other employees who have been employed by the City for at least 30 days, may utilize up to five days of bereavement leave upon the death of a family member. An employee who wishes to use bereavement leave shall notify their immediate supervisor, department head, or Personnel Director of the intent to use such leave.

~~Every employee shall obtain his department head's approval in advance for absence on account of death in order to be eligible for the benefits in this section.~~

Section 11.5.1 Family Member, Defined

Section 11.14.1 Immediate Family

"Family member" means a spouse or a child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law.

Section 11.5.2 Terms of Leave

Employees may use up to five days of bereavement leave upon the death of a family member. The days of leave need not be consecutive, but must be completed within three months of the date of death of the family member.

The City may request documentation of the death of the family member. On request, the employee shall provide documentation within 30 days of the first day of the leave.

Documentation may take the form of a death certificate, published obituary, written verification of death, burial, or memorial services, or other equivalent documentation. Any information or documentation provided to the City shall be maintained as confidential.

Section 11.5.3 Compensation During Bereavement Leave

For a regular full-time employee, the first ~~three~~ ^{five} working days of bereavement leave are a paid leave of absence.

For all other employees, or for leave beyond ~~five~~ ^{three} days, bereavement leave is unpaid, but an employee may use vacation, compensatory time, sick leave, or any other paid leave that would otherwise be available. ~~A full-time employee is entitled to use sick leave to care for illness or injury in the immediate family as specified in Section 11.2.2. A regular full-time employee is allowed a leave of absence with pay not to exceed 3 working days in the case of death in the employee's immediate family. With his/her Department Head's approval, he or she may have 2 additional working days, which are charged first to sick leave, second to compensatory time, third to vacation.~~

~~Immediate family, for the purpose of bereavement leave, is defined as the employee's spouse, child, parent, brother, sister, mother/father in law, brother/sister in law, grandparents, or registered Domestic Partner.~~

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Section 11.5.4 ~~Section 11.14.2~~ Bereavement Leave for Other Than Immediate Family

A department head may allow a regular full-time employee leave of absence up to one day to attend the funeral of a person other ~~then~~ than a member of his/her immediate family, chargeable to sick leave, compensatory time, or vacation.

Section 11.14.3 Timesheet

~~Each absence on account of death leave must be explained on the employee's time sheet.~~

Section 11.156 Jury Leave – Notice

When an employee is called for jury duty, he or she shall be granted leave for this purpose upon presenting the jury notice to his or her department head. The department head shall notify the Personnel Director.

Section 11.156.1 Pay

A regular full-time employee is entitled to receive jury leave with full pay if he or she remits to the city compensation received from duty. Compensation for mileage is not considered compensation for jury duty. The employee may elect to retain jury duty compensation, but if he or she does so he or she is not entitled to salary while on jury leave. The time spent on jury duty is not work time for the purpose of calculating overtime.

Section 11.156.2 Without Pay

An employee who is not a regular full-time employee takes jury leave without pay.

Section 11.156.3 Partial Day

If jury duty permits, the employee is expected to work a partial day.

Section 11.167 Military Leave

Military leave shall be granted in accordance with the provisions of federal and state law. Employees entitled to military leave shall give the department head an opportunity within the limits of military regulations to determine when such leave shall be taken. Employees who served in the U.S. military organizations or state militia groups may take the necessary time off with pay to fulfill this obligation. These employees may apply accrued personal leave and unused earned vacation time to the leave if they wish; however they are not obliged to do so. Reinstatements of individuals returning from military leave shall be done in accordance with the Military and Veterans Code of California.

Employees are eligible for reemployment after completing military service, provided the employee provides copies of the military orders to the department head upon receipt; military service is entered directly from employment with the City and active duty service is satisfactorily completed; and re-employment is applied for and take place within ninety (90) days after discharge from active duty. If you are returning from up to six (6) months active duty for training, you must apply within thirty (30) days after discharge.

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Section 11.178 Family and Medical Care Leave

Section 11.8.1 Statement of Policy

The City provides family and medical care leave for eligible employees as required by federal and state law. Employees who misuse or abuse family and medical care leave may be disciplined, up to and including termination. Employees who fraudulently obtain or use family and medical care leave are not protected by statutory job restoration or maintenance of health benefits provisions.

This policy is supplemented by the Federal Family and Medical Leave Act (“FMLA”), the California Family Rights Act (“CFRA”), and state and federal regulations implementing both Acts. Unless otherwise stated in this policy, “Leave” means leave pursuant to the FMLA and/or CFRA. To the extent permitted by law, the City will run each employee’s FMLA and CFRA leaves concurrently.

~~To the extent not already provided for under current leave policies and provisions, the City will provide family and medical care leave for eligible employees as required by state and federal law. The following provisions set forth certain of the rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 (“FMLA”), and the regulations of the California Family Rights Act (“CFRA”). Unless otherwise provided by this article, “Leave” under this article shall mean leave pursuant to the FMLA and CFRA.~~

Section 11.8.2-11.17.4 Definitions

- A. “12-Month Period” means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.
- B. “Single 12 Month Period” means a 12-month period which begins on the first day the eligible employee takes FMLA leave to take care of a covered service member and ends 12 months after that date.
- A-C. “Family member” for FMLA leave means an employee’s child, parent, and spouse. “Family member” for CFRA leave means an employee’s child, parent, parent-in-law, spouse, domestic partner, grandchild, grandparent, and sibling.
- D. B. “Child”:
 - a. Under the FMLA, “child” means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self care because of a mental or physical disability. An employee’s child is one for whom the employee has actual day-to-day responsibility for care and includes, a biological, adopted, foster or step-child. A child is “incapable of self care” if he/she requires active assistance or supervision to provide daily self care in three or more of the activities of daily living or instrumental activities of daily living—such as, caring for grooming and hygiene, bathing, dressing and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.

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- ~~a.b.~~ Under the CFRA, “child” means a child of another person regardless of age or capacity for self care. An employee’s child means a biological, adopted, foster, step-child, legal ward, a child of a domestic partner, or a person to whom the employee stands in loco parentis.
- E. “Designated person” means any individual related by blood or whose association with the employee is the equivalent of a family relationship, identified by an employee in advance or at the time the employee requests the leave. An employee may identify only one “designated person” in one 12-month period.
- ~~F.~~ C. “Parent” means the biological parent of an employee or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.
- ~~B.G.~~ “Parent-in-law” means the parent of a spouse or domestic partner of the employee.
- ~~C.H.~~ D. “Spouse” means one or two persons to a marriage, regardless of the sex of the persons. For purposes of CFRA leave, “spouse” includes a registered domestic partner as defined below. “Spouse” means a husband or wife as defined or recognized under California State law for purposes of marriage.
- ~~I.~~ E. “Domestic Partner” is another adult with whom the employee has chosen to share their life in an intimate and committed relationship of mutual caring and with whom the employee has filed a Declaration of Domestic Partnership with the Secretary of State, and who meets the criteria specified in California Family Code section 297. A legal union formed in another state that is substantially equivalent to the California domestic partnership is also sufficient. Domestic Partner,” as defined by Family Code §§ 297 and 299.2, shall have the same meaning as “Spouse” for purposes of CFRA Leave.
- J. “Grandparent” means a parent of the employee’s parent.
- K. “Grandchild” means a child of the employee’s child.
- L. “Sibling” means a person related to the employee by blood, adoption, or affinity through a common legal or biological parent.
- ~~C.~~
- ~~D.M.~~ F. “Serious health condition” means an illness, injury impairment, or physical or mental condition that involves:

 1. Inpatient Care (i.e., ~~an overnight stay~~admission to a facility that includes or is expected to include an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery there from); or
 2. Continuing treatment by a health care provider: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

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- a) A period of incapacity (i.e., inability to work, or perform other regular daily activities) due to serious health condition of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - i) Treatment two or more times by a health care provider, by a nurse or physician’s assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider; or
 - ii) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. This includes for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.
- b) Any period of incapacity due to pregnancy or for prenatal care ([Note: FMLA only; under California law, an employee incapacitated by pregnancy is entitled to pregnancy disability leave, not CFRA leave; see Section 11.10 below.](#))
- c) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - i) Requires periodic visits for treatment by a health care provider, or by a nurse or physician’s assistant under direct supervision of a health care provider;
 - ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.
- d) A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.

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- e) Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

G. “Health Care Provider” means:

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;
2. Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises treatment of a serious health condition;
3. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under California State law;
4. Nurse practitioners and nurse-midwives and clinical social workers who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State law;
5. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
6. Any health care provider from whom an employer or group health plan’s benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

H. “Covered active duty” means: (1) in the case of a member of a regular component of the Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country; or (2) in the case of a member of the reserve component of the Armed Forces, duty during the deployment of members of the Armed Forces to a foreign country under a call or order to active duty under certain conditions as specified by regulation. “Active Duty” means a duty under a call to order of active, retired, reserves, or National Guard members of the United States Armed Forces by law or any other provision of law during a war or national emergency declared by the President or Congress.

I. ~~“Contingency Operation” means a military operation that is (1) designated by the Secretary of Defense as an operation in which members of the United States Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military~~

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~~force; or (2) that results in the call to order of active duty members of the United States Armed Forces by law or any other provision of law during a war or national emergency declared by the President or Congress.~~

- J. ~~“Covered Servicemember” means (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (2) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy a member of the United States Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, in otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.~~

- K. ~~“Outpatient Status” means, with respect to a covered service member, the status of a member of the Armed Forces assigned to either: (1) a military medical treatment facility as an outpatient; or (2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients; the status of a member of the United States Armed Forces assigned to: (1) a military medical treatment facility as an outpatient; or (2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.~~

- L. ~~“Next of Kin of a Covered Service Member” means the nearest blood relative other than the covered service member’s spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as their nearest blood relative for purposes of military caregiver leave under the FMLA “Next of Kin” means the nearest blood relative of an injured servicemember.~~

- M. ~~“Serious Injury or Illness” means: (1) in the case of a member of the Armed forces, including a member of the National Guard or reserves, means an injury or illness that a covered service member incurred in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by the service in the line of duty on active duty in the Armed Forces) and that may render the service member medically unfit to perform the duties of the member’s office, grade, rank, or rating; or (2) in the case of a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran means an injury or illness incurred by a member of the Armed Forces in the line of duty on active duty that may render~~

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~~the member medically unfit to perform the duties of the member's office, grade, rank, or rating.~~

Section ~~11.17.211.8.3~~ Reasons For Leave

Leave is only permitted for the following reasons:

1. The birth of a child or to care for a newborn of an employee;
2. The placement of a child with an employee in connection with the adoption or foster care of a child;
3. Leave to care for a child, parent, or spouse, ~~or domestic partner~~ who has a serious health condition;
4. (CFRA only) Leave to care for a domestic partner, grandparent, grandchild, parent-in-law, sibling, or designated person who has a serious health condition.
5. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position;
56. Leave for a "qualifying exigency" ~~may be taken~~ arising out of the fact that an employee's spouse, son, daughter, or parent is on covered active military duty or has been notified of an impending call or order to covered active duty status in the National Guard or Reserves in support of a contingency operation~~active duty in support of a contingency operation involving the United States Armed Forces;~~
~~or~~
7. (CFRA only) Leave for a "qualifying exigency" arising out of the fact that an employee's domestic partner is on covered active duty or has been notified of an impending call or order to covered active duty status in the National Guard or Reserves in support of a contingency operation.
68. Leave to care for a spouse, son, daughter, parent, or "next of kin" servicemember of the United States Armed Forces who has a serious injury or illness that (a) was incurred in the line of duty while on active military duty, or (b) existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces. T~~(this leave can run up to 26 weeks of unpaid leave during an employer's 12-month period).~~

Section ~~11.17.311.8.4~~ Employees Eligible For Leave

An employee is eligible for leave if the employee:

1. Has worked for at least 12 months; and
2. Has been employed for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

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Section 11.17.411.8.5 Amount of Leave

Eligible employees are entitled to a total of 12 workweeks (or 26 workweeks to care for a covered service member) of leave during any 12-month period. If FMLA leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first. Eligible employees are entitled to a total of 12 workweeks (or 26 weeks to care for an injured servicemember) of leave during any 12-month period.

A. Minimum Duration of Leave

If leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within one year of the birth or placement of the child. In addition, the basic minimum duration of such leave is two weeks. However, an employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least one day, but less than two weeks duration on any two occasions.

If leave is requested to care for a child, parent, parent-in-law, spouse, domestic partner, grandparent, grandchild, designated person, or the employee him/herself/themselves with a serious health condition, there is no minimum amount of leave that must be taken. However, the notice and medical certification provisions of this policy must be complied with.

B. Spouses Both Employed By The City (FMLA only)

Spouses who are eligible for FMLA leave and who are both employed by the City may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement, or to care for the employee's parent with a serious health condition.

Spouses who are eligible for FMLA leave and who are both employed by the City may be limited to a combined total of 26 workweeks of leave during the single 12-month period described in Section 11.8.2(B) if the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement, to care for the employee's parent with a serious health condition, or to care for a covered service member with a serious injury or illness.

In any case in which a husband and wife both employed by the City are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period if leave is taken for the birth or placement for adoption or foster care of the employees' child (i.e., bonding leave).

In any case in which a husband and wife both employed by the City are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 26 workweeks during any 12-month period if leave is taken to care for an injured servicemember.

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The above limitations apply only where leave is solely protected by the FMLA for one of the specified reasons, and do not apply to leave that qualifies under the CFRA or to FMLA leave taken under any other circumstances. Except as noted above, this limitation does not apply to any other type of leave under this policy.

Section ~~11.7.5~~11.8.6 Employee Benefits While on Leave

Leave under this policy is unpaid. While on leave, employees will continue to be covered by the City group health insurance to the same extent that coverage is provided while the employee is on the job. If the employee is disabled by pregnancy, coverage will extend for the duration of pregnancy disability leave (see Section 11.10 below) and during any FMLA/CFRA leave.

The City does not pay for benefit plans that are not part of the group health plan for any employee on unpaid leave. However, as a result, employees will not continue to be covered under the City's other non-health benefit plans which that are not provided pursuant to the City's group health plans while the employee is on unpaid leave.

Employees may make the appropriate contributions for continued coverage under the preceding ~~non-health benefit plans by payroll deductions (if the employee is using their paid leave) or direct payments (if the employee is not using their paid leave)~~ plans by payroll deductions or direct payments made to these plans. Depending on the particular plan, the City will inform you whether the premiums should be paid to the carrier or to the City. Your coverage on a particular plan may be dropped if you are more than 30 days late in making a premium payment. However, you will receive a notice at least 15 days before coverage is to cease, advising you that you will be dropped if your premium payment is not paid by a certain date. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.

If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the City shall have the right to recover its share of health plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee or his/her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control. ~~The City shall have the right to recover premiums through deduction from any sums due the City (e.g. unpaid wages, vacation pay, etc.).~~

Section ~~11.17.6~~11.8.7 Substitution of Paid Accrued Leaves

Although family and medical care leave under this policy is unpaid, while on leave under this policy, as set forth herein, an employee may elect and the City will require an employee to concurrently use paid accrued leaves as described below. Similarly, the City may require an employee to concurrently use paid accrued leaves after requesting FMLA and/or CFRA leave, and may also require an employee to use family and medical care leave concurrently with a non-FMLA/CFRA leave which is FMLA/CFRA-qualifying.

A. ~~A.~~ Employee's Right To Use Paid ~~Accrued~~ Leaves Concurrently With Family Leave;

An employee may use any earned or accrued paid leave except sick leave for all or part of any unpaid family and medical care leave. An employee is entitled to use sick leave concurrently with family and medical care leave for the employee's own serious health condition or that of the employee's parent, parent-

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~~in-law, spouse, domestic partner, child, grandparent, grandchild, or sibling. Where an employee has earned or accrued paid vacation, administrative leave, compensatory time, or personal or family leave (if applicable to your agency, this is referring to paid family leave; some agencies permit employees to use a certain number of sick leave days for family leave purposes), that paid leave may be substituted for all or part of any (otherwise) unpaid leave under this policy.~~

~~As for sick leave, an employee is entitled to use sick leave concurrently with leave under this policy if:~~

- ~~1. The leave is for the employee's own serious health condition; or~~
- ~~2. The leave is needed to care for a parent, spouse, child, or domestic partner with a serious health condition, and would be permitted as sick leave under the City's sick leave policy.~~

B. City's Right To Require An Employee To Use Paid Leave ~~When Using FMLA/CFRA Leave~~

Employees must exhaust their accrued leaves concurrently with FMLA/CFRA leave to the same extent that employees have the right to use their accrued leaves concurrently with FMLA/CFRA leave, with two exceptions:

- ~~1. Employees Where an employee is on leave and is eligible for a disability leave benefit, pursuant to a disability plan, that pays a portion of the employee's salary, the employee may agree to – but is not required to – use paid leave to cover the unpaid portion of their salary; are not required to use accrued compensatory time earned in lieu of overtime earned pursuant to the Fair Labor Standards Act; and~~
- ~~2. An employee must agree to use accrued sick leave to care for a child, parent, spouse or domestic partner, grandparent, grandchild, or sibling. Employees will only be required to use sick leave concurrently with FMLA/CFRA leave if the leave is for the employee's own serious health condition.~~

C. City's Right To Require An Employee To Exhaust FMLA/CFRA Leave Concurrently With Other Leaves

If an employee takes a leave of absence for any reason which is FMLA/CFRA qualifying, the City may designate that non-FMLA/CFRA leave as running concurrently with the employee's 12-week FMLA/CFRA leave entitlement. The only exception is for peace officers and firefighters who are on paid industrial injury leave pursuant to Labor Code § 4850.

D. City's and Employee's Rights If An Employee Requests Accrued Leave Without Mentioning Either the FMLA or CFRA

If an employee requests to utilize accrued vacation leave or other accrued paid time off without reference to a FMLA/CFRA-qualifying purpose, the City may

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not ask the employee if the leave is for a FMLA/CFRA-qualifying purpose. However, if the City denies the employee's request and the employee provides information that the requested time off is for a FMLA/CFRA-qualifying purpose, the City may inquire further into the reason for the absence. If the reason is FMLA/CFRA-qualifying, the City may require the employee to exhaust accrued leave as described above.

Section ~~11-17-711.8.8~~ Medical Certification

A. Content of Certification

Employees who request leave must provide a medical certification and/or recertification to support the need for the leave as described below:

1. **Employee's Own Serious Health Condition:** Employees who request leave for their own serious health condition must provide written certification from the health care provider that contains all of the following: the date, if known, on which the serious health condition commenced; the probable duration of the condition; and a statement that, due to the serious health condition, the employee is unable to work at all or is unable to perform any one or more of the essential functions of their position. Upon expiration of the time period the health care provider originally estimated that the employee needed for their own serious health condition, the employee must obtain recertification if additional leave is requested.
2. **Family Member Serious Health Condition:** Employees who request leave to care for a child, parent, parent-in-law, domestic partner, spouse, grandparent, grandchild, or sibling who has serious health condition must provide written certification from the health care provider of the family member requiring care that contains all of the following: the date, if known, on which the serious health condition commenced; the probable duration of the condition; an estimate of the amount of time which the health care provider believes the employee needs to care for the child, parent, domestic partner, spouse, grandparent, grandchild, or sibling and a statement that the serious health condition warrants the participation of the employee to provide care during a period of treatment or supervision of the child, parent, domestic partner, spouse, grandparent, grandchild, or sibling. The term "warrants the participation of the employee" includes, but is not limited to, providing psychological comfort, and arranging third party care for the covered family member, as well as directly providing, or participating in, the medical care. Upon expiration of the time period the health care provider originally estimated that the employee needed to care for a covered family member, the employer must obtain recertification if additional leave is requested.
3. **Service member Serious Injury or Illness:** Employees who request FMLA leave to care for a covered service member who is a child, spouse, parent or "next of kin" of the employee, must provide written certification from a health care provider regarding the injured service member's serious injury or illness. The City will verify the certification as permitted by the FMLA regulations.

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4. **Qualifying Exigency:** The first time an employee requests leave because of a qualifying exigency, an employee may require the employee to provide a copy of the military member’s active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to active duty status in a foreign country, and the dates of the military member’s active duty service. A copy of the new active duty orders or similar documentation shall be provided to the City if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different military member. The City will verify the certification as permitted by the FMLA and CFRA regulations.

~~Employees who request leave for their own serious health condition or to care for a child, parent or a spouse who has a serious health condition must provide written certification from the health care provider of the individual requiring care if requested by the City. If the leave is requested because of the employee’s own serious health condition, the certification must include a statement that the employee is unable to work at all or is unable to perform the essential functions of his/her position.~~

~~Employees who request leave to care for an injured service member who is a child, spouse, parent, or “next of kin” of the employee must provide written certification from a health care provider regarding the injured service member’s serious injury or illness.~~

AB. Time To Provide A Certification

When an employee's leave is foreseeable and at least 30 days notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested certification to the City within the time frame requested by the City (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

BC. Consequences For Failure To Provide An Adequate Or Timely Certification

If an employee provides an incomplete medical certification the employee will be given a reasonable opportunity to cure any such deficiency. However, if an employee fails to provide a medical certification within the time frame established by this policy, the City may delay the taking of FMLA/CFRA leave until the required certification is provided.

C. Recertification

If the City has reason to doubt the validity of a certification, the City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City may require the opinion of a third provider jointly approved by the City and the employee, but paid for by the City. The opinion of the third provider will be binding. An employee may request a copy of the health care provider’s opinions when there is a recertification.

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D. Personnel Director’s Review of Certification for Employee’s Own Serious Health Condition

Complete and Sufficient: The employee must provide a certification for their own serious health condition that is complete and sufficient to support the request for leave. A certification is incomplete if one or more of the applicable entries on the certification form have not been completed. A certification is insufficient if the information on the certification form is vague, ambiguous, or not responsive. If the certification is incomplete or insufficient, the Personnel Director will give the employee written notice of the deficiencies and seven days to cure, unless a longer period is necessary in light of the employee’s diligent, good faith efforts to address the deficiencies.

Authentication and Clarification: After giving the employee an opportunity to cure the deficiencies in a medical certification for the employee’s own serious health condition, the Personnel Director may contact the health care provider who provided the certification to clarify and/or authenticate the certification. “Authentication” means providing the health care provider with a copy of the certification form and requesting verification that the information on the form was completed or authorized by the health care provider who signed the form. “Clarification” means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of the response. The Personnel Director may not ask for additional information beyond that required on the certification form.

E. Second and Third Medical Opinions for Employee’s Own Serious Health Condition

If the City has a good faith, objective reason to doubt the validity of a certification for the employee’s serious health condition, the City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City may require the opinion of a third provider jointly approved by the City and the employee, but paid for by the City. The opinion of the third provider will be binding. The City must provide the employee with a copy of the second and third medical opinions, where applicable, without cost, upon the request of the employee.

F. Intermittent Leave Or Leave On A Reduced Leave Schedule

If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition (~~“serious health condition”~~), the employee must provide medical certification that such leave is medically necessary. “Medically necessary” means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

Section ~~11.17.8~~11.8.9 Employee Notice of Leave

Although the City recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. If leave is foreseeable, at least 30 days’ notice is required. In addition, if an employee

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knows that he/she will need leave in the future, but does not know the exact date(s) (e.g. for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. Such notice may be orally given. For foreseeable leave due to a qualifying exigency, an employee must provide verbal or written notice of the need for leave as soon as practicable, regardless of how far in advance such leave is foreseeable. If the City determines that an employee failed to provide timely notice of a foreseeable leave, absent an emergency need²s notice is inadequate or the employee knew about the requested leave in advance of the request, the City may delay the start granting of the leave until ~~if the City~~ can, in its discretion, adequately cover the position with a substitute.

Section ~~11.17.911.8.10~~ Reinstatement Upon Return From Leave

~~(a) Reinstatement to Same or Equivalent Position:~~ A. Right To Reinstatement

~~(b)~~

(a) Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period.

~~(c)~~ I

~~(d)~~

(b) If a definite date of reinstatement has been agreed upon at the beginning of the leave, the employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the employee and the City, the employee will be reinstated within two business days, where feasible, after the employee notifies the employer of his/her readiness to return.

(c) Employee's Obligation to Periodically Report on Their Condition: Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.

(d) Fitness for Duty Certification: As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition, which made the employee unable to perform their job, the employee must obtain and present a fitness-for-duty certification from the health care provider stating that the employee is able to resume work. Failure to provide such certification will result in denial of reinstatement.

(e) Reinstatement of "Key Employees": Under the FMLA only, the City may deny reinstatement to a "key" employee (i.e., an employee who is among the highest paid 10 percent of all employed by the City within 75 miles of the worksite) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the City, and the employee is notified of the City's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur. This provision applies to FMLA leave only, and does not apply during or upon the expiration of CFRA leave.

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Section 11.8.11 Required Forms

Employees must complete any applicable forms to receive family and medical care leave. The forms are available from the Human Resources Department.

Section 11.1811.9 Authorized Leave of Absence Without Pay

A department head may grant an employee a leave of absence without pay for not more than ten (10) days when it is in the best interest of the city, and on approval of the City Manager. Any leave of absence in excess of ten (10) days can only be granted by the City Manager.

Section 11.189.1 Return From Leave

Return from leave:

- (a) Failure of an employee to return to duty upon the termination of authorized leave of absence is an unauthorized leave of absence and is cause for discharge.
- (b) Upon return an employee may be required to submit to medical examination to determine whether or not he/she is still capable of performing the duties of his/her position. When a physical examination discloses that an employee is not physically capable of performing his/her duties, the City shall offer him/her any vacant position in the city for which he/she is qualified. If an employee is no longer physically capable of performing the duties of a vacant position, he or she shall be terminated.

Section 11.1910 Pregnancy Disability Leave

An employee who is disabled because of pregnancy, childbirth, or a related medical condition is entitled to an unpaid pregnancy disability leave for the number of hours the employee would normally work within four calendar months (one-third of a year or 17 1/3 weeks). For a full-time employee who works 40 hours per week, “four months” means 693 hours of leave entitlement, based on 40 hour per week times 17 1/3 weeks. An employee who works less than 40 hours per week will receive a pro rata or proportional amount of leave up to four months.

Section 11.1910.1 Notice & Certification Requirements

1. Requests for pregnancy disability leave must be submitted in writing with reasonable advance notice and must be approved by the employee’s supervisor or department director before the leave begins. The request must be supported by a written certification from the attending physician stating (1) that the employee is disabled from working by pregnancy, childbirth or a related medical condition, (2) that: (1) the employee is disabled from working by pregnancy, childbirth or a related medical condition; (2) the date on which the employee became disabled by pregnancy, childbirth or a related medical condition; and (3) the estimated duration or end date of the leave. The certification must state the expected duration of the disability and the expected date of return to work.
2. All leaves must be confirmed in writing, have an agreed-upon specific date of return, and be submitted to the department director prior to being taken. Requests for an extension of leave must be submitted in writing to the department director prior to the agreed date of return and must be supported by a written certification

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of the attending physician that the employee continues to be disabled by pregnancy, childbirth, or a related medical condition. The maximum pregnancy disability leave is four months.

Section 11.1910.2 Compensation During Leave

Pregnancy disability leaves are without pay. However, the employee may first use accrued sick leave, vacation leave, and then any other accrued paid time off during the leave.

Section 11.1910.3 Benefits During Leave

1. Group Health Insurance: An employee on pregnancy disability leave may continue to receive any group health insurance coverage that was provided before her leave, beginning on the date the pregnancy disability leave begins and continuing for up to four months in a 12-month period, at the same level and under the same conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. The City may recover premiums it paid to maintain health coverage if an employee does not return to work following pregnancy disability leave, unless the reason for the failure to return is a circumstance beyond her control or the use of the separate right to 12 weeks of bonding leave under the FMLA and/or CFRA. An employee on pregnancy disability leave may receive any group health insurance coverage that was provided before the leave on the same terms as provided to other employees who become disabled off duty, if: 1) the employee is eligible for concurrent family medical leave; and 2) the employee has not already exhausted this 12-week group health insurance coverage benefit in the current family medical leave eligibility period. The City may recover premiums it paid to maintain health coverage, as provided by the family and medical leave laws, if an employee does not return to work following pregnancy disability leave.
2. ~~An employee on pregnancy disability leave who is not eligible to receive group health insurance coverage as described above, may receive health insurance coverage in conjunction with COBRA guidelines by making monthly premium payments to the City.~~
3. Sick and Vacation Leave Accrual: Sick leave and vacation leave do not accrue while an employee is on unpaid pregnancy disability leave.
3. Employee Status during Leave: The employee retains employee status during the leave. The leave is not a break in service for purposes of longevity or seniority under any collective bargaining agreement or employee benefit plan. Benefits will be resumed upon the employee's reinstatement in the same manner and at the same levels as provided when the leave began, without any new qualification period, physical exam, or other qualifying provisions

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Section 11.1910.4 Reinstatement

1. Upon the expiration of pregnancy leave, ~~and the City's receipt of a written statement from the health care provider that the employee is fit to return to duty,~~ the employee will be reinstated to her original or a comparable n-equivalent position, so long as it was not eliminated for a legitimate business reason during the leave.
2. If the employee's original position is no longer available, the employee will be assigned to an open position that is substantially similar in job content, status, pay, promotional opportunities, and geographic location as the employee's original position.
3. If upon return from leave an employee is unable to perform the essential functions of her job because of a physical or mental disability, the City will initiate an interactive process with the employee in order to identify a potential reasonable accommodation.
4. An employee who fails to return to work after the termination of her leave loses her reinstatement rights.

Section 11.2011 Unauthorized Leave of Absence

An unauthorized leave of absence is treated as time not worked.

~~Section 11.21 Deduction~~

For an unauthorized leave of absence, the City shall deduct from the employee's pay an amount equal to time absent.

Section 11.2212 Sick Leave Donations

In the event, an employee is unable to work due to catastrophic illness or, surgery (either their own or that ~~of a~~ qualifying of a qualifying family member), City employees may donate their accrued sick leave to another employee under the following conditions:

- Employee will be out of work in excess of two weeks (80 hours).
- The sick/injured employee has exhausted all of his/her accrued sick, vacation, and compensatory time.
- Individual employees may donate sick leave hours, which are in excess of forty (40) accrued hours with a cap of twenty (20) hours per fiscal year.
- Employees, who are terminating their employment with the City, may not donate their sick leave hours to another employee.
- Any employee requesting a donation of sick leave hours shall submit a written request to the Department head requesting authorization to obtain the donation of sick leave hours from their fellow employees.

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- [Once hours are donated and received, the donation is irrevocable.](#)

Section 11.2313 Leave Requests

The following procedure shall apply for all leave requests other than for sick leave:

- A) Leave requests shall be made in writing using the City of Lindsay Leave- Request Form, which will be available at each department work site. No leave will be considered approved until the form is signed by the employee's department head or his/her designee and a copy of the form is returned to the requesting employee.
- B) Vacation requests should be made at least two weeks in advance. In those cases where multiple employees are requesting the same time period off, the order in which the requests are received shall determine which ~~employee~~ employees are granted vacation leave.
- C) Special request for one day off which was not a planned vacation may be made at any time prior to the day to be taken. The leave request form must be submitted and approved prior to the employee taking the day off.
- D) Upon receiving a leave request, the department head shall approve/deny the request and forward a copy to the requesting employee and to the finance department. In the case of denial, the department head shall indicate on the form the reasons for the denial.
- E) Employees who are denied a leave request may appeal to the Personnel Director.

Section 11.2414 Temporary and ~~Part-Time~~ Part-Time Employees Not Eligible

Temporary employees, including emergency and extra help employees, are not eligible for paid benefits, including paid leaves of absence unless the law requires otherwise. ~~Part-time~~ Part-time employees are not eligible for benefits or leaves of absence other than vacation after five years of service.

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TRANSFER AND DEMOTION

Section 12.1.1 Involuntary Transfer

The City may initiate employee transfers when the transfer is in the best interest of the City. City initiated transfers shall not serve the required probationary period in accordance with Rule 9. Upon approval of the Personnel Director and City Manager, the department head may transfer an employee anytime from one position to another position in a comparable class where the salary range is the same, involves the performance of similar duties and requires substantially the same basic qualifications. However, the employee shall be consulted prior to any transfer. Any employee who is transferred from one position to another position in the same or similar class shall be compensated at the same step and salary range the employee received in the previous position. The salary anniversary date shall not change. Employees may appeal the transfer within five (5) days to the City Manager whose decision is final.

Section 12.1.2 Voluntary Transfer

An employee’s request for transfer to another type of work or department normally will be considered only after successful completion of the probationary period. Employees requesting a transfer shall submit a memorandum to the Personnel Director and City Manager detailing the request for transfer and reasons for the request. Upon receipt of the transfer request, the Personnel Director will notify the employee’s Department Head. Job performance, qualifications, attendance, and other factors shall be evaluated to ensure the most effective use of the employee’s capabilities in evaluating the transfer request. The Personnel Director will communicate to the employee whether the request is granted. When the foregoing factors are substantially equal, transfers shall be determined by City seniority. Employees transferred to a vacant position at their request shall serve a new probationary period in accordance with Rule 9.

If the transfer involved a change from one department to another, both department heads must consent thereto unless the City Manager orders the transfer.

~~Transfer A transfer~~ shall not be used to effectuate a promotion or demotion, each of which may be accomplished only as provided in the personnel rules and regulations.

Section 12.2 Demotion

The City Manager may demote an employee for disciplinary purposes. No employee shall be demoted to a position ~~who for which they do~~ does not possess the minimum qualification.

Disciplinary demotion action shall be in accordance with Rule 14.

Demotion is the removal of an employee from his or her present position to a ~~lower paying lower-~~ paying position. A Department Head may request the City Manager demote an employee for any of the following reasons:

- (a) At the request of an employee, provided the employee possesses the minimum qualifications for the demoted position.
- (b) Failure to meet the job-related standards of a promotional probation.
- (c) For disciplinary actions (see Rule 14).

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(d) For displacement.

Employees requesting a voluntary demotion shall submit a memorandum to the Personnel Director and City Manager detailing the request for voluntary demotion and reasons for the request. Upon receipt of the request for voluntary demotion, the Personnel Director will notify the employee's department head. If the request for voluntary demotion involves a change from one department to another, both department heads must consent thereto unless the City Manager orders the demotion. Employees demoted at their own request shall be placed at the same step unless another step is mutually agreed to. If the employee has held regular status in the classification to which he or she is voluntarily demoted, probation can be waived upon approval of the City Manager.

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RULE XIII

SEPARATION FROM SERVICE

Section 13.1 Abandonment of Position

An employee may be separated from employment if the employee fails to report for duty and is absent from work without approved leave for more than three consecutive work shifts, or fails to report for work upon the expiration of a vacation or a leave of absence where the employee did not notify his or her department head of the reason for the absence. This will be deemed to be a resignation and may result in termination of employment. The Personnel Director shall provide written notice of the proposed action to be taken due to ~~the~~ abandonment to the ~~employee~~~~employees~~ at the last known address. Said notice shall provide the employee the Skelly prep disciplinary due process. ~~process~~

Section 13.2 Disciplinary Action

An employee may be separated from employment for disciplinary reasons by the City Manager as provided in Rule 14.

Section 13.3 Layoff

An employee may be separated from employment because of changes in duties or organization, abolishment of position, shortage of work, or funds.

Section 13.3.1 Statement of Intent

Whenever, in the judgment of the City Council, it becomes necessary to abolish any position or employment, the employee holding such position or employment may be laid off or demoted without disciplinary action and without the right of appeal.

Section 13.3.2 Notification

Employees to be laid off will be given, whenever possible, at least fourteen (14) calendar days prior notice.

Section 13.3.3 Order of Layoff

Employees will be laid off in the inverse order of their seniority in their classification in the department. Seniority is determined based upon date of hire in the classification and higher classifications in the department. A lay off out of the inverse order of seniority may be made if, in the City's judgment, retention of special job skills are required. Within each class, employees will be laid off in the following order, unless special skills are required: temporary, part-time, probationary, and regular. In cases where there are two or more employees in the classification in the department from which the lay off is to be made who have the same seniority date, such employees will be laid off on the basis of the last evaluation rating in the class, providing such rating has been on file at least thirty (30) days and no more than twelve (12) months prior to lay off, as follows:

First, all employees having ratings of "improvement needed;" second, all employees having ratings of "competent;" third, all employees having ratings of "outstanding."

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Section 13.3.4 Re-employment Rights for Laid-off Employees

Regular employees, who have received a satisfactory or better evaluation for the 12 months prior to ~~lay off~~layoff, have completed their probationary period and who have been laid off shall be automatically placed on a re-employment list for two (2) years for the classification from which they were laid off.

Section 13.4 Resignation

An employee wishing to leave employment in good standing shall file with the City Manager a written resignation stating the effective date and reasons for leaving, at least two weeks before leaving the service, unless approval for a shorter notice is obtained. Resignation shall be deemed accepted upon submission. A resignation made with the notice required may be regarded as cause for denying the resigning employee future employment with the City, and is a resignation not in good standing.

Section 13.5 Disability and Disability Accommodations

~~An employee may be separated for disability when the employee cannot perform the essential functions of the job. The City may separate a disabled employee if the employee cannot perform the essential functions of the job with reasonable accommodation. (NOTE: ADD REASONABLE ACCOMMODATION POLICY – PAGE 13).~~

A. POLICY

The City provides employment-related reasonable accommodations to qualified individuals with disabilities within the meaning of the California Fair Employment and Housing Act and the Americans with Disabilities Act. The City may separate a disabled employee if the employee cannot perform the essential functions of the job with reasonable accommodation.

B. PROCEDURE

1. Request for Accommodation

An employee who desires a reasonable accommodation in order to perform essential job functions should make such a request in writing to the Human Resources Department. The request must identify: a) the job-related functions at issue; and b) the desired accommodation(s).

2. Reasonable Documentation of Disability

Following receipt of the request, the Human Resources Department may require additional information, such as reasonable documentation of the existence of a disability.

3. Fitness for Duty Examination

The City may require an employee to undergo a fitness for duty examination to determine whether the employee can perform the essential functions of the job with or without reasonable

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accommodation. The City may also require that a City-approved physician conduct the examination.

4. Interactive Process Discussion

After receipt of reasonable documentation of disability and/or a fitness for duty report, the City will arrange for a discussion, in person or via telephone conference call, with the employee, and his or her representative(s), if any. The purpose of the discussion is to work in good faith to fully discuss all feasible potential reasonable accommodations.

5. Case-by-Case Determination

The City determines, in its sole discretion, whether reasonable accommodation(s) can be made, and the type of accommodation(s) to provide. The City will not provide accommodation(s) that would pose an undue hardship upon City finances or operations, or that would endanger the health or safety of the employee or others. The City will inform the employee of its decision as to reasonable accommodation(s) in writing.

Section 13.6 Retirement

Retirement from employment shall be subject to the terms and conditions of the City's retirement plan. Whenever an employee meets the conditions set forth in the City's retirement plan regulations, they may elect to retire and receive benefits earned under the retirement plan.

~~Section 13.7 Death of Employee~~

~~In the event of a death of an employee, payment of earned wages due shall be in accordance with the laws of the state. Unless otherwise provided by law, payment of any other funds due the deceased employee will be paid to the beneficiary so designated in writing by the employee. If no beneficiary has been designated, any funds due shall be paid to the deceased employee's surviving spouse or domestic partner. In the absence of a surviving spouse or partner, such payment shall be made to the employee's children. In the absence of children, such payment shall be made to the estate of the deceased employee.~~

~~Section 13.8 Return of City Owned Property~~

~~The department head is responsible for the return of city owned property by the employee leaving the service of the city. The employee shall return the property before he or she is entitled to receive his/her final salary check.~~

Section 13.97 Exit Interviews

Whenever possible, the Personnel Director shall conduct exit interviews with employees upon separation from employment.

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RULE XIV

DISCIPLINARY PROCEDURES

Section 14.1 Policy

The City's policy on disciplinary actions is founded on the premise that the actions are to be corrective, and any disciplinary actions should reinforce and shape employee behavior in the reasonable and necessary direction ~~actualizing to actualize~~ the City's goals.

The tenure of every employee shall be based on reasonable standards of person conduct and job performance. Failure to meet such standards shall be grounds for appropriate disciplinary action. Disciplinary actions should be progressively more severe, and commensurate with the seriousness of the offense and with due consideration of the employee's prior performance record. However, the City may disregard progressive discipline for a serious offense. A serious offense may result in severe discipline. All suspensions, demotions, reductions in salary and terminations of persons with regular status shall be made according to these rules. Employees who are probationary, temporary, part time, or serve pursuant to a contract may be disciplined at any time without cause or right of appeal unless their contract provides otherwise.

Section 14.2 Basis for Disciplinary Action

Basis for disciplinary actions include, but shall not be limited to, the reasons listed below and in accordance with procedures listed in these rules.

- (a) Failure to meet work performance standards and requirements; unsatisfactory or careless work; failure to meet production or quality standards as given by employee's supervisor; or mistakes due to carelessness or failure to get necessary instructions.
- (b) Discourteous or disrespectful treatment of other employees, citizens, suppliers, or visitors, or ~~treatment, behavior~~ which does not foster cooperation.
- (c) Insubordination or refusing to obey supervisor's directions pertaining to work;¹ refusal to perform assigned work; or to follow a direct order;² or insulting or demeaning the authority of a supervisor or manager.
- (d) Willful or negligent disobedience of any law, City or department rule or regulation.
- (e) Failure to maintain a neat and clean appearance in terms of the standards established by the employee's supervisor; any departure from accepted conventional modes of dress or personal grooming; or wearing improper or unsafe clothing.
- (f) Excessive use of City telephone for personal calls.
- (g) Posting, removing or altering notices on any bulletin board on City property without permission of an officer of the City.
- (h) Soliciting during working hours and/or in working areas;² selling merchandise or collecting funds of any kind for charities or others with~~out~~ authorization during

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business hours, or at a time or place that interferes with the work of another employee on City premises.

- (i) Conducting a lottery or gambling on City premises.
- (j) Misappropriation or damage of public property or waste of public funds or property through negligent or willful misconduct.
- (k) Absence without approved leave; leaving ~~work station~~workstation during work hours without supervisor's permission, except to use the restroom; leaving work before the end of a workday or not being ready to work at the start of a workday without supervisor's approval; or stopping work before time specified for such purposes.
- (l) Failure to report an absence or late arrival; excessive absenteeism; or tardiness.
- (m) Practicing deception or fraud in the securing of a job appointment or promotion; or failure to supply full information as to character, reputation, or acts which, if known at the time of appointment might have resulted in a disqualification of the employee for the job to which appointment was made.
- (n) Falsification or misrepresentation of a relevant official statement, document, reports or records, and employment application, including the omission of information in an attempt to deceive or mislead, or the willful omission of information that, if known, could affect the outcome.
- (o) Misappropriation of found property; theft of City property or the property of other employees; unauthorized possession or removal of any City property, including documents, from the premises without prior permission from management; unauthorized use of City equipment or property for personal reasons; or using City equipment for profit.
- (p) ~~Violation of the City's or a department's confidentiality policies, or disclosure of confidential City information to any unauthorized person or entity. Violating the non-disclosure agreement; giving confidential or proprietary City information to other organizations, to unauthorized employees, or to anyone whom issuance of such information has not been authorized; breach of confidentiality of personnel information; or removing the contents of any official record, report, document or other written matter, current or completed.~~
- (q) Lying about sick or personal leave; falsifying reason for a leave of absence or other data requested by the City; or alteration of City records or other City documents.
- (r) Failure to use or alteration of time cards, attendance documents or other records; altering such records of another employee, or causing someone to alter such records which is considered theft of time.
- (s) Neglect of duties.

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- (t) Being intoxicated or under the influence of intoxicants, drugs or narcotics while at work; or use, possession or sale of such in any quantities while on City premises except medications prescribed by a physician, which do not impair work performance. Possessing or using alcohol in City offices or facilities.
- (u) Smoking while on duty in an area where smoking is prohibited or at non-designated times, as specified by department rules.
- (v) Incompetency.
- (w) Inefficiency.
- (x) Dishonesty.
- (y) Malicious gossip and/or spreading rumors; engaging in behavior designed to create discord and lack of harmony; interfering with another employee on the job; or willfully restricting work output or encouraging in other to do the same.
- (z) Improper withdrawal or limitation of service or any action that interferes with or is disruptive of the City mission or the public service.
- (aa) Any act or statement, oral or written, which tends to bring the City, its employees or officers into disrepute or ridicule.
- (bb) Use of coarse, obscene, profane, or insolent language or gestures to any Other employee or the public; indifference or rudeness towards the public or any other employee; or any disorderly/antagonistic conduct on City premises.
- (cc) Sleeping while on duty; or loitering or loafing during working hours.
- (dd) Improper political activity.
- (ee) Unauthorized possession of dangerous or illegal firearms, weapons or explosives on City property or while on duty, or displaying or brandishing any firearm or weapon, whether in jest or otherwise, in any manner which can be construed as careless, threatening or dangerous except in the performance ~~or~~ of official duties.
- (ff) Receiving or accepting, directly or indirectly, any money, gift, reward, service, gratuity, favor, hospitality, loan or other consideration for any service or official action rendered by the employee, without first securing the written permission from the City Manager.
- (gg) Use of influence of position with the City for private gain or advantage, or the use of time, facilities, equipment or supplies for private gain or advantage.
- (hh) Engaging in an act of sabotage; or negligently causing the destruction, damage, loss or misuse of City property, or the property of any employees, customers, suppliers, or visitors; or the failure to immediately report damage, loss or an accident involving City equipment.

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- (ii) Negligence or any careless action which endangers the life or safety of another person; willful violation of security or safety rules or failure to observe safety rules or safety practices; failure to wear required equipment; or tampering with safety equipment or other devices.
- ~~(jj)~~ ~~Negligence or any careless action which endangers the life or safety of another person; willful violation of security or safety rules or failure to observe safety rules or safety practices; failure to wear required equipment; or tampering with safety equipment or other devices.~~
- ~~(jj)~~(jj) Fighting, ~~or~~ horseplay, or provoking a fight while on duty.
- ~~(mm)~~(kk) Conviction of a felony or misdemeanor when there is a nexus to the workplace. The word, “convicted” shall be construed to mean pleas of guilty, or nolo contendere, regardless, of whether any sentence is imposed by the court.
- ~~(nn)~~(ll) Engaging in criminal conduct or acts of violence, or making threats of violence toward anyone on City premises or when representing the City.
- ~~(oo)~~(mm) Threatening, intimidating or coercing other employees on or off the premise at anytime, for any purpose.
- ~~(pp)~~(nn) Immoral conduct or indecency on City property; or failure to exhibit acceptable behavior either during or outside duty hours such that the employee’s ability to perform his or her duties is impaired; or the ability of the City to perform its’ mission is or may be impaired; or causes the discredit to the City.
- ~~(qq)~~(oo) Refusal to take and subscribe any oath or affirmation, which is required by law in connection with employment.
- ~~(rr)~~(pp) Unlawful discrimination, harassment or retaliation.
- ~~(ss)~~(qq) ~~Unapproved outside employment or activity, or other enterprise that constitutes a conflict of interest with service to the City~~ Conflict of interest.
- ~~(tt)~~(rr) ~~Any conduct that impairs, disrupts or causes discredit to the City, to the public service, or other employee’s employment. Any deliberate action that is extreme in nature and is detrimental to the City’s efforts to operate efficiently.~~
- ~~(uu)~~(ss) Working overtime without authorization or refusing to work assigned overtime.
- ~~(vv)~~(tt) Any violation or action inconsistent with these personnel system rules or officially promulgated City rules, regulations or policies.

Section 14.3 Types of Discipline

~~The following are types of counseling, reprimands and discipline which the City may impose: The following procedures shall be followed when, in the judgment of the department head, an employee has committed an act or omission that justifies disciplinary action. Disciplinary actions may range from informal conversations to formal termination. A typical progressive sequence of disciplinary actions used by the City is:~~

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1. Counseling: The immediate supervisor usually counsels the employee. Counseling is informal discussion with an employee designed to assist the employee to fully develop his or her skills and abilities. The discussion may include, but shall not be limited to, clarifying standards, setting expectations and areas of concern, seeking information, or problem solving. Counseling is usually the action taken to assist the employee in clarifying the need for improvement.

To provide both the supervisor and employee with a permanent record of a counseling, a written memo may be sent to the employee to clarify verbal agreements and the need for possible behavior change. No record of the counseling is placed in the employee's permanent personnel file unless disciplinary action of at least a written reprimand is later issued on the same problem.

A counseling memo is not considered "punitive action" under the Public Safety Officers Procedural Bill of Rights Act

2. Verbal Reprimand: A verbal reprimand is a verbal direction from a supervisory employee to discontinue inappropriate conduct or to correct a performance issue. A verbal reprimand will be documented in writing and retained in the supervisor's file until the completion of the evaluation year and then documented in the performance evaluation, as the supervisor deems necessary. A verbal reprimand is not subject to the discipline or discipline appeal procedures described below. ~~Oral reprimand: The oral warning notifies the employee that his or her performance or behavior must be improved. Oral warnings are given by supervisors when counseling has failed to produce the desired change.~~

~~The warning shall define the areas in which improvement is required, set goals leading to this improvement, and shall inform the employee that failure to improve will result in more serious action. To provide both the supervisor and employee with a permanent record of a specific violation, a written memo may be sent to the employee confirming the conversation. The memo shall state the offense and consequences if corrective action is not taken. No record is placed in the employee's permanent personnel file unless subsequent action is necessary.~~

- ~~5-3.~~ Written reprimand: A written reprimand is written direction from a supervisory employee to discontinue inappropriate conduct or to correct a performance issue. ~~warning is a formal notice to an employee of a performance or conduct problem.~~

The content of the written warning shall define what occurred, the date and time of event which is the cause of the reprimand, what was violated by the employee, what the employee is directed to do to correct the situation, and the employee's right to respond in writing within five (5) working days of the reprimand. The written reprimand shall be signed by the employee's supervisor, or department head, countersigned by the employee, and filed with the personnel officer. If the employee refuses to sign, ~~it this~~ shall be noted ~~as such~~ on the memorandum. When the written warning is issued, the employee, shall receive one copy with both signatures affixed and a copy will be placed in the employee's permanent personnel file. The employee has the right submit a written rebuttal to the

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Personnel Director or designee within 5 working days. Such rebuttal shall be attached to and stored alongside the reprimand in the employee's personnel file along with the employee's response if any. Unless required by law, a written reprimand is not subject to the discipline or discipline appeal procedures described below.

~~6.4.~~ 4. —Suspension Without Pay: A department head may suspend an employee from his or her position without pay for cause. Documents related to a suspension shall become part of the employee's personnel file when the discipline is final. An employee subject to suspension will receive prior written notice and right of appeal as provided herein. Employees who are exempt from FLSA overtime requirements will only be subject to suspension where a suspension is consistent with FLSA regulations.

~~7.5.~~ 5. —Demotion: A department head may demote an employee from his or her position for cause. Documents related to a demotion shall become part of the employee's personnel file when the discipline is final. An employee subject to demotion will be entitled to prior written notice and right of appeal as provided herein.

~~8.6.~~ 6. —Reduction in Pay or Paid Leave Accruals: A department head may reduce an employee's pay or paid leave for cause. A reduction in pay for disciplinary purposes may take one of two forms: (1) a decrease in salary to a lower step within the salary range; ~~or~~ (2) a decrease in salary paid to an employee for a fixed period of time; or (3) loss of accrued paid vacation or administrative leave, floating holiday, or other general-purpose paid time off. Documents related to a reduction in pay shall become part of the employee's personnel file when the discipline becomes final. An employee subject to a reduction in pay is entitled to prior written notice and right of appeal as provided herein. Employees who are exempt from the FLSA overtime requirements are not subject to pay reduction, except loss of accrued vacation, floating holiday, or administrative leave.

~~9.7.~~ 7. —Discharge: A department head may discharge an employee from his or her position for cause. Documents related to discharge shall become a part of an employee's personnel file when the discipline becomes final. A discharged employee is entitled to prior written notice and right of appeal as provided herein.

Section 14.4 Written Notice of Intent to Discipline

Only regular, for-cause employees have the right to the conference and appeal process outlined in Sections 14.4, 14.5, and 14.6. Written notice of the proposed disciplinary action (Suspension, Demotion, Reduction ~~in~~ Pay, or Termination) shall be given to the employee. Such notice shall include:

- (a) A statement which clearly defines the intent to take action, the proposed action to be taken and the effective beginning and ending time of intended action.
- (b) A statement of the specific grounds and particular facts upon which the proposed disciplinary action will be taken.

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- (c) A copy of all written materials, reports or documents upon which the intended discipline is based.
- ~~(d)~~ A statement with the date and time of the Skelly conference with the department head.
- ~~(d)~~ A statement that the employee will be afforded the right to respond, either orally, in writing, or both within five (5) working days upon receipt of the intended disciplinary action, to the department head, either by requesting a Skelly conference, by providing a written response, or both.
- ~~(e)~~ The date and time of the Skelly conference with the department head.
- ~~(f)~~ Notice that the failure to respond within five (5) working days shall constitute a waiver of the right to respond prior to the imposition of discipline.
- (g) Notice of the employee’s right to have a representative of their choice at the Skelly conference.

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The employee’s signature on the notice of intent to render discipline shall acknowledge receipt of said notice by the employee. If the employee refused to sign it shall be noted as such on the notice of intent to discipline. The signature documentation on said notice shall acknowledge that the employee received the notice.

Section 14.5 Employee Response

Within five (5) working days the employee shall have the right to respond, in writing, or at the conference to the department head concerning the proposed action (Suspension, Demotion, Reduction in Pay, Termination).

If, within the five (5) working days response period, the employee, does not indicate a desire to participate in the pre-disciplinary Skelly process, the proposed action of the City should be considered conclusive and shall take effect as prescribed.

The employee’s failure to make an oral response at the arranged conference time, or the employee’s failure to cause his or her written response to be delivered by the date and time specified in the notice, constitutes a waiver of the employee’s right to respond prior to the imposition of the discipline. In that case, the proposed disciplinary action will be imposed on the date specified.

Section 14.6 Final Notice of Discipline

Within 5 calendar days of receipt of the employee’s timely written response or within 5 calendar days of the conference, the department head will (1) dismiss the notice of intent and take no disciplinary action against the employee, (2) modify the intended disciplinary action, or (3) impose the intended disciplinary action. In any event, the department head will prepare and provide the employee with a notice that contains the following:

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- a. The level of discipline, if any, to be imposed and the effective date of the discipline;
- b. The specific charges upon which the discipline is based;
- c. A summary of the facts upon which the charges are based;
- d. A copy of all written materials, reports, or documents upon which the discipline is based; and
- e. A statement of the nature of the employee’s right to appeal and deadline to appeal.

Section 14.7 Relief of Duty

The Personnel Director, or their designee, may place the employee on administrative leave with pay pending the completion of an investigation or opportunity to respond as may be required to determine if disciplinary action is to be taken. In the event of an oral notice, the City Manager shall confirm the action by giving the employee written notice. In the event that the Personnel Director has a conflict of interest, the Finance Director will determine, and confirm with the City Manager, whether it is appropriate to place an employee on administrative leave.

Section 14.8 Appeal

~~An employee, who desires to appeal to the City Manager or designee shall inform the Personnel Director, or their designee, in writing within five (5) days of the department head’s decision. The City Manager or designee shall hear the appeal within sixty (60) days after the employee informs the Personnel Director, or their designee. In the event that the Personnel Director has a conflict of interest, the employee shall notify the Finance Director of its desire to appeal.~~

Section 14.8.1 Request for Appeal Hearing

A regular, for-cause employee may appeal from a final notice of discipline in the form of suspension, demotion, reduction in pay, or termination by delivering a written answer to the charges and a request for appeal to the Personnel Director, or their designee, who will forward the appeal to the City Manager. The written answer and request for appeal must be received no later than 10 calendar days from the date of the department director’s decision. In the event that the Personnel Director has a conflict of interest, request for an appeal hearing should be delivered to the Finance Director.

Section 14.8.2 Date and Time of the Appeal Hearing

The City Manager will set a date for an appeal hearing ~~before himself/herself or the designee~~ within a reasonable time after receipt of a timely request for appeal but no later than sixty (60) days. An employee who, having filed a timely request for appeal, has been notified of the time and place of the appeal hearing, and who fails to appear personally at the hearing, may be deemed to have abandoned his or her appeal. In such a case, the City Manager may dismiss the appeal.

The appeal hearing officer shall be the City Manager or an individual designated by the City Manager, so long as the City Manager did not serve as the *Skelly* officer for the discipline at issue

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or has a conflict of interest. In those cases, the appeal hearing officer shall be an impartial individual designated by the City Council.

Section 14.8.3 Identification of Issues, Witnesses and Evidence

No later than 10 days prior to the appeal hearing, each party will provide each other and the ~~City hearing officer~~ ~~Manager or designee~~ a statement of the issues to be decided, a list of all witnesses to be called (except rebuttal witnesses), a brief summary of the subject matter of the testimony of each witness, and a copy of all evidence (except rebuttal evidence) to be submitted at the hearing.

The City will use numbers to identify its evidence; the employee shall use alphabet letters.

Neither party will be permitted to call any witness during the hearing who has not been identified pursuant to this section, nor use any exhibit not provided pursuant to this section, unless that party can show that they could not have reasonably anticipated the need for the witness or exhibit. The Personnel Board will state at the beginning of the hearing the decision as to the precise issue(s) to be decided.

Section 14.8.4 Conduct of the Appeal Hearing

a. Subpoenas

The ~~hearing officer~~ ~~City Manager or designee~~ has authority to issue subpoenas in the name of the City prior to the commencement of the hearing. Each party is responsible for serving his/her/its own subpoenas. City employees who are subpoenaed to testify during working hours will be released with pay to appear at the hearing. City employees who are subpoenaed to testify during non-working hours will be compensated for the time they actually testify unless the City agrees to a different arrangement.

b. Continuances

The ~~hearing officer~~ ~~City Manager or designee~~ may continue a scheduled hearing only upon good cause shown.

c. Record of the Proceedings

All disciplinary hearings may, at the discretion of the parties, be either recorded by a court reporter or tape recorded. Any party who requests a transcript of the proceedings must pay for his/ her/ its own copy of a transcript.

d. The ~~City Manager's (or designee's)~~ Hearing Officer's Authority During the Hearing

The ~~hearing officer~~ ~~City Manager or designee~~ has the authority to control the conduct of the hearing and to affirm, modify, or revoke the discipline, but shall not have the power to alter, amend, change, add to, or subtract from any of the terms of these Policies.

e. Conduct of the Hearing

- i. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses, but hearings shall be conducted in a manner ~~the City~~

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~~Manager or designee~~ the hearing officer, decides is the most conducive to determining the truth.

- ii. Any relevant evidence may be admitted if it is the type of evidence upon which responsible persons are accustomed to rely upon in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions.
- iii. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but over timely objection shall not be sufficient in itself to support a finding, unless such evidence would be admissible over objection in civil actions. An objection is timely if made before submission of the case.
- iv. The rules dealing with privileges shall be effective to the same extent that they are now or hereafter may be recognized in civil actions.
- v. Irrelevant and unduly repetitious evidence may be excluded.
- vii. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon the request of either party.
- viii. All witnesses shall be sworn in for the record prior to testifying at the hearing.

f. Burden of Proof at the Hearing

The City has the burden of proof by a preponderance of the evidence.

g. Right to Due Process

The employee shall have the following due process rights during the hearing:

- i. The right to be represented by legal counsel or another chosen representative, at his or her own expense;
- ii. The right to call and examine witnesses on his or her behalf;
- iii. The right to introduce evidence;
- iv. The right to cross-examine opposing witnesses on any matter relevant to the issues;
- v. The right to impeach any witness regardless of which party first called him or her to testify; and
- vi. The right to rebut evidence against him or her.

i. Presentation of the Case

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All parties and their counsel or representatives shall not disparage the intelligence, morals, or ethics of their adversaries or the ~~hearing officer~~ City Manager or designee. The hearing shall proceed in the following order unless the ~~hearing officer~~ City Manager or designee directs otherwise:

- i. The City shall be permitted to make an opening statement.
 - ii. The employee shall be permitted to make an opening statement.
 - iii. The City shall produce its evidence.
 - iv. The employee shall produce his or her evidence.
 - v. The City, followed by the employee, may offer rebuttal evidence.
 - vi. Closing arguments of no more than 20 minutes shall be permitted at the discretion of the ~~hearing officer~~ City Manager or designee. The City shall have the right to argue first, the employee may argue second, and the City may reserve a portion of its argument time for rebuttal.
- j. Hearing Demeanor and Behavior

All parties and their attorneys or representatives shall not, by written submission or oral presentation, disparage the intelligence, ethics, morals, integrity or personal behavior of their adversaries or members of the Board.

- k. Written Briefs by the Parties

The ~~hearing officer~~ City Manager or designee or the parties may request the submission of written briefs. The ~~hearing officer~~ City Manager or designee will determine whether to allow written briefs, the deadline for submitting briefs, and the page limit for briefs.

Section 14.8.5: Written Findings and Decision

The ~~hearing officer~~ City Manager or designee shall render a statement of written findings and ~~recommended~~ decision within 14 days after the hearing has been completed and the briefs, if any, have been submitted.

If the City Manager was neither the appeal hearing officer or the Skelly officer the City Manager shall review the findings and recommendations of the appeal hearing officer and may then affirm, revoke, or modify the findings, recommendations, or disciplinary action taken. In such case, or if the City Manager was the hearing officer, the City Manager's decision is final. There is no process for reconsideration.

If the City Manager was the Skelly officer, the City Council shall review the findings and recommendations of the appeal hearing officer and may then affirm, revoke, or modify the findings, recommendations, or disciplinary action taken. The decision of the City Council is final. There is no process for reconsideration.

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Section 14.8.6. Proof of Service of the Written Findings and Decision

The ~~City Manager~~ ~~City Manager or designee~~ shall send ~~its~~ ~~the~~ final statement of written findings and decision, along with a proof of service of mailing, to each of the parties and to each of the parties' representatives.

Section 14.8.8. Judicial Review; Statute of Limitations

~~The City Manager's (or designee's) written findings and decision is final. There is no process for reconsideration.~~ Pursuant to Code of Civil Procedure section 1094.6, the parties have 90 days from the date of the proof of service of mailing of the written findings and decision to appeal the decision to the Superior Court in and for the County of Tulare.

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**RULE
XV**

CITY – OWNED EQUIPMENT

Section 15.1 Motor Vehicles – Use

Each city vehicle may be used only on city business and shall be stored in prescribed locations on city property when not in use. Normally, only the City Manager and a department head are allowed to take a vehicle home. The City Manager may make exceptions.

Section 15.2 Assignment

The City Manager shall assign each vehicle into the custody of a department head. The department head is responsible for proper use and safeguarding of that vehicle.

Section 15.3 Operation

Only an employee may operate a city vehicle. No officer or employee shall allow an unauthorized person to rent, borrow or use a city vehicle or permit a hitchhiker or other person not having business with the city to ride in a vehicle. An employee operating a city vehicle who is involved in an accident must report the accident immediately to the police department and the Personnel Director. No city employee may drive a city vehicle who does not have in his/her possession a valid driver's license. Each city employee shall comply with all city and state laws regarding the operation of city vehicles and is personally responsible for payment of a fine incurred while driving a city vehicle.

Section 15.4 Equipment Other Than Motor Vehicles

No city equipment, instruments, tools, supplies, machines or other items which are the property of the city may be used by an officer or employee engaged in outside employment. No employee shall take city property for personal use without permission of the appropriate department head. If permission is granted, the employee is responsible for its safe return. No officer or employee shall allow an unauthorized person to rent, borrow, or use city property except with prior permission of the City Manager or appropriate department head.

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POLITICAL ACTIVITY

Section 16.1 Prohibited Conduct:

The City prohibits:

1. Employees and officers from engaging in political activities during work hours;
2. Political campaigning in City buildings or on premises adjacent to City buildings; and
3. An employee or officer from using his or her office to coerce or intimidate public employees to promote, propose, oppose, or contribute to any political cause or candidate.

Section 16.2 Examples of Prohibited Conduct

1. Participate in political activities of any kind while in uniform;
2. Participate in political activities during working hours;
3. Participate in political activities on City worksites;
4. Place or distribute political communications on City property;
5. Use equipment to make political communications;
6. Solicit a political contribution from an officer or employee of the City, or from a person on a City employment list, with knowledge that the person from whom the contribution is solicited is a City officer or employee;
7. Favor or discriminate against any employee because of political opinions or affiliations;
8. Interfere with any election; or
9. Attempt to trade job benefits for votes

16.3 Examples of Permitted Conduct

1. Express opinions on all political subjects or candidates;
2. Become a candidate for any local, state, or national election;
3. Contribute to political campaigns;
4. Join and participate in the activities of political organizations;
5. Request, during off-duty time, political contributions, through the mail or other means, from City officers or employees if the solicitation is part of a solicitation

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made to a significant segment of the public which may include City officers or employees;

6. Solicit or receive, during off-duty time, political contributions from a City employee organization if the funds, when collected, were not earmarked for a clearly identifiable candidate for a federal, state or local office; or
7. Solicit or receive, during off-duty time, political funds or contributions to promote the passage or defeat of a ballot measure which would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of City officers or employees.

TRAINING OF EMPLOYEES

Section 17.1 Responsibility for Training

It is the policy of the City to encourage the training of employees. The City Manager and department heads have responsibility for developing training programs for employees. Training may include lecture courses, demonstrations, assignment of reading matter or other devices available for the purpose of improving the effectiveness and broadening the knowledge of a municipal officer or employee in the performance of his or her duties.

Section 17.2 Credit for Training

Participation in and successful completion of special training courses may be considered in making advancements and promotions. The employee shall file evidence of training programs with the personnel officer.

Section 17.3 Training Costs

When in the opinion of the City Manager a training course to be taken by an employee will benefit the City, the City Manager may authorize payment by the City of tuition charges, fees and textbooks. Textbooks purchased by the City become the property of the City. When tuition is paid by the City, the employee must file with the Personnel Department written evidence of his or her satisfactorily passing the course or he or she may be required to refund money paid by the City for the course. If the employee is separated from the city service within six (-6) months after completing the course. This includes training for peace officers where none of the training or only a portion of the training was reimbursed by P.O.S.T. The employee will be responsible for the portion not reimbursed to the City.

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GRIEVANCE PROCEDURE

Section 18.1 PURPOSE

The grievance procedure will give regular employees assurance that the City recognizes their right to be heard and assist them in achieving job satisfaction. The purpose of this procedure is to provide a just and equitable method for the resolution of grievances or complaints without prejudice. The intent of this policy is to:

- (a) Promote improved employer-employee relations by establishing grievance procedures on matters for which appeal or hearing is not provided by other regulations:
- (b) Give each employee a systematic means of obtaining further consideration of problems after every reasonable effort has failed to resolve them through discussion;
- (c) Settle grievances as near as possible to point of origin.
 - 1. Supervisors shall make every effort to resolve grievances informally at their level.
- (d) Provide that appeals shall be conducted as informally as possible.

Section 18.2 Definition of Grievance

Subject to the exclusions listed, a grievance is defined as any dispute that: (1) is job-related, (2) is wholly or partially within the province of the City to rectify or remedy, (3) concerns terms and conditions of employment, (4) involves the interpretation, application, or alleged violation of these rules or a current Memorandum of Understanding (MOU) between the City and a recognized employee organization representing City employees, and (5) is not subject to any other City dispute resolution process or procedure that is provided by statute, ordinance, resolution or agreement.

Section 18.3 Grievance Procedure

In every case involving a grievance, the employee shall first make an effort to resolve the grievance with his/her supervisor without delay. If the employee does not believe the problem is satisfactorily resolved, he/she may appeal in writing on the grievance form to the department head. The appeal must be filed within thirty (30) days of the date the employee knew or should have known of the circumstances giving rise to the grievance.

Section 18.4 Investigation of Facts/Decision of Department Head

The department head shall investigate the facts and issues and shall decide the matter at the earliest date consistent with the nature of the investigation but in any event, within 5 working days. The Department Head shall personally notify the employee of his/her decision in writing on the grievance form.

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Section 18.5 Appeal to Personnel Director, Designee, or Finance Director

If the employee desires to pursue the matter further, he/she shall notify the Personnel Director, or designee, in writing on the grievance form within five (5) working days of the Department Head's decision. In the event that the Personnel Director has a conflict of interest, the employee shall notify the Finance Director.

Section 18.6 Employee Meeting

Within ten (10) days after the Personnel Director, designee, or Finance Director receives the grievance complaint, he/she will arrange a meeting of the employee, employee representative (if any,) and department head. At the meeting an earnest effort shall be made to arrive at a satisfactory resolution of the issue.

Section 18.7 Written Decision

If a resolution is not reached at the employee meeting, the Personnel Director, designee, or Finance Director shall make his/her decision in writing five (5) working days after the date of the meeting. The decision of the Personnel Director, designee, or Finance Director is final.

Section 18.8 Regulations During Grievance Procedure:

The following regulations apply during the grievance procedure:

- (a) An employee may request the assistance of another person of his/her own choosing in preparing and presenting the appeal at any level of the review;
- (b) The employee and his/her representative may use a reasonable amount of work time, determined by the appropriate department head, in conferring about and presenting the grievance.
- (c) The time limits specified in this rule may be extended to a definite date by mutual written agreement of the parties;
- (d) An employee may drop proceedings upon written notice at any state of the procedure;
- (e) The result of final adjudication shall be in writing and acknowledged by the signature of all parties;
- (f) Copy of the grievance complaint, department head conclusion and Personnel Director, designee, or Finance Director's decision maintained in a file containing grievances;
- (g) There may not be discrimination, reprisal, or retaliation against any employee for availing himself/herself of the grievance procedure.

REPORTS AND RECORDS

Section 19.1 Personnel Files

The Personnel Director shall maintain a personnel record for each employee in the service of the City showing the name, title of position held, the department to which assigned, salary, changes in employment status, disciplinary action, performance evaluation, and such other information as may be considered pertinent by the Personnel Director. Personnel records are confidential and access to personnel records shall be limited [to the extent permitted by law](#).

Section 19.2 Access to Administrative Records

The City Attorney and the Personnel Director shall have access to all departmental records, documents, and papers pertaining to employees, the examination of which will aid in the discharge duties. All administrative records shall be maintained in a manner, which will preserve their confidentiality.

Section 19.3 Employee Access to Their Personnel Records

Section 19.3.1 Inspection of File

An employee may inspect his or her own personnel file, at reasonable times and at reasonable intervals. An employee who wishes to review his or her file should contact the Personnel Officer to arrange an appointment. The review must be done in the presence of a designated employee of Personnel.

Section 19.3.2 Copies

On request, an employee is entitled to receive a copy of any employment related document he or she has signed. An employee who wishes to receive such a copy should contact a designated employee of Personnel. On request, the City will also provide an employee single copies of any other documents in his or her personnel file. The City may charge a reasonable fee for the copies.

In the event the employee wishes to have another person/representative inspect his or her personnel file, the employee must provide the person/representative with written authorization. The employee will be notified of the date, time and place of the inspection in writing. It is the employee's responsibility to notify the person to whom the employee has given written authorization of the date, time and place of the inspection.

Under no circumstances is the employee and/or the employee's designee permitted to add or remove any document or other item from the employee's personnel file during the inspection.

Section 19.4 Access to Personnel Records by Department Heads

A Department Head shall have access to all records, documents, and papers pertaining to employees in his or her department, if the examination will aid in the discharge of his or her duties. The Department shall maintain this confidentiality.

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Section 19.5 Destruction of Records

Upon approval of the City Attorney, all other records relating to personnel may be destroyed as prescribed by law.

Section 19.6 Purging of Employee Discipline Records

Only written reprimand may be expunged upon sustained corrective behavior after one year. The employee wishing to have a written reprimand purged shall make a written request to the City Manager. The City Manager shall consult with the employee's department head to substantiate that corrective behavior has been sustained for the one-year period. The City Manager shall obtain the concurrence of the department head before the records are expunged.

Section 19.7 Address Notification

Employees shall notify the personnel office of any change of name, address, or telephone number within five (5) calendar days of the change.

Section 19.8 Performance Evaluations

It is the policy of the City to evaluate employee performance on a regularly scheduled basis. The performance evaluation shall normally be conducted by the employee's immediate supervisor and shall be discussed with the employee. The employee's immediate supervisor shall consider performance in relation to the duties outlined in the employee's position description.

A performance evaluation shall be completed prior to the completion of the probationary period, and annually thereafter. A performance evaluation shall be completed on at least an annual basis for regular employees and prior to the promotion or transfer of an employee. The Personnel Director will notify the employee's department head approximately thirty (30) days prior to the [due date for an employee's evaluation, as defined in Section 4.9](#) ~~employee's anniversary date~~. It is the department head's responsibility to assure that the performance evaluation is completed and returned to the employee for signature prior to the employee's evaluation date. Special evaluation, as needed, may be given.

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RULE
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HARASSMENT, DISCRIMINATION AND RETALIATION POLICY

Section 20.1 Purpose

It is the City's intent and the purpose of this Policy to provide all employees, applicants, and contractors with an environment that is free from any form of discriminatory harassment, discrimination or retaliation as defined in this Policy. This Policy prohibits harassment or discrimination on the basis of any of the following protected classifications: an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, citizenship status, uniformed service member status, marital status, pregnancy, age, medical condition and physical or mental disability (whether perceived or actual) or any other category protected by law. It is also the policy of the City to provide a procedure for investigating alleged harassment, discrimination and retaliation in violation of this Policy. The protection from discrimination includes the protection from retaliation for having taken action either as a complainant, or for assisting a complainant in taking action, or for acting as a witness or advocate on behalf of an employee in a legal or other proceeding to obtain a remedy for a breach of this policy.

Section 20.2 Policy

The City has zero tolerance for any conduct that violates ~~this~~ Policy. Conduct need not rise to the level of a violation of law in order to violate ~~this~~ Policy. Instead, a single act can violate this Policy and provide grounds for discipline or other appropriate sanctions. If you are in doubt as to whether or not any particular conduct may violate this Policy, do not engage in the conduct, and seek guidance from a supervisor or the Personnel Director, designee, or Finance Director.

Romantic or sexual relationships between supervisors and subordinate employees are discouraged. There is an inherent imbalance of power and potential for exploitation in such relationships. The relationship may create an appearance of impropriety and lead to charges of favoritism by other employees. A welcome sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing.

Section 20.3 Definitions

1. Protected Classifications:

This Policy prohibits harassment or discrimination because of an individual's protected classification(s). "Protected Classification" includes race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, citizenship status, uniformed service member status, marital status, pregnancy, age, medical condition and physical or mental disability (whether perceived or actual). For purposes of this policy, "race" includes traits historically associated with race, including but not limited to protective hairstyles such as twists, locks, or braids.

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2. Policy Coverage:

This Policy prohibits elected officials, officers, employees and contractors from harassing or discriminating against applicants, officers, officials, employees and contractors because: (1) of an individual's protected classification, (2) of the perception of an individual is protected classification, or (3) the individual associates with a person who has or is perceived to have a protected classification.

3. Discrimination:

This Policy prohibits treating individuals differently because of the individual's protected classification as defined by this Policy.

4. Harassment:

Harassment means unsolicited words or conduct which subjectively and objectively offend another person. Harassment includes, but is not limited to, the following examples of behavior undertaken because of an individual's protected classification:

- a. Verbal harassment, such as epithets (nicknames and slang terms), derogatory or suggestive comments, propositioning, jokes or slurs, including graphic verbal commentaries about an individual's body, or that identify a person on the basis of his or her protected classification. Verbal harassment includes comments on appearance and stories that tend to disparage those of a protected classification.
- b. Visual forms of harassment, such as derogatory posters, notices, bulletins, cartoons, drawings, sexually suggestive objects, or e-mails on the basis of a protected classification. Visual harassment includes mimicking the way someone walks or talks because of their protected classification.
- c. Physical harassment, such as assault, touching, impeding or blocking movement, grabbing, patting, leering, making express or implied job-related threats in return for submission to physical acts, taunting, or any physical interference with normal work or movement.
- d. Sexual harassment, such as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature or any of the above described conduct when:
 - i. Submission to such conduct is either an expressed or implied term or condition of an individual's employment, or
 - ii. Submission to or rejection of such conduct is used as the basis for employment decisions affecting such individual, or

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- iii. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating a hostile, intimidating or offensive work environment, or
 - iv. By definition, sexual harassment is not within the course and scope of an individual's employment with the City's.
5. Discrimination/harassment does not include the following:
1. Bona fide acts or omission of acts based solely upon bona fide occupational qualifications under Equal Employment Opportunity Commission and California Fair Employment and Housing Commissions Guidelines.
 2. Bona fide requests or demands by a supervisor that the employee improve his/her work quality or output, that the employee report to the job site on time, that the employee comply with city or departmental rules or regulations, or any other appropriate ~~work-related~~work-related communication between supervisor and employee.

Individual employees may be held personally liable for discriminatory acts, including sexual harassment.

Section 20.4 Retaliation

Retaliation against a person (and his or her associates) who reports or provides information about harassment or discrimination is strictly prohibited. Any act of reprisal violates this Policy and will result in appropriate disciplinary action. Examples of actions that might be retaliation against a complainant, witness or other participant in the complaint process include: (1) singling a person out for harsher treatment; (2) lowering a performance evaluation; (3) failing to hire, failing to promote, withholding pay increases, assigning more onerous work, abolishing a position, demotion or discharge; or (4) real or implied threats of intimidation to prevent an individual from reporting harassment or discrimination.

Well-intentioned attempts to insulate or protect a complainant by changing his or her work environment or schedule or duties or by transferring the complainant to another office may be retaliatory. Before a supervisor takes such action, the supervisor should contact the Personnel Director, or their designee. In the event that the Personnel Director has a conflict of interest, the supervisor may contact the Finance Director.

Any act of retaliation will be treated as a separate and distinct incident, regardless of the outcome of the harassment or discrimination complaint.

Section 20.5 Reporting Harassment, Discrimination or Retaliation

An applicant, employee, officer, official or contractor who feels he or she has been harassed, discriminated against, retaliated against, or desires to raise a grievance of conduct in violation of this Policy should report the conduct immediately as outlined below so that the complaint can be resolved quickly and fairly.

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All employees involved in the complaint process may be represented by a person of their choosing and at their own expense.

1. Object to the Conduct

Sometimes an individual is unaware that his/her conduct is offensive. The offensive behavior may be eliminated by simply informing the offender that the conduct or language in question is unwelcome and offensive and request that it be discontinued immediately. A person who believes he/she is being harassed is encouraged to use this process.

When the conduct in question continues after the offending person has been informed it is offensive, or if a person does not feel comfortable talking to the offending person directly, the employee should make a report in accordance with subsection 2 below or go directly to the formal reporting process.

2. Oral Report

If a person who believes that this Policy has been violated does not want to confront the offending person, he/she should report the conduct to a supervisor, department head or any City management employee. The individual may also seek the advice, assistance or consultation of a supervisor, department head, or any City management employee. Any supervisory or management employee who receives such a report must in turn direct it to the Personnel Director of Human Resources, or their designee. The Personnel Director, or their designee, will determine what level of investigation and response is necessary. In the event that the Personnel Director has a conflict of interest, a report may be turned in to the Finance Director, and the Finance Director, will determine what level of investigation and response is necessary.

3. Written Process

An individual who believes this Policy has been violated may provide a written complaint to a supervisor, department head or any management employee who in turn must direct the complaint to the Human Resources Department, or their designee. Individuals are encouraged to use the Confidential Complaint Form for this purpose. In the event that the Personnel Director has a conflict of interest, the complaint may be directed to the Finance Director.

4. Option to Report to Outside Administrative Agencies

Applicants, employees, officers, officials and contractors have the option to report harassment, discrimination, or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California [Civil Rights Department of Fair Employment and Housing \(DFEHCRD\)](#).

Additionally, they have the option to make a report via the [City of Lindsay WeTip Anonymous Reporting Solution Line Employment Risk Management Authority \(ERMA\) Employee Protection Line](#) online at www.WeTip.com <https://www.employeeprotectionline.com/xplonline/> or via phone at [\(909\)987-5005800](tel:(909)987-5005800) 576-5262. The Employee Protection Line is an effective risk

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management tool that allows employees to anonymously report workplace wrongdoing 24 hours-a-day, seven days-a-week.

Section 20.6 Supervisory Resolution

Whenever possible, employees who believe they are experiencing discrimination, discriminatory harassment or retaliation are encouraged to inform the individual that his/her behavior is unwelcome, offensive, unprofessional or highly inappropriate. If this does not resolve the concern or if an employee feels uncomfortable, threatened, or has difficulty expressing his/her concern, assistance should be sought from a supervisor or manager.

Section 20.7 Formal Investigation/Response

1. Investigation

Upon receipt of a complaint of alleged harassment, discrimination or retaliation, the Personnel Director, designee, or Finance Director will be responsible for coordinating a thorough investigation (unless he/she is named in the complaint). The Personnel Director, designee, or Finance Director may coordinate the investigation with the complainant's department head and may hire an outside investigator if the City deems it appropriate. The type of investigation undertaken, and the party chosen to conduct the investigation will depend on the nature of the complaint made and will be determined by the Personnel Director, designee, or Finance Director. The Personnel Director, designee, or Finance Director will report the status of investigations to the City Manager as appropriate.

The Director, in concurrence with the City Manager, may take interim action to diffuse volatile circumstances. The investigator will review the complaint allegations in an objective manner and to the extent that the City deems necessary. The investigation will normally include interviews with the reporting individual, the accused, and any other person who is believed to have relevant knowledge concerning the allegations. The investigator will remind all witnesses to maintain the confidentiality of the interview and that retaliation against those who report alleged harassment or who participate in the investigation is prohibited.

The City takes a proactive approach to potential Policy violations and will conduct an investigation if its officers, supervisors, or managers become aware that harassment, discrimination or retaliation may be occurring, regardless of whether or not the recipient of the alleged action or a third party reports a potential violation.

2. Remedial and Disciplinary Action

If the investigation determines that the alleged conduct occurred and that the conduct violated this Policy, the City will notify the complainant and perpetrator of the general conclusion(s) of the investigation and take effective remedial action that is designed to end the violation(s). Any employee or officer determined to have violated this Policy will be subject to disciplinary action, up to and including termination. Disciplinary action may also be taken against any

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official, supervisor or manager who condones or ignores potential violations of this Policy, or who otherwise fails to take appropriate action to enforce this Policy. Any official or contractor found to have violated this Policy will be subject to appropriate sanctions.

3. Closure

At the conclusion of the investigation, the Personnel Director, designee, or Finance Director will notify the complainant in general terms of the outcome of the investigation.

4. Confidentiality

Every possible effort will be made to assure the confidentiality of complaints made under this Policy. Complete confidentiality cannot occur, however, due to the need to fully investigate potential Policy violations and take effective remedial action. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor or the Personnel Director, designee, or Finance Director. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction. The City will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or a court order.

Section 20.8 Responsibilities of Employees, Management and Supervisory Employees

1. Employees

In order to establish and maintain a professional working environment, while at the same time preventing harassment, discrimination, and retaliation, employees are expected to:

- Set an example of acceptable conduct by not participating in or provoking behavior that violates this Policy. Try not to be angry or insulted if an individual tells you that your behavior is offensive. People have different ethical values and standards and may be offended by behavior you think is proper. Tell the individual you did not realize your behavior was offensive, and immediately cease the conduct.
- Let fellow employees know when you consider behavior offensive. The City hires people from a wide variety of cultural and ethnic backgrounds, and an individual may not realize behavior he or she thinks is proper could be seen by others as offensive.
- Report harassment, discrimination or retaliation as quickly as possible, whether the employee is the target of the conduct or a witness.
- If an employee witnesses harassment, he or she should tell the individual being harassed that the City has a policy prohibiting such behavior, and that he or she can demand that the harasser cease the behavior.

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- Maintain confidentiality as required by this Policy.
- Fully cooperate with the City’s investigation of complaints made under this Policy.

2. Managers and Supervisors

In addition to the responsibilities listed above, managers and supervisors are responsible for the following:

- Implementing this Policy by taking all complaints seriously and modeling behavior that is consistent with this Policy. Direct all complaints to the Personnel Director, designee, or Finance Director.
- Taking positive steps to eliminate any form of harassment, discrimination or retaliation observed or brought to his/her attention.
- Making sure no department director, supervisor or other employee retaliates through any action of intimidation, restraint, coercion or discrimination.
- Monitoring the work environment and taking appropriate action to stop potential Policy violations.
- Following up with those who have complained to ensure the behavior complained of has ceased.
- Informing complainants of their option to contact the EEOC or ~~DFEH~~ [CRD](#) regarding a potential Policy violation.
- Taking prompt, appropriate action within their work units to avoid and minimize the incidence ~~of any~~ [of any](#) form of discrimination, harassment or retaliation.
- Ensuring that his/her subordinates understand their responsibilities under this policy.
- Ensuring that members who make complaints or who oppose any unlawful employment practices are protected from retaliation and that such matters are kept confidential to the extent possible.

C. MANDATORY TRAINING

As part of its commitment to ensuring a work environment free from harassment and discrimination, the City requires that all ~~of~~ its employees receive training on this Policy during scheduled training. Human Resources will schedule training sessions each year to

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ensure that employees are able to complete the mandatory training. Attendance at the training will be documented.

All employees shall certify by signing the prescribed form that he/she has been advised of this policy, is aware of and understands its contents and agrees to abide by its provision during hi//her term of employment with the City of Lindsay.

1. Supervisory employees shall receive two hours of classroom or other effective interactive training and education within six months of assuming a supervisory position.
2. All other employees shall receive one hour of classroom or other effective interactive training and education within six months of their employment or sooner for seasonal or temporary employees as described in Government Code § 12950.1
3. If the required training is to be provided by ~~DFEH~~-CRD online training courses, the Training Supervisor should ensure that employees are provided the link or website address to the training course (Government Code § 12950).

Section 20.9 Disposition of Complaints

Only one of the following four (4) dispositions will be used to classify the disposition of an allegation of harassment:

- (a) Sustained Complaints- If the complaint is substantiated, this policy and procedure prohibiting discrimination/harassment will be reviewed with the offender. Appropriate disciplinary action and/or training, will be taken pursuant to disciplinary procedures.
- (b) Not Sustained Complaints- If there is insufficient evidence to either prove or disprove the allegation(s), both parties to the complaint will be informed of the reason(s) for this disposition.
- (c) Unfounded Complaint- If it is determined that an act reported pursuant to this policy/procedure did not in fact occur, a finding of unfounded shall be made.
- (d) Exonerated Complaints- If it is determined that an act reported pursuant to this policy/procedure did in fact occur, but was lawful and proper within the guidelines established herein, a finding of exonerated shall be made.

Should it be determined that the reporting party maliciously filed the complaint knowing that it was false or frivolous at the time of the complaint, that employee shall be subject to discipline up to, and including termination.

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Section 20.10 Documentation of Complaints

All complaints or allegations shall be documented on forms and in manner designated by the Director of Personnel, designee, or Finance Director. All reports shall be:

- Approved by the Director of Personnel, designee, or Finance Director
- Maintained for a minimum of five (5) years

Section 20.11 Questions Regarding Discrimination or Harassment

Employees having questions are encouraged to contact a supervisor, manager, their department head, Personnel Director or designee, Finance Director, or the City Manager, or they may contact the California [Department of Fair Employment and Housing](#) [Civil Rights Department](#) at (800) 884-1684 or the Equal Employment Opportunity Commission (800) 669-6820.

Section 20.12 Workplace Violence

The City of Lindsay is committed to providing a safe work environment that is free of violence and the threat of violence. The top priority in this process is effectively handling critical workplace incidents, especially those dealing with actual or potential violence. The department of public safety will be notified of all incidents.

This policy sets forth the City's position regarding workplace violence and provides guidance to all employees, supervisors and managers in addressing workplace violence issues.

- A. Violence or the threat of violence, against or by any employee of the City or any other person is unacceptable.
 - (1) Should a non-employee, on City property, demonstrate or threaten violent behavior he/she may be subject to criminal prosecution.
 - (2) Should an employee, during working hours, demonstrate or threaten violent behavior he/she may be subject to disciplinary action in addition to criminal prosecution.
- B. The following actions are considered violent acts and are explicitly prohibited.
 - (1) Striking, punching, slapping, or assaulting another person.
 - (2) Fighting or challenging another person to fight.
 - (3) Grabbing, pinching or touching another person in an unwanted way whether sexually or otherwise.
 - (4) Engaging in dangerous, threatening or unwanted horseplay.
 - (5) Possession, use or threat of use, of a gun, knife or other weapon of any kind on the city property, including parking lots, other exterior premises, city vehicles, or unless such possession or use is a requirement of the job.

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- (6) Threatening or harming another person, or any other action or conduct that implies the threat of bodily harm.
- C. Any employee who is victim of any violent threatening or harassing conduct, any witness to such conduct, or anyone receiving a report of such conduct, whether the perpetrator is a city employee or non-employee person in the chain of command.

The appropriate person in the chain of command may include:

- (1) Immediate Supervisor
- (2) Department Head
- (3) Personnel Director, Designee, or Finance Director
- (4) City Manager

If no one in the chain of command can be reached, the employee should report to the personnel department. In case of emergencies, the employee should call 911 immediately.

- D. No one, acting in good faith who initiates a complaint or reports an incident under this policy will be subject to retaliation or harassment.
- E. In the event the City fears for the safety of the perpetrator or the safety of others at the scene of the violent act, law enforcement will be called for assistance.
- F. Employees who violate this policy may be subject to disciplinary action up to and including termination.

CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

**RULE
XXI**

SUBSTANCE ABUSE POLICY

Section 21.1 Introduction

The intent of this policy is to deter the misuse or abuse of legal or illegal substances that create a threat to the safety and health of any City Employee or member of the public. The City of Lindsay discourages alcohol and drug abuse and strives to achieve a work force free from the influence of drugs and alcohol.

In recognition of the City's responsibility to maintain a safe, healthful and productive work environment and each employee's responsibility to perform work for the public safely, effectively and efficiently, the City will act to eliminate any substance abuse which increases the risk of accidents, absenteeism, substandard performance, poor employee's morale or damage to the City's reputation. Substance abuse includes the use of or possession of illegal drugs, alcohol or controlled substance, which could impair an employee's ability to perform his or hers job safely, effectively and efficiently.

The City of Lindsay believes that its employees are its most important assets. Thus, a primary objective of the policy is to ensure that public safety and the welfare of our employees are not endangered as a result of substance abuse. Additionally, the City is committed to provide an employee with an opportunity for recovery and rehabilitation, enabling the affected employee to return to satisfactory job performance level.

Section 21.2 Purpose

This policy sets forth the City's position regarding substances abuse and provides guidance to all employees, supervisors and managers in addressing substance abuse issues.

Section 21.3 Policy

It is the City's policy that no employee shall:

- (a) Report to work under the influence of alcohol or drugs;
- (b) Be under the influence of alcohol or drugs while on standby;
- (c) Possess drugs while on duty or while on standby;
- (d) Use alcohol or drugs while on duty or while on standby;
- (e) Sell, distribute or provide alcohol or drugs to any employee or person while on duty or while on standby;
- (f) Sell, distribute or provide alcohol or drugs to any employee or person while on duty or while on standby;
- (g) Have their ability to work impaired as a result of the use of alcohol or drugs.

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While use of medically prescribed medication and drugs is not per se a violation of the policy, failure by the employee to notify his/her supervisor before beginning work when taking such medication or drugs which may interfere with the safe and effective performance of duties is a violation of this policy. In the event there is a question regarding the employee's ability to safely and effectively perform the assigned duties while using such medication or drugs, clearance from a qualified physician will be required.

The City reserves the right to search, without employee consent, all areas and property in which the City maintains full or joint control with the employee for the purpose of detecting the presence of alcohol or illegal drugs. Areas in which the City maintains full control include but are not limited to all City owned equipment. Areas jointly controlled by the City and employees include but are not limited to desks, lockers, file cabinets, office cabinets and bookshelves. Otherwise, the City may notify the appropriate law enforcement agency that an employee may have illegal drugs in his/her possession or in an area not jointly or fully controlled by the City.

Employees reasonably believed to be under the influence of alcohol or drugs shall be prevented from engaging in further work and shall be detained for a reasonable time until an authorized City representative or law enforcement representative can transport the employee from the work site.

Violations of this policy may be grounds for disciplinary action, up to and including discharge. Refusal to submit immediately to a drug and/or alcohol test when requested by City management or law enforcement personnel, failure to cooperate during testing, or any acts taken by the employee to negate testing procedures, may constitute insubordination and may be ground for discipline up to and including termination.

The City has established a voluntary Employee Assistance Program (EAP) to assist those employees who voluntarily seek help for alcohol or drug problems. Employees should contact the Personnel Director or their supervisors for additional information. The City is committed to providing reasonable accommodation to those employees whose drug or alcohol problem classifies them as disabled.

Section 21.4 Application

This policy applies to all City of Lindsay employees as well as applicants for positions with the City of Lindsay. This policy applies to alcohol and to all substances, drugs or medications, legal or illegal, which could impair an employee's ability to effectively and safely perform the function of the job.

Section 21.5 Employee Responsibilities

An employee shall:

- (a) Not report to work or while on standby have his/her ability to perform job duties impaired due to alcohol or drug use, on or off duty.
- (b) Not possess, use, or be under the influence of alcohol or drugs (illegal drugs and legal drugs without a prescription) during working hours, while on standby, on breaks, during meal periods or while driving a personnel vehicle or City vehicle on City business;

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- (c) Not directly or through a third party sell or provide drugs or alcohol to any person or to any other employee while either employee or both employees are on duty or while on standby;
- (d) Submit immediately to a drug and/or alcohol test when directed by a responsible City supervisor or management representative;
- (e) Notify his/her supervisor, before beginning work or when contacted for call back when taking any medications or drugs, prescription or non-prescription, or alcohol, which may interfere with the safe and effective performance of duties or operation of City equipment; and;
- (f) Upon request, provide a current valid prescription for any drug or medication identified when a drug analysis is positive within a reasonable time period. The prescription must be in the employee's name.

Section 21.6 Employee Complaint

- (a) Any employee may file a complaint with their department head regarding any employee whose performance is being affected by substance abuse.
- (b) An employee filing a complaint shall, within 24 hours, document in writing, the facts constituting reasonable suspicion that the employee in question was intoxicated or under the influence of drugs and/or alcohol.
- (c) Complaints, which are determined to be malicious or vexatious will not be tolerated and will subject the complaining individual to disciplinary action.

Section 21.7 Management Responsibilities and Guidelines

- A. Manager and supervisors are responsible for consistent enforcement of this policy.
- B. Managers and supervisors may direct an employee to submit to a drug and/or alcohol test when a manager or supervisor has a reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol. "Reasonable suspicion" is a belief based on objective and articulable facts sufficient to lead a reasonably prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his/her job safely is reduced.

For example, any of the following, alone or in combination, may constitute reasonable suspicion:

- (a) Slurred speech;
- (b) Alcohol on breath;
- (c) Problems walking or other physical activity impairments;
- (d) An accident involving City property;

CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

- (e) Physical altercation;
 - (f) Verbal altercation;
 - (g) Behavior, which is so unusual that it, warrants summoning a supervisor or anyone else with authority;
 - (h) Possession of alcohol or drugs;
 - (i) Information obtained from a reliable person with personal knowledge.
- C. Any manager or supervisor directing an employee to submit to a drug and/or alcohol test shall, within 24 hours, document in writing the acts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs and/or alcohol. Any manager or supervisor encountering an employee who refuses to submit to a drug and/or alcohol test upon request shall remind the employee of the requirements and consequences of this policy.
- (j) Managers or supervisors shall not physically search employees.
 - (k) Managers and supervisors shall notify the appropriate law enforcement agency when they have reasonable suspicion or believe that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the City.
 - (l) Managers and supervisors may search areas jointly or fully controlled by the City.
 - (m) Managers and supervisors shall not confiscate, without consent, prescription drugs or medication from an employee who has a prescription.

Section 21.8 Employee Assistance Program

The City has a well-established voluntary Employees Assistance Program (EAP) to assist employees who seek help for substance abuse problems.

The EAP is available for assessment, referral to treatment, and follow-up. Any employee with the City of Lindsay wishing confidential assistance for a possible alcohol or drug problem may contact personnel, their insurance provider or the Employee Assistance Program for additional information.

Employees who are concerned about their alcohol and/or drug use are strongly encouraged to voluntarily seek assistance through the EAP or health insurance program. In addition, employees who are concerned about alcohol and/or drug use among their co-workers should strongly encourage those individuals to seek assistance through the EAP.

All Self-referral contacts are held in confidence by the EAP unless the employee requests, through specific written release of information, that the department, supervisors, union or other parties be notified.

CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

The employee's compliance with [the](#) recommendations of the EAP is voluntary. Employee's job security and/or promotional opportunities will not be jeopardized by utilization of the EAP or any other treatment service.

If an employee requires leave time for substance abuse treatment, he/she can follow established personnel policy concerning sick leave usage.

Section 21.9 Confidentiality

The City recognizes the confidentiality and privacy due employees, and disclosure of any information relating to chemical abuse treatment, except on a need-to-know basis, shall only be with the expressed written consent of the employee involved or pursuant to lawful process.

Section 21.10 Compliance

Employees must, as a condition of employment, abide by the terms of this policy, and report any conviction under a criminal drug statute for violations occurring on or off city premises while conducting City Business. A report of a conviction must be made as soon as possible, but in no case more than five (5) days after the conviction.

CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

MISCELLANEOUS RULES

Section 22.1 Dress Code

Employees of the City are required to dress appropriately for the jobs they are performing. Unless required to wear a uniform, City employees in the office are expected to adhere to a business, business casual, or smart casual dress code. Therefore, failure to follow the dress regulations contained in this section shall be grounds for discipline.

- (1) All clothing must be neat, clean, and in good repair. For example, employees are not permitted to wear hooded sweatshirts, sweatpants, torn clothing, ripped or faded jeans.
- (2) Prescribed uniforms and safety equipment must be worn.
- (3) ~~Foot wear~~Footwear must be appropriate for the work environment and functions performed. Flip flop sandals are not permitted unless approved by the Department Head.
- (4) Hair must be neat, clean and well-groomed.
- (5) Beards, mustaches, and sideburns must be maintained in neat and well-groomed fashion.
- (6) Jewelry is acceptable except where it constitutes a health or safety hazard.
- (7) Good personal hygiene is required.
- (8) All clothing~~Dress~~ must be appropriate ~~for to~~ the professional work environment, avoiding excessively revealing or provocative attire. This includes avoiding clothes midriff or back, transparent or see-through or excessively tight clothing, setting particularly if the employee has public contact. For example, employees are not permitted to wear hooded sweatshirts, sweatpantscrop tops, tank tops, miniskirts, short dresses, or leggings (except under items).
- (9) No tattoos are allowed anywhere on the head, face, or neck.
- (10) Any visible tattoos shall not be obscene, sexually explicit, discriminatory to sex, race, religion, or national origin, extremist, and/or ~~gang-related~~gang related. Any non-conforming tattoos ~~will shall~~ be covered with clothing or a bandage while at work or removed.
- (11) For employees working with the public, no objects, articles, jewelry or ornamentation of any kind shall be attached to or through the skin if visible on any body part including the tongue or any part of the mouth. However, employees may wear except one up to two set of reasonably sizedreasonably sized earrings in each lobe and a stud in the nose. Any non-conforming piercing

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CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

shall be removed, covered with a bandage, or replaced with a clear, plastic spacer.

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If an employee has a question about how the piercing policy is applicable to them, the matter should be immediately raised with their supervisor for consideration and determination.

Section 22.2 Outside Activities

A full-time employee may not carry on concurrently with his/her public service, any private business or undertaking, attention to which affects the time or quality of his/her work or which casts discredit upon or creates embarrassment for the city government.

Section 22.3 Other Public Offices

An employee may not accept appointment to a county or state or position or otherwise incur an obligation of civil public service outside his/her regular municipal employment without first obtaining the recommendation of his/her department head and approval of the City Manager.

Section 22.4 Official Badge or Insignia

An official or employee who wears a badge or other official insignia as evidence of his/her authority may not permit the badge or insignia to be used or worn by another person without approval of the department head. The department head may not grant approval accept to a person regularly and formally appointed by the City Manager to the position designated by the badge or insignia. The employee shall return the badge or insignia to the department head when he/she terminates.

Section 22.5 Purchase Order

No officer or employee may order services or merchandise without first being authorized to do so and obtaining a purchase order. ~~Employee~~An employee who orders services or merchandise without a purchase order is personally responsible for payment.

Section 22.6 Operating City Vehicles

Employees whose duties include the driving of a city vehicle shall possess a valid driver's license issued by the State of California, such license shall be carried at all times when so engaged.

Section 22.7 False Information

No employee of the City of Lindsay shall make false official reports or knowingly enter or cause to be entered in any department books, records, or reports, any inaccurate, false or improper information. A failure to enter information as required by an employee is also deemed to be false information.

CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

Section 22.8 Release of Information

It is the City’s policy that all requests for information concerning current or former employees, either by telephone or in writing, are to be referred to the Personnel Director.

It is the City’s policy to state only that a person is (was) employed with the City, the date of employment and verification of title or position.

When a valid authorization for release of information, as determined by the Personnel Director is submitted, additional information may be release. All requests for references must be made in writing. Generally only written references will be provided and then only in conformance with the specific provisions of the former employees’ authorization to release information.

Only job-related issues are to be discussed. Job-related issues include attendance, work habits, quality and quantity of work, supervision required and initiative.

Section 22.9 Employment of Related Persons

A policy concerning the employment of related persons applicable to personnel practices is desirable since employment decisions and/or supervision involving a related person may create potential conflicts of interest, create a negative or unprofessional work environment, or present concerns regarding supervision, safety, security or morale.

Section 22.9.1 Definition of “Related Person”

“Related Person” shall include: mother, father, grandmother, grandfather, or grandchild of the employee or spouse or domestic partner of the employee, and the son, son-in-law, daughter, daughter-in-law, brother or sister of the employee, or any other person living in the immediate household of the employee.

Section 22.9.2 Prohibited Conduct

- (a) Related person will not be eligible for employment with the City where potential problems of supervision, safety, security or morale, or potential conflicts of interest exist.
- (b) Related persons may not be employed in the same department nor under the same immediate supervisor where potential problems of supervision, safety, security or morale, or potential conflicts of interest exist.
- (c) One related person may not supervise another person where the potential for creating adverse impact on supervision, safety, security or morale exists.

CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

Section 22.10 Meals and Breaks Periods

All employees except for police and fire personnel, are not on call during meal breaks unless directed otherwise by a supervisor. The time spent for a meal period shall not exceed the authorized time allowed.

Each employee is entitled to a 15-minute break, near the ~~mid point~~midpoint, for each four-hour work period. Only one 15-minute break shall be taken during each four hours of duty. No breaks shall be taken during the first or last two hours of an employee's shift unless approved by a supervisor.

Section 22.11 Time Sheets

All employees are paid on a bi-weekly basis usually on Friday with certain exceptions such as holidays. Time sheets shall be completed and submitted to Administration no later than Monday on a bi-weekly basis, unless specified otherwise. Department heads are responsible for the accurate and timely submission of the time sheets for the payment of wages.

Section 22.12 Seatbelts

All employees shall wear available safety restraints whenever operating a City vehicle or equipment.

Section 22.13 Smoking

Smoking and other use of tobacco products is not permitted inside eCity facilities or on City property. It shall also be the responsibility of all employees to ensure that no person smokes or uses any tobacco product inside city facilities. ~~Department heads may designate specific vehicles as "smoking" vehicle.~~

Section 22.14.1 Conditional Offer of Employment Examinations

After a conditional offer of employment has been extended to an applicant, the City may, in compliance with all applicable laws, require the applicant to submit to a fitness for duty examination prior to conferring appointment.

Section 22.14.2 Current Employee Examinations

The Personnel Director or a designee may require an employee to submit to a fitness for duty examination to determine if the employee is able to perform the essential functions of his or her job when: 1) the employee appears to be unable to perform or has difficulty performing one or more essential functions of his or her job; and 2) there is reason to question the employee's ability to safely or efficiently complete work duties.

Section 22.14.3 Role of Health Care Provider

A City-selected health care provider will examine the employee at City expense. The City will provide the health care provider with a letter requesting a fitness for duty examination and a

CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

written description of the essential functions of the employee’s job. The health care provider will examine the employee and provide the City with non-confidential information regarding whether:

- 1) the employee is fit to perform essential job functions;
- 2) there are any reasonable accommodations that would enable the employee to perform essential job functions; and
- 3) the employee’s continued employment poses a threat to the health and safety of him or herself or others. Should the health care provider exceed the scope of the City’s request and provide confidential health information, the City will return the report to the health care provider and request another report that includes only the non-confidential fitness for duty information that the City has requested.

Section 22.14.4 Medical Information

During the course of a fitness for duty examination, the City will not seek or use information regarding an employee’s medical history, diagnoses, or course of treatment without an employee’s written authorization.

Section 22.14.5 Medical Information from the Employee’s Health Care Provider

An employee may submit confidential medical information to the City from his or her personal health care provider. If the employee provides written authorization, the Personnel Director will submit the information that the employee provides to the City-paid health care provider who conducted the examination. The Personnel Director will request the City-paid health care provider to determine whether the information alters the original fitness for duty assessment.

Section 22.14.6 Interactive Process Discussion

After receipt of both the health care provider’s fitness for duty report, and the analysis of the employee’s personal health care information (if any) the Personnel Director will arrange for a discussion or discussions, in person or via conference telephone call, with the employee and his or her representatives, (if any). The purpose of the discussions will be in good faith to fully discuss all feasible potential reasonable accommodations. During the discussions, the Personnel Director will also discuss, if relevant, alternate available jobs for which the employee is qualified, or whether the employee qualifies for disability retirement or family and medical leave.

Section 22.14.7 Determination

After the discussions, the Personnel Director will review the information received, and determine if there is a reasonable accommodation that would enable the employee to perform essential job functions, or if the accommodations would pose an undue hardship on City finances or operations. The Personnel Director will inform the employee of his or her determination. The Personnel Director will use his or her discretion based upon the particular facts of each case.

CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

RULE
XXIII

COMPUTER, INTERNET, ELECTRONIC MAIL, AND VOICE MAIL

Section 23.1 Introduction

The City of Lindsay, hereinafter (City), is committed to providing employees with the business tools necessary in order to enhance efficiency in job performance and best serve the citizens of Lindsay.

Section 23.2 Purpose

This policy sets forth the City’s policy with respect to the use of computers, electronic mail (e-mail), intranet (internal messaging systems), mobile messaging, telephonic voice mail and Internet access and other electronic communications systems provided by the City of Lindsay.

Section 23.3 Applicability

The provisions of this policy apply to all employees of the City of Lindsay, including full-time and temporary employees, as well as volunteers, agents and vendors.

Section 23.4 General Provision

With the rapidly changing nature of electronic media, and the “etiquette” which is developing among users of external on-line services and the Internet, this policy cannot lay down rules to cover every possible to be applied to use of computers, electronic mail (e-mail), intranet (internal messaging systems), and mobile messaging systems, telephonic voice mail and Internet access and other electronic communications systems provided by the City of Lindsay.

Section 23.5 No expectation of Privacy

The city respects the individual privacy of its employees. However, employee privacy does not extend to the employee’s work-related conduct or to the use of City-provided equipment or supplies.

Section 23.6 Ownership

E-mail, telephonic voice mail, internal messaging systems, Internet access and other electronic communications systems are provided only for the purpose of conducting City business. All electronic communications of any sort or type generated by employees with City equipment or stored on city equipment are the property of the City of Lindsay.

The City recognizes that there may be incidental or occasional personal use of e-mail or voice mail but these messages will be treated the same as other messages. The City reserves the right to access and disclose as necessary all messages sent over its e-mail or voice mail system, without regard to content. Since your personal messages can be assessed by the City management without prior notice, you should not use e-mail or voice mail to transmit any messages you would not want read, or listened to by a third party. Misusing the Internet e-mail system, or telephonic voice mail systems will subject you to disciplinary action up to and including termination.

All software programs, computer files and other documents created by City employees on City computer or other electronic systems are the property of the City and therefore exclusively owned by the City.

CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

Section 23.7 Prohibited Uses

All employees are prohibited from:

- (a) Installation of programs on the City's computer systems (including virus checking and screen savers) without prior written consent of the department head.
- (b) Copying City Software programs for personal use;
- (c) Use another employee's password to attempt to gain access to the employee's computer electronic mail (e-mail), Internet access or other electronic communications systems;
- (d) Connecting computers (including laptops and personal computers) not owned or leased by the City to the City's information system network without prior written consent;
- (e) Using the access code, log-on or password of other employees to gain access to their e-mail or computer records, without prior consent.
- (f) Disclosing access codes, log-on or password of otherwise make the City electronic resources available to persons not authorized to have such access;
- (g) Infringing on others' access and use of the City's information systems, including, but not limited to:
 1. Sending of excessive messages, either locally or off-site;
 2. Unauthorized modifications of system facilities, operating systems or disk partitions;
 3. Attempting to crash or tie up a City computer or network;
 4. Attempting or gaining unauthorized access to or damaging or vandalizing City computing facilities, equipment, software, or computer files;
 5. ~~Developing or using a modem on City owned or leased computers without the prior written consent;~~
 - 7.5. Installing or using a modem on City owned or leased computers without the prior written consent.
 - 8.6. Violating any federal, state or local laws in the use of City information systems;
 - 9.7. Violating any copyright or license to software, information (including, but not limited to, text images, icons, programs, etc.) ~~Whether whether~~ created by the City or any other person or entity;
- (h) Exposing others, either intentionally or unintentionally, to material which is offensive, obscene or in poor taste;
- (i) Any use that would be offensive to a reasonable person because it involves an individual's race, religion, color, sex, gender identity, sexual orientation (~~including heterosexuality, homosexuality and bisexuality~~), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship,

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pregnancy, age, medical condition (cancer or HIV/AIDS related), genetic characteristics, and physical or mental disability (whether perceived or actual);

- (j) Communication of confidential City information to unauthorized individuals within or outside the City;
- (k) Sending messages with content that conflicts with any City policies, rules or other applicable laws;
- (l) Unauthorized attempts to access City data or systems;
- (m) Theft or unauthorized copying of electronic files or data;
- (n) Initiating or sustaining chain letters, and
- (o) Intentionally misrepresenting one’s identity for improper or illegal acts.

Section 23.8 Violations of This Policy

Violations of any provision of this policy may result in disciplinary action up to and including termination of employment.

Section 23.9
VIDEO AND AUDIO SURVEILLANCE POLICY

Section 23.10—Introduction

Through this Policy, the City informs all employees that it maintains cameras with video and audio surveillance capabilities located throughout the City’s facilities. This policy aims to ensure the safety and security of our employees, visitors and assets and maintain transparency.

Section 23.11—Purpose

The purpose is to establish clear guidelines and procedures for the use of video and audio surveillance within city-owned facilities. This policy aims to deter and investigate criminal activity, enhance the safety of individuals and property.

1. The City may use these cameras for security, investigations, or for any other purpose that would assist the City in performing its duties.
2. Cameras may be discreet or obvious. Employees should not assume that there are no cameras if they cannot see one. Employees should assume, for privacy purposes, that there are active cameras in their workplaces.
3. The City will NOT install any cameras where the law prohibits it. The City will not install any audio or video recording devices in restrooms, locker rooms, or any other rooms designated for changing clothes, unless authorized by a court order.
4. Due to the City’s strong security interests, agreement to this Policy is a job requirement for all City employees. By accepting employment with the City, and continuing to be employed, each employee acknowledges that City facilities use video and audio recording devices in accordance with this Policy.

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- 5. [Access to surveillance footage should be limited to authorized personnel responsible for security, law enforcement, or administration purposes.](#)
- 6. [Personnel responsible for operating surveillance systems should receive appropriate training on the policy guidelines, privacy considerations, and their responsibilities.](#)
[The retention period for surveillance footage should be determined based on the provisions within the City of Lindsay Records Retention Policy.](#)

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Section 23.120

SOCIAL MEDIA POLICY (City Council

Resolution No. 22-48)

Section 23.13-Introduction

[This policy establishes guidelines for the establishment and use by the City of Lindsay of social media sites \(including but not limited to Facebook and Instagram\) as a means of conveying City of Lindsay \(“City”\) information to its citizens.](#)

[The intended purpose behind establishing City of Lindsay social media sites is to disseminate information from the City, about the City, to its citizens. The City of Lindsay has an overriding interest in deciding what is “spoken” on behalf of the City on City social media sites.](#)

[For purposes of this policy, “social media” is understood to be content created by individuals, using accessible, expandable, and upgradable publishing technologies, through and on the Internet. Examples of social media include, but are not limited to, Facebook, Instagram, YouTube, Twitter, LinkedIn, and blogs. For purposes of this policy, “comments” include information, articles, pictures, videos or any other form of communicative content posted on a City of Lindsay social media site, either as its own post or attached to another post.](#)

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Section 23.14-General Policy

- 1. [The establishment and use by any City department of City social media sites are subject to approval by the City Manager or his/her designees. All City of Lindsay social media sites shall be administered by City of Lindsay designated staff.](#)
- 2. [City social media sites should make clear on their respective profile pages that they are maintained by the City of Lindsay and that they follow the City’s Social Media Policy.](#)
- 3. [Wherever possible, City social media sites should link back to the official City of Lindsay website for forms, documents, online services and other information necessary to conduct business with the City of Lindsay.](#)
- 4. [Designated staff will monitor content on City social media sites to ensure adherence to both the City’s Social Media Policy and the interest and goals of the City of Lindsay.](#)
- 5. [The City reserves the right to restrict or remove any content that is deemed in violation of this Social Media Policy or any applicable law. Any content removed based on these guidelines must be retained by the City Clerk for a reasonable period of time, including the time, date and identity of the poster, when available.](#)
- 6. [These guidelines must be displayed to users or made available by hyperlink. The City will approach the use of social media tools as consistently as possible, enterprise wide.](#)

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CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

- 7. The City of Lindsay’s website at–<https://www.lindsay.ca.us/> <https://www.lindsay.ca.us/> will remain the City’s primary and predominant internet presence.
- 8. All City social media sites shall adhere to applicable federal, state and local laws, regulations and policies.
- 9. City social media sites are subject to the California Public Records Act. Any content maintained in a social media format that is related to City business, including a list of subscribers, posted communication, and communication submitted for posting, may be a public record subject to public disclosure.
- 10. Employees representing the City government via City social media sites must conduct themselves at all times as a representative of the City and in accordance with all City policies.
- 11. This Social Media Policy may be revised at any time.
- 12. Comments on topics or issues not within the jurisdictional purview of the City of Lindsay may be removed.
- 13. Any posts deemed to be offensive, derogatory, hostile, or anything that is construed as discriminatory on the basis of any protected category, i.e. race, sex, disability, or religion will be removed.
- 14. The City does not endorse any links or advertisements that may show up on its [Facebook social media page](#).

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Section 23.15 Comments Policy

By posting or commenting on the City of Lindsay’s Facebook page, or other City of Lindsay social media, you agree to the terms of use of the City of Lindsay’s social media ~~comment~~ policy as provided herein.

- 1. As a public entity the City must abide by certain standards to serve all its constituents in a civil and unbiased manner.
- 2. The City of Lindsay Facebook and other social media pages are intended to be “family friendly,” so please keep your comments clean by following these simple rules. In addition to keeping it family friendly, we require that you follow our posting guidelines here. Please note that we utilize Facebook’s automatic content filtering feature. All City of Lindsay social media content is subject to monitoring.

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~~The intended purpose behind establishing City of Lindsay social media sites is to disseminate information from the City, about the City, to its citizens. Comments posted to City of Lindsay social media pages will be monitored, and inappropriate content as defined above will be removed as soon as possible and without prior notice. Please note, comments posted to pages are monitored and our Facebook settings will automatically hide a comment if profanity is used within the post.~~

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Section 23.15 Comment Policy

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CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

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~~4. If you need to contact the Lindsay Police Department, please call their front desk at (559) 562-2511, or if it is an emergency, call 911 and ask for assistance. While comments posted on the City’s social media pages are monitored, posting a comment is neither the recommended nor best way to contact the City or Lindsay Police Department.~~

~~5. Departments shall monitor their social media sites for comments requesting responses from the City and for comments in violation of this policy.~~

~~4. All comments posted to any City of Lindsay Facebook site are bound by Facebook’s Statement of Rights and Responsibilities and Community Standards, located at www.facebook.com/terms.php, and www.facebook.com/communitystandards, respectfully. The City of Lindsay reserves the right to report any violation of Facebook’s Statement of Rights and Responsibilities and/or Community Standards to Facebook with the intent of Facebook taking appropriate and reasonable responsive action.~~

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~~By posting or commenting on the City of Lindsay social media platforms you agree to our terms of use. You participate by your own choice, taking personal responsibility for your comments, your username and any information you provide therein.~~

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CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

**FEDERAL HEALTH CONTINUATION REQUIREMENTS; THE CONSOLIDATED
OMNIBUS RECONCILIATION ACTS OF 1985**

Section 24.1 Continuation Rights as an Employees

The Employee covered by the City group health plan, has the right to choose Continuation Coverage if the employee losses his/her group health coverage because of a reduction in hours of employment or termination of employment, except for reasons of gross misconduct.

Section 24.2 Continuation Rights as a Spouse

The spouse of an employee covered by a group health plan, has the right to chose Continuation coverage if the employee's group health coverage is lost due to:

- (1) The death of the employee
- (2) Termination of the employee's employment (for reason other than gross misconduct) or reduction in his or her hours of employment;
- (3) Divorce or legal separation; or
- (4) The employee's entitlement to Medicare.

Section 24.3 Continuation Rights as a Dependent Child

A dependent child of an employee covered by a group health plan has the right to Continuation Coverage if the employee's group health coverage is lost due to:

- (1) The death of the employee
- (2) Termination of the employee's employment (reasons other than gross misconduct) or reduction in his or her hours of employment;
- (3) Divorce or legal separation;
- (4) The employee's entitlement to Medicare; or
- (5) The dependent ceasing to be dependent child as defined under this group health plan.

Section 24.4 Notice Requirements

The law requires that the employee or family member inform the Plan Administrator, within 60 days, of a divorce, legal separation or when a child is no longer a dependent as defined under group health plan. If the Plan Administrator is someone other than the employer, then the employer has the responsibility to notify the Plan Administrator, within 30 days, in the case of employee's death, termination of employment, reduction in hours or Medicare entitlement. When the Plan administrator is notified that one of these events has happened, the Plan Administrator will in turn notify the employee within 14 days, that he/she has the right to choose Continuation Coverage. The employee then has 60 days from the date they would lose coverage or the date of the notice, whichever is greater, to elect Continuation Coverage.

Each person who loses group health coverage has a separated right to make an election. If Continuation Coverage is not elected, group health coverage may end.

CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

Section 24.5 Premium Payment

A person electing Continuation Coverage may be responsible for the payment for the continued coverage. In most cases the maximum amount that may be charged for Continuation Coverage is 102% of the applicable group premium.

The first premium for Continuation Coverage is due by the 45th day following the date the person elects Continuation Coverage.

The employee has the right to make all future premium payments on a monthly basis. However, annual, semi annual or quarterly payments may also be made if the employee and employer so agree. A grace period of 30 days (or one equal in length to the employer grace period, if longer) will be allowed for late payment of any monthly premium.

Failure to pay the premium by the end of the grace period may cause termination of Continuation Coverage.

Section 24.6 Length of Continuation Coverage

The maximum length for Continuation Coverage is 18 months when the cause for loss of coverage is termination of employment or reduction in the hours of the employee. In all other cases, the Continuation Coverage period 36 months. Continuation Coverage, however, may terminate before the end of the 18 or 36 month period when:

- (1) The former employer no longer provides group health coverage to any of its employees;
- (2) The premium for Continuation Coverage is not paid by the end of the grace period;
- (3) The employee becomes covered under another employer sponsored health plan, except when the new plan has a pre existing condition provision; or
- (4) The employee becomes entitled to Medicare.

When Continuation Coverage terminates, the employee will be allowed to convert to an individual health conversion policy, if a health conversion privilege is available to similarly situated active employees.

Section 24.7 Extension of Continuation Coverage

If the employee and his/her spouse or dependent children have elected Continuation Coverage for 18 months due to termination of employment or reduction in hours and before the end of the 18 month period:

- (1) The employee dies
- (2) The employee divorces or becomes legally separated; or
- (3) The employee becomes entitled to Medicare,

CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

The spouse and dependent children may extend Continuation Coverage. Additionally, during the 18 month period, if a child loses dependent status, the child may also extend Continuation Coverage.

In these instances, Continuation Coverage will extended up to 36 months from the date coverage was originally lost, subject to payment of up to 102% of the applicable group premium.

Section 24.8 Pre-existing Medical Conditions

If the employee's Continuation Coverage terminates because the employee became covered under another employer sponsored health plan and that plan limits or reduces the employee's coverage due to a pre-existing medical condition, the employee may maintain Continuation Coverage for the balance of the applicable 18 or 36 months period.

Continuation Coverage will then pay benefits for the pre-existing medical condition without regard to any other group health coverage. All other benefits will be coordinated with the new group health plan so that no more than 100% of allowable expenses under both group health plans will be payable.

Section 24.9 Social Security Disability

If the employee, his/her spouse or dependent child are disabled at the time of termination in employment or reduction in hours, the disabled person may be entitled to 29 months of Continuation Coverage instead of 18 months.

To qualify for this extension, he or she must apply for disability status under the Social Security Act and notify the Plan Administrator when a determination of disability is made. This notice must be provided to the Plan Administrator within 60 days after the date of determination and prior to the end of the 18- month continuation period. The disabled person must also notify the Plan Administrator within 30 days of the date the Social Security Administration determines that he or she is no longer disabled. This extended Continuation Coverage will then terminate on the first day of the month, which begins after the 30 days of the date of final determination by Social Security.

The first 18 months of Continuation Coverage may require payment of up to 102% of the applicable group premium. The next 11 months may require payment of up to 150% of the applicable group premium.

Section 24.10 State Continuation Rights

Several, but not all states, have continuation options from which the employee may choose as alternatives to Continuation Coverage. If the group health plan requires the employer to offer a state continuation option, there should be an explanation in the employee's group health booklet. The employee may elect either the State Continuation or Continuation Coverage but the employee cannot elect both.

This policy is intended to provide the employee with a brief explanation of COBRA. It is not intended to provide the employee with legal advice.

CITY OF LINDSAY – PERSONNEL RULES AND REGULATIONS

Any notice of change of address, change of marital status, or children's status should be sent to the employer at:

City of Lindsay
251 E. Honolulu
P.O. Box 369
Lindsay, CA 93247



STAFF REPORT

TO: Lindsay City Council
FROM: Joseph M. Tanner, City Manager
DEPARTMENT: City Manager
ITEM NO.: 11.10
MEETING DATE: August 08, 2023

ACTION & RECOMMENDATION

Consider the Approval of Resolution No. 23-35, A Resolution of the City Council of the City of Lindsay Authorizing the Delegation of Authority to Make Decision on Applications for Disability Retirement.

City Staff recommends that the City Council pass and adopt Resolution No. 23-35 to delegate authority to the City Manager to make the determination regarding whether a local safety member is eligible to retire for disability and to make necessary arrangements for any appeals of the City's decision.

BACKGROUND | ANALYSIS

Under the Public Employees' Retirement Law ("PERL") local safety members may be eligible to disability retire through CalPERS if they are substantially incapacitated from performing their usual job duties.

With respect to local safety members, when an application for disability retirement is filed by or on behalf of a local safety member, CalPERS requests that the City make the initial determination regarding whether an employee is substantially incapacitated from performing his or her usual duties and whether the incapacitation is industrial in nature. The City must certify its decision to CalPERS. The local safety member may appeal the decision and receive an administrative hearing.

Under the PERL, the City Council makes the initial decision. However, the PERL allows the City Council to delegate the decision to a subordinate officer. The subordinate officer may also be delegated authority to make any arrangements necessary to provide for an appeal if the local safety member appeals the City's decision on an application for disability retirement.

The decision regarding substantial incapacity is based on a review of the competent medial evidence concerning the injury or disability. The underlying information reviewed remains the same, regardless of whether the City Council or the delegate certifies the decision to CalPERS. However, the delegation allows the decision to be made more quickly without the need to have the matter heard at a City Council meeting and reduces some of the privacy issues that go along with having the decision made by the City Council at a City Council meeting.

FISCAL IMPACT

No fiscal impact associated with this action.

ATTACHMENTS

N/A



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

NUMBER 23-35

TITLE A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY
AUTHORIZING THE DELEGATION OF AUTHORITY TO MAKE
DECISION ON APPLICATIONS FOR DISABILITY RETIREMENT

MEETING At a regularly scheduled meeting of the City of Lindsay City Council held on
August 08, 2023, at 6:00 PM at 251 E. Honolulu Street, Lindsay, CA 93247

WHEREAS, the City of Lindsay is a contracting agency of the California Public Employees' Retirement System; and

WHEREAS, the Public Employees' Retirement Law requires that a contracting agency determine whether an employee of such agency in employment in which he or she is classified as a local safety member is disabled for purposes of the Public Employees' Retirement Law and such disability is "industrial" within the meaning of such law; and

WHEREAS, the City Council of the City of Lindsay has determined upon legal advice that it may delegate authority under Government Code section 21173 to make such determinations to the incumbent of the position of City Manager; and

NOW BE IT RESOLVED, that the City Council of the City of Lindsay delegate and it does hereby delegate applications on behalf of the City of Lindsay pursuant to Government Code section 21152(c) for disability retirement of all employees and to initiate requests for reinstatement of such employees who are retired for disability; and

BE IT FURTHER RESOLVED, that the City Council of the City of Lindsay delegate and it does hereby delegate to the incumbent of the position of City Manager authority to make determinations of disability on behalf of the City of Lindsay under Government Code section 21156 and whether such disability is industrial and to certify such determinations and all other necessary information to the California Public Employees' Retirement System; and

BE IT FURTHER RESOLVED, that in the event that any local safety member appeals the decision of the City Manager regarding his or her incapacitation from the performance of his or her duties pursuant to the Public Employees' Retirement Law, the City Manager is authorized and empowered to make such arrangements to have the appeal heard pursuant to the laws governing California Public Employees' Retirement System retirements, including, but not limited to, entering into an agreement with the Officer of Administrative Hearings for the provision of a hearing before an administrative law judge.

RESOLUTION NO. 23-35

Page 1 of 2



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

PASSED AND ADOPTED by the City Council of the City of Lindsay as follows:

MEETING DATE	August 08, 2023
MOTION	
SECOND MOTION	
AYES	
ABSENT	
ABSTAIN	
NAYS	

CERTIFICATION OF THE FOREGOING RESOLUTION AS FULL, TRUE, PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF LINDSAY AS DETAILED.

FRANCESCA QUINTANA
CITY CLERK

HIPOLITO A. CERROS
MAYOR



STAFF REPORT

TO: Lindsay City Council
FROM: Francesca Quintana, City Clerk & Assistant to the City Manager
DEPARTMENT: City Manager
ITEM NO.: 12.1
MEETING DATE: August 08, 2023

ACTION & RECOMMENDATION

Consider the Designation of Voting Delegates and Alternate(s) for the League of California Cities Annual Conference and Expo.

City Staff recommends that the City Council select a voting delegate and alternate so that the City Clerk may submit their names to the League of California Cities and assure that they are able to cast their vote at the annual business meeting on behalf of the City.

BACKGROUND | ANALYSIS

The Cal Cities 2023 Annual Conference & Expo is scheduled for September 20 – 22, 2023 in Sacramento, California. An important part of the Annual Conference is the Annual Business Meeting (during General Assembly) on Friday, September 22, 2023, at 8:30 AM, please note the new voting time. At this meeting, Cal Cities membership considers and acts on resolutions that establish Cal Cities policy. In order to vote at the Annual Business Meeting, the City Council must designate a voting delegate. The City may also appoint up to two alternate voting delegates, one of whom may vote if the designated voting delegate is unable to serve in that capacity. Designation of the voting delegate and alternates must be done by City Council action and cannot be accomplished by individual action of the Mayor or City Manager alone.

Council should consider the following when selecting the voting delegate and alternate:

- The voting delegate and alternates must be registered to attend the conference.
- In order to cast a vote, at least one voter must be present at the Business Meeting and in possession of the voting delegate card.
- The voting delegate/alternate form must be submitted to the League of California Cities by August 28, 2023.

FISCAL IMPACT

No fiscal impact associated with this action.

ATTACHMENTS

- Voting Delegate Packet



Council Action Advised by August 28, 2023

DATE: Wednesday, June 21, 2023

TO: Mayors, Council Members, City Clerks, and City Managers

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference and Expo, Sept. 20-22, 2023,
Sacramento SAFE Credit Union Convention Center**

Every year, the League of California Cities convenes a member-driven General Assembly at the [Cal Cities Annual Conference and Expo](#). The General Assembly is an important opportunity where city officials can directly participate in the development of Cal Cities policy.

Taking place on Sept. 22, the General Assembly is comprised of voting delegates appointed by each member city; every city has one voting delegate. Your appointed voting delegate plays an important role during the General Assembly by representing your city and voting on resolutions.

To cast a vote during the General Assembly, your city must designate a voting delegate and up to two alternate voting delegates, one of whom may vote if the designated voting delegate is unable to serve in that capacity. Voting delegates may either be an elected or appointed official.

Please complete the attached voting delegate form and email it to Cal Cities office no later than Monday, August 28.

New this year, we will host a pre-conference information session for voting delegates to explain their role. Submitting your voting delegate form by the deadline will allow us time to establish voting delegate/alternate records prior to the conference and provide pre-conference communications with voting delegates.

Please view Cal Cities' [event and meeting policy](#) in advance of the conference.

Action by Council Required. Consistent with Cal Cities bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council.

Please note that designating the voting delegate and alternates **must** be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.



Conference Registration Required. The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. Conference registration is open on the [Cal Cities](#) website.

For a city to cast a vote, one voter must be present at the General Assembly and in possession of the voting delegate card and voting tool. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the voting delegate desk. This will enable them to receive the special sticker on their name badges that will admit the voting delegate into the voting area during the General Assembly.

Transferring Voting Card to Non-Designated Individuals Not Allowed. The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the General Assembly, they may *not* transfer the voting card to another city official.

Seating Protocol during General Assembly. At the General Assembly, individuals with a voting card will sit in a designated area. Admission to the voting area will be limited to the individual in possession of the voting card and with a special sticker on their name badge identifying them as a voting delegate.

The voting delegate desk, located in the conference registration area of the SAFE Credit Union Convention Center in Sacramento, will be open at the following times: Wednesday, Sept. 20, 8:00 a.m.- 6:00 p.m. and Thursday, Sept. 21, 7:30 a.m.- 4:00 p.m. On Friday, Sept. 22, the voting delegate desk will be open at the General Assembly, starting at 7:30 a.m., but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to Cal Cities office by Monday, Aug. 28. If you have questions, please contact Zach Seals at zseals@calcities.org.

Attachments:

- General Assembly Voting Guidelines
- Voting Delegate/Alternate Form
- Information Sheet: Cal Cities Resolutions and the General Assembly

General Assembly Voting Guidelines

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to Cal Cities policy.
2. **Designating a City Voting Representative.** Prior to the Cal Cities Annual Conference and Expo, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the voting delegate form provided to the Cal Cities Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the voting delegate desk in the conference registration area. Voting delegates and alternates must sign in at the voting delegate desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the General Assembly.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the credentials committee at the voting delegate desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in their possession the city's voting card and voting tool; and be registered with the credentials committee. The voting card may be transferred freely between the voting delegate and alternates but may not be transferred to another city official who is neither a voting delegate nor alternate.
6. **Voting Area at General Assembly.** At the General Assembly, individuals with a voting card will sit in a designated area. Admission to the voting area will be limited to the individual in possession of the voting card and with a special sticker on their name badge identifying them as a voting delegate.
7. **Resolving Disputes.** In case of dispute, the credentials committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the General Assembly.



CITY: _____

**2023 ANNUAL CONFERENCE
VOTING DELEGATE/ALTERNATE FORM**

Please complete this form and return it to Cal Cities office by Monday, August 28, 2023. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.

To vote at the General Assembly, voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

Please note: Voting delegates and alternates will be seated in a separate area at the General Assembly. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the voting delegate desk.

1. VOTING DELEGATE

Name: _____

Email: _____

Title: _____

2. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

Email: _____

3. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

Email: _____

ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES OR

ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).

Name: _____ Email: _____

Mayor or City Clerk: _____ Date: _____ Phone: _____
(circle one) (signature)

Please complete and email this form to votingdelegates@calcities.org by Monday, August 28, 2023.

How it works: Cal Cities Resolutions and the General Assembly

Developing League of California Cities policy is a dynamic process that engages a wide range of members to ensure that we are representing California cities with one voice. These policies directly guide Cal Cities advocacy to promote local decision-making, and lobby against statewide policy that erodes local control.

The resolutions process and General Assembly is one way that city officials can directly participate in the development of Cal Cities policy. If a resolution is approved at the General Assembly, it becomes official Cal Cities policy. Here's how Resolutions and the General Assembly works.

Prior to the Annual Conference and Expo

General Resolutions



Sixty days before the Annual Conference and Expo, Cal Cities members may submit policy proposals on issues of importance to cities. The resolution must have the concurrence of at least five additional member cities or individual members.



Policy Committees



The Cal Cities President assigns general resolutions to policy committees where members review, debate, and recommend positions for each policy proposal. Recommendations are forwarded to the Resolutions Committee.



During the Annual Conference and Expo

Petitioned Resolutions



The petitioned resolution is an alternate method to introduce policy proposals during the annual conference. The petition must be signed by



voting delegates from 10% of member cities, and submitted to the Cal Cities President at least 24 hours before the beginning of the General Assembly.

Resolutions Committee



The Resolutions Committee considers all resolutions. General Resolutions approved¹ by either a policy committee or the Resolutions Committee are next considered by the General Assembly. General resolutions not approved, or referred for further study by both a policy committee and the Resolutions Committee do not go the General Assembly. All Petitioned Resolutions are considered by the General Assembly, unless disqualified.²



General Assembly



During the General Assembly, voting delegates debate and consider general and petitioned resolutions forwarded by the Resolutions Committee. Potential Cal Cities bylaws amendments are also considered at this meeting.

Who's who

Cal Cities policy development is a member-informed process, grounded in the voices and experiences of city officials throughout the state.

The **Resolutions Committee** includes representatives from each Cal Cities diversity caucus, regional division, municipal department, policy committee, as well as individuals appointed by the Cal Cities president.

Voting delegates are appointed by each member city; every city has one voting delegate.

The **General Assembly** is a meeting of the collective body of all voting delegates — one from every member city.

Seven **Policy Committees** meet throughout the year to review and recommend positions to take on bills and regulatory proposals. Policy committees include members from each Cal Cities diversity caucus, regional division, municipal department, as well as individuals appointed by the Cal Cities president.

What's new in 2023?



- Voting delegates will receive increased communications to prepare them for their role during the General Assembly.
- The General Assembly will take place earlier to allow more time for debate and discussion.
- Improvements to the General Assembly process will make it easier for voting delegates to discuss and debate resolutions.

¹ The Resolution Committee can amend a general resolution prior to sending it to the General Assembly.

² Petitioned Resolutions may be disqualified by the Resolutions Committee according to Cal Cities Bylaws Article VI, Sec. 5(f).



STAFF REPORT

TO: Lindsay City Council
FROM: Francesca Quintana, City Clerk & Assistant to the City Manager
DEPARTMENT: City Manager
ITEM NO.: 12.2
MEETING DATE: August 08, 2023

ACTION & RECOMMENDATION

Consider the Selection of Dates and Times for City Council Brown Act, Harassment, and Ethics in Public Service Training.

City Staff recommends that the City Council consider the selection of two (2) dates for a City Council Brown Act, Harassment and Discrimination, and Ethics Training to be administered pursuant to the City Council Handbook.

BACKGROUND | ANALYSIS

Section 3.9 'Trainings' of the adopted City Council Handbook outlines the trainings that City Council members should receive, and their frequency as summarized below.

Brown Act: Members of the City Council and commissions shall receive training in the Ralph M. Brown Act as it relates to public service every two years.

Sexual Harassment Prevention: In addition, Council members shall receive two hours of sexual harassment prevention training every two years, per State law.

Ethics: Members of the City Council and commissions shall receive at least two hours of ethics training in general ethics principles and ethics laws relevant to their public service every two years.

At this time, all members of the City Council are due to receive the above referenced trainings and thus City Staff would like to make the appropriate arrangements so that the training may be administered.

Staff proposes that the training be administered in ***two (2) separate sessions*** by a licensed attorney, held in-person at Lindsay City Hall, held during an evening on a day of the workweek, and have an expected duration of 2-3 hours per session.

City Staff kindly requests that the City Council select two (2) of the below dates and times for the training.

- Friday August 25, 2023, at 5:00 PM or 6:00 PM
- Tuesday, August 29, 2023, at 5:00 PM or 6:00 PM
- Friday, September 01, 2023, at 5:00 PM or 6:00 PM
- Friday, September 15, 2023, at 5:00 PM or 6:00 PM

FISCAL IMPACT

The training cost is expected to total \$4,075.00 +/- \$750.00 (*should the travel time for the training administrator be longer than 1.5 hours, one way*). A more detailed breakdown is provided below.

Session #1: \$2,150.00

- Brown Act (1 hour) and Ethics in Public Service Training (2 hours)

Session #2: \$1,925.00

- Harassment (2 hours)

This cost would be sourced from 101-4030-69088 CITY MANAGER STAFF TRAINING FUND.

ATTACHMENTS

- City Council Handbook



City of Lindsay

City Council Handbook

Approved and Adopted:

01-11-2022 by Resolution 22-05

Amended:

02-14-2023 by Resolution 23-03

Last Updated: February 2023

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SECTION 1. GENERAL

- 1.1 **Purpose.** The purpose of the City Council Handbook is to promote communication, understanding, fairness, and trust among the members of the Lindsay City Council and staff concerning their roles, responsibilities, and expectations for management of the business of the City of Lindsay.
- 1.2 **Values.** Council members shall represent the best interests of the City and community at large. Councilmembers shall treat fellow Councilmembers, members of the public, staff and consultants with respect, civility and courtesy. Councilmembers shall respect each other's individual points of view and right to disagree. When addressing the public in any way, Councilmembers shall make certain their opinions are expressed solely as their own, and do not necessarily reflect the opinions of any other Councilmember. Council members shall respect the decisions of the majority of the Council at all times.
- 1.3 **Code of Conduct.** Members of City Council shall abide by the following code of conduct.

Members shall:

Work for the common good of the people of the City of Lindsay and not for any private or personal interest.

Endeavor to treat all members of the public and issues before them in a fair and equitable manner.

Make impartial decisions, free of bribes, unlawful gifts, narrow political interests and financial or other personal interests that impair independence of judgment or action.

Decisions will be fair, objective, made in public (unless allowed or required to be made in closed session), and understandable.

Fully participate in their meetings and other public forums while demonstrating respect and courtesy to others, practicing civility and decorum in discussions and debate, listening courteously and attentively, and engaging in effective communication.

Act in an efficient manner, making decisions based upon research and facts in accordance with the Brown Act to allow full and equal participation in the public process.

Refrain from abusive conduct, personal charges or verbal attacks upon the character, motives, ethics or morals of other members, staff or members of the public. Refrain from negative comments regarding any person or

group based on their race, ethnicity, sex, gender, sexual orientation, national origin, immigration status, religion, disability, age, marital status, or membership in any other protected category.

Respect and preserve the confidentiality of information provided to them concerning confidential matters of the City, and refrain from disclosing any information received confidentially without proper legal authorization nor use such information to advance the personal, financial, or private interests of themselves or others.

Use their title only when conducting official City business, for informational purposes, or as an indication of background and expertise, carefully considering whether they are exceeding or appearing to exceed their authority.

Respect established channels of communication with City staff, treat staff members professionally, and not attempt to pressure or influence discussions, recommendations, workloads, schedules or department priorities without the approval of a majority of the City Council providing direction directly to the City Manager.

In unofficial settings, members of City Council shall be clear in representing to the public, other agencies, and the media whether their comments or statements represent the official position of the City or a personal viewpoint.

- 1.4 Review. The City Council Handbook shall be amended by a majority vote of the City Council and may be updated administratively by the City Clerk in order to remain current with federal, state, and local law. It is recommended that a new Council conduct a review of the document within thirty days of its first regular meeting.
- 1.5 Ralph M. Brown Act. All conduct of the City Council shall be in full compliance with State law, including the Ralph M. Brown Act.

SECTION 2. MAYOR AND MAYOR PRO TEM APPOINTMENT PROCESS

- 2.1 Appointment of Mayor. The Council shall appoint from among their members a Mayor. Nominations shall be recorded by the City Clerk. The City Clerk will confirm acceptance of each nomination and put each nominee's name to a vote in the order of the nominations received. The Mayor shall serve a two-year term and serve as the Presiding Officer of the Council.
- 2.2 Appointment of Mayor Pro Tem. The Council shall appoint from among their members a Mayor Pro Tem. Nominations shall be recorded by the City Clerk.

The City Clerk will confirm acceptance of each nomination and put each nominee's name to a vote in the order of the nominations received. The Mayor Pro Tem shall serve a one-year term and fulfill the duties of the Mayor in their absence.

SECTION 3. COUNCIL ADMINISTRATIVE MATTERS

- 3.1 Oath of Office. The oath of office shall be administered to all Councilmembers prior to their assumption of office, at or before the first meeting in January following a general election, or within 30 days of a qualified person's appointment to fill a Council vacancy.
- 3.2 Reorganization. The reorganization of the Council shall occur at the first meeting in December, or as soon thereafter.
- 3.3 Seating Order. Following the reorganization of Council, the City Clerk shall designate the seating order for the Council dais. The Mayor Pro Tem shall always be seated immediately to the right of the Mayor.
- 3.4 Attendance. City Councilmembers acknowledge that attendance at lawful meetings of the City Council is part of their official duty. Councilmembers shall make a good faith effort to attend all such meetings unless unable. Councilmembers will notify the City Manager or the City Clerk if they will be absent from a meeting, or if they wish to participate via teleconference prior to the meeting. Should a member of the Council have two (2) absences without notice, a review of Council Committees will be prompted and added to the next Council meeting agenda.
- 3.5 Appointment of Vacancy. If a vacancy occurs less than 90 days prior to a regular election, no appointment shall be made and the vacancy will be filled through the regular election process. Should a vacancy occur more than 90 days prior to the next regular election at which council members are to be elected, the vacancy shall be filled by a majority vote of the remaining members of the City Council. The Council shall determine the process for appointment prior to the application process and in full accordance with State law.
- 3.6 Boards, Commissions, and Committees. The Council shall appoint representatives to committees, commissions, and boards as required by the governing bodies.

No later than the second regular meeting of January of each year, Council shall review all the appointments as provided in a list prepared by the City Clerk. The annual review will be conducted to fill vacancies or an expired term of office, and to consider removal of any appointee for cause, such as for failure to keep

Council informed of the Committee's activities, or for excessive absenteeism without good cause.

Each Councilmember shall commit themselves to serving as a representative on a minimum of one committee, commission, and/or board.

Councilmembers shall make a good faith effort to attend all meetings that require a quorum of the appointed members to convene a meeting.

If a Councilmember is unable to attend, they should notify their alternate and the City Clerk as far in advance of the meeting as possible.

Council representatives to such committees, commissions, or boards shall keep the Council informed of ongoing business through brief oral or written reports to the Council.

The City Clerk will maintain and keep on file a list of Standing Committees, Ad Hoc Committees, regional agencies and organizations, and boards to which Councilmembers are appointed.

- 3.7 Reimbursement. The Council shall establish in the budget funding for conferences, meetings, training, and representation at ceremonial functions for the benefit of the City. Councilmembers shall attend these functions for purposes of improving comprehension of and proficiency in municipal affairs and/or legislative operations. Councilmembers shall be subject to the City's Administrative Policy and Procedures for travel and expenses reimbursement. Councilmembers shall not exceed travel expenses in the amount of \$2,500 per fiscal year. Should a Councilmember wish to exceed the \$2,500 amount allotted for travel per fiscal year, the request shall be placed on a regular meeting agenda and subject to approval by a majority of the Council.
- 3.8 Requests for City-Sanctioned Events or Use/Rental of City Facilities Outside of Normal Operation Hours. Any request for a City-sanctioned event to the City Council will be submitted as an agenda item and follow the timelines for submittal of agenda reports. Any request for a City-sanctioned event should include general information regarding the purpose and content of the event; anticipated event cost; information on the presenters; contact information; expected staff resources, and its overall benefit to the City. The request *must* be made during the 'Request for Future Items' portion of the regular City Council meeting. The request will be placed on the next meeting agenda and be subject to approval by a majority of the Council.

3.9 Trainings.

Ethics: Members of the City Council and commissions shall receive at least two hours of ethics training in general ethics principles and ethics laws relevant to their public service every two years. New members must receive this training within their first year of service. Members shall attend training sessions that are offered locally in the immediate vicinity of Tulare County or by completing online a state-approved public service ethics education program. An individual who serves on multiple legislative bodies needs only receive two hours of ethics training every two years to satisfy this requirement for all applicable public service positions.

Brown Act: Members of the City Council and commissions shall receive training in the Ralph M. Brown Act as it relates to public service every two years. New members must receive this training within their first year of service. Members shall attend training sessions that are offered locally in the immediate vicinity of Tulare County or by completing an online education component. Additionally, each Councilmember shall be provided with a digital copy of the a guide to the Ralph M. Brown Act prior to their assumption of office.

Sexual Harassment Prevention: In addition, Council members shall receive two hours of sexual harassment prevention training every two years, per State law. New members must receive this training within their first six months of service.

3.10 Use of Electronic Devices During Council Meetings. Councilmembers shall not use electronic devices to send or receive communications regarding agenda items or to access information which other Councilmembers do not have equal access to during a meeting of the City Council at which they are in attendance. This does not apply to receipt of telephone calls or text messages from family members in the event of an urgent family matter.

3.11 Public Records. Councilmembers shall strive to use only their official City email account to conduct City business. The City shall provide Councilmembers with separate publicly owned devices such as tablets or cell phones for the conduct of City business.

If a request for records is received, a search that is reasonably calculated to locate responsive records will be conducted. Privacy concerns can and should be addressed on a case-by-case basis.

Social Media, AB 992, and the Brown Act. The City Council recognizes social media as a powerful tool for distributing important information and connecting with constituents. However, it is important to be mindful of how the regulations

set forth in the Brown Act and, more recently, AB 992 impact Councilmembers' use of social media.

Under AB 992, a public official may communicate on social media platforms to answer questions, provide information to the public or to solicit information from the public regarding a matter within the legislative body's subject matter jurisdiction. However, these communications are only permissible so long as a majority of the members of the legislative body do not use any social media platform to "discuss among themselves" official business. Importantly, "discuss among themselves" has been broadly defined and arguably includes making posts, commenting, replying, sharing, reacting (e.g. "liking" a post) or using digital icons that express reactions, i.e., emojis.

The City council should abide by the provisions found within the City of Lindsay Social Media Policy.¹

Best practices include the following:

- a. Create a separate "business-only" account rather than using a personal account to distribute official information.
- b. Limit online interactions with other Councilmembers to avoid the perception of a "serial meeting" under the Brown Act.
- c. Avoid posting, responding, or interacting with posts that concern substantive agenda items or issues within subject matter jurisdiction.
- d. Do not block, unfriend, delete, or otherwise remove any social media user OR consider disabling the comment function altogether.

3.12 Conflict of Interest. The Political Reform Act states that public officials shall perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. The Political Reform Act establishes regulations regarding conflicts of interests and campaign receipts and expenditures.

A public official who holds an office specified in Government Code Section 87200, and who has a disqualifying financial interest in a decision, shall identify the conflict of interest or potential conflict of interest, and immediately prior to the consideration of the matter, do all of the following:

- a. Publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in enough detail to be understood by the public. *Residential street addresses do not have to be disclosed.*

¹ Attached as Appendix C

- b. Recuse themselves from discussing and voting on the matter, or otherwise acting in violation of Government Code Section 87100.
- c. Leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the Consent Calendar and is not pulled for extended discussion.

In the event, that multiple Councilmembers disclose a disqualifying Conflict of Interest for the same matter and a quorum is not reached with the remaining Councilmembers, the City Attorney shall provide guidance as to the selection method for achieving quorum.

It is critical to note that compliance with the State's conflict of interest laws is each public official's personal responsibility. While the City Attorney can render advice on the interpretation of State laws and regulations on conflict matters, such advice is solely an interpretation of the law. Further, the City Attorney represents the City and City Council as a whole and not individual Councilmembers. The only authority that can provide binding interpretations and possible immunity from civil or criminal liability on such matters is the Fair Political Practices Commission (FPPC).

SECTION 4. COUNCIL INTERACTION WITH CITY MANAGER, STAFF, AND MEDIA

- 4.1 City Manager. Councilmembers are free to go to the City Manager to discuss any subject. Issues concerning the performance of a Department or any employee must be directed to the City Manager. Councilmembers shall not meet with groups of management employees for the purpose of discussing terms of employment or establishing employee policy. Direction to City employees, other than the City Manager or City Attorney, is the sole prerogative of the City Manager.
- 4.2 Staff. The Council shall not abuse staff nor embarrass staff during open session, or at any other time. If a Councilmember has a question on a subject on the agenda, the Councilmember is encouraged to contact the City Manager, City Clerk, or Department Head prior to any meeting at which the subject may be discussed. This does not restrict Councilmembers from asking additional questions during a Council meeting. The Council shall treat staff members professionally, and not attempt to pressure or influence discussions, recommendations, workloads, schedules or department priorities without the approval of a majority of the City Council providing direction directly to the City Manager.
- 4.3 Media. Typically, the Mayor is the designated representative of the Council to speak on official City positions; however, the Mayor may at any time decline to

make a public statement and/or designate a speaker on their behalf. Any Councilmember may choose to comment to the media but should clearly distinguish between personal viewpoints and any official City position. Generally, press releases shall be prepared by City staff and routed to the City Manager for approval before release to the media. No member of the City Council shall issue any press release on behalf of the City without the express approval of the City Manager. The Councilmember appointed to the role of Mayor shall be clear in making oral or written public statements that they represent their personal viewpoint as the Mayor, or upon approval of a majority of the City Council, represent the viewpoint of the full City Council.

SECTION 5. MEETINGS

- 5.1 **Open to the Public.** All meetings of the City Council whether regular, special, or study sessions, shall be open to the public, unless a closed session is held as authorized by law. All meetings shall be noticed as required to allow action to be taken by the Council.
- 5.2 **Quorum.** Three members of the City Council shall constitute a quorum and shall be sufficient to transact business. A quorum must be present to begin a Council meeting, for any vote to be taken, and during any portion of a noticed public hearing. If less than three Councilmembers appear at a regular meeting, the Mayor, Mayor Pro Tem in the absence of the Mayor, any Councilmember in the absence of both the Mayor and Mayor Pro Tem, or in the absence of all Council Members, the City Clerk, shall adjourn the meeting to a stated day and hour or cancel the meeting due to the lack of a quorum.
- 5.3 **Broadcasting of City Council Meetings.** All regular City Council meetings shall be video-recorded and broadcast over an online video teleconferencing platform of the City's choice, unless the City is unable to do so due to unforeseen circumstances or circumstances beyond the City's control.
- 5.4 **Teleconferencing.** If circumstances prevent a Councilmember from being physically present during a City Council meeting, the member may choose to participate via teleconference pursuant to State Law. Participation via teleconference shall be considered sufficient to attain Council quorum.

At the start of any Council meeting during which a Councilmember participates via teleconference, the City Clerk must announce the name of the Councilmember who is participating remotely and record that information in the meeting minutes. No Councilmember shall be authorized to participate in a meeting via teleconference unless:

- a. The member notifies the City Manager and the City Clerk prior to the start of the meeting.
- b. The remote connection is established prior to the start of the meeting and continuous for the duration of the meeting.
- c. All persons present at the place of the meeting (including members of the public) can hear and speak to the person(s) participating remotely, and the person(s) participating remotely can hear and speak to all persons present at the place of the meeting, and to any other individual participating in the meeting via teleconference.

If a remote participant is disconnected from the meeting, the minutes must note that fact and the time at which the disconnection occurred.

A member who participates remotely retains their right to speak when recognized by the Presiding Officer, make or second any motion and cast votes.

- 5.5 Regular Meetings. As a matter of general principle, the City Council shall conduct its regular meetings at 6:00 p.m. on the second and fourth Tuesdays of each month in the City Council Chambers located at City Hall. The time, date, or place of a regular meeting may be altered as published in the Council agenda.
- 5.6 Adjournment. It shall be the policy of the City Council to adjourn meetings, including executive closed sessions, by 9:00 p.m. unless the Council elects to continue past the adjournment hour by unanimous consent of all Councilmembers in attendance, including any Councilmembers participating via teleconference. If at the hour of 9:00 p.m. the City Council has not concluded its business, the Council will review the balance of the agenda and determine by vote whether to continue any remaining items to the next regularly scheduled meeting or adjourn the meeting to another date and time pursuant to the procedures set forth in the Brown Act.
- 5.7 Successor Agency Meetings. The City Council also sits as Board Members of the Successor Agency to the dissolved Lindsay Redevelopment Agency and shall meet on an as-needed basis. The Mayor shall serve as Chairperson and the Mayor Pro Tem shall serve as the Vice Chairperson.
- 5.8 Special Meetings. Pursuant to Government Code Section 54956, a special meeting may only be called by the Mayor or a majority of the Council. Written notice must be given to the City Council and to the media 24 hours prior to a special meeting. Notice requirements of the Brown Act shall be complied with for all meetings. Notice of the meeting must be given in accordance with law. Public comments at special meetings shall be limited to only those items described on the special meeting notice/agenda.

- 5.9 Study Sessions. The City Council may choose to hold study sessions or joint meetings with other boards, commissions, committees, or agencies as deemed necessary to attend to City business. Study sessions are scheduled to provide Councilmembers the opportunity to better understand a particular item.
- 5.10 Closed Sessions. The City Council may hold closed sessions at any time authorized by law (and in consultation with the City Attorney), to consider or hear any matter, which is authorized by law. Requests for a closed session should be made to the City Manager.

SECTION 6. POSTING NOTICE AND AGENDA

- 6.1 Posting of Notice and Agenda. For every regular, special, or study session meeting, the City Clerk or other authorized person shall post a notice of the meeting, specifying the time and place at which the meeting will be held, and an agenda containing a brief description of all items of business to be discussed at the meeting. This notice and agenda may be combined in a single document. The City Clerk shall post each agenda for a City Council regular meeting no less than 72 hours in advance of the meeting and shall post each agenda for a special meeting no less than 24 hours in advance of the meeting online and in the official bulletin board. The City Clerk shall maintain an affidavit indicating the location, date and time of posting for each agenda. The City Clerk shall also post agenda packets, minutes and all legal notices for City Council meetings on the City's website. Copies shall also be available free of charge in the City Clerk's Office. Not later than the third day prior to said meeting, the City Clerk shall distribute the packet to each member of the City Council and place a packet for public review at the City Hall Bulletin Board. The agenda packet will also be made available to members of the press upon request and will be posted on the City's website. Any supplemental materials distributed to members of the City Council after the posting of the agenda will be available for public review in the City Clerk's Office and at the City Council meeting. If supplemental materials are made available to the members of the City Council at the meeting, a copy will be available for public review in the City Council Chambers. All supplemental materials shall be posted online after the meeting. The City Clerk shall not accept any agenda item or revised agenda item after established deadlines unless authorized by the City Manager.
- 6.2 Description of Matters. All items of business to be discussed at a meeting of the City Council shall be briefly described on the agenda. Matters not included on the published agenda may not be discussed and acted upon unless otherwise authorized by State law or providing the City Council finds one of the following conditions is met: a) Four-fifths of the City Council determines that the subject

meets the criteria of "Emergency" as defined in Section M. b) Four-fifths of the City Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the agenda as required by law.

- 6.3 Location of Posting. The notice and agenda shall be posted on a bulletin board, publicly accessible, at City Hall, 251 E. Honolulu Street, Lindsay, California, and on the City website.

SECTION 7. AGENDA CONTENTS

- 7.2 Agenda Packets. Councilmembers are expected to review the agenda and all agenda packet materials, participate in discussions, and make an informed decision on the merits of the issues before them. The complete agenda packet for any regular, special, or study session meeting shall be made available to the public as required by law.
- a. Packet Preparation. No later than the Friday prior to the City Council Meeting, the City Clerk shall prepare the agenda packet, which shall include the agenda plus all of its corresponding agenda reports and attachments. No item shall be considered if not included in the packet, except that a correction or supplement to an item already included in the packet may be considered. Reports carried over as Old Business shall be reproduced again at the City Manager's discretion.
- 7.3 Limitation to Act Only on Items on the Agenda. No action shall be taken on any matter not on the posted agenda, subject only to the exception whereupon a majority of the Council determines the existence of an "emergency situation" as defined by state law.
- 7.4 "Emergency Matter". In accordance with State Law, an emergency matter arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the City Council determines that: 1) a work stoppage or other activity which severely impairs public health, safety, or both; 2) a crippling disaster which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.
- 7.5 "Timing" of Agenda. The City Clerk will "time" each agenda item as a way for the Council to maintain a sense of how much time can be committed to any one item without going past an established ending time for the meeting. This includes a suggested maximum of 10 minutes for any presentations to Council.

- 7.6 Consent Calendar. The Consent Calendar may include routine and noncontroversial items. Items on the Consent Calendar are treated as one agenda item and shall be acted upon by a single vote of Council. A Councilmember may request an item be removed from the Consent Calendar. Councilmembers shall be given the opportunity to ask a clarifying question about a consent item or make a brief comment about an item without having to remove the item from the Consent Calendar.
- 7.7 Council Requests for Future Agenda Items. Council requests for future agenda items, can be called for by any Councilmember during the 'Request for Future Items' section of a regular meeting. Immediately following the request of an item, a vote will be taken on the item. If a majority of the City Council supports further study of the item, then a full staff analysis will be prepared within a reasonable time as determined by the City Manager unless otherwise directed by a majority of the City Council. Discussion shall be limited to whether an item should be added to an agenda, not the merit of the item.
- 7.8 Procedure for Bringing Matters before City Council.
- a. Requesting Matters for Placement on the Agenda. Matters requested by City staff are approved by the City Manager. Agenda reports shall be reviewed by the City Manager. The City Manager can recommend that the matter be referred to the City Council or back to the originating department for adherence to required form, additional analysis, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions. The City Manager determines the placement and timing of items on the Agenda.
 - b. Emergency and Non-Agendized Items. Emergency and non-agendized items may be added to an agenda only in accordance with state law. Emergency items are only those matters affecting public health or safety such as work stoppages, disasters and other severe emergencies that severely impair the public health and/or safety qualify for emergency meetings. Adding an emergency item requires a four-fifths vote of the Council. Emergency items are very rare. More likely, after the agenda is posted, an item arises that the City Council would like to act on. Nonagendized items may be added to the agenda only if the City Council makes findings that 1) the need to consider the item arose after the posting of the agenda; and 2) there is a need to take immediate action at this meeting of the City Council. These findings must be approved by a four-fifths vote; if less than five members of City Council are present, the findings require a unanimous vote of those present.

- c. Scheduling Public Hearings Mandated by State, Federal, or Local Statute. The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.
- d. Submission of Agenda Items. Except for Old Business, as a condition to placing an item on the agenda, agenda items from departments, shall be furnished to the City Clerk at a time established by the City Manager. The City Manager has set a deadline of 12:00 p.m. on Monday eight days prior to the regular City Council Meeting at which the item is to be presented. If Monday falls on a holiday, the agenda item shall be submitted to the City Clerk on the preceding Thursday, twelve days before a meeting.
- e. Proclamations. Ceremonial proclamations are often requested of the City in recognition of an event or individual. Certificates and Proclamations may be sent directly to the requestor or presented at a City Council meeting as arranged with the requesting body and at the Council's discretion. Proclamations may be approved by the Mayor, Two (2) Members of the City Council, or the City Manager (for routine items). Proclamations or certificates of recognition will **not** be issued for: Political Campaigns or Endorsements of Political Candidates, individuals with no direct relationship to the City of Lindsay, or individuals contrary to City policies or any applicable law or regulation. City Council Members will have the opportunity for rebuttal of a proclamation immediately following its reading.
- f. Formal City Council Positions. Formal support or opposition by the City Council for any form of a legislative platform, specific legislation or other matters shall be approved by a majority of the City Council. Any individual Councilmember may request the Mayor for approval to add an item to the agenda for consideration. The Mayor shall report out at a City Council Meeting, any statements made representing the viewpoint of the full City Council. The City Council shall not take action on any matter that has no direct effect on the local affairs of the City of Lindsay and over which the City, as a California municipal corporation, has no jurisdiction. The requesting Councilmember shall furnish with the request, proposed language in the form of a letter, resolution, or other documentation that provides a direct connection or effect on the City of Lindsay.
- g. Scheduling a Presentation. Any requests for a presentation, can be called for by any Councilmember during the 'Request for Future Items' section of a regular meeting. Immediately following the request of a presentation,

a vote will be taken on the item. If a majority of the City Council supports the presentation, then the presentation will be scheduled within a reasonable time as determined by the City Manager unless otherwise directed by a majority of the City Council. Discussion shall be limited to whether a presentation should be added to an agenda, not the merit of the item. Members of the public may also request a presentation in writing to the City Clerk of City Manager. Staff shall present the written request to the Council at the meeting following the written request. A vote will be taken on the item.

SECTION 8. PROCEDURES FOR THE CONDUCT OF PUBLIC MEETINGS

- 8.1 Sergeant-at-Arms. The Chief of Police their designee shall serve as the Sergeant-at-Arms of the Council meetings, and shall be in attendance when requested by the Presiding Officer. The Sergeant-at-Arms shall carry out all orders and instructions given by the Presiding Officer for the purpose of maintaining order and decorum at council meetings. The Mayor may call a recess if a speaker or group of speakers become unruly and/or interferes with the orderly conduct of the meeting. The Sergeant-at-Arms shall carry out all orders and instructions given by the Mayor for the purpose of maintaining order and decorum at the City Council meetings. Upon instructions of the Mayor or a majority of the City Council, it shall be the duty of the Sergeant-of-Arms, or any officer present, to escort outside or place under arrest any person who violates the order and decorum of the meeting, and cause them as necessary, to be prosecuted under the provisions of applicable law. Effective January 1, 2022, Senate Bill (SB) 1100 Section 54957.95 pertaining to orderly conduct of open meetings will be in effect.
- 8.2 Parliamentarian. The City Clerk shall be designated as Parliamentarian for the City Council proceedings to advise the Presiding Officer, within the limitations imposed by *Rosenberg's Rules of Order* and in consultation with the City Attorney.
- 8.3 Presiding Officer. The Mayor shall serve as the Presiding Officer of the Council. As Presiding Officer, the Mayor is responsible for running a timely and orderly meeting. If the Mayor is unavailable, the Mayor Pro Tem shall run the meeting. In the absence of both the Mayor and the Mayor Pro Tem, the City Clerk shall call the Council to order, whereupon a temporary Presiding Officer shall be selected by the Councilmembers present for the duration of one meeting only.
- 8.4 Responsibilities of the Presiding Officer.
 - a. The Presiding Officer shall be responsible for maintaining the order and decorum of meetings. It shall be the duty and responsibility of the Presiding Officer to ensure that the rules of operation and decorum

contained herein are observed. The Presiding Officer shall maintain control of communication between Councilmembers and among Council, staff and public.

- b. Communication with Councilmembers
 - i. Councilmembers shall request the floor from the Presiding Officer before speaking.
 - ii. When one member of the Council has the floor and is speaking, other Councilmembers shall not interrupt or otherwise disturb the speaker.
- c. Communication with Members of the Public Addressing the Council
 - i. The Presiding Officer shall open the floor for public comment as appropriate.
 - ii. Any staff member with an item on the agenda will be available to the City Council to answer questions arising during discussions between Councilmembers and among Councilmembers and members of the public.
 - iii. Members of the public shall direct their questions and comments to the Council, not to staff.

8.5 Rules of Order. The City Council adopts no specific rules of order except those listed herein. The City Council shall refer to *Rosenberg's Rules of Order*, as a guide for the conduct of meetings, with the following modifications:

- a. A motion is not required prior to a general discussion on an agenda item. A pre-motion discussion allows the members to share their thoughts so that a motion can more easily be made that considers what appears to be the majority position.
- b. All motions except nominations require a second.
- c. A motion may be amended at the request of the maker and the consent of the person who seconded the motion. Such a procedure is often used to accommodate concerns expressed by other members.
- d. A motion to amend may still be used.

8.6 Public Hearing Procedures. Generally, public hearings are to be conducted in the following order:

- a. Presentation of Staff Report.
- b. Questions by Council and/or Staff.

- c. Presiding Officer Opens Hearing.
- d. Public Testimony.
 - i. Public Hearings shall be conducted with such time necessary for a fair and reasonable oral testimony; it is the City's policy not to institute time limits for public testimony under Public Hearing matters.
- e. Presiding Officer Closes Hearing.
 - i. Once the hearing has been closed, no additional public testimony will be taken without a majority vote of the Council to reopen the hearing.
 - ii. No main motions may be made by a Councilmember until after a hearing is closed for public comment.
- f. Discussion by Council.
- g. Action by Council.

8.7 Public Comment.

- a. During Regular City Council meetings, comments may be offered on items not on the agenda under that portion of the agenda identified for Public Comment. Comments shall be limited to three (3) minutes per person, with thirty (30) minutes for the total comment period, unless otherwise indicated by the Presiding Officer.
- b. Upon addressing the Council, each speaker is requested, but not required, to state their name.
- c. Councilmembers shall be respectful of the speakers and shall not enter into a debate with any member of the public. Cross-exchange, including follow-up questions, between the Council and the public should be limited to the extent possible during Public Comment.
- d. The public may also choose to submit a written comment. Public comments received via email, postal mail, or hand-delivered to the City Clerk will be distributed to the Council and incorporated into the official minutes; however, they will not be read aloud in open session.
- e. A group of speakers may designate a single speaker to represent the group. The designated speaker would be given the time which would have been allocated to others (to a maximum of 10 minutes) to speak. Individuals wanting to delegate time to another must be present at the

meeting and must indicate their desire to cede time to a single individual by notifying the City Clerk.

- f. The Presiding Officer or Parliamentarian have the right to ask a member of the public to step down if over the allotted time or if comments are not germane.
 - g. Unless prior arrangements have been made by a member of the public with the City Clerk by the Friday preceding the Tuesday council meeting at 5:00 P.M., audiovisual materials of any kind will not be permitted during Public Comment.
 - h. Alternative methods of addressing the Council shall be allowed for persons who do not speak English or those who require other accommodations. Requests for accommodation should be made with the City Clerk.
 - i. State law provides that Council can take action only on such matters that have been noticed at least 72 hours in advance of the meeting, unless special circumstances are found to exist. As a result, substantive discussion or formal action by the Council on non-agendized items is not allowed under Public Comment.
- 8.8 Voting and Motions. Councilmembers will have the opportunity to ask questions of staff, comment on, and discuss any agendized item in order to help form a consensus before a motion is offered. After such discussion, any Councilmember may make a motion. Before the motion can be considered or discussed, it must be seconded; a motion that does not receive a second is considered a “dead” motion.
- Unless any Councilmember calls for separate votes in advance, any item on the Agenda with related sub-parts shall be treated as one agenda item and voted on in one motion.
- 8.9 Abstaining from a Vote. Any council member who abstains from voting without a valid reason shall be deemed to have voted with the majority on that particular issue. Any council member who publicly announces that they are abstaining from voting on a particular matter for specified and valid reasons shall not subsequently be allowed to withdraw that abstention.
- 8.10 Tie Votes. If a tie vote results at a time when less than all members of the Council who may legally participate in the matter are present, the matter may be automatically continued to the agenda of the next regular meeting of the Council, unless otherwise ordered by the Council. Otherwise, tie votes shall be lost motions.

8.11 Discussion.

- a. Speaking More Than Once. To encourage the full participation of all members of the Council, no member or members shall be permitted to monopolize the discussion of the question. If a Councilmember has already spoken, other Councilmembers wishing to speak shall then be recognized. It is not necessary for all City Councilmembers to speak or give their viewpoints if another Councilmember has already addressed their concerns.
- b. Relevancy of Discussion. All discussion must be relevant to the issue before the City Council. A Councilmember is given the floor only for the purpose of discussing the pending question; discussion which departs is out of order. Councilmembers shall avoid repetition and strive to move the discussion along. Arguments, for or against a measure, should be stated as concisely as possible.

A motion, its nature, or consequences, may be debated vigorously. It is never permissible to attack the motives, character, or personality of a Councilmember either directly or by innuendo or implication. It is the duty of the Presiding Officer to instantly rule out of order any Councilmember who engages in personal attacks.

It is the responsibility of each Councilmember to maintain an open mind on all issues during discussion and deliberation.

- c. Duties of Councilmembers. Promptly at the time and the date of each regular meeting, members of the City Council shall take their regular stations in the Council Chambers and the business of the City Council shall be taken up for consideration and disposition.
- d. Presiding Officer's Duties During Discussion. The Presiding Officer has the responsibility of controlling and expediting the discussion. A Councilmember who has been recognized to speak on a question has a right to the undivided attention of the Council. It is the duty of the Presiding Officer to keep the subject clearly before the members, to rule out irrelevant discussion, and to restate the question whenever necessary.
- e. After the Vote. Once a majority of the Council has approved a motion, no further discussion shall be made.

8.12 Councilmember Respect. Councilmembers shall abide by the majority decision of the Council, even if in the minority. All members of the Council, including those serving as Mayor and Mayor Pro Tem, have equal votes. No Councilmember has more power than any other, and all shall be treated with equal respect.

SECTION 9. CLOSED SESSIONS

- 9.1 Purpose. It is the policy of the City Council to conduct its business in public to the greatest extent possible. However, state law recognizes that, in certain circumstances, public discussion could potentially jeopardize the public interest, compromise the City's position, and could cost the taxpayers of Lindsay financially. Therefore, closed sessions shall be held from time to time in accordance with the law. The procedures for the conduct of these meetings shall be the same as for public meetings, except that the public will be excluded.
- 9.2 Rule of Confidentiality. The City Council recognizes that breaches in confidentiality can severely prejudice the City's position in litigation, labor relations and real estate negotiations. Further, breaches of confidentiality can create a climate of distrust among Councilmembers and can harm the Council's ability to communicate openly in closed sessions, thereby impairing the Council's ability to perform its official duties.
- The City Council further recognizes that confidentiality of discussions and documents are at the core of a closed session. Confidentiality is essential if the closed session is to serve its purpose. Therefore, the City Council will adhere to a strict policy of confidentiality for closed sessions.
- 9.3 Breach of Rule of Confidentiality. No person who attends a closed session may disclose any statements, discussions, or documents used in a closed session except where specifically authorized by State law. Any authorized disclosure shall be in strict compliance with these rules and the Ralph M. Brown Act. Violation of this rule shall be considered a breach of this rule of confidentiality and grounds for censure.
- 9.4 Agenda. The agenda for a closed session will contain that information required to be disclosed pursuant to the Ralph M. Brown Act.
- 9.5 Permissible Topics. All closed sessions will be held in strict compliance with the Ralph M. Brown Act. The City Attorney and/or City Clerk will advise in advance on topics that may be discussed in a closed session.
- 9.6 Rules of Decorum.
- a. The same high standard of respect and decorum as apply to public meetings shall apply to closed sessions. There shall be courtesy, respect and tolerance for all viewpoints and for the right of Councilmembers to disagree. Councilmembers shall strive to make each other feel comfortable and safe to express their points of view. All Councilmembers have the right to insist upon strict adherence to this rule.

- b. Prior to a vote, the Presiding Officer shall ensure that the motion is clearly stated and clearly understood by all Councilmembers.
- c. Decorum by Councilmembers. While the City Council is in session, Councilmembers must respect the Presiding Officer's authority to conduct each meeting and preserve order and decorum. A member shall not, by conversation or otherwise, delay or interrupt the proceedings or the peace of the City Council nor disturb any member while speaking, nor refuse to obey the orders of the Council, or the Mayor, except as otherwise herein provided. Members shall make the public feel welcome, value each other's time and respect each other's opportunity to speak while attempting to build consensus on an item through an opportunity for dialogue; but when this is not possible, the majority vote shall prevail and the majority shall show respect for the opinion of the minority.

9.7 Conduct of Meeting.

- a. The Presiding Officer will call the closed session to order.
- b. The Presiding Officer will keep discussion focused on the permissible topics.
- c. The use of handouts and visual aids such as charts is encouraged to focus debate and promote understanding of the topic. All such materials are strictly confidential.
- d. If the City Council in closed session has provided direction to City staff on proposed terms and conditions for any type of negotiations, whether it be related to property acquisitions or disposal, a proposed or pending claim or litigation, or employee negotiations, all contact with the other party will be through the designated City person(s) representing the City in the handling of the matter. A Councilmember, not so designated by the Council, will not under any circumstances have any contact or discussion with the other party or its representative concerning the matter which was discussed in the closed session, and will not communicate any discussions conducted in closed session to such party.

9.8 Public Disclosure After Final Action.

- a. The Ralph M. Brown Act requires that, as a body, the City Council make certain public disclosure of closed session decisions when those actions have become final. Accordingly, the City Council shall publicly report any final action taken in closed session, and the vote, including abstentions, as directed by the Ralph M. Brown Act. B. The report will state only the action taken and the vote. Unless authorized by the majority of the City

Council, the report will not make representations as to the debate or discussion that occurred. Except for the action taken and the vote, all closed session discussions will remain confidential.

SECTION 10. DECORUM

- 10.1 Councilmembers. Members of the City Council value and recognize the importance of the trust invested in them by the public to accomplish the business of the City. Councilmembers shall accord the utmost courtesy to each other, City employees, and the public. When speaking, a Councilmember's tone should remain neutral and non-verbal communication aspects should be considerate and polite.
- 10.2 City Employees. Members of the City staff shall observe the same rules of order and decorum applicable to the City Council.
- 10.3 Public. Members of the public attending City Council meetings shall observe the same rules of order and decorum applicable to the City Council.
- 10.4 Noise in the Chambers. Noise emanating from the audience, whether expressing opposition or support within the City Hall Chambers which disrupts City Council meetings, shall not be permitted. All cellular phones and other consumer electronic devices shall be muted while in the chambers.

SECTION 11. DISCLAIMER

To the extent a matter is not covered by the Handbook, the Presiding Officer in consultation with the City Clerk and/or City Attorney may make a ruling. Any such ruling may not violate the Charter of the City of Lindsay, the Lindsay Municipal Code, or statutory provisions that may govern a particular matter.

If any rule, guideline, or policy contained herein is in conflict with the provisions of the Charter or the Lindsay Municipal Code, such rule shall be deemed invalid or modified to conform to the Charter or Lindsay Municipal Code. Such invalidity shall not affect other rules, guidelines, or policies contained herein which can be given effect without the invalid rule, guideline, or policy, and to this end these rules, guidelines, and policies are severable. Any deviation from the City Council Handbook shall not, alone, invalidate the approval of any matter.

**APPENDIX A: OPEN & PUBLIC: A GUIDE TO THE RALPH M. BROWN ACT
(LEAGUE OF CALIFORNIA CITIES)**

**APPENDIX B: ROSENBERG'S RULES OF ORDER (SIMPLE PARLIAMENTARY
PROCEDURES FOR THE 21ST CENTURY)**

APPENDIX C: CITY OF LINDSAY SOCIAL MEDIA POLICY

Open & Public V

A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016



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A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016

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IT IS THE PEOPLE’S BUSINESS

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Chapter 1

IT IS THE PEOPLE'S BUSINESS



The right of access

Two key parts of the Brown Act have not changed since its adoption in 1953. One is the Brown Act's initial section, declaring the Legislature's intent:

"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly."

*"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."*¹

The people reconfirmed that intent 50 years later in the November 2004 election by adopting Proposition 59, amending the California Constitution to include a public right of access to government information:

*"The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."*²

The Brown Act's other unchanged provision is a single sentence:

*"All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter."*³

That one sentence is by far the most important of the entire Brown Act. If the opening is the soul, that sentence is the heart of the Brown Act.

Broad coverage

The Brown Act covers members of virtually every type of local government body, elected or appointed, decision-making or advisory. Some types of private organizations are covered, as are newly-elected members of a legislative body, even before they take office.

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any communication medium or device through which a majority of a legislative body

PRACTICE TIP: The key to the Brown Act is a single sentence. In summary, all meetings shall be **open and public** except when the Brown Act authorizes otherwise.

discusses, deliberates or takes action on an item of business outside of a noticed meeting. They include meetings held from remote locations by teleconference.

New communication technologies present new Brown Act challenges. For example, common email practices of forwarding or replying to messages can easily lead to a serial meeting prohibited by the Brown Act, as can participation by members of a legislative body in an internet chatroom or blog dialogue. Communicating during meetings using electronic technology (such as laptop computers, tablets, or smart phones) may create the perception that private communications are influencing the outcome of decisions; some state legislatures have banned the practice. On the other hand, widespread cablecasting and web streaming of meetings has greatly expanded public access to the decision-making process.

Narrow exemptions

The express purpose of the Brown Act is to assure that local government agencies conduct the public's business openly and publicly. Courts and the California Attorney General usually broadly construe the Brown Act in favor of greater public access and narrowly construe exemptions to its general rules.⁴

Generally, public officials should think of themselves as living in glass houses, and that they may only draw the curtains when it is in the public interest to preserve confidentiality. Closed sessions may be held only as specifically authorized by the provisions of the Brown Act itself.

The Brown Act, however, is limited to meetings among a majority of the members of multi-member government bodies when the subject relates to local agency business. It does not apply to independent conduct of individual decision-makers. It does not apply to social, ceremonial, educational, and other gatherings as long as a majority of the members of a body do not discuss issues related to their local agency's business. Meetings of temporary advisory committees — as distinguished from standing committees — made up solely of less than a quorum of a legislative body are not subject to the Brown Act.

The law does not apply to local agency staff or employees, but they may facilitate a violation by acting as a conduit for discussion, deliberation, or action by the legislative body.⁵

The law, on the one hand, recognizes the need of individual local officials to meet and discuss matters with their constituents. On the other hand, it requires — with certain specific exceptions to protect the community and preserve individual rights — that the decision-making process be public. Sometimes the boundary between the two is not easy to draw.

Public participation in meetings

In addition to requiring the public's business to be conducted in open, noticed meetings, the Brown Act also extends to the public the right to participate in meetings. Individuals, lobbyists, and members of the news media possess the right to attend, record, broadcast, and participate in public meetings. The public's participation is further enhanced by the Brown Act's requirement that a meaningful agenda be posted in advance of meetings, by limiting discussion and action to matters listed on the agenda, and by requiring that meeting materials be made available.

Legislative bodies may, however, adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and irrelevant speech.

PRACTICE TIP: Think of the government's house as being made of glass. The curtains may be drawn only to further the public's interest. A local policy on the use of laptop computers, tablets, and smart phones during Brown Act meetings may help avoid problems.

Controversy

Not surprisingly, the Brown Act has been a source of confusion and controversy since its inception. News media and government watchdogs often argue the law is toothless, pointing out that there has never been a single criminal conviction for a violation. They often suspect that closed sessions are being misused.

Public officials complain that the Brown Act makes it difficult to respond to constituents and requires public discussions of items better discussed privately — such as why a particular person should not be appointed to a board or commission. Many elected officials find the Brown Act inconsistent with their private business experiences. Closed meetings can be more efficient; they eliminate grandstanding and promote candor. The techniques that serve well in business — the working lunch, the sharing of information through a series of phone calls or emails, the backroom conversations and compromises — are often not possible under the Brown Act.

As a matter of public policy, California (along with many other states) has concluded that there is more to be gained than lost by conducting public business in the open. Government behind closed doors may well be efficient and business-like, but it may be perceived as unresponsive and untrustworthy.

Beyond the law — good business practices

Violations of the Brown Act can lead to invalidation of an agency's action, payment of a challenger's attorney fees, public embarrassment, even criminal prosecution. But the Brown Act is a floor, not a ceiling for conduct of public officials. This guide is focused not only on the Brown Act as a minimum standard, but also on meeting practices or activities that, legal or not, are likely

to create controversy. Problems may crop up, for example, when agenda descriptions are too brief or vague, when an informal get-together takes on the appearance of a meeting, when an agency conducts too much of its business in closed session or discusses matters in closed session that are beyond the authorized scope, or when controversial issues arise that are not on the agenda.

The Brown Act allows a legislative body to adopt practices and requirements for greater access to meetings for itself and its subordinate committees and bodies that are more stringent than the law itself requires.⁶ Rather than simply restate the basic requirements of the Brown Act, local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act does not provide full guidance. As with the adoption of any other significant policy, public comment should be solicited.

A local policy could build on these basic Brown Act goals:

- A legislative body's need to get its business done smoothly;
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time;
- A local agency's right to confidentially address certain negotiations, personnel matters, claims and litigation; and
- The right of the press to fully understand and communicate public agency decision-making.

PRACTICE TIP: Transparency is a foundational value for ethical government practices. The Brown Act is a floor, not a ceiling, for conduct.



An explicit and comprehensive public meeting and information policy, especially if reviewed periodically, can be an important element in maintaining or improving public relations. Such a policy exceeds the absolute requirements of the law — but if the law were enough, this guide would be unnecessary. A narrow legalistic approach will not avoid or resolve potential controversies. An agency should consider going beyond the law, and look at its unique circumstances and determine if there is a better way to prevent potential problems and promote public trust. At the very least, local agencies need to think about how their agendas are structured in order to make Brown Act compliance easier. They need to plan carefully to make sure public participation fits smoothly into the process.

Achieving balance

The Brown Act should be neither an excuse for hiding the ball nor a mechanism for hindering efficient and orderly meetings. The Brown Act represents a balance among the interests of constituencies whose interests do not always coincide. It calls for openness in local government, yet should allow government to function responsively and productively.

There must be both adequate notice of what discussion and action is to occur during a meeting as well as a normal degree of spontaneity in the dialogue between elected officials and their constituents.

The ability of an elected official to confer with constituents or colleagues must be balanced against the important public policy prohibiting decision-making outside of public meetings.

In the end, implementation of the Brown Act must ensure full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effective and natural operation of government.

Historical note

In late 1951, *San Francisco Chronicle* reporter Mike Harris spent six weeks looking into the way local agencies conducted meetings. State law had long required that business be done in public, but Harris discovered secret meetings or caucuses were common. He wrote a 10-part series on “Your Secret Government” that ran in May and June 1952.

Out of the series came a decision to push for a new state open meeting law. Harris and Richard (Bud) Carpenter, legal counsel for the League of California Cities, drafted such a bill and Assembly Member Ralph M. Brown agreed to carry it. The Legislature passed the bill and Governor Earl Warren signed it into law in 1953.

The Ralph M. Brown Act, known as the Brown Act, has evolved under a series of amendments and court decisions, and has been the model for other open meeting laws — such as the Bagley-Keene Act, enacted in 1967 to cover state agencies.

Assembly Member Brown is best known for the open meeting law that carries his name. He was elected to the Assembly in 1942 and served 19 years, including the last three years as Speaker. He then became an appellate court justice.

PRACTICE TIP: The Brown Act should be viewed as a tool to facilitate the business of local government agencies. Local policies that go beyond the minimum requirements of law may help instill public confidence and avoid problems.

ENDNOTES:

- 1 California Government Code section 54950
- 2 California Constitution, Art. 1, section 3(b)(1)
- 3 California Government Code section 54953(a)
- 4 This principle of broad construction when it furthers public access and narrow construction if a provision limits public access is also stated in the amendment to the State's Constitution adopted by Proposition 59 in 2004. California Constitution, Art. 1, section 3(b)(2).
- 5 California Government Code section 54952.2(b)(2) and (c)(1); *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533
- 6 California Government Code section 54953.7

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Chapter 2

LEGISLATIVE BODIES

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Chapter 2

LEGISLATIVE BODIES

The Brown Act applies to the legislative bodies of local agencies. It defines “legislative body” broadly to include just about every type of decision-making body of a local agency.¹



What is a “legislative body” of a local agency?

A “legislative body” includes:

- **The “governing body”** of a local agency² and certain of its subsidiary bodies; “or any other local body created by state or federal statute.”² This includes city councils, boards of supervisors, school boards and boards of trustees of special districts. A “local agency” is any city, county, city and county, school district, municipal corporation, successor agency to a redevelopment agency, district, political subdivision or other local public agency.³ A housing authority is a local agency under the Brown Act even though it is created by and is an agent of the state.⁴ The California Attorney General has opined that air pollution control districts and regional open space districts are also covered.⁵ Entities created pursuant to joint powers agreements are also local agencies within the meaning of the Brown Act.⁶

- **Newly-elected members** of a legislative body who have not yet assumed office must conform to the requirements of the Brown Act as if already in office.⁷ Thus, meetings between incumbents and newly-elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.

Q. On the morning following the election to a five-member legislative body of a local agency, two successful candidates, neither an incumbent, meet with an incumbent member of the legislative body for a celebratory breakfast. Does this violate the Brown Act?

A. *It might, and absolutely would if the conversation turns to agency business. Even though the candidates-elect have not officially been sworn in, the Brown Act applies. If purely a social event, there is no violation but it would be preferable if others were invited to attend to avoid the appearance of impropriety.*

- **Appointed bodies** — whether permanent or temporary, decision-making or advisory — including planning commissions, civil service commissions and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and blue ribbon committees created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the

PRACTICE TIP: The prudent presumption is that an advisory committee or task force is subject to the Brown Act. Even if one clearly is not, it may want to comply with the Brown Act. Public meetings may reduce the possibility of misunderstandings and controversy.

Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate; and met only to exchange information and report back to their respective boards, they would have been exempt from the Brown Act.⁸

- **Standing committees** of a legislative body, irrespective of their composition, which have either: (1) a continuing subject matter jurisdiction; or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.⁹ Even if it comprises less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates long-term committees on budget and finance or on public safety, those are standing committees subject to the Brown Act. Further, according to the California Attorney General, function over form controls. For example, a statement by the legislative body that the advisory committee “shall not exercise continuing subject matter jurisdiction” or the fact that the committee does not have a fixed meeting schedule is not determinative.¹⁰ “Formal action” by a legislative body includes authorization given to the agency’s executive officer to appoint an advisory committee pursuant to agency-adopted policy.¹¹
- The governing body of any **private organization** either: (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company or other entity; or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity’s governing board.¹² These include some nonprofit corporations created by local agencies.¹³ If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.¹⁴ When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.¹⁵

PRACTICE TIP: It can be difficult to determine whether a subcommittee of a body falls into the category of a standing committee or an exempt temporary committee. Suppose a committee is created to explore the renewal of a franchise or a topic of similarly limited scope and duration. Is it an exempt temporary committee or a non-exempt standing committee? The answer may depend on factors such as how meeting schedules are determined, the scope of the committee’s charge, or whether the committee exists long enough to have “continuing jurisdiction.”

Q: The local chamber of commerce is funded in part by the city. The mayor sits on the chamber’s board of directors. Is the chamber board a legislative body subject to the Brown Act?

A: *Maybe. If the chamber’s governing documents require the mayor to be on the board and the city council appoints the mayor to that position, the board is a legislative body. If, however, the chamber board independently appoints the mayor to its board, or the mayor attends chamber board meetings in a purely advisory capacity, it is not.*

Q: If a community college district board creates an auxiliary organization to operate a campus bookstore or cafeteria, is the board of the organization a legislative body?

A: *Yes. But, if the district instead contracts with a private firm to operate the bookstore or cafeteria, the Brown Act would not apply to the private firm.*

- **Certain types of hospital operators.** A lessee of a hospital (or portion of a hospital)

first leased under Health and Safety Code subsection 32121(p) after January 1, 1994, which exercises “material authority” delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.¹⁶

What is not a “legislative body” for purposes of the Brown Act?

- A temporary advisory committee composed **solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.¹⁷ Temporary committees are sometimes called *ad hoc* committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.¹⁸
- Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.¹⁹

Q. A member of the legislative body of a local agency informally establishes an advisory committee of five residents to advise her on issues as they arise. Does the Brown Act apply to this committee?

A. *No, because the committee has not been established by formal action of the legislative body.*

Q. During a meeting of the city council, the council directs the city manager to form an advisory committee of residents to develop recommendations for a new ordinance. The city manager forms the committee and appoints its members; the committee is instructed to direct its recommendations to the city manager. Does the Brown Act apply to this committee?

A. *Possibly, because the direction from the city council might be regarded as a formal action of the body notwithstanding that the city manager controls the committee.*

- Individual decision makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads are not subject to the Brown Act since such assemblies are not those of a legislative body.²⁰
- Public employees, each acting individually and not engaging in collective deliberation on a specific issue, such as the drafting and review of an agreement, do not constitute a legislative body under the Brown Act, even if the drafting and review process was established by a legislative body.²¹
- County central committees of political parties are also not Brown Act bodies.²²

ENDNOTES:

- 1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1127

- 2 California Government Code section 54952(a) and (b)
- 3 California Government Code section 54951; Health and Safety Code section 34173(g) (successor agencies to former redevelopment agencies subject to the Brown Act). But see Education Code section 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.
- 4 *Torres v. Board of Commissioners of Housing Authority of Tulare County* (1979) 89 Cal.App.3d 545, 549-550
- 5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990)
- 6 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354, 362
- 7 California Government Code section 54952.1
- 8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799, 804-805
- 9 California Government Code section 54952(b)
- 10 79 Ops.Cal.Atty.Gen. 69 (1996)
- 11 *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, 793
- 12 California Government Code section 54952(c)(1). Regarding private organizations that receive local agency funding, the same rule applies to a full voting member appointed prior to February 9, 1996 who, after that date, is made a non-voting board member by the legislative body. California Government Code section 54952(c)(2)
- 13 California Government Code section 54952(c)(1)(A); *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 300; *Epstein v. Hollywood Entertainment Dist. II Business Improvement District* (2001) 87 Cal.App.4th 862, 876; see also 85 Ops.Cal.Atty.Gen. 55 (2002)
- 14 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal. App.4th 287, 300 fn. 5
- 15 "The Brown Act, Open Meetings for Local Legislative Bodies," California Attorney General's Office (2003), p. 7
- 16 California Government Code section 54952(d)
- 17 California Government Code section 54952(b); see also *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821, 832.
- 18 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1129
- 19 56 Ops.Cal.Atty.Gen. 14, 16-17 (1973)
- 20 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870, 878-879
- 21 *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1513
- 22 59 Ops.Cal.Atty.Gen. 162, 164 (1976)

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Chapter 3

MEETINGS

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Chapter 3

MEETINGS



The Brown Act only applies to meetings of local legislative bodies. The Brown Act defines a meeting as: "... and any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take any action on any item that is within the subject matter jurisdiction of the legislative body."¹ The term "meeting" is not limited to gatherings at which action is taken but includes deliberative gatherings as well. A hearing before an individual hearing officer is not a meeting under the Brown Act because it is not a hearing before a legislative body.²

Brown Act meetings

Brown Act meetings include a legislative body's regular meetings, special meetings, emergency meetings, and adjourned meetings.

- **"Regular meetings"** are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 72-hour posting requirements.³
- **"Special meetings"** are meetings called by the presiding officer or majority of the legislative body to discuss only discrete items on the agenda under the Brown Act's notice requirements for special meetings and are subject to 24-hour posting requirements.⁴
- **"Emergency meetings"** are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities and are held on little notice.⁵
- **"Adjourned meetings"** are regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment, with no agenda required for regular meetings adjourned for less than five calendar days as long as no additional business is transacted.⁶

Six exceptions to the meeting definition

The Brown Act creates six exceptions to the meeting definition:⁷

Individual Contacts

The first exception involves individual contacts between a member of the legislative body and any other person. The Brown Act does not limit a legislative body member acting on his or her own. This exception recognizes the right to confer with constituents, advocates, consultants, news reporters, local agency staff, or a colleague.

Individual contacts, however, cannot be used to do in stages what would be prohibited in one step. For example, a series of individual contacts that leads to discussion, deliberation, or action among a majority of the members of a legislative body is prohibited. Such serial meetings are discussed below.

Conferences

The second exception allows a legislative body majority to attend a conference or similar gathering open to the public that addresses issues of general interest to the public or to public agencies of the type represented by the legislative body.

Among other things, this exception permits legislative body members to attend annual association conferences of city, county, school, community college, and other local agency officials, so long as those meetings are open to the public. However, a majority of members cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction.



Community Meetings

The third exception allows a legislative body majority to attend an open and publicized meeting held by another organization to address a topic of local community concern. A majority cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the legislative body's subject matter jurisdiction. Under this exception, a legislative body majority may attend a local service club meeting or a local candidates' night if the meetings are open to the public.

"I see we have four distinguished members of the city council at our meeting tonight," said the chair of the Environmental Action Coalition. "I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?"

The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if a majority discusses, deliberates, or takes action on an item during the meeting of the other organization. There is a fine line between what is permitted and what is not; hence, members should exercise caution when participating in these types of events.

- Q.** The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for re-election and all three participate. All of the candidates are asked their views of a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?
- A.** Yes, because the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates.



Other Legislative Bodies

The fourth exception allows a majority of a legislative body to attend an open and publicized meeting of: (1) another body of the local agency; and (2) a legislative body of another local agency.⁸ Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their subject matter jurisdiction. This exception allows, for example, a city council or a majority of a board of supervisors to attend a controversial meeting of the planning commission.

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business and to avoid the appearance of a Brown Act violation. Further, aside

from the Brown Act, there may be other reasons, such as due process considerations, why the members should avoid giving public testimony or trying to influence the outcome of proceedings before a subordinate body.

Q. The entire legislative body intends to testify against a bill before the Senate Local Government Committee in Sacramento. Must this activity be noticed as a meeting of the body?

A. *No, because the members are attending and participating in an open meeting of another governmental body which the public may attend.*

Q. The members then proceed upstairs to the office of their local Assembly member to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public?

A. *Yes, because the entire body may not meet behind closed doors except for proper closed sessions. The same answer applies to a private lunch or dinner with the Assembly member.*

Standing Committees

The fifth exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers (meaning that they cannot speak or otherwise participate in the meeting).⁹

Q. The legislative body establishes a standing committee of two of its five members, which meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she?

A. *She may attend, but only as an observer; she may not participate.*

Social or Ceremonial Events

The final exception permits a majority of a legislative body to attend a purely social or ceremonial occasion. Once again, a majority cannot discuss business among themselves of a specific nature that is within the subject matter jurisdiction of the legislative body.

Nothing in the Brown Act prevents a majority of members from attending the same football game, party, wedding, funeral, reception, or farewell. The test is not whether a majority of a legislative body attends the function, but whether business of a specific nature within the subject matter jurisdiction of the body is discussed. So long as no such business is discussed, there is no violation of the Brown Act.

Grand Jury Testimony

In addition, members of a legislative body, either individually or collectively, may give testimony in private before a grand jury.¹⁰ This is the equivalent of a seventh exception to the Brown Act’s definition of a “meeting.”

Collective briefings

None of these exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings that involve a majority of the body in the same place and time must be open to the public and satisfy Brown Act meeting notice and agenda requirements.

Retreats or workshops of legislative bodies

Gatherings by a majority of legislative body members at the legislative body’s retreats, study sessions, or workshops are covered under the Brown Act. This is the case whether the retreat, study session, or workshop focuses on long-range agency planning, discussion of critical local issues, or team building and group dynamics.¹¹



Q. The legislative body wants to hold a team-building session to improve relations among its members. May such a session be conducted behind closed doors?

A. *No, this is not a proper subject for a closed session, and there is no other basis to exclude the public. Council relations are a matter of public business.*

Serial meetings

One of the most frequently asked questions about the Brown Act involves serial meetings. At any one time, such meetings involve only a portion of a legislative body, but eventually involve a majority. The Brown Act provides that “[a] majority of the members of a legislative body shall not, outside a meeting ... use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.”¹² The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful observation of and participation in legislative body decision-making.

The serial meeting may occur by either a “daisy chain” or a “hub and spoke” sequence. In the daisy chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum has discussed, deliberated, or taken action on an item within the legislative body’s subject matter jurisdiction. The hub and spoke process involves at least two scenarios. In the first scenario, Member A (the hub) sequentially contacts Members B, C, and D and so on (the spokes), until a quorum has been contacted. In the second scenario, a staff member (the hub), functioning as an intermediary for the legislative body or one of its members,



communicates with a majority of members (the spokes) one-by-one for discussion, deliberation, or a decision on a proposed action.¹³ Another example of a serial meeting is when a chief executive officer (the hub) briefs a majority of members (the spokes) prior to a formal meeting and, in the process, information about the members’ respective views is revealed. Each of these scenarios violates the Brown Act.

A legislative body member has the right, if not the duty, to meet with constituents to address their concerns. That member also has the right to confer with a colleague (but not with a majority of the body, counting the member) or appropriate staff about local agency business. An employee or official of a local agency may engage in separate conversations or communications outside of an open and noticed meeting “with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of

the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.”¹⁴

The Brown Act has been violated, however, if several one-on-one meetings or conferences leads to a discussion, deliberation, or action by a majority. In one case, a violation occurred when a quorum of a city council, by a letter that had been circulated among members outside of a formal meeting, directed staff to take action in an eminent domain proceeding.¹⁵

A unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.¹⁶ Such a memo, however, may be a public record.¹⁷

The phone call was from a lobbyist. “Say, I need your vote for that project in the south area. How about it?”

“Well, I don’t know,” replied Board Member Aletto. “That’s kind of a sticky proposition. You sure you need my vote?”

“Well, I’ve got Bradley and Cohen lined up and another vote leaning. With you I’d be over the top.”

Moments later, the phone rings again. “Hey, I’ve been hearing some rumbles on that south area project,” said the newspaper reporter. “I’m counting noses. How are you voting on it?”

Neither the lobbyist nor the reporter has violated the Brown Act, but they are facilitating

a violation. The board member may have violated the Brown Act by hearing about the positions of other board members and indeed coaxing the lobbyist to reveal the other board members' positions by asking "You sure you need my vote?" The prudent course is to avoid such leading conversations and to caution lobbyists, staff, and news media against revealing such positions of others.

The mayor sat down across from the city manager. "From now on," he declared, "I want you to provide individual briefings on upcoming agenda items. Some of this material is very technical, and the council members don't want to sound like idiots asking about it in public. Besides that, briefings will speed up the meeting."

Agency employees or officials may have separate conversations or communications outside of an open and noticed meeting "with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body."¹⁸ Members should always be vigilant when discussing local agency business with anyone to avoid conversations that could lead to a discussion, deliberation or action taken among the majority of the legislative body.

"Thanks for the information," said Council Member Kim. "These zoning changes can be tricky, and now I think I'm better equipped to make the right decision."

"Glad to be of assistance," replied the planning director. "I'm sure Council Member Jones is OK with these changes. How are you leaning?"

"Well," said Council Member Kim, "I'm leaning toward approval. I know that two of my colleagues definitely favor approval."

The planning director should not disclose Jones' prospective vote, and Kim should not disclose the prospective votes of two of her colleagues. Under these facts, there likely has been a serial meeting in violation of the Brown Act.

- Q.** The agency's website includes a chat room where agency employees and officials participate anonymously and often discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?
- A.** Yes, because it is a technological device that may serve to allow for a majority of members to discuss, deliberate, or take action on matters of agency business.
- Q.** A member of a legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting?
- A.** No, the Brown Act expressly allows a majority of a body to call a special meeting, though the members should avoid discussing the merits of what is to be taken up at the meeting.

PRACTICE TIP: When briefing legislative body members, staff must exercise care not to disclose other members' views and positions.

Particular care should be exercised when staff briefings of legislative body members occur by email because of the ease of using the “reply to all” button that may inadvertently result in a Brown Act violation.

Informal gatherings

Often members are tempted to mix business with pleasure — for example, by holding a post-meeting gathering. Informal gatherings at which local agency business is discussed or transacted violate the law if they are not conducted in conformance with the Brown Act.¹⁹ A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an opportunity to attend, hear, or participate in the deliberations of members.

Thursday at 11:30 a.m., as they did every week, the board of directors of the Dry Gulch Irrigation District trooped into Pop’s Donut Shoppe for an hour of talk and fellowship. They sat at the corner window, fronting on Main and Broadway, to show they had nothing to hide. Whenever he could, the managing editor of the weekly newspaper down the street hurried over to join the board.

A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues — which might be difficult. This kind of situation should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive’s presence in no way lessens the potential for a violation of the Brown Act.

Q. The agency has won a major victory in the Supreme Court on an issue of importance. The presiding officer decides to hold an impromptu press conference in order to make a statement to the print and broadcast media. All the other members show up in order to make statements of their own and be seen by the media. Is this gathering illegal?

A. *Technically there is no exception for this sort of gathering, but as long as members do not state their intentions as to future action to be taken and the press conference is open to the public, it seems harmless.*



Technological conferencing

Except for certain nonsubstantive purposes, such as scheduling a special meeting, a conference call including a majority of the members of a legislative body is an unlawful meeting. But, in an effort to keep up with information age technologies, the Brown Act specifically allows a legislative body to use any type of teleconferencing to meet, receive public comment and testimony, deliberate, or conduct a closed session.²⁰ While the Brown Act contains specific requirements for conducting a teleconference, the decision to use teleconferencing is entirely discretionary with the body. No person has a right under the Brown Act to have a meeting by teleconference.

“Teleconference” is defined as “a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either

audio or video, or both.”²¹ In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following teleconferencing requirements:²²

- Teleconferencing may be used for all purposes during any meeting;
- At least a quorum of the legislative body must participate from locations within the local agency’s jurisdiction;
- Additional teleconference locations may be made available for the public;
- Each teleconference location must be specifically identified in the notice and agenda of the meeting, including a full address and room number, as may be applicable;
- Agendas must be posted at each teleconference location, even if a hotel room or a residence;
- Each teleconference location, including a hotel room or residence, must be accessible to the public and have technology, such as a speakerphone, to enable the public to participate;
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location; and
- All votes must be by roll call.

Q. A member on vacation wants to participate in a meeting of the legislative body and vote by cellular phone from her car while driving from Washington, D.C. to New York. May she?

A. *She may not participate or vote because she is not in a noticed and posted teleconference location.*

The use of teleconferencing to conduct a legislative body meeting presents a variety of issues beyond the scope of this guide to discuss in detail. Therefore, before teleconferencing a meeting, legal counsel for the local agency should be consulted.

Location of meetings

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.²³

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is one of the following:²⁴

- Comply with state or federal law or a court order, or attend a judicial conference or administrative proceeding in which the local agency is a party;
- Inspect real or personal property that cannot be conveniently brought into the local agency’s territory, provided the meeting is limited to items relating to that real or personal property;

Q. The agency is considering approving a major retail mall. The developer has built other similar malls, and invites the entire legislative body to visit a mall outside the jurisdiction. May the entire body go?

A. *Yes, the Brown Act permits meetings outside the boundaries of the agency for specified reasons and inspection of property is one such reason. The field trip must be treated as a meeting and the public must be allowed to attend.*

- Participate in multiagency meetings or discussions; however, such meetings must be held within the boundaries of one of the participating agencies, and all of those agencies must give proper notice;
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries, or meet at its principal office if that office is located outside the territory over which the agency has jurisdiction;
- Meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction;
- Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility; or
- Visit the office of its legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.²⁵

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential

employee from another district.²⁶ A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.²⁷

Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of communication available.²⁸



Endnotes:

- 1 California Government Code section 54952.2(a)
- 2 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870
- 3 California Government Code section 54954(a)
- 4 California Government Code section 54956
- 5 California Government Code section 54956.5
- 6 California Government Code section 54955
- 7 California Government Code section 54952.2(c)
- 8 California Government Code section 54952.2(c)(4)
- 9 California Government Code section 54952.2(c)(6)
- 10 California Government Code section 54953.1
- 11 “*The Brown Act*,” California Attorney General (2003), p. 10
- 12 California Government Code section 54952.2(b)(1)
- 13 *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95
- 14 California Government Code section 54952.2(b)(2)
- 15 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518
- 16 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 17 California Government Code section 54957.5(a)
- 18 California Government Code section 54952.2(b)(2)
- 19 California Government Code section 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964)
- 20 California Government Code section 54953(b)(1)
- 21 California Government Code section 54953(b)(4)
- 22 California Government Code section 54953
- 23 California Government Code section 54954(b)
- 24 California Government Code section 54954(b)(1)-(7)
- 25 94 Ops.Cal.Atty.Gen. 15 (2011)
- 26 California Government Code section 54954(c)
- 27 California Government Code section 54954(d)
- 28 California Government Code section 54954(e)

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at www.cacities.org/opengovernment. A current version of the Brown Act may be found at www.leginfo.ca.gov.





Chapter 4

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Chapter 4

AGENDAS, NOTICES, AND PUBLIC PARTICIPATION



Effective notice is essential for an open and public meeting. Whether a meeting is open or how the public may participate in that meeting is academic if nobody knows about the meeting.

Agendas for regular meetings

Every regular meeting of a legislative body of a local agency — including advisory committees, commissions, or boards, as well as standing committees of legislative bodies — must be preceded by a posted agenda that advises the public of the meeting and the matters to be transacted or discussed.

The agenda must be posted at least 72 hours before the regular meeting in a location “freely accessible to members of the public.”¹ The courts have not definitively interpreted the “freely accessible” requirement. The California Attorney General has interpreted this

provision to require posting in a location accessible to the public 24 hours a day during the 72-hour period, but any of the 72 hours may fall on a weekend.² This provision may be satisfied by posting on a touch screen electronic kiosk accessible without charge to the public 24 hours a day during the 72-hour period.³ While posting an agenda on an agency’s Internet website will not, by itself, satisfy the “freely accessible” requirement since there is no universal access to the internet, an agency has a supplemental obligation to post the agenda on its website if: (1) the local agency has a website; and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body.⁴

Q. May the meeting of a governing body go forward if its agenda was either inadvertently not posted on the city’s website or if the website was not operational during part or all of the 72-hour period preceding the meeting?

A. *At a minimum, the Brown Act calls for “substantial compliance” with all agenda posting requirements, including posting to the agency website.⁵ Should website technical difficulties arise, seek a legal opinion from your agency attorney. The California Attorney General has opined that technical difficulties which cause the website agenda to become inaccessible for a portion of the 72 hours preceding a meeting do not automatically or inevitably lead to a Brown Act violation, provided the agency can demonstrate substantial compliance.⁶ This inquiry requires a fact-specific examination of whether the agency or its legislative body made “reasonably effective efforts to notify interested persons of a public meeting” through online posting and other available means.⁷ The Attorney General’s opinion suggests that this examination would include an evaluation of how long a technical problem persisted, the efforts made to correct the problem or otherwise ensure that the public was informed, and the actual effect the problem had on public*

awareness, among other factors.⁸ The City Attorneys' Department has taken the position that obvious website technical difficulties do not require cancellation of a meeting, provided that the agency meets all other Brown Act posting requirements and the agenda is available on the website once the technical difficulties are resolved.

The agenda must state the meeting time and place and must contain "a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session."⁹ Special care should be taken to describe on the agenda each distinct action to be taken by the legislative body, and avoid overbroad descriptions of a "project" if the "project" is actually a set of distinct actions that must each be separately listed on the agenda.¹⁰

PRACTICE TIP: Putting together a meeting agenda requires careful thought.

Q. The agenda for a regular meeting contains the following items of business:

- Consideration of a report regarding traffic on Eighth Street; and
- Consideration of contract with ABC Consulting.

Are these descriptions adequate?

A. *If the first is, it is barely adequate. A better description would provide the reader with some idea of what the report is about and what is being recommended. The second is not adequate. A better description might read "consideration of a contract with ABC Consulting in the amount of \$50,000 for traffic engineering services regarding traffic on Eighth Street."*

Q. The agenda includes an item entitled City Manager's Report, during which time the city manager provides a brief report on notable topics of interest, none of which are listed on the agenda.

Is this permissible?

A. *Yes, so long as it does not result in extended discussion or action by the body.*

A brief general description may not be sufficient for closed session agenda items. The Brown Act provides safe harbor language for the various types of permissible closed sessions. Substantial compliance with the safe harbor language is recommended to protect legislative bodies and elected officials from legal challenges.

Mailed agenda upon written request

The legislative body, or its designee, must mail a copy of the agenda or, if requested, the entire agenda packet, to any person who has filed a written request for such materials. These copies shall be mailed at the time the agenda is posted. If requested, these materials must be made available in appropriate alternative formats to persons with disabilities.

A request for notice is valid for one calendar year and renewal requests must be filed following January 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive the agenda does not constitute grounds for invalidation of actions taken at the meeting.¹¹



Notice requirements for special meetings

There is no express agenda requirement for special meetings, but the notice of the special meeting effectively serves as the agenda and limits the business that may be transacted or discussed.

Written notice must be sent to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and radio or television station that has requested such notice in writing. This notice must be delivered by personal delivery or any other means that ensures receipt, at least 24 hours before the time of the meeting.

The notice must state the time and place of the meeting, as well as all business to be transacted or discussed. It is recommended that the business to be transacted or discussed be described in the same manner that an item for a regular meeting would be described on the agenda — with a brief general description. As noted above, closed session items should be described in accordance with the Brown Act's safe harbor provisions to protect legislative bodies and elected officials from challenges of noncompliance with notice requirements.

The special meeting notice must also be posted at least 24 hours prior to the special meeting using the same methods as posting an agenda for a regular meeting: (1) at a site that is freely accessible to the public, and (2) on the agency's website if: (1) the local agency has a website; and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body.¹²

Notices and agendas for adjourned and continued meetings and hearings

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment.¹³ If no time is stated, the meeting is continued to the hour for regular meetings. Whoever is present (even if they are less than a quorum) may so adjourn a meeting; if no member of the legislative body is present, the clerk or secretary may adjourn the meeting. If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.¹⁴ A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.

A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.¹⁵

Notice requirements for emergency meetings

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.¹⁶ News media that have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However, the news media must be notified as soon as possible of the meeting and any action taken.



News media may make a practice of having written requests on file for notification of special or emergency meetings. Absent such a request, a local agency has no legal obligation to notify news media of special or emergency meetings — although notification may be advisable in any event to avoid controversy.

Notice of compensation for simultaneous or serial meetings

A legislative body that has convened a meeting and whose membership constitutes a quorum of another legislative body, may convene a simultaneous or serial meeting of the other legislative body only after a clerk or member of the convened legislative body orally announces: (1) the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the meeting of the other legislative body; and (2) that the compensation or stipend is provided as a result of convening the meeting of that body.¹⁷

No oral disclosure of the amount of the compensation is required if the entire amount of such compensation is prescribed by statute and no additional compensation has been authorized by the local agency. Further, no disclosure is required with respect to reimbursements for actual and necessary expenses incurred in the performance of the member’s official duties, such as for travel, meals, and lodging.

Educational agency meetings

The Education Code contains some special agenda and special meeting provisions.¹⁸ However, they are generally consistent with the Brown Act. An item is probably void if not posted.¹⁹ A school district board must also adopt regulations to make sure the public can place matters affecting the district’s business on meeting agendas and to address the board on those items.²⁰

Notice requirements for tax or assessment meetings and hearings

The Brown Act prescribes specific procedures for adoption by a city, county, special district, or joint powers authority of any new or increased tax or assessment imposed on businesses.²¹ Though written broadly, these Brown Act provisions do not apply to new or increased real property taxes or assessments as those are governed by the California Constitution, Article XIII C or XIII D, enacted by Proposition 218. At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days notice of a public hearing at which the legislative body proposes to enact or increase the tax or assessment. Notice of the public meeting and public hearing must be provided at the same time and in the same document. The public notice relating to general taxes must be provided by newspaper publication. The public notice relating to new or increased business assessments must be provided through a mailing to all business owners proposed to be subject to the new or increased assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.

The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of the Constitution.²² As a practical matter, the Constitution’s notice requirements have preempted this section of the Brown Act.



Non-agenda items

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda:²³

- When a majority decides there is an “emergency situation” (as defined for emergency meetings);
- When two-thirds of the members present (or all members if less than two-thirds are present) determine there is a need for immediate action and the need to take action “came to the attention of the local agency subsequent to the agenda being posted.” This exception requires a degree of urgency. Further, an item cannot be considered under this provision if the legislative body or the staff knew about the need to take immediate action before the agenda was posted. A new need does not arise because staff forgot to put an item on the agenda or because an applicant missed a deadline; or
- When an item appeared on the agenda of, and was continued from, a meeting held not more than five days earlier.

The exceptions are narrow, as indicated by this list. The first two require a specific determination by the legislative body. That determination can be challenged in court and, if unsubstantiated, can lead to invalidation of an action.

“I’d like a two-thirds vote of the board, so we can go ahead and authorize commencement of phase two of the East Area Project,” said Chair Lopez.

“It’s not on the agenda. But we learned two days ago that we finished phase one ahead of schedule — believe it or not — and I’d like to keep it that way. Do I hear a motion?”

The desire to stay ahead of schedule generally would not satisfy “a need for immediate action.” Too casual an action could invite a court challenge by a disgruntled resident. The prudent course is to place an item on the agenda for the next meeting and not risk invalidation.

“We learned this morning of an opportunity for a state grant,” said the chief engineer at the regular board meeting, “but our application has to be submitted in two days. We’d like the board to give us the go ahead tonight, even though it’s not on the agenda.”

A legitimate immediate need can be acted upon even though not on the posted agenda by following a two-step process:

- First, make two determinations: 1) that there is an immediate need to take action, and 2) that the need arose after the posting of the agenda. The matter is then placed on the agenda.
- Second, discuss and act on the added agenda item.

Responding to the public

The public can talk about anything within the jurisdiction of the legislative body, but the legislative body generally cannot act on or discuss an item not on the agenda. What happens when a member of the public raises a subject not on the agenda?

PRACTICE TIP: Subject to very limited exceptions, the Brown Act prohibits any action or discussion of an item not on the posted agenda.

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to “briefly respond” to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back, request to place a matter on the agenda for a subsequent meeting (subject to the body’s rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on his or her own activities.²⁴ However, caution should be used to avoid any discussion or action on such items.



Council Member Jefferson: I would like staff to respond to Resident Joe’s complaints during public comment about the repaving project on Elm Street — are there problems with this project?

City Manager Frank: The public works director has prepared a 45-minute power point presentation for you on the status of this project and will give it right now.

Council Member Brown: Take all the time you need; we need to get to the bottom of this. Our residents are unhappy.

It is clear from this dialogue that the Elm Street project was not on the council’s agenda, but was raised during the public comment period for items not on the agenda. Council Member A properly asked staff to respond; the city manager should have given at most a brief response. If a lengthy report from the public works director was warranted, the city manager should have stated that it would be placed on the agenda for the next meeting. Otherwise, both the long report and the likely discussion afterward will improperly embroil the council in a matter that is not listed on the agenda.

The right to attend and observe meetings

A number of Brown Act provisions protect the public’s right to attend, observe, and participate in meetings.

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise “fulfill any condition precedent” to attending a meeting. Any attendance list, questionnaire, or similar document posted at or near the entrance to the meeting room or circulated at a meeting must clearly state that its completion is voluntary and that all persons may attend whether or not they fill it out.²⁵

No meeting can be held in a facility that prohibits attendance based on race, religion, color, national origin, ethnic group identification, age, sex, sexual orientation, or disability, or that is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.²⁶ This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.²⁷

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.²⁸

Action by secret ballot, whether preliminary or final, is flatly prohibited.²⁹

All actions taken by the legislative body in open session, and the vote of each member thereon, must be disclosed to the public at the time the action is taken.³⁰

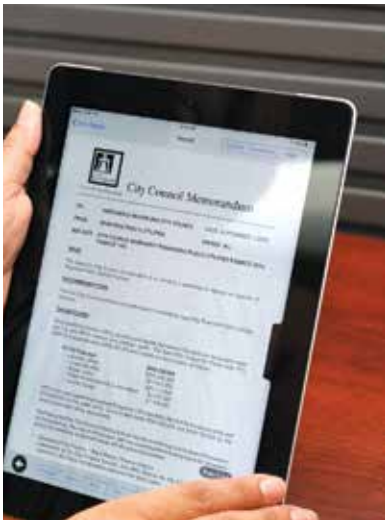
Q: The agenda calls for election of the legislative body’s officers. Members of the legislative body want to cast unsigned written ballots that would be tallied by the clerk, who would announce the results. Is this voting process permissible?

A: *No. The possibility that a public vote might cause hurt feelings among members of the legislative body or might be awkward — or even counterproductive — does not justify a secret ballot.*

The legislative body may remove persons from a meeting who willfully interrupt proceedings.³¹ Ejection is justified only when audience members actually disrupt the proceedings.³² If order cannot be restored after ejecting disruptive persons, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to re-admit an individual or individuals not responsible for the disturbance.³³

Records and recordings

The public has the right to review agendas and other writings distributed by any person to a majority of the legislative body in connection with a matter subject to discussion or consideration at a meeting. Except for privileged documents, those materials are public records and must be made available upon request without delay.³⁴ A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.³⁵



Q: In connection with an upcoming hearing on a discretionary use permit, counsel for the legislative body transmits a memorandum to all members of the body outlining the litigation risks in granting or denying the permit. Must this memorandum be included in the packet of agenda materials available to the public?

A: *No. The memorandum is a privileged attorney-client communication.*

Q: In connection with an agenda item calling for the legislative body to approve a contract, staff submits to all members of the body a financial analysis explaining why the terms of the contract favor the local agency. Must this memorandum be included in the packet of agenda materials available to the public?

A: *Yes. The memorandum has been distributed to the majority of the legislative body, relates to the subject matter of a meeting, and is not a privileged communication.*

A legislative body may discuss or act on some matters without considering written materials. But if writings are distributed to a majority of a legislative body in connection with an agenda item, they must also be available to the public. A non-exempt or otherwise privileged writing distributed to a majority of the legislative body less than 72 hours before the meeting must be made available for inspection at the time of distribution at a public office or location designated for that purpose; and the agendas for all meetings of the legislative body must include the address of this office or location.³⁶ A writing distributed during a meeting must be made public:

- At the meeting if prepared by the local agency or a member of its legislative body; or
- After the meeting if prepared by some other person.³⁷

Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is subject to the California Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.³⁸ The agency may impose its ordinary charge for copies that is consistent with the California Public Records Act.³⁹



In addition, the public is specifically allowed to use audio or video tape recorders or still or motion picture cameras at a meeting to record the proceedings, absent a reasonable finding by the legislative body that noise, illumination, or obstruction of view caused by recorders or cameras would persistently disrupt the proceedings.⁴⁰

Similarly, a legislative body cannot prohibit or restrict the public broadcast of its open and public meetings without making a reasonable finding that the noise, illumination, or obstruction of view would persistently disrupt the proceedings.⁴¹

The public's place on the agenda

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.⁴²

Q. Must the legislative body allow members of the public to show videos or make a power point presentation during the public comment part of the agenda, as long as the subject matter is relevant to the agency and is within the established time limit?

A. *Probably, although the agency is under no obligation to provide equipment.*

Moreover, the legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself. But the Brown Act provides no immunity for defamatory statements.⁴³

PRACTICE TIP: Public speakers cannot be compelled to give their name or address as a condition of speaking. The clerk or presiding officer may request speakers to complete a speaker card or identify themselves for the record, but must respect a speaker's desire for anonymity.

Q. May the presiding officer prohibit a member of the audience from publicly criticizing an agency employee by name during public comments?

A. *No, as long as the criticism pertains to job performance.*

Q. During the public comment period of a regular meeting of the legislative body, a resident urges the public to support and vote for a candidate vying for election to the body. May the presiding officer gavel the speaker out of order for engaging in political campaign speech?

A. *There is no case law on this subject. Some would argue that campaign issues are outside the subject matter jurisdiction of the body within the meaning of Section 54954.3(a). Others take the view that the speech must be allowed under paragraph (c) of that section because it is relevant to the governing of the agency and an implicit criticism of the incumbents.*



The legislative body may adopt reasonable regulations, including time limits, on public comments. Such regulations should be enforced fairly and without regard to speakers' viewpoints. The legislative body has discretion to modify its regulations regarding time limits on public comment if necessary. For example, the time limit could be shortened to accommodate a lengthy agenda or lengthened to allow additional time for discussion on a complicated matter.⁴⁴

The public does not need to be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a public meeting, if all interested members of the public had the opportunity to speak on the item before or during its consideration, and if the item has not been substantially changed.⁴⁵

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item on the agenda but need not allow members of the public an opportunity to speak on other matters within the jurisdiction of the legislative body.⁴⁶

Endnotes:

- 1 California Government Code section 54954.2(a)(1)
- 2 78 Ops.Cal.Atty.Gen. 327 (1995)
- 3 88 Ops.Cal.Atty.Gen. 218 (2005)
- 4 California Government Code sections 54954.2(a)(1) and 54954.2(d)
- 5 California Government Code section 54960.1(d)(1)
- 6 ___ Ops.Cal.Atty.Gen.___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262
- 7 *North Pacifica LLC v. California Coastal Commission* (2008) 166 Cal.App.4th 1416, 1432
- 8 ___ Ops.Cal.Atty.Gen.___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262, Slip Op. at p. 8
- 9 California Government Code section 54954.2(a)(1)
- 10 *San Joaquin Raptor Rescue v. County of Merced* (2013) 216 Cal.App.4th 1167 (legislative body's approval of CEQA action (mitigated negative declaration) without specifically listing it on the agenda violates Brown Act, even if the agenda generally describes the development project that is the subject of the CEQA analysis.)

- 11 California Government Code section 54954.1
- 12 California Government Code sections 54956(a) and (c)
- 13 California Government Code section 54955
- 14 California Government Code section 54954.2(b)(3)
- 15 California Government Code section 54955.1
- 16 California Government Code section 54956.5
- 17 California Government Code section 54952.3
- 18 Education Code sections 35144, 35145 and 72129
- 19 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196
- 20 California Education Code section 35145.5
- 21 California Government Code section 54954.6
- 22 See Cal.Const.Art.XIIIC, XIIID and California Government Code section 54954.6(h)
- 23 California Government Code section 54954.2(b)
- 24 California Government Code section 54954.2(a)(2)
- 25 California Government Code section 54953.3
- 26 California Government Code section 54961(a); California Government Code section 11135(a)
- 27 California Government Code section 54952.2(c)(2)
- 28 California Government Code section 54953(b)
- 29 California Government Code section 54953(c)
- 30 California Government Code section 54953(c)(2)
- 31 California Government Code section 54957.9.
- 32 *Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966 (silent and momentary Nazi salute directed towards mayor is not a disruption); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800 (city council may not prohibit “insolent” remarks by members of the public absent actual disruption).
- 33 California Government Code section 54957.9
- 34 California Government Code section 54957.5
- 35 California Government Code section 54957.5(d)
- 36 California Government Code section 54957.5(b)
- 37 California Government Code section 54957.5(c)
- 38 California Government Code section 54953.5(b)
- 39 California Government Code section 54957.5(d)
- 40 California Government Code section 54953.5(a)
- 41 California Government Code section 54953.6
- 42 California Government Code section 54954.3(a)
- 43 California Government Code section 54954.3(c)
- 44 California Government Code section 54954.3(b); *Chaffee v. San Francisco Public Library Com.* (2005) 134 Cal.App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992)
- 45 California Government Code section 54954.3(a)
- 46 California Government Code section 54954.3(a)

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at www.cacities.org/opengovernment. A current version of the Brown Act may be found at www.leginfo.ca.gov.





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Chapter 5

CLOSED SESSIONS

A closed session is a meeting of a legislative body conducted in private without the attendance of the public or press. A legislative body is authorized to meet in closed session only to the extent expressly authorized by the Brown Act.¹



As summarized in Chapter 1 of this Guide, it is clear that the Brown Act must be interpreted liberally in favor of open meetings, and exceptions that limit public access (including the exceptions for closed session meetings) must be narrowly construed.² The most common purposes of the closed session provisions in the Brown Act are to avoid revealing confidential information (e.g., prejudicing the city's position in litigation or compromising the privacy interests of employees). Closed sessions should be conducted keeping those narrow purposes in mind. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter to be considered by a legislative body must be discussed in public. As an example, a board of police commissioners cannot meet in closed session to provide general policy guidance to a police chief, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.³

In this chapter, the grounds for convening a closed session are called "exceptions" because they are exceptions to the general rule that meetings must be conducted openly. In some circumstances, none of the closed session exceptions apply to an issue or information the legislative body wishes to discuss privately. In these cases, it is not proper to convene a closed session, even to protect confidential information. For example, although the Brown Act does authorize closed sessions related to specified types of contracts (e.g., specified provisions of real property agreements, employee labor agreements, and litigation settlement agreements),⁴ the Brown Act does not authorize closed sessions for other contract negotiations.

Agendas and reports

Closed session items must be briefly described on the posted agenda and the description must state the specific statutory exemption.⁵ An item that appears on the open meeting portion of the agenda may not be taken into closed session until it has been properly agendized as a closed session item or unless it is properly added as a closed session item by a two-thirds vote of the body after making the appropriate urgency findings.⁶

The Brown Act supplies a series of fill in the blank sample agenda descriptions for various types of authorized closed sessions, which provide a "safe harbor" from legal attacks. These sample

PRACTICE TIP: Some problems over closed sessions arise because secrecy itself breeds distrust. The Brown Act does not require closed sessions and legislative bodies may do well to resist the tendency to call a closed session simply because it may be permitted. A better practice is to go into closed session only when necessary.

agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multi-jurisdictional law enforcement cases, hospital boards of directors, medical quality assurance committees, joint powers agencies, and audits by the California State Auditor's Office.⁷

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.⁸

Following a closed session, the legislative body must provide an oral or written report on certain actions taken and the vote of every elected member present. The timing and content of the report varies according to the reason for the closed session and the action taken.⁹ The announcements may be made at the site of the closed session, so long as the public is allowed to be present to hear them.

If there is a standing or written request for documentation, any copies of contracts, settlement agreements, or other documents finally approved or adopted in closed session must be provided to the requestor(s) after the closed session, if final approval of such documents does not rest with any other party to the contract or settlement. If substantive amendments to a contract or settlement agreement approved by all parties requires retyping, such documents may be held until retyping is completed during normal business hours, but the substance of the changes must be summarized for any person inquiring about them.¹⁰

The Brown Act does not require minutes, including minutes of closed sessions. However, a legislative body may adopt an ordinance or resolution to authorize a confidential "minute book" be kept to record actions taken at closed sessions.¹¹ If one is kept, it must be made available to members of the legislative body, provided that the member asking to review minutes of a particular meeting was not disqualified from attending the meeting due to a conflict of interest.¹² A court may order the disclosure of minute books for the court's review if a lawsuit makes sufficient claims of an open meeting violation.

Litigation

There is an attorney/client relationship, and legal counsel may use it to protect the confidentiality of privileged written and oral communications to members of the legislative body — outside of meetings. But protection of the attorney/client privilege cannot by itself be the reason for a closed session.¹³

The Brown Act expressly authorizes closed sessions to discuss what is considered pending litigation. The rules that apply to holding a litigation closed session involve complex, technical definitions and procedures. The essential thing to know is that a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in litigation in which the agency is, or could become, a party.¹⁴ The litigation exception under the Brown Act is narrowly construed and does not permit activities beyond a legislative body's conferring with its own legal counsel and required support staff.¹⁵ For example, it is not permissible to hold a closed session in which settlement negotiations take place between a legislative body, a representative of an adverse party, and a mediator.¹⁶

PRACTICE TIP: Pay close attention to closed session agenda descriptions. Using the wrong label can lead to invalidation of an action taken in closed session if not substantially compliant.

The California Attorney General has opined that if the agency’s attorney is not a participant, a litigation closed session cannot be held.¹⁷ In any event, local agency officials should always consult the agency’s attorney before placing this type of closed session on the agenda in order to be certain that it is being done properly.

Before holding a closed session under the pending litigation exception, the legislative body must publicly state the basis for the closed session by identifying one of the following three types of matters: existing litigation, anticipated exposure to litigation, or anticipated initiation of litigation.¹⁸

Existing litigation

- Q.** May the legislative body agree to settle a lawsuit in a properly-noticed closed session, without placing the settlement agreement on an open session agenda for public approval?
- A.** Yes, but the settlement agreement is a public document and must be disclosed on request. Furthermore, a settlement agreement cannot commit the agency to matters that are required to have public hearings.

Existing litigation includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local



agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or consider alternatives for resolution of the case. Generally, an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation cannot be approved in closed session if it commits the city to take an action that is required to have a public hearing.¹⁹

Anticipated exposure to litigation against the local agency

Closed sessions are authorized for legal counsel to inform the legislative body of a significant exposure to litigation against the local agency, but only if based on “existing facts and circumstances” as defined by the Brown Act.²⁰ The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff. In general, the “existing facts and

circumstances” must be publicly disclosed unless they are privileged written communications or not yet known to a potential plaintiff.

Anticipated initiation of litigation by the local agency

A closed session may be held under the exception for the anticipated initiation of litigation when the legislative body seeks legal advice on whether to protect the agency’s rights and interests by initiating litigation.

Certain actions must be reported in open session at the same meeting following the closed

session. Other actions, as where final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person.²¹ Each agency attorney should be aware of and make the disclosures that are required by the particular circumstances.

Real estate negotiations

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency. A "lease" includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body's negotiator on price and terms of payment.²² Caution should be exercised to limit discussion to price and terms of payment without straying to other related issues such as site design, architecture, or other aspects of the project for which the transaction is contemplated.²³



Q. May other terms of a real estate transaction, aside from price and terms of payment, be addressed in closed session?

A. *No. However, there are differing opinions over the scope of the phrase "price and terms of payment" in connection with real estate closed sessions. Many agency attorneys argue that any term that directly affects the economic value of the transaction falls within the ambit of "price and terms of payment." Others take a narrower, more literal view of the phrase.*

The agency's negotiator may be a member of the legislative body itself. Prior to the closed session, or on the agenda, the legislative body must identify its negotiators, the real property that the negotiations may concern²⁴ and the names of the parties with whom its negotiator may negotiate.²⁵

After real estate negotiations are concluded, the approval and substance of the agreement must be publicly reported. If its own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval and the substance of the agreement upon inquiry by any person, as soon as the agency is informed of it.²⁶

"Our population is exploding, and we have to think about new school sites," said Board Member Jefferson.

"Not only that," interjected Board Member Tanaka, "we need to get rid of a couple of our older facilities."

"Well, obviously the place to do that is in a closed session," said Board Member O'Reilly. "Otherwise we're going to set off land speculation. And if we even mention closing a school, parents are going to be in an uproar."

A closed session to discuss potential sites is not authorized by the Brown Act. The exception is limited to meeting with its negotiator over specific sites — which must be identified at an open and public meeting.

PRACTICE TIP: Discussions of who to appoint to an advisory body and whether or not to censure a fellow member of the legislative body must be held in the open.

Public employment

The Brown Act authorizes a closed session “to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee.”²⁷ The purpose of this exception — commonly referred to as the “personnel exception” — is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.²⁸ The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.²⁹ That authority may be delegated to a subsidiary appointed body.³⁰

An employee must be given at least 24 hours notice of any closed session convened to hear specific complaints or charges against him or her. This occurs when the legislative body is reviewing evidence, which could include live testimony, and adjudicating conflicting testimony offered as evidence. A legislative body may examine (or exclude) witnesses,³¹ and the California Attorney General has opined that, when an affected employee and advocate have an official or essential role to play, they may be permitted to participate in the closed session.³² The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.³³ If the employee is not given the 24-hour prior notice, any disciplinary action is null and void.³⁴

However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation. The Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.³⁵

- Q.** Must 24 hours notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session?
- A.** *No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.*

Correct labeling of the closed session on the agenda is critical. A closed session agenda that identified discussion of an employment contract was not sufficient to allow dismissal of an employee.³⁶ An incorrect agenda description can result in invalidation of an action and much embarrassment.

For purposes of the personnel exception, “employee” specifically includes an officer or an independent contractor who functions as an officer or an employee. Examples of the former include a city manager, district general manager or superintendent. Examples of the latter include a legal counsel or engineer hired on contract to act as local agency attorney or chief engineer.

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.³⁷ Action on individuals who are not “employees” must also be public — including discussing and voting on appointees to committees, or debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.

The personnel exception specifically prohibits discussion or action on proposed compensation in closed session, except for a disciplinary reduction in pay. Among other things, that means there can be no personnel closed sessions on a salary change (other than a disciplinary reduction) between any unrepresented individual and the legislative body. However, a legislative body may address the compensation of an unrepresented individual, such as a city manager, in a closed session as part of a labor negotiation (discussed later in this chapter), yet another example of the importance of using correct agenda descriptions.

Reclassification of a job must be public, but an employee's ability to fill that job may be considered in closed session.

Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position.³⁸ However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.³⁹

"I have some important news to announce," said Mayor Garcia. "We've decided to terminate the contract of the city manager, effective immediately. The council has met in closed session and we've negotiated six months severance pay."

"Unfortunately, that has some serious budget consequences, so we've had to delay phase two of the East Area Project."

This may be an improper use of the personnel closed session if the council agenda described the item as the city manager's evaluation. In addition, other than labor negotiations, any action on individual compensation must be taken in open session. Caution should be exercised to not discuss in closed session issues, such as budget impacts in this hypothetical, beyond the scope of the posted closed session notice.

Labor negotiations

The Brown Act allows closed sessions for some aspects of labor negotiations. Different provisions (discussed below) apply to school and community college districts.

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,⁴⁰ on employee salaries and fringe benefits for both represented ("union") and non-represented employees. For represented employees, it may also consider working conditions that by law require negotiation. For the purpose of labor negotiation closed sessions, an "employee" includes an officer or an independent contractor who functions as an officer or an employee, but independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.⁴¹

These closed sessions may take place before or during negotiations with employee representatives. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

PRACTICE TIP: The personnel exception specifically prohibits discussion or action on proposed compensation in closed session except for a disciplinary reduction in pay.

PRACTICE TIP: Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

During its discussions with representatives on salaries and fringe benefits, the legislative body may also discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.⁴²

The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.⁴³ The labor closed sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees.

Labor negotiations — school and community college districts

Employee relations for school districts and community college districts are governed by the Rodda Act, where different meeting and special notice provisions apply. The entire board, for example, may negotiate in closed sessions.

Four types of meetings are exempted from compliance with the Rodda Act:

1. A negotiating session with a recognized or certified employee organization;
2. A meeting of a mediator with either side;
3. A hearing or meeting held by a fact finder or arbitrator; and
4. A session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.⁴⁴

Public participation under the Rodda Act also takes another form.⁴⁵ All initial proposals of both sides must be presented at public meetings and are public records. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.⁴⁶ The final vote must be in public.

Other Education Code exceptions

The Education Code governs student disciplinary meetings by boards of school districts and community college districts. District boards may hold a closed session to consider the suspension or discipline of a student, if a public hearing would reveal personal, disciplinary, or academic information about the student contrary to state and federal pupil privacy law. The student's parent or guardian may request an open meeting.⁴⁷

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.⁴⁸ Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.⁴⁹

PRACTICE TIP: Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act.

Joint Powers Authorities

The legislative body of a joint powers authority may adopt a policy regarding limitations on disclosure of confidential information obtained in closed session, and may meet in closed session to discuss information that is subject to the policy.⁵⁰

License applicants with criminal records

A closed session is permitted when an applicant, who has a criminal record, applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license. The applicant and the applicant's attorney are authorized to attend the closed session meeting. If the body decides to deny the license, the applicant may withdraw the application. If the applicant does not withdraw, the body must deny the license in public, immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.⁵¹

Public security

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings, essential public services, including water, sewer, gas, or electric service, or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials including the Governor, Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.⁵² Action taken in closed session with respect to such public security issues is not reportable action.



Multijurisdictional law enforcement agency

A joint powers agency formed to provide law enforcement services (involving drugs; gangs; sex crimes; firearms trafficking; felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft) to multiple jurisdictions may hold closed sessions to discuss case records of an on-going criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.⁵³

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.⁵⁴

Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals, under other provisions of law.⁵⁵

1. A meeting to hear reports of hospital medical audit or quality assurance committees, or for related deliberations. However, an applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing.
2. A meeting to discuss "reports involving trade secrets" — provided no action is taken.

A "trade secret" is defined as information which is not generally known to the public or competitors and which: 1) "derives independent economic value, actual or potential" by virtue of its restricted knowledge; 2) is necessary to initiate a new hospital service or program or facility; and 3) would, if prematurely disclosed, create a substantial probability of depriving the hospital of a substantial economic benefit.

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district's dissolution.⁵⁶



Other legislative bases for closed session

Since any closed session meeting of a legislative body must be authorized by the Legislature, it is important to carefully review the Brown Act to determine if there is a provision that authorizes a closed session for a particular subject matter. There are some less frequently encountered topics that are authorized to be discussed by a legislative body in closed session under the Brown Act, including: a response to a confidential final draft audit report from the Bureau of State Audits,⁵⁷ consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,⁵⁸ hearing a charge or complaint from a member enrolled in a health plan by a legislative body of a local agency that provides Medi-Cal services,⁵⁹ discussions by a county board of supervisors that governs a health plan licensed pursuant to the Knox-Keene Health Care Services Plan Act related to trade secrets or contract negotiations

concerning rates of payment,⁶⁰ and discussions by an insurance pooling joint powers agency related to a claim filed against, or liability of, the agency or a member of the agency.⁶¹

PRACTICE TIP: Meetings are either open or closed. There is nothing “in between.”⁶²

Who may attend closed sessions

Meetings of a legislative body are either fully open or fully closed; there is nothing in between. Therefore, local agency officials and employees must pay particular attention to the authorized attendees for the particular type of closed session. As summarized above, the authorized attendees may differ based on the topic of the closed session. Closed sessions may involve only the members of the legislative body and only agency counsel, management and support staff, and consultants necessary for consideration of the matter that is the subject of closed session, with very limited exceptions for adversaries or witnesses with official roles in particular types of hearings (e.g., personnel disciplinary hearings and license hearings). In any case, individuals who do not have an official role in the closed session subject matters must be excluded from closed sessions.⁶³

Q. May the lawyer for someone suing the agency attend a closed session in order to explain to the legislative body why it should accept a settlement offer?

A. *No, attendance in closed sessions is reserved exclusively for the agency’s advisors.*

The confidentiality of closed session discussions

The Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality.⁶⁴ It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.⁶⁵ Only the legislative body acting as a body may agree to divulge confidential closed session information; regarding attorney/client privileged communications, the entire body is the holder of the privilege and only the entire body can decide to waive the privilege.⁶⁶

Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long opined that officials have a fiduciary duty to protect the confidentiality of closed session discussions. The Attorney General issued an opinion that it is “improper” for officials to disclose information received during a closed session regarding pending litigation,⁶⁷ though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions.⁶⁸ In any event, in 2002, the Brown Act was amended to prescribe particular remedies for breaches of confidentiality. These remedies include injunctive relief; and, if the breach is a willful disclosure of confidential information, the remedies include disciplinary action against an employee, and referral of a member of the legislative body to the grand jury.⁶⁹

The duty of maintaining confidentiality, of course, must give way to the responsibility to disclose improper matters or discussions that may come up in closed sessions. In recognition of this public policy, under the Brown Act, a local agency may not penalize a disclosure of information learned during a closed session if the disclosure: 1) is made in confidence to the district attorney or the grand jury due to a perceived violation of law; 2) is an expression of opinion concerning the propriety or legality of actions taken in closed session, including disclosure of the nature and extent of the illegal action; or 3) is information that is not confidential.⁷⁰

The interplay between these possible sanctions and an official’s first amendment rights is complex and beyond the scope of this guide. Suffice it to say that this is a matter of great sensitivity and controversy.

“I want the press to know that I voted in closed session against filing the eminent domain action,” said Council Member Chang.

“Don’t settle too soon,” reveals Council Member Watson to the property owner, over coffee. “The city’s offer coming your way is not our bottom line.”

The first comment to the press may be appropriate if it is a part of an action taken by the City Council in closed session that must be reported publicly.⁷¹ The second comment to the property owner is not — disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.

PRACTICE TIP: There is a strong interest in protecting the confidentiality of proper and lawful closed sessions.

ENDNOTES:

- 1 California Government Code section 54962
- 2 California Constitution, Art. 1, section 3
- 3 61 Ops.Cal.Atty.Gen. 220 (1978); but see California Government Code section 54957.8 (multijurisdictional law enforcement agencies are authorized to meet in closed session to discuss the case records of ongoing criminal investigations, and other related matters).
- 4 California Government Code section 54957.1
- 5 California Government Code section 54954.5
- 6 California Government Code section 54954.2
- 7 California Government Code section 54954.5
- 8 California Government Code sections 54956.9 and 54957.7
- 9 California Government Code section 54957.1(a)
- 10 California Government Code section 54957.1(b)
- 11 California Government Code section 54957.2
- 12 *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050; 2 Cal.Code Regs. section 18707
- 13 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 14 California Government Code section 54956.9; *Shapiro v. Board of Directors of Center City Development Corp.* (2005) 134 Cal.App.4th 170 (agency must be a party to the litigation).
- 15 82 Ops.Cal.Atty.Gen. 29 (1999)
- 16 *Page v. Miracosta Community College District* (2009) 180 Cal.App.4th 471
- 17 “The Brown Act,” California Attorney General (2003), p. 40
- 18 California Government Code section 54956.9(g)
- 19 *Trancas Property Owners Association v. City of Malibu* (2006) 138 Cal.App.4th 172
- 20 Government Code section 54956.9(e)
- 21 California Government Code section 54957.1
- 22 California Government Code section 54956.8
- 23 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904; see also 93 Ops.Cal.Atty.Gen. 51 (2010) (redevelopment agency may not convene a closed session to discuss rehabilitation loan for a property already subleased to a loan recipient, even if the loan incorporates some of the sublease terms and includes an operating covenant governing the property); 94 Ops.Cal.Atty.Gen. 82 (2011) (real estate closed session may address form, manner and timing of consideration and other items that cannot be disclosed without revealing price and terms).
- 24 73 Ops.Cal.Atty.Gen. 1 (1990)
- 25 California Government Code sections 54956.8 and 54954.5(b)
- 26 California Government Code section 54957.1(a)(1)
- 27 California Government Code section 54957(b)
- 28 63 Ops.Cal.Atty.Gen. 153 (1980); but see *Duvall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session but only if related to the evaluation of a particular employee).
- 29 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002)
- 30 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 80 Ops.Cal.Atty. Gen. 308 (1997). Interviews of candidates to fill a vacant staff position conducted by a temporary committee appointed by the governing body may be done in closed session.

- 31 California Government Code section 54957(b)(3)
- 32 88 Ops.Cal.Atty.Gen. 16 (2005)
- 33 *Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860
- 34 California Government Code section 54957(b); but see *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568 (notice not required for closed session deliberations regarding complaints or charges, when there was a public evidentiary hearing prior to closed session).
- 35 78 Ops.Cal.Atty.Gen. 218 (1995); *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87
- 36 *Moreno v. City of King* (2005) 127 Cal.App.4th 17
- 37 California Government Code section 54957
- 38 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165
- 39 California Government Code section 54957.1(a)(5)
- 40 California Government Code section 54957.6
- 41 California Government Code section 54957.6(b); see also 98 Ops.Cal.Atty.Gen. 41 (2015) (a project labor agreement between a community college district and workers hired by contractors or subcontractors is not a proper subject of closed session for labor negotiations because the workers are not “employees” of the district).
- 42 California Government Code section 54957.6; and 51 Ops.Cal.Atty.Gen. 201 (1968)
- 43 California Government Code section 54957.1(a)(6)
- 44 California Government Code section 3549.1
- 45 California Government Code section 3540
- 46 California Government Code section 3547
- 47 California Education Code section 48918; but see *Rim of the World Unified School District v. Superior Court* (2003) 104 Cal.App.4th 1393 (Section 48918 preempted by the Federal Family Educational Right and Privacy Act in regard to expulsion proceedings).
- 48 California Education Code section 72122
- 49 California Education Code section 60617
- 50 California Government Code section 54956.96
- 51 California Government Code section 54956.7
- 52 California Government Code section 54957
- 53 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354
- 54 California Government Code section 54957.8
- 55 California Government Code section 54962
- 56 California Health and Safety Code section 32106
- 57 California Government Code section 54956.75
- 58 California Government Code section 54956.81
- 59 California Government Code section 54956.86
- 60 California Government Code section 54956.87
- 61 California Government Code section 54956.95
- 62 46 Ops.Cal.Atty.Gen. 34 (1965)
- 63 82 Ops.Cal.Atty.Gen. 29 (1999)

- 64 Government Code section 54963
- 65 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 327; see also California Government Code section 54963.
- 66 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 67 80 Ops.Cal.Atty.Gen. 231 (1997)
- 68 76 Ops.Cal.Atty.Gen. 289 (1993)
- 69 California Government Code section 54963
- 70 California Government Code section 54963
- 71 California Government Code section 54957.1

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Chapter 6

REMEDIES



Certain violations of the Brown Act are designated as misdemeanors, although by far the most commonly used enforcement provisions are those that authorize civil actions to invalidate specified actions taken in violation of the Brown Act and to stop or prevent future violations. Still, despite all the safeguards and remedies to enforce them, it is ultimately impossible for the public to monitor every aspect of public officials' interactions. Compliance ultimately results from regular training and a good measure of self-regulation on the part of public officials. This chapter discusses the remedies available to the public when that self-regulation is ineffective.

Invalidation

Any interested person, including the district attorney, may seek to invalidate certain actions of a legislative body on the ground that they violate the Brown Act.¹ Violations of the Brown Act, however, cannot be invalidated if they involve the following types of actions:

- Those taken in substantial compliance with the law. No Brown Act violation is found when the given notice substantially complies with the Brown Act, even when the notice erroneously cites to the wrong Brown Act section, but adequately advises the public that the Board will meet with legal counsel to discuss potential litigation in closed session;²
- Those involving the sale or issuance of notes, bonds or other indebtedness, or any related contracts or agreements;
- Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment;
- Those connected with the collection of any tax; or
- Those in which the complaining party had actual notice at least 72 hours prior to the regular meeting or 24 hours prior to the special meeting, as the case may be, at which the action is taken.

Before filing a court action seeking invalidation, a person who believes that a violation has occurred must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action and the nature of the claimed violation. This demand must be sent within 90 days of the alleged violation or 30 days if the action was taken in open session but in violation of Section 54954.2, which requires (subject to specific exceptions) that only properly agendaized items are acted on by the governing body during a meeting.³ The legislative body then has up to 30 days to cure and correct its action. If it does not act, any lawsuit must be filed within the next 15 days. The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and to weigh its options before litigation is filed.

Although just about anyone has standing to bring an action for invalidation,⁴ the challenger must show prejudice as a result of the alleged violation.⁵ An action to invalidate fails to state a cause of action against the agency if the body deliberated but did not take an action.⁶

Applicability to Past Actions

Any interested person, including the district attorney, may file a civil action to determine whether past actions of a legislative body occurring on or after January 1, 2013 constitute violations of the Brown Act and are subject to a mandamus, injunction, or declaratory relief action.⁷ Before filing an action, the interested person must, within nine months of the alleged violation of the Brown Act, submit a “cease and desist” letter to the legislative body, clearly describing the past action and the nature of the alleged violation.⁸ The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action.⁹ If the body fails to take any action within the 30-day period or takes an action other than an unconditional commitment, a lawsuit may be filed within 60 days.¹⁰

The legislative body’s unconditional commitment must be approved at a regular or special meeting as a separate item of business and not on the consent calendar.¹¹ The unconditional commitment must be substantially in the form set forth in the Brown Act.¹² No legal action may thereafter be commenced regarding the past action.¹³ However, an action of the legislative body in violation of its unconditional commitment constitutes an independent violation of the Brown Act and a legal action consequently may be commenced without following the procedural requirements for challenging past actions.¹⁴

The legislative body may rescind its prior unconditional commitment by a majority vote of its membership at a regular meeting as a separate item of business not on the consent calendar. At least 30 days written notice of the intended rescission must be given to each person to whom the unconditional commitment was made and to the district attorney. Upon rescission, any interested person may commence a legal action regarding the past actions without following the procedural requirements for challenging past actions.¹⁵

Civil action to prevent future violations

The district attorney or any interested person can file a civil action asking the court to:

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body of a local agency;
- Determine the applicability of the Brown Act to actions or threatened future action of the legislative body;
- Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law; or
- Compel the legislative body to tape record its closed sessions.

PRACTICE TIP: A lawsuit to invalidate must be preceded by a demand to cure and correct the challenged action in order to give the legislative body an opportunity to consider its options. The Brown Act does not specify how to cure or correct a violation; the best method is to rescind the action being complained of and start over, or reaffirm the action if the local agency relied on the action and rescinding the action would prejudice the local agency.



It is not necessary for a challenger to prove a past pattern or practice of violations by the local agency in order to obtain injunctive relief. A court may presume when issuing an injunction that a single violation will continue in the future where the public agency refuses to admit to the alleged violation or to renounce or curtail the practice.¹⁶ Note, however, that a court may not compel elected officials to disclose their recollections of what transpired in a closed session.¹⁷

Upon finding a violation of the Brown Act pertaining to closed sessions, a court may compel the legislative body to tape record its future closed sessions. In a subsequent lawsuit to enforce the Brown Act alleging a violation occurring in closed session, a court may upon motion of the plaintiff review the tapes if there is good cause to think the Brown Act has been violated, and make public the relevant portion of the closed session recording.

Costs and attorney's fees

Someone who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. Courts have held that attorney's fees must be awarded to a successful plaintiff unless special circumstances exist that would make a fee award against the public agency unjust.¹⁸ When evaluating how to respond to assertions that the Brown Act has been violated, elected officials and their lawyers should assume that attorney's fees will be awarded against the agency if a violation of the Act is proven.

An attorney's fee award may only be directed against the local agency and not the individual members of the legislative body. If the local agency prevails, it may be awarded court costs and attorney's fees if the court finds the lawsuit was clearly frivolous and lacking in merit.¹⁹

Criminal complaints

A violation of the Brown Act by a member of the legislative body who acts with the improper intent described below is punishable as a misdemeanor.²⁰

A criminal violation has two components. The first is that there must be an overt act — a member of a legislative body must attend a meeting at which action is taken in violation of the Brown Act.²¹

"Action taken" is not only an actual vote, but also a collective decision, commitment or promise by a majority of the legislative body to make a positive or negative decision.²² If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.²³ In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act — not whether that member has voted with the majority or minority, or has voted at all.

The second component of a criminal violation is that action is taken with the intent of a member "to deprive the public of information to which the member knows or has reason to know the public is entitled" by the Brown Act.²⁴

PRACTICE TIP: Attorney's fees will likely be awarded if a violation of the Brown Act is proven.

As with other misdemeanors, the filing of a complaint is up to the district attorney. Although criminal prosecutions of the Brown Act are uncommon, district attorneys in some counties aggressively monitor public agencies' adherence to the requirements of the law.

Some attorneys and district attorneys take the position that a Brown Act violation may be pursued criminally under Government Code section 1222.²⁵ There is no case law to support this view; if anything, the existence of an express criminal remedy within the Brown Act would suggest otherwise.²⁶

Voluntary resolution

Arguments over Brown Act issues often become emotional on all sides. Newspapers trumpet relatively minor violations, unhappy residents fume over an action, and legislative bodies clam up about information better discussed in public. Hard lines are drawn and rational discussion breaks down. The district attorney or even the grand jury occasionally becomes involved. Publicity surrounding alleged violations of the Brown Act can result in a loss of confidence by constituents in the legislative body. There are times when it may be preferable to consider re-noticing and rehearing, rather than litigating, an item of significant public interest, particularly when there is any doubt about whether the open meeting requirements were satisfied.

At bottom, agencies that regularly train their officials and pay close attention to the requirements of the Brown Act will have little reason to worry about enforcement.

ENDNOTES:

- 1 California Government Code section 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision); sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions); 54954.6 (tax hearings); 54956 (special meetings); and 54956.5 (emergency situations). Violations of sections not listed above cannot give rise to invalidation actions, but are subject to the other remedies listed in section 54960.1.
- 2 *Castaic Lake Water Agency v. Newhall County Water District* (2015) 238 Cal.App.4th 1196, 1198
- 3 California Government Code section 54960.1 (b) and (c)(1)
- 4 *McKee v. Orange Unified School District* (2003) 110 Cal. App.4th 1310, 1318-1319
- 5 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 556, 561
- 6 *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116-17, 1118
- 7 Government Code Section 54960.2(a); Senate Bill No. 1003, Section 4 (2011-2012 Session)
- 8 Government Code Sections 54960.2(a)(1), (2)
- 9 Government Code Section 54960.2(b)



- 10 Government Code Section 54960.2(a)(4)
- 11 Government Code Section 54960.2(c)(2)
- 12 Government Code Section 54960.2(c)(1)
- 13 Government Code Section 54960.2(c)(3)
- 14 Government Code Section 54960.2(d)
- 15 Government Code Section 54960.2(e)
- 16 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524; *Accord Shapiro v. San Diego City Council* (2002) 96 Cal. App. 4th 904, 916 & fn.6
- 17 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 334-36
- 18 *Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors* (2003) 112 Cal. App.4th 1313, 1327-29 and cases cited therein
- 19 California Government Code section 54960.5
- 20 California Government Code section 54959. A misdemeanor is punishable by a fine of up to \$1,000 or up to six months in county jail, or both. California Penal Code section 19. Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.
- 21 California Government Code section 54959
- 22 California Government Code section 54952.6
- 23 61 Ops.Cal.Atty.Gen.283 (1978)
- 24 California Government Code section 54959
- 25 California Government Code section 1222 provides that “[e]very wilful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor.”
- 26 The principle of statutory construction known as *expressio unius est exclusio alterius* supports the view that section 54959 is the exclusive basis for criminal liability under the Brown Act.

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Rosenberg's Rules of Order

REVISED 2011

Simple Rules of Parliamentary Procedure for the 21st Century

By Judge Dave Rosenberg



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ABOUT THE AUTHOR

Dave Rosenberg is a Superior Court Judge in Yolo County. He has served as presiding judge of his court, and as presiding judge of the Superior Court Appellate Division. He also has served as chair of the Trial Court Presiding Judges Advisory Committee (the committee composed of all 58 California presiding judges) and as an advisory member of the California Judicial Council. Prior to his appointment to the bench, Rosenberg was member of the Yolo County Board of Supervisors, where he served two terms as chair. Rosenberg also served on the Davis City Council, including two terms as mayor. He has served on the senior staff of two governors, and worked for 19 years in private law practice. Rosenberg has served as a member and chair of numerous state, regional and local boards. Rosenberg chaired the California State Lottery Commission, the California Victim Compensation and Government Claims Board, the Yolo-Solano Air Quality Management District, the Yolo County Economic Development Commission, and the Yolo County Criminal Justice Cabinet. For many years, he has taught classes on parliamentary procedure and has served as parliamentarian for large and small bodies.

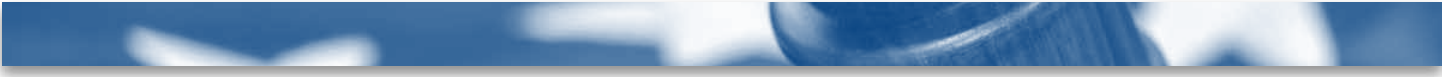


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INTRODUCTION

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that has not always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules — *Robert's Rules of Order* — which are embodied in a small, but complex, book. Virtually no one I know has actually read this book cover to cover. Worse yet, the book was written for another time and for another purpose. If one is chairing or running a parliament, then *Robert's Rules of Order* is a dandy and quite useful handbook for procedure in that complex setting. On the other hand, if one is running a meeting of say, a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order.

Hence, the birth of *Rosenberg's Rules of Order*.

What follows is my version of the rules of parliamentary procedure, based on my decades of experience chairing meetings in state and local government. These rules have been simplified for the smaller bodies we chair or in which we participate, slimmed down for the 21st Century, yet retaining the basic tenets of order to which we have grown accustomed. Interestingly enough, *Rosenberg's Rules* has found a welcoming audience. Hundreds of cities, counties, special districts, committees, boards, commissions, neighborhood associations and private corporations and companies have adopted *Rosenberg's Rules* in lieu of *Robert's Rules* because they have found them practical, logical, simple, easy to learn and user friendly.

This treatise on modern parliamentary procedure is built on a foundation supported by the following four pillars:

1. **Rules should establish order.** The first purpose of rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings.
2. **Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate; and those who do not fully understand and do not fully participate.
3. **Rules should be user friendly.** That is, the rules must be simple enough that the public is invited into the body and feels that it has participated in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of rules of procedure is to encourage discussion and to facilitate decision making by the body. In a democracy, majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself, but not dominate, while fully participating in the process.

Establishing a Quorum

The starting point for a meeting is the establishment of a quorum. A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The default rule is that a quorum is one more than half the body. For example, in a five-member body a quorum is three. When the body has three members present, it can legally transact business. If the body has less than a quorum of members present, it cannot legally transact business. And even if the body has a quorum to begin the meeting, the body can lose the quorum during the meeting when a member departs (or even when a member leaves the dais). When that occurs the body loses its ability to transact business until and unless a quorum is reestablished.

The default rule, identified above, however, gives way to a specific rule of the body that establishes a quorum. For example, the rules of a particular five-member body may indicate that a quorum is four members for that particular body. The body must follow the rules it has established for its quorum. In the absence of such a specific rule, the quorum is one more than half the members of the body.

The Role of the Chair

While all members of the body should know and understand the rules of parliamentary procedure, it is the chair of the body who is charged with applying the rules of conduct of the meeting. The chair should be well versed in those rules. For all intents and purposes, the chair makes the final ruling on the rules every time the chair states an action. In fact, all decisions by the chair are final unless overruled by the body itself.

Since the chair runs the conduct of the meeting, it is usual courtesy for the chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the chair should not participate in the debate or discussion. To the contrary, as a member of the body, the chair has the full right to participate in the debate, discussion and decision-making of the body. What the chair should do, however, is strive to be the last to speak at the discussion and debate stage. The chair should not make or second a motion unless the chair is convinced that no other member of the body will do so at that point in time.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, often published agenda. Informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon roadmap for the meeting. Each agenda item can be handled by the chair in the following basic format:

First, the chair should clearly announce the agenda item number and should clearly state what the agenda item subject is. The chair should then announce the format (which follows) that will be followed in considering the agenda item.

Second, following that agenda format, the chair should invite the appropriate person or persons to report on the item, including any recommendation that they might have. The appropriate person or persons may be the chair, a member of the body, a staff person, or a committee chair charged with providing input on the agenda item.

Third, the chair should ask members of the body if they have any technical questions of clarification. At this point, members of the body may ask clarifying questions to the person or persons who reported on the item, and that person or persons should be given time to respond.

Fourth, the chair should invite public comments, or if appropriate at a formal meeting, should open the public meeting for public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of public speakers. At the conclusion of the public comments, the chair should announce that public input has concluded (or the public hearing, as the case may be, is closed).

Fifth, the chair should invite a motion. The chair should announce the name of the member of the body who makes the motion.

Sixth, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member of the body who seconds the motion. It is normally good practice for a motion to require a second before proceeding to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and vote on a motion even when there is no second. This is a matter left to the discretion of the chair.

Seventh, if the motion is made and seconded, the chair should make sure everyone understands the motion.

This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the chair should now invite discussion of the motion by the body. If there is no desired discussion, or after the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or very brief discussion, then the vote on the motion should proceed immediately and there is no need to repeat the motion. If there has been substantial discussion, then it is normally best to make sure everyone understands the motion by repeating it.

Ninth, the chair takes a vote. Simply asking for the “ayes” and then asking for the “nays” normally does this. If members of the body do not vote, then they “abstain.” Unless the rules of the body provide otherwise (or unless a super majority is required as delineated later in these rules), then a simple majority (as defined in law or the rules of the body as delineated later in these rules) determines whether the motion passes or is defeated.

Tenth, the chair should announce the result of the vote and what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members of the body, if any, who voted in the minority on the motion. This announcement might take the following form: “The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring a 10-day notice for all future meetings of this body.”

Motions in General

Motions are the vehicles for decision making by a body. It is usually best to have a motion before the body prior to commencing discussion of an agenda item. This helps the body focus.

Motions are made in a simple two-step process. First, the chair should recognize the member of the body. Second, the member of the body makes a motion by preceding the member’s desired approach with the words “I move ...”

A typical motion might be: “I move that we give a 10-day notice in the future for all our meetings.”

The chair usually initiates the motion in one of three ways:

1. **Inviting the members of the body to make a motion**, for example, “A motion at this time would be in order.”
2. **Suggesting a motion to the members of the body**, “A motion would be in order that we give a 10-day notice in the future for all our meetings.”
3. **Making the motion**. As noted, the chair has every right as a member of the body to make a motion, but should normally do so only if the chair wishes to make a motion on an item but is convinced that no other member of the body is willing to step forward to do so at a particular time.

The Three Basic Motions

There are three motions that are the most common and recur often at meetings:

The basic motion. The basic motion is the one that puts forward a decision for the body’s consideration. A basic motion might be: “I move that we create a five-member committee to plan and put on our annual fundraiser.”

The motion to amend. If a member wants to change a basic motion that is before the body, they would move to amend it. A motion to amend might be: “I move that we amend the motion to have a 10-member committee.” A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

The substitute motion. If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they would move a substitute motion. A substitute motion might be: “I move a substitute motion that we cancel the annual fundraiser this year.”

“Motions to amend” and “substitute motions” are often confused, but they are quite different, and their effect (if passed) is quite different. A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor, and substitute a new and different motion for it. The decision as to whether a motion is really a “motion to amend” or a “substitute motion” is left to the chair. So if a member makes what that member calls a “motion to amend,” but the chair determines that it is really a “substitute motion,” then the chair’s designation governs.

A “friendly amendment” is a practical parliamentary tool that is simple, informal, saves time and avoids bogging a meeting down with numerous formal motions. It works in the following way: In the discussion on a pending motion, it may appear that a change to the motion is desirable or may win support for the motion from some members. When that happens, a member who has the floor may simply say, “I want to suggest a friendly amendment to the motion.” The member suggests the friendly amendment, and if the maker and the person who seconded the motion pending on the floor accepts the friendly amendment, that now becomes the pending motion on the floor. If either the maker or the person who seconded rejects the proposed friendly amendment, then the proposer can formally move to amend.

Multiple Motions Before the Body

There can be up to three motions on the floor at the same time. The chair can reject a fourth motion until the chair has dealt with the three that are on the floor and has resolved them. This rule has practical value. More than three motions on the floor at any given time is confusing and unwieldy for almost everyone, including the chair.

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that is made. For example, assume the first motion is a basic “motion to have a five-member committee to plan and put on our annual fundraiser.” During the discussion of this motion, a member might make a second motion to “amend the main motion to have a 10-member committee, not a five-member committee to plan and put on our annual fundraiser.” And perhaps, during that discussion, a member makes yet a third motion as a “substitute motion that we not have an annual fundraiser this year.” The proper procedure would be as follows:

First, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passed*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions.

Second, if the substitute motion *failed*, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would then move to consider the main motion (the first motion) as *amended*. If the motion to amend *failed*, the chair would then move to consider the main motion (the first motion) in its original format, not amended.

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee), or if *amended*, would be in its amended format (10-member committee). The question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are not debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

Motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. It requires a simple majority vote.

Motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote.

Motion to fix the time to adjourn. This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: “I move we adjourn this meeting at midnight.” It requires a simple majority vote.

Motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on “hold.” The motion can contain a specific time in which the item can come back to the body. “I move we table this item until our regular meeting in October.” Or the motion can contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

Motion to limit debate. The most common form of this motion is to say, “I move the previous question” or “I move the question” or “I call the question” or sometimes someone simply shouts out “question.” As a practical matter, when a member calls out one of these phrases, the chair can expedite matters by treating it as a “request” rather than as a formal motion. The chair can simply inquire of the body, “any further discussion?” If no one wishes to have further discussion, then the chair can go right to the pending motion that is on the floor. However, if even one person wishes to discuss the pending motion further, then at that point, the chair should treat the call for the “question” as a formal motion, and proceed to it.

When a member of the body makes such a motion (“I move the previous question”), the member is really saying: “I’ve had enough debate. Let’s get on with the vote.” When such a motion is made, the chair should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body.

NOTE: A motion to limit debate could include a time limit. For example: “I move we limit debate on this agenda item to 15 minutes.” Even in this format, the motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item*. This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

Majority and Super Majority Votes

In a democracy, a simple majority vote determines a question. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions come up when the body is taking an action which effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super majority) to pass:

Motion to limit debate. Whether a member says, “I move the previous question,” or “I move the question,” or “I call the question,” or “I move to limit debate,” it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

Motion to close nominations. When choosing officers of the body (such as the chair), nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers and it requires a two-thirds vote to pass.

Motion to object to the consideration of a question. Normally, such a motion is unnecessary since the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to suspend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

Counting Votes

The matter of counting votes starts simple, but can become complicated.

Usually, it’s pretty easy to determine whether a particular motion passed or whether it was defeated. If a simple majority vote is needed to pass a motion, then one vote more than 50 percent of the body is required. For example, in a five-member body, if the vote is three in favor and two opposed, the motion passes. If it is two in favor and three opposed, the motion is defeated.

If a two-thirds majority vote is needed to pass a motion, then how many affirmative votes are required? The simple rule of thumb is to count the “no” votes and double that count to determine how many “yes” votes are needed to pass a particular motion. For example, in a seven-member body, if two members vote “no” then the “yes” vote of at least four members is required to achieve a two-thirds majority vote to pass the motion.

What about tie votes? In the event of a tie, the motion always fails since an affirmative vote is required to pass any motion. For example, in a five-member body, if the vote is two in favor and two opposed, with one member absent, the motion is defeated.

Vote counting starts to become complicated when members vote “abstain” or in the case of a written ballot, cast a blank (or unreadable) ballot. Do these votes count, and if so, how does one count them? The starting point is always to check the statutes.

In California, for example, for an action of a board of supervisors to be valid and binding, the action must be approved by a majority of the board. (California Government Code Section 25005.) Typically, this means three of the five members of the board must vote affirmatively in favor of the action. A vote of 2-1 would not be sufficient. A vote of 3-0 with two abstentions would be sufficient. In general law cities in

California, as another example, resolutions or orders for the payment of money and all ordinances require a recorded vote of the total members of the city council. (California Government Code Section 36936.) Cities with charters may prescribe their own vote requirements. Local elected officials are always well-advised to consult with their local agency counsel on how state law may affect the vote count.

After consulting state statutes, step number two is to check the rules of the body. If the rules of the body say that you count votes of “those present” then you treat abstentions one way. However, if the rules of the body say that you count the votes of those “present and voting,” then you treat abstentions a different way. And if the rules of the body are silent on the subject, then the general rule of thumb (and default rule) is that you count all votes that are “present and voting.”

Accordingly, under the “present and voting” system, you would **NOT** count abstention votes on the motion. Members who abstain are counted for purposes of determining quorum (they are “present”), but you treat the abstention votes on the motion as if they did not exist (they are not “voting”). On the other hand, if the rules of the body specifically say that you count votes of those “present” then you **DO** count abstention votes both in establishing the quorum and on the motion. In this event, the abstention votes act just like “no” votes.

How does this work in practice?

Here are a few examples.

Assume that a five-member city council is voting on a motion that requires a simple majority vote to pass, and assume further that the body has no specific rule on counting votes. Accordingly, the default rule kicks in and we count all votes of members that are “present and voting.” If the vote on the motion is 3-2, the motion passes. If the motion is 2-2 with one abstention, the motion fails.

Assume a five-member city council voting on a motion that requires a two-thirds majority vote to pass, and further assume that the body has no specific rule on counting votes. Again, the default rule applies. If the vote is 3-2, the motion fails for lack of a two-thirds majority. If the vote is 4-1, the motion passes with a clear two-thirds majority. A vote of three “yes,” one “no” and one “abstain” also results in passage of the motion. Once again, the abstention is counted only for the purpose of determining quorum, but on the actual vote on the motion, it is as if the abstention vote never existed — so an effective 3-1 vote is clearly a two-thirds majority vote.

Now, change the scenario slightly. Assume the same five-member city council voting on a motion that requires a two-thirds majority vote to pass, but now assume that the body **DOES** have a specific rule requiring a two-thirds vote of members “present.” Under this specific rule, we must count the members present not only for quorum but also for the motion. In this scenario, any abstention has the same force and effect as if it were a “no” vote. Accordingly, if the votes were three “yes,” one “no” and one “abstain,” then the motion fails. The abstention in this case is treated like a “no” vote and effective vote of 3-2 is not enough to pass two-thirds majority muster.

Now, exactly how does a member cast an “abstention” vote?

Any time a member votes “abstain” or says, “I abstain,” that is an abstention. However, if a member votes “present” that is also treated as an abstention (the member is essentially saying, “Count me for purposes of a quorum, but my vote on the issue is abstain.”) In fact, any manifestation of intention not to vote either “yes” or “no” on the pending motion may be treated by the chair as an abstention. If written ballots are cast, a blank or unreadable ballot is counted as an abstention as well.

Can a member vote “absent” or “count me as absent?” Interesting question. The ruling on this is up to the chair. The better approach is for the chair to count this as if the member had left his/her chair and is actually “absent.” That, of course, affects the quorum. However, the chair may also treat this as a vote to abstain, particularly if the person does not actually leave the dais.

The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself; the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed.

A motion to reconsider requires a majority vote to pass like other garden-variety motions, but there are two special rules that apply only to the motion to reconsider.

First, is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted in the majority on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body — including a member who voted in the minority on the original motion — may second the motion). If a member who voted in the minority seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. At the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focuses on the item and the policy in question, not the personalities of the members of the body. Debate on policy is healthy, debate on personalities is not. The chair has the right to cut off discussion that is too personal, is too loud, or is too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body.

Can a member of the body interrupt the speaker? The general rule is “no.” There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be, “point of privilege.” The chair would then ask the interrupter to “state your point.” Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person’s ability to hear.

Order. The proper interruption would be, “point of order.” Again, the chair would ask the interrupter to “state your point.” Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded, and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, “return to the agenda.” If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair’s determination may be appealed.

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

Special Notes About Public Input

The rules outlined above will help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did.



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City of Lindsay
Social Media Policy

Adopted on 08/09/2022 via Resolution No. 22-48

Overview

This policy establishes guidelines for the establishment and use by the City of Lindsay of social media sites (including but not limited to Facebook and Instagram) as a means of conveying City of Lindsay (“City”) information to its citizens.

The intended purpose behind establishing City of Lindsay social media sites is to disseminate information from the City, about the City, to its citizens. The City of Lindsay has an overriding interest in deciding what is “spoken” on behalf of the City on City social media sites.

For purposes of this policy, “social media” is understood to be content created by individuals, using accessible, expandable, and upgradable publishing technologies, through and on the Internet. Examples of social media include, but are not limited to, Facebook, Instagram, YouTube, Twitter, LinkedIn, and blogs. For purposes of this policy, “comments” include information, articles, pictures, videos or any other form of communicative content posted on a City of Lindsay social media site, either as its own post or attached to another post.

General Policy

1. The establishment and use by any City department of City social media sites are subject to approval by the City Manager or his/her designees. All City of Lindsay social media sites shall be administered by City of Lindsay designated staff.
2. City social media sites should make clear on their respective profile pages that they are maintained by the City of Lindsay and that they follow the City’s Social Media Policy.
3. Wherever possible, City social media sites should link back to the official City of Lindsay website for forms, documents, online services and other information necessary to conduct business with the City of Lindsay.
4. Designated staff will monitor content on City social media sites to ensure adherence to both the City’s Social Media Policy and the interest and goals of the City of Lindsay.
5. The City reserves the right to restrict or remove any content that is deemed in violation of this Social Media Policy or any applicable law. Any content removed based on these guidelines must be retained by the City Clerk for a reasonable period of time, including the time, date and identity of the poster, when available.
6. These guidelines must be displayed to users or made available by hyperlink.

7. The City will approach the use of social media tools as consistently as possible, enterprise wide.
8. The City of Lindsay's website at <https://www.lindsay.ca.us/> will remain the City's primary and predominant internet presence.
9. All City social media sites shall adhere to applicable federal, state and local laws, regulations and policies.
10. City social media sites are subject to the California Public Records Act. Any content maintained in a social media format that is related to City business, including a list of subscribers, posted communication, and communication submitted for posting, may be a public record subject to public disclosure.
11. Employees representing the City government via City social media sites must conduct themselves at all times as a representative of the City and in accordance with all City policies.
12. This Social Media Policy may be revised at any time.
13. Comments on topics or issues not within the jurisdictional purview of the City of Lindsay may be removed.
14. Any posts deemed to be offensive, derogatory, hostile, or anything that is construed as discriminatory on the basis of race, sex, disability, or religion will be removed.
15. The City does not endorse any links or advertisements that may show up on its Facebook page.

Comment Policy

By posting or commenting on the City of Lindsay's Facebook page, or other City of Lindsay social media, you agree to the terms of use of the City of Lindsay's social media comment policy as provided herein.

1. As a public entity the City must abide by certain standards to serve all its constituents in a civil and unbiased manner.
2. The City of Lindsay Facebook and other social media pages are intended to be "family friendly," so please keep your comments clean by following these simple rules. In addition to keeping it family friendly, we require that you follow our posting guidelines here. Please note that we utilize Facebook's automatic content filtering feature. All City of Lindsay social media content is subject to monitoring.
3. The intended purpose behind establishing City of Lindsay social media sites is to disseminate information from the City, about the City, to its citizens.

4. Comments containing any of the following inappropriate forms of content shall not be permitted on City of Lindsay social media sites and are subject to removal and/or restriction by designated staff.
 - a. Comments not related to the original topic, including random or unintelligible comments; Profane, obscene, violent, or pornographic content and/or language;
 - b. Content that promotes, fosters or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, or national origin;
 - c. Defamatory or personal attacks;
 - d. Threats to any person or organization;
 - e. Comments in support of, or in opposition to, any political campaigns or ballot measures;
 - f. Solicitation of commerce, including but not limited to advertising of any business or product for sale;
 - g. Conduct in violation of any federal, state or local law;
 - h. Encouragement of illegal activity;
 - i. Information that may tend to compromise the safety or security of the public or public systems; or
 - j. Content that violates a legal ownership interest, such as a copyright, of any party.
 - k. Harassment or content which constitutes and/or facilitates stalking;
 - l. Content which violates the right to privacy;
 - m. Encouragement of violence;
 - n. Repetitive content;
 - o. Comments which may reasonably interfere with, inhibit, or compromise law enforcement investigations, police tactics, police responses to incidents and/or the safety of police staff and officers;
 - p. Posts or comments that contain any external links.
5. A comment posted by a member of the public on any City of Lindsay social media site is the opinion of the commentator or poster only, and publication of a comment does not imply endorsement of, or agreement by, the City of Lindsay, nor do such comments necessarily reflect the opinions or policies of the City of Lindsay.
6. The City of Lindsay reserves the right to deny access to City of Lindsay social media sites for any individual, who violates the City of Lindsay's Social Media Policy, at any time and without prior notice.

7. Comments posted to City of Lindsay social media pages will be monitored and inappropriate content as defined above will be removed as soon as possible and without prior notice. Please note, comments posted to pages are monitored and our Facebook settings will automatically hide a comment if profanity is used within the post.
8. If you need to contact the Lindsay Police Department, please call their front desk at (559) 562-2511, or if it is an emergency, call 911 and ask for assistance. While comments posted on the City's social media pages are monitored, posting a comment is neither the recommended nor best way to contact the City or Lindsay Police Department.
9. Departments shall monitor their social media sites for comments requesting responses from the City and for comments in violation of this policy.
10. All comments posted to any City of Lindsay Facebook site are bound by Facebook's Statement of Rights and Responsibilities and Community Standards, located at www.facebook.com/terms.php, and www.facebook.com/communitystandards, respectfully. The City of Lindsay reserves the right to report any violation of Facebook's Statement of Rights and Responsibilities and/or Community Standards to Facebook with the intent of Facebook taking appropriate and reasonable responsive action.
11. By posting or commenting on the City of Lindsay social media platforms you agree to our terms of use. You participate by your own choice, taking personal responsibility for your comments, your username and any information you provide therein.



STAFF REPORT

TO: Lindsay City Council
FROM: Curtis Cannon, Planning Manager
DEPARTMENT: City Services and Planning
ITEM NO.: 13.1
MEETING DATE: August 08, 2023

ACTION & RECOMMENDATION

Public Hearing to Consider the Approval of Resolution No. 23-34 A Resolution of the City Council of the City of Lindsay Approving General Plan Amendment No. 23-01, Planned Unit Development No. 2023-02, and Adopting an Initial Study/Mitigated Negative Declaration (IS/MND) for General Plan Amendment No. 2023-01, Zone Change No. 2023-01, and Planned Unit Development (PUD) No. 2023-02, A Request by Francisco Acevedo to Change the Land Use Designation from Low-Density Residential to Medium-Density Residential for A 2.5-Acre Portion of A Site Bound to the North by West Hickory Street, to the East By Parkside Avenue, to the South by Ono City Parkway, and the West by Sequoia Avenue/Road 214 (APNs 201-230-003 to -009).

Based on the findings and subject to the conditions of approval within this report, City Staff recommends that the City Council approve Resolution No. 23-36.

BACKGROUND | ANALYSIS

Mario Valmonte and Associates filed the application on behalf of Francisco Acevedo for the development of 116 residential units consisting of 85 single-family lots and 31 multi-family housing units. The proposal includes a General Plan Amendment to change the Land Use Designation from Low-Density Residential to Medium-Density Residential and a Zone Change to change the zone from R-1-7 to RM-3 and Planned Unit Development (PUD) Overlay over a 2.5-acre portion of the site to allow for the development of multi-family housing units. The 32-acre project site is bound to the north by W. Hickory Street, to the East by Parkside Avenue, to the South by Ono City Parkway, and to the West by Sequoia Avenue/Road 214 (APNs 201-230-003 to -009).

The proposed project would result in on-site infrastructure improvements, including the construction of interior access roads with five ingress/egress access points; one along Avenue 236, two along Parkside Avenue, and two along Road 214, new lighting and landscaping in accordance with City standards, and connection to existing City utilities, including water, wastewater and stormwater systems.

General Plan Amendment: The General Plan Land Use Element does not dictate specific procedures to amend land use designations for residential land uses. Instead, the Plan relies on the land use diagram (map) and basic allocations of land areas between various existing and future land uses. The land use

diagram provides a framework for future growth and development that provides for a balanced range of land uses in locations that are compatible and consistent with City goals. Any amendment to the Plan should consider the impacts of the proposed amendment on other Plan goals, policies, objectives, and standards (such as the Circulation Element). State law allows the City Council to amend any element of the Plan up to four (4) times per year. A new State law prohibits cities from lowering the allowed density through a General Plan Amendment; however, in this case, the allowed density will be increasing. An increased allowed density has the potential to better help the City achieve State-assigned housing goals.

Change of Zone: Since the General Plan relies on the land use diagram (map) and basic allocations of land areas between various existing and future land uses as a resource in determining land use amendments, the proposed amendment would not be in conflict with the policies, objectives, and standards of the General Plan.

City of Lindsay Zoning Ordinance Section 18.22.050.A provides criteria for review of zone changes:

“At the public hearing, the City Council shall review the application or the proposal and may receive pertinent evidence and testimony as to why and how the proposed change is necessary to achieve the objectives of the Zoning Ordinance prescribed in Section 18.01.020, and how or why the proposed change is consistent with the General Plan and the stated purposes and application intended for the zone classification proposed.”

The proposed Land Use Designation of Medium-Density Residential and zoning designation of RM-3 would allow for a 2.5-acre portion of the site to develop with residential uses at a higher density than what is currently planned for. Approval of the project would allow for the development of the site that is consistent with the goals and policies of the General Plan.

Planned Unit Development: The proposed PUD includes the merging of seven existing single-family lots to allow for a 31-unit multi-family development on approximately 2.5 acres. The development will consist of two-story buildings with buildings of six, five, or two units. Each unit includes a single-car garage and a porch and patio. The development will be gated with a six-foot block wall along the perimeter of the project. The site also includes 25 uncovered parking stalls, refuse enclosures, a tot lot, and landscaped common areas.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

As Lead Agency under the California Environmental Quality Act (CEQA), the City staff reviewed the project to determine whether it could have a significant effect on the environment because of its development. In accordance with CEQA Guidelines Section 15382, “[s]ignificant effect on the environment” means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An Initial Study was prepared and found that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project in the form of mitigations have been made by or agreed to by the project proponent. A Mitigated Negative Declaration (MND) for the entire 32-acre site and all its stated uses was prepared and is attached. The 20-day public review period began on July 15 and will end on August 08, 2023.

FINDINGS

Amendments to the General Plan Map and Zoning Map may be approved by the Council if the proposed amendment is necessary to achieve the objectives of the Zoning Code described in Chapter 18.01 and if the amendment would be consistent with the goals and policies of the General Plan and the purposes and application intended for the zoning district classification proposed.

1. The project has been reviewed for compliance with the Municipal Code and the Subdivision Map Act and was found to be in compliance with the incorporation of the recommended Conditions of Approval.
2. The amendment is consistent with the goals and policies of the General Plan and the purposes and applications intended for the zoning district classification proposed.

Pursuant to Section 18.19.070 of the Lindsay Municipal Code, a PUD may be approved if the proposed map meets the findings of the Municipal Code and the Conditions of Approval. Staff has determined the project meets the findings of the Municipal Code and included Conditions of Approval.

1. *The proposed location of the PUD is in accordance with the objectives of the Zoning Code.*
The Zoning Code allows for a PUD to be located in any zone district other than R-1-7X. No part of this project is located in the R-1-7X zone.
2. *The proposed location of the PUD and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, and welfare or materially injurious to properties or improvements in the vicinity.*
Staff has determined, with the analysis included in the Mitigated Negative Declaration for this project, that the PUD and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, and welfare or materially injurious to properties or improvements in the vicinity.
3. *The proposed PUD will comply with each of the applicable provisions of this section.*
The project has been found by staff to be in compliance with the Lindsay Municipal Code, including Section 18.19.070.
4. *The standards of population density, site area and dimensions, site coverage, yard spaces, the height of structures, the distance between structures, off-street parking and off-street loading facilities, landscaped areas, and street design will produce an environment of stable and desirable character consistent with the objectives of the Zoning Code and will not generate more traffic than the streets in the vicinity can carry without congestion and will not overload utilities.*
Staff has determined, with the analysis included in the Mitigated Negative Declaration for this project, that the standards of population density, site area and dimensions, site coverage, yard spaces, the height of structures, the distance between structures, off-street parking and off-street loading facilities, landscaped areas, and street design will produce an environment of stable and desirable character consistent with the objectives of the Zoning Code, and will not generate more traffic than the streets in the vicinity can carry without congestion and will not overload utilities.
5. *That the combination of different dwelling types and/or a variety of land uses in the development will complement each other and will harmonize with existing and proposed land uses in the vicinity.*
Staff has determined the combination of dwelling types will complement each other and will harmonize with existing and proposed land uses in the vicinity.

6. *That the proposed PUD will satisfactorily mitigate potential environmental impacts in accordance with the provisions of Section 18.18.070 of this title.*

Staff has determined, with the analysis included in the Mitigated Negative Declaration for this project, the proposed PUD will satisfactorily mitigate potential environmental impacts in accordance with the provisions of Section 18.18.070 of this title.

RECOMENDED APPROVAL FINDINGS

1. The amendment is consistent with the goals and policies of the General Plan and the purposes and application intended for the zoning district classification proposed.
2. That the proposed location of the PUD is in accordance with the objectives of the Zoning Code.
3. That the proposed location of the PUD and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, and welfare or materially injurious to properties or improvements in the vicinity.
4. That the proposed PUD will comply with each of the applicable provisions of this section.
5. That the standards of population density, site area and dimensions, site coverage, yard spaces, the height of structures, the distance between structures, off-street parking and off-street loading facilities, landscaped areas, and street design will produce an environment of stable and desirable character consistent with the objectives of the Zoning Code and will not generate more traffic than the streets in the vicinity can carry without congestion and will not overload utilities.
6. That the combination of different dwelling types and/or a variety of land uses in the development will complement each other and will harmonize with existing and proposed land uses in the vicinity.
7. That the proposed PUD will satisfactorily mitigate potential environmental impacts in accordance with the provisions of Section 18.18.070 of this title.

RECOMMENDED CONDITIONS

1. The site shall be developed consistent with the exhibits provided and applicable development standards found in the Zoning Ordinance and City Municipal Code.
2. All mitigation measures in the Mitigated Negative Declaration were approved with General Plan Amendment No. 2023-01, Zone Change No. 2023-01, and Planned Unit Development No. 2023-02.
3. The project shall be developed and maintained in substantial compliance with the conditions of the Tentative Subdivision Map contained in Resolution 05-36 and Resolution 07-05, except as modified by these conditions of approval.
4. All fences and walls shall be constructed in accordance with Section 18.06.050 Property Development Standards of the City Municipal Code.
5. Construct all frontage improvements along Whitney Street, including curb, gutter, sidewalk, drive approach(es), landscape and irrigation. Whitney Street construction (minimum of 2-12' wide travel lanes, 4' wide minimum paved shoulder on the north side, and 8' wide parking on the south side) in accordance with the approved plans for Mission Estates Subdivision.
6. Construct Whitney Street to Sequoia Avenue and Parkside Avenue to include a minimum of 2-12' wide travel lanes, 4' wide minimum paved shoulder on the north side, and 8' wide

- parking on the south side in accordance with the approved plans for Mission Estates Subdivision.
7. Construct sewer, water, storm drain facilities, and streetlights in accordance with the approved plans for Mission Estates Subdivision and other private utilities (SCE, SoCalGas, AT&T, Comcast, Frontier) in Whitney Street from Sequoia Avenue to Parkside Avenue to serve the development.
 8. Vacate the right of way for Napa Boulevard south of Whitney Street in accordance with the California Streets and Highway Code, the Subdivision Map Act, and the City Municipal Code.
 9. The developer shall remove the parks from the subdivision by application for lot line adjustment(s) and/or parcel map(s) in accordance with the Subdivision Map Act and City Municipal Code.
 10. Inspect and test existing facilities constructed in Whitney Street for the Mission Estates Subdivision as directed by and to the satisfaction of the City to confirm the adequacy of facilities and/or determine improvements to be constructed.
 11. A merger of the lots shall be completed by a licensed surveyor to remove the lines of the seven lots of the PUD and recorded prior to the application for a building permit.
 12. Plans for all public and private improvements, including but not limited to water, sewer, storm drainage, road pavement, curb and gutter, sidewalk, streetlights, landscaping, and fire hydrants shall be approved by the City Engineer, and these improvements shall be completed in accordance with the approved plans to the satisfaction of the City Services Department.
 13. Parkland in-lieu fees shall be paid to the City for each lot in accordance with the City's Fee Schedule adopted by resolution of the City Council. Fees shall be paid prior to approval of the Final Map.
 14. The project shall be subject to the applicable development impact fees adopted by resolution of the City Council.
 15. The developer shall comply with the standards, provisions, and requirements of the San Joaquin Valley Air Pollution Control District that relate to the project.
 16. Fire hydrant types and locations shall be approved by the Public Safety and City Services Departments.
 17. Concrete pads for the installation of mailboxes shall be provided in accordance with determinations made by the Lindsay Postmaster.
 18. One tree shall be planted in the front yard of each home prior to the certificate of occupancy being issued.
 19. Streetlights shall be provided within the project as per City local street lighting standards.
 20. Any existing roadway, sidewalk, or curb and gutter that is damaged during construction shall be repaired or replaced to the satisfaction of the City Services Department.
 21. All signs shall require a sign permit separate from the building permit.
 22. The PUD approval shall expire within two years; an extension is granted by the City.
 23. The City of Lindsay shall not be liable for any damage, loss, or injury to the person, property, or effects of the applicant or of any agent, servant, employee, contracted staff, or volunteer. The applicant agrees to indemnify, protect, and hold harmless the City of Lindsay against any and all such damages, costs, attorney's fees, or employees.

FISCAL IMPACT

No fiscal impact associated with this action at this time. Development impact fees will be paid when the residential units are constructed in accordance with City policy and State law.

ATTACHMENTS

- Proof of Notice of Public Hearing
- Proof of Notice of Public Hearing Mailed to Property Owners within 300 feet
- Mission Estates Subdivision Map
- PUD Site Plan
- IS/MND for General Plan Amendment No. 2023-01, Zone Change No. 2023-01, and Planned Unit Development No. 2023-02
- Resolution No. 23-34

**CITY OF LINDSAY
PUBLIC NOTICE OF AVAILABILITY
NOTICE OF PUBLIC HEARING**

Date: Tuesday, August 8, 2023
Time: 6:00 PM or as soon thereafter
Location: Council Chambers City Hall
251 East Honolulu Street, Lindsay, CA 93247

NOTICE IS HEREBY GIVEN that the City Council of the City of Lindsay, California, will hold a public hearing on August 8, 2023, beginning at 6:00 PM (or as soon thereafter as the matter can be heard) to solicit public comments relating to the following matter:

CONSIDERATION OF GENERAL PLAN AMENDMENT NO. 2023-01, ZONE CHANGE NO. 2023-01, PLANNED UNIT DEVELOPMENT NO. 2023-01 AND THE ACCOMPANYING INITIAL STUDY/MITIGATED NEGATIVE DECLARATION (IS/MND). MARIO VALMONTE AND ASSOCIATES FILED THE APPLICATION FOR GENERAL PLAN AMENDMENT, ZONE CHANGE, AND PUD FOR THE DEVELOPMENT OF 116 RESIDENTIAL UNITS CONSISTING OF 85 SINGLE-FAMILY LOTS AND 31 MULTI-FAMILY HOUSING UNITS. THE PROPOSAL INCLUDES A GENERAL PLAN AMENDMENT TO CHANGE THE LAND USE DESIGNATION FROM LOW-DENSITY RESIDENTIAL TO MEDIUM-DENSITY RESIDENTIAL AND A ZONE CHANGE TO CHANGE THE ZONE FROM R-1-7 TO RM-3 AND PUD-OVERLAY OVER THE SOUTHERN MULTI-FAMILY HOUSING UNITS. THE 32-ACRE PROJECT SITE IS BOUND TO THE NORTH BY W. HICKORY STREET, TO THE EAST BY PARKSIDE AVENUE, TO THE SOUTH BY ONO CITY PARKWAY, AND THE WEST BY SEQUOIA AVENUE/ROAD 214 (APNS 201-230-003 TO -009).

This is to advise that the City of Lindsay has prepared an IS/MND in conformance with the California Environmental Quality Act (CEQA) for the project identified herein. As mandated by State law, the minimum public review period for this document is 20 days.

FURTHER information on this matter and the full text of the proposed documents may be obtained from the City of Lindsay City Services Office, 150 N. Mirage Avenue, Lindsay, CA, from 8:00 a.m. to 5:00 p.m., Monday through Friday of the comment period. Due to the limits mandated by State law, mailed responses must be filed with the City of Lindsay, Planning, P.O. Box 369, Lindsay, CA 93247 no later than August 8, 2023, at 5:00 p.m. Persons having comments or concerns about the proposed project are encouraged to attend and offer their comments at the hearing. Written comments can also be filed in the City of Lindsay City Services Office, 150 N. Mirage Avenue, Lindsay, CA prior to the date of the hearing. If you challenge the proposed action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City at, or prior to, the Public Hearing.

BY ORDER OF THE CITY COUNCIL OF THE CITY OF LINDSAY

Dated: July 13, 2023



City of Lindsay

DEPARTMENT OF CITY SERVICES

P.O. Box 369 — Lindsay, California 93247 — 150 North Mirage Ave.
559 • 562 • 7102 ext. 4
559 • 562 • 5748 fax



NOTICE OF PUBLIC HEARING

The City of Lindsay invites you to the public hearing for the consideration of the project below. This public hearing will be your opportunity to communicate any questions or concerns regarding the proposed project.

Hearing Date and Time: Tuesday, August 8th, 2023, at 6:00pm

Hearing Location: Council Chambers, City Hall, 251 E Honolulu St, Lindsay CA 93247

Project: General Plan Amendment, Zone Change and Initial Study and Mitigated Negative Declaration

Project Location: Mission Estates is a vacant lot with surrounding streets: Sequoia Ave, W Hickory St, Parkside Ave, and Ono City Parkway.

Project Description: Multi-family and single-family homes.

AVISO DE AUDIENCIA PUBLICA

La Ciudad de Lindsay los invita a la junta de audiencia pública para la consideración del proyecto descrito en este aviso. Esta junta servirá como oportunidad de expresar cualquier preocupación o pregunta que usted tenga.

Hora y fecha de junta: martes, 8 de agosto, 2023 a las 6:00pm

Ubicación de la junta: sala del ayuntamiento, City Hall, 251 E Honolulu St. Lindsay, CA 93247

Proyecto: Enmienda del Plan General Municipal, Cambio de Zona, Primer Estudio Ambiental y Declaración Negativa Mitigada

Ubicación del proyecto: Mission Estates es un lote vacío. Las calles que rodean el lote son: Sequoia Ave, W Hickory St, Parkside Ave y Ono City Parkway.

Descripción de proyecto: viviendas multifamiliar y unifamiliares.

If you have any questions, feel free to call and ask for Curtis Cannon at 559-562-7102 ext. 4. Si tiene alguna pregunta, llame y pida por Curtis Cannon al numero 559-562-7102 ext.4.

Thank you/Gracias,
Lindsay City Services



"MISSION ESTATES"

BEING A SUBDIVISION OF A PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 30 SOUTH, RANGE 27 EAST, MOUNT Diablo BASE AND MERIDIAN, IN THE CITY OF LINDSAY, COUNTY OF TULARE, STATE OF CALIFORNIA.

JULY 2006

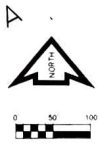
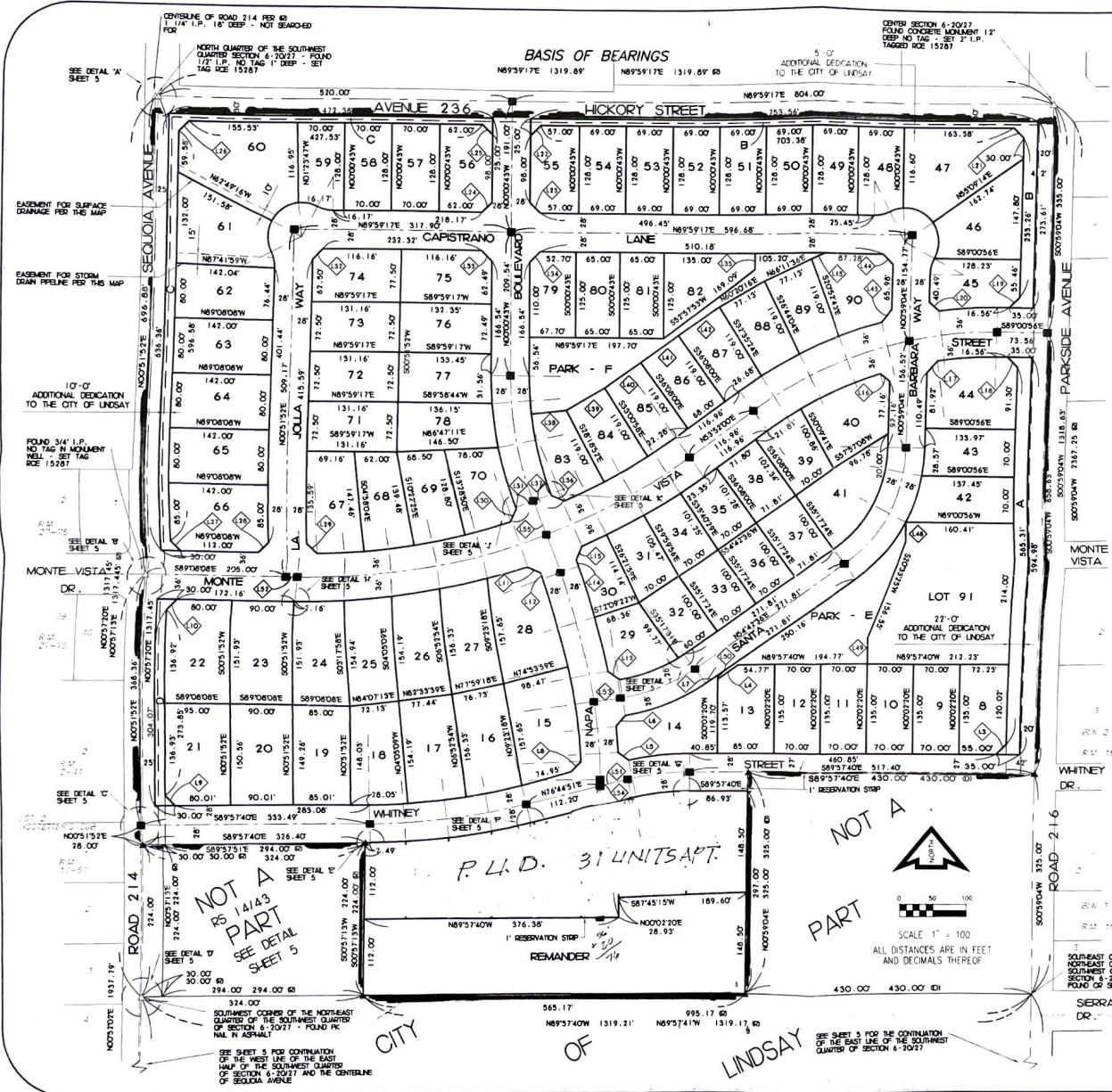
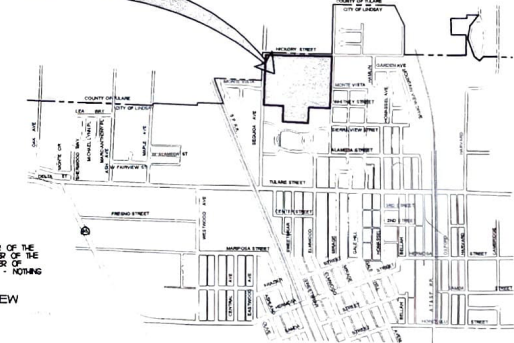
OWNERS: ~~LINDSAY MISSION ESTATES, LLC~~ FRANCISCO ACEVEDO
A UTAH LIMITED LIABILITY COMPANY
KERTH NELLESEN, MANAGING MEMBER
81-32 NORTH 300 WEST
PROVO, UTAH 84606
18923 AVE. 260
ENETER, CA 93221

ENGINEER: **ROBERTS ENGINEERING**
P. O. Box 908
Porterville, Ca. 93258
Phone: (559) 784-8328
Fax: (559) 784-8339

- LEGEND**
- △ MONUMENT FOUND AS DESCRIBED
 - ▲ SET 2" I.P. TAGGED RCE 15287
 - SET CITY STANDARD STREET MONUMENT TAGGED RCE 15287
 - SET 3/4" I.P. TAGGED RCE 15287
 - ⊙ RECORD PER DEED DATED 20, 1978
 - ⊖ RECORD PER RECORD OF SURVEY
 - RECORDED JANUARY 29, 1979 IN BOOK 3616, PAGE 657, FILE NO. 5696, O.R.
 - RECORDED IN BOOK 14 OF LICENSED SURVEYS, AT PAGE 43, T.C.R.
 - SUBDIVISION BOUNDARY

BASIS OF BEARINGS:
THE CENTERLINE OF AVENUE 236 - HICKORY STREET PER RECORD OF SURVEY - WHICH BEARS:
N 89° 59' 17" E

VICINITY MAP
PROJECT SITE



NOT A PART

NOT A PART

P.L.D. 31 UNITS APT.

REMAINDER

CITY OF LINDSAY

SEE SHEET 5 FOR CONTINUATION OF THE WEST LINE OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 6-2027 AND THE CENTERLINE OF SEQUOIA AVENUE

SEE SHEET 5 FOR CONTINUATION OF THE EAST LINE OF THE SOUTHWEST QUARTER OF SECTION 6-2027



SITE PLAN LEGEND:

- = CONCRETE
- = GRASS
- = 1-CAR GARAGE
- = TREE

EXISTING ZONING:	R-1
PROPOSED ZONING:	RH-2
TOTAL UNITS:	31
TOTAL GARAGES:	31
TOTAL OPEN PARKING:	25
TOTAL PARKING PROVIDED:	56 (47 REQ'D)
TOTAL SQ. FT.:	77,562 S.F. (1.78 ACRES)



MARIO A. VALMONTE & ASSOCIATES
 5378 N. AURORA AVE.
 FRESNO, CA 93722
 PHONE: (559) 351-4415

SHEET NAME: Site Plan
 PROJECT NAME: Site Development

OWNER: Francisco Agaveiro
 18823 Avenue 256
 Exeter, CA 93221

Revisions: _____ Date: _____
 Drawn by: MAV
 Date: 1-16-2021
 Scale: AS NOTED
 Job #: _____
 Sheet: _____

T1
 of Sheets

1 PLAN UNIT DEVELOPMENT
 SCALE: 1" = 20'

Mission Estates Residential Project Initial Study

Prepared for:



City of Lindsay
251 E. Honolulu St.
Lindsay, CA 93247
(559) 562-7102
Contact: Neyba Amezcua

Prepared by:



Crawford & Bowen Planning, Inc.
113 N. Church Street, Suite 310
Visalia, CA 93291
(559) 840-4414
Contact: Emily Bowen, LEED AP

July 2022

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PROJECT INFORMATION

This document is the Initial Study/Mitigated Negative Declaration on the potential environmental effects of the City of Lindsay's (City) Mission Estates Residential Project (Project). The City of Lindsay will act as the Lead Agency for this project pursuant to the California Environmental Quality Act (CEQA) and the CEQA Guidelines. Copies of all materials referenced in this report are available for review in the project file during regular business hours at 251 E. Honolulu Street, Lindsay, CA 93247.

Project title

Mission Estates Residential Project

Lead agency name and address

City of Lindsay
251 E. Honolulu St.
Lindsay, CA 93247

Contact person and phone number

Neyba Amezcua, Director of City Services and Planning
City of Lindsay (559) 562-7102

Project location

The City of Lindsay is located in Tulare County in the southern part of the San Joaquin Valley. The 32-acre Project site is located in the northern portion of the City, bound to the north by W Hickory Street, to the east by Parkside Avenue, to the south by Ono City Parkway, and to the west by Sequoia Avenue/Road 214. See Figure 1. Lindsay is bounded to the west by State Route (SR) 65.

Figure 1 – Location

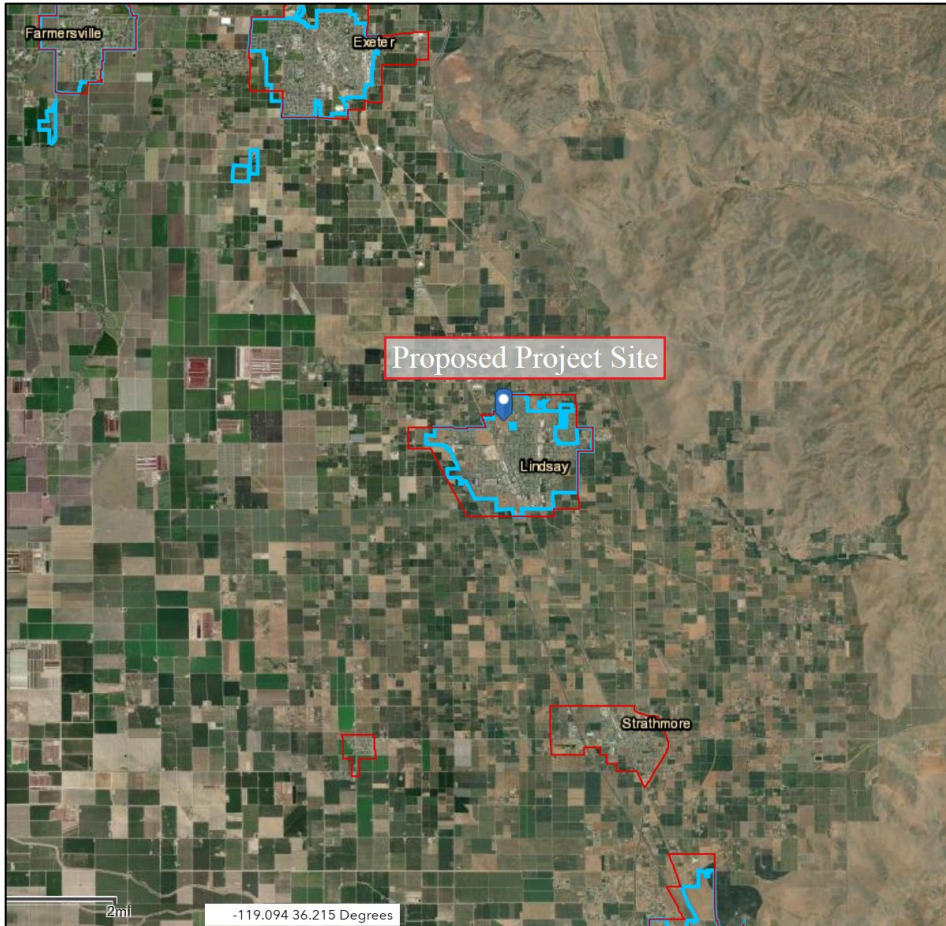


Figure 2 – Site Aerial



Project sponsor's name/address

Mario Valmonte and Associates
5379 N. Aurora Ave
Fresno, CA 93722

General plan designation

Low Density Residential

Zoning

R-1-7

Project Description

The proposed Project consists of the development of 116 residential units consisting of 85 single-family housing and 31 multi-family housing units. The proposed Project also includes a PUD-Overlay for eight lots to accommodate for the multi-family housing. As a part of the Project, the Land Use Map of the Lindsay General Plan would be amended to change the land use designation of the southern part of the site to medium density residential and the zone would be changed to RM-3 (multi-family residential), which would be consistent with the General Plan land use designation. The RM-3 zone on approximately 2.5 acres of land would allow for the development of up to 31 multi-family units at full buildout.

Project Components

- Construction of 85 single family residential units.
- Construction of 31 multi-family residential units.
- Construction of interior access roads with five ingress/egress access points; one along Avenue 236, two along Parkside Avenue, and two along Road 214.
- New lighting and landscaping in accordance with City standards.
- Connection to existing City utilities, including water, wastewater and stormwater systems.
- General Plan Amendment to change the Land Use Designation from low density residential to medium density residential and to accommodate a PUD-Overlay over the southern multi-family housing units (APNs 201-230-003, -004, -005, -006, -007, -008, and -009).
- Zone change to change the zone from R-1-7 to RM-3 in the southern portion of the site to accommodate the multi-family residential.

Surrounding Land Uses/Existing Conditions

The proposed Project site is currently vacant and highly disturbed with minimal vegetation.

Lands directly surrounding the proposed Project are described as follows:

- North: Roosevelt Elementary School, and vacant/agricultural land.
- South: Vacant land parcel, County Health Agency, and Lindsay Wellness Center and City Park identified as Public & Semi-Public Facility and Park & Recreation.
- East: Existing single-family residence and residential housing development, identified as Very Low and Low Density Residential.
- West: Residential housing development, identified as Low Density Residential.

Figure 3 – Site Plan

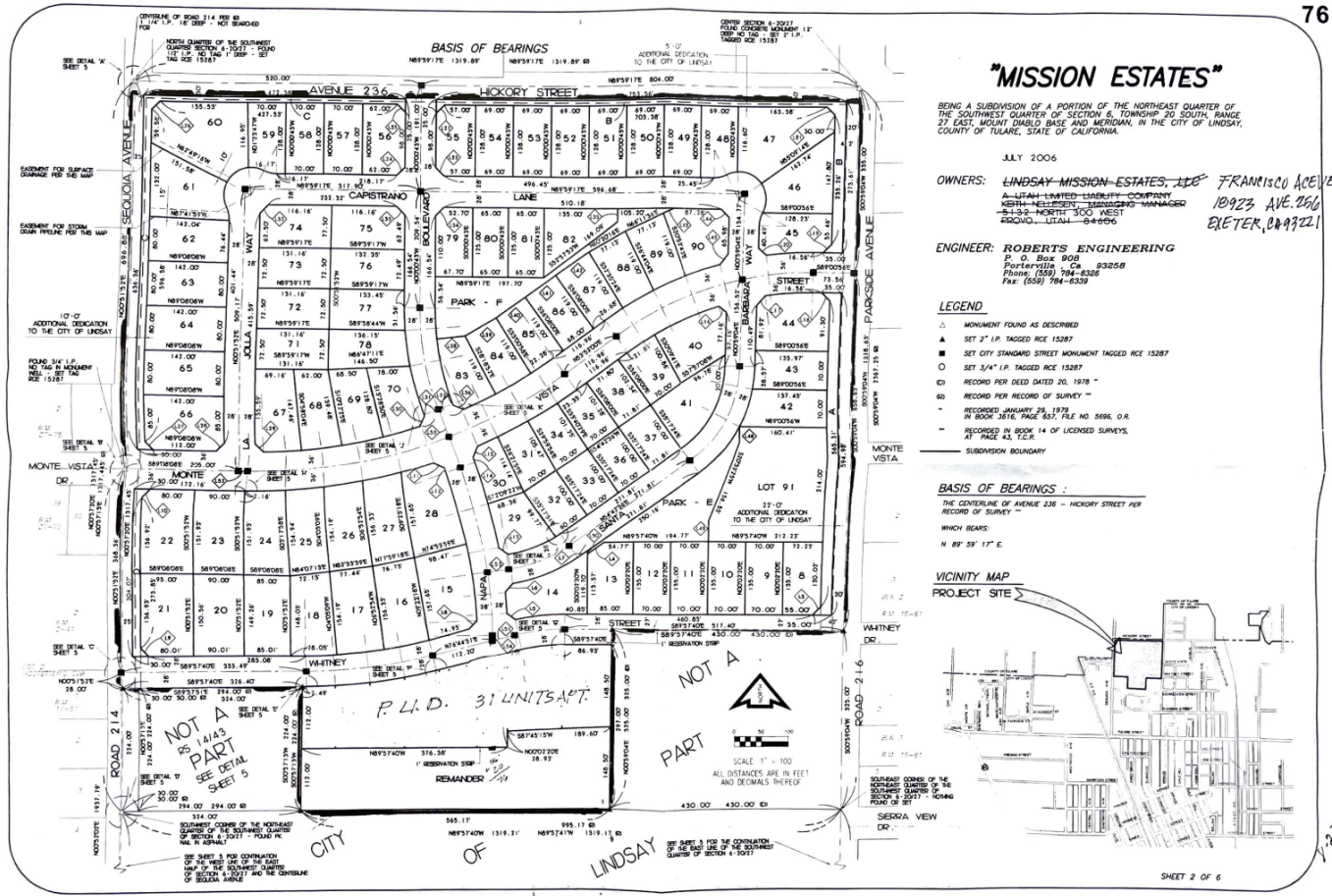


Figure 4 – Multi-family Site Plan



Other Public Agencies Involved

- The adoption of a Mitigated Negative Declaration by the City of Lindsay
- Approval of a General Plan Amendment by the City of Lindsay
- Approval of a Zone Change by the City of Lindsay
- Approval of Building Permits by the City of Lindsay
- Approval of a Stormwater Pollution Prevention Plan by the Central Valley Regional Water Quality Control Board
- Dust Control Plan Approval letter from the San Joaquin Valley Air Pollution Control District
- Compliance with other federal, state and local requirements.

Tribal Consultation

The City of Lindsay has not received any project-specific requests from any Tribes in the geographic area with which it is traditionally and culturally affiliated with or otherwise to be notified about projects in the City of Lindsay.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a “Potentially Significant Impact” as indicated by the checklist on the following pages.

- | | | |
|--|---|---|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agriculture Resources and Forest Resources | <input type="checkbox"/> Air Quality |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Energy |
| <input type="checkbox"/> Geology / Soils | <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Hazards & Hazardous Materials |
| <input type="checkbox"/> Hydrology / Water Quality | <input type="checkbox"/> Land Use / Planning | <input type="checkbox"/> Mineral Resources |
| <input type="checkbox"/> Noise | <input type="checkbox"/> Population / Housing | <input type="checkbox"/> Public Services |
| <input type="checkbox"/> Recreation | <input type="checkbox"/> Transportation | <input type="checkbox"/> Tribal Cultural Resources |
| <input type="checkbox"/> Utilities / Service Systems | <input type="checkbox"/> Wildfire | <input type="checkbox"/> Mandatory Findings of Significance |

DETERMINATION

On the basis of this initial evaluation:

- I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the

project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

- I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- I find that the proposed project MAY have a “potentially significant impact” or “potentially significant unless mitigated” impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Neyba Amezcua

Date

Director of City Services and Planning

City of Lindsay

ENVIRONMENTAL CHECKLIST

I. AESTHETICS

Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and regulations governing scenic quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

The proposed Project site is located on the San Joaquin Valley floor in the northern portion of the City of Lindsay, California. TulareWorks Health & Human Services Agency office lies to the southwest of the site and Mt Olive Lutheran Church to the east. The site is bounded to the east by Parkside Avenue, with residential development beyond the roadway and to the south by Ono City Parkway, with Lindsay Wellness Center beyond the roadway. The site is bounded by Sequoia Avenue/Road 214 to the west, with residential development and agricultural/vacant land beyond the roadway in that direction. West Hickory Street lies to the north of the site, with Roosevelt Elementary School, agricultural/vacant land,

and a rural residence beyond the roadway. The aesthetic features of the existing visual environment in the proposed Project area are residential and some agricultural. There are no scenic resources or scenic vistas in the area. State Routes (SR) in the proposed Project vicinity include SR 65.

REGULATORY SETTING

Federal

Aesthetic resources are protected by several federal regulations, none of which are relevant to the proposed Project because it will not be located on lands administered by a federal agency, and the proposed Project applicant is not requesting federal funding or a federal permit.

State

Nighttime Sky – Title 24 Outdoor Lighting Standards

The Energy Commission adopted changes to Title 24, Parts 1 and 6, Building Energy Efficiency Standards (Standards), on April 23, 2008. These new Standards became effective on January 1, 2010. Requirements for outdoor lighting remained consistent with past Standards and the requirements vary according to which “Lighting Zone” the equipment is in. The Standards contain lighting power allowances for newly installed equipment and specific alterations that are dependent on which Lighting Zone the Project is located in. Existing outdoor lighting systems are not required to meet these lighting power allowances. However, alterations that increase the connected load, or replace more than 50% of the existing luminaires, for each outdoor lighting application that is regulated by the Standards, must meet the lighting power allowances for newly installed equipment.

An important part of the Standards is to base the lighting power that is allowed on how bright the surrounding conditions are. The eyes adapt to darker surrounding conditions, and less light is needed to properly see; when the surrounding conditions get brighter, more light is needed to see. The least power is allowed in Lighting Zone 1 and increasingly more power is allowed in Lighting Zones 2, 3, and 4.

The Energy Commission defines the boundaries of Lighting Zones based on U.S. Census Bureau boundaries for urban and rural areas as well as the legal boundaries of wilderness and park areas. By default, government designated parks, recreation areas and wildlife preserves are Lighting Zone 1; rural areas are Lighting Zone 2; and urban areas are Lighting Zone 3. Lighting Zone 4 is a special use district that may be adopted by a local government.

California Scenic Highway Program

The Scenic Highway Program allows county and city governments to apply to the California Department of Transportation (Caltrans) to establish a scenic corridor protection program which was created by the Legislature in 1963. Its purpose is to protect and enhance the natural scenic beauty of California highways and adjacent corridors, through special conservation treatment. The state laws governing the Scenic Highway Program are found in the Streets and Highways Code, Sections 260 through 263. While not Designated State Scenic Highways, two Eligible State Scenic Highways occur in Tulare County, SR 198 and SR 190.

RESPONSES

a. Have a substantial adverse effect on a scenic vista?

Less than Significant Impact. The proposed Project includes the construction of up to 116 residential units (31 multi-family units and 85 single-family units) and the improvements associated with a new residential development, including lighting and site landscaping. The structures will conform to design standards set forth by the City's General Plan and Zoning Ordinance. The proposed Project site is located in an area that is largely surrounded by urban uses, with some agricultural/vacant land to the north and west and will not result in a use that is visually incompatible with the surrounding area.

A scenic vista is generally considered a view of an area that has remarkable scenery or a resource that is indigenous to the area. The Project is located in an area of minimal topographic relief, and views of the site are easily obscured by buildings, other structures, and trees. Neither the Project area nor any surrounding land use contains features typically associated with scenic vistas (e.g., ridgelines, peaks, overlooks).

Construction activities will be visible from the adjacent roadsides; however, the construction activities will be temporary in nature and will not affect a scenic vista. The impact will be *less than significant*.

Mitigation Measures: None are required.

b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?

Less than Significant Impact. There are no state designated scenic highways within the immediate proximity to the Project site. California Department of Transportation Scenic Highway Mapping System identifies SR 198 east of SR 99 as an Eligible State Scenic Highway. This is the closest highway, located

approximately 7.5 miles north of the Project site, and the Project site is both physically and visually separated from SR 198 by intervening land uses.

The Tulare County General Plan designates County Scenic Roads, and the closest Scenic Road is Road 216 which ends north of the Project site. The proposed residential Project will be in conformance with City landscaping and design standards and will blend in with the residential development to the north, east and west.

Based on the National Register of Historic Places (NRHP) and the City's General Plan, no historic buildings exist on the Project site. The proposed Project would not cause damage to rock outcroppings or historic buildings within a State scenic highway corridor. Any impacts would be considered *less than significant*.

Mitigation Measures: None are required.

c. In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and regulations governing scenic quality?

Less than Significant Impact. Site construction will include residences, internal access roads, lighting and site landscaping. The residences will be single-family and multi-family and will conform to design standards set forth by the City's General Plan, Zoning Ordinance, and the Housing Element. The proposed Project site is located in an area that is largely surrounded by urban uses, including residential, and as such, will not result in a use that is visually incompatible with the surrounding area. The proposed Project will not substantially degrade the existing visual character or quality of the area or its surroundings.

The impact will be *less than significant*.

Mitigation Measures: None are required.

d. Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

Less Than Significant Impact. Nighttime lighting is necessary to provide and maintain safe, secure, and attractive environments; however, these lights have the potential to produce spillover light and glare and

waste energy, and if designed incorrectly, could be considered unattractive. Light that falls beyond the intended area is referred to as “light trespass.” Types of light trespass include spillover light and glare. Minimizing all these forms of obtrusive light is an important environmental consideration. A less obtrusive and well-designed energy efficient fixture would face downward, emit the correct intensity of light for the use, and incorporate energy timers.

Spillover light is light emitted by a lighting installation that falls outside the boundaries of the property on which the installation is sited. Spillover light can adversely affect light-sensitive uses, such as residential neighborhoods at nighttime. Because light dissipates as it travels from the source, the intensity of a light fixture is often increased at the source to compensate for the dissipated light. This can further increase the amount of light that illuminates adjacent uses. Spillover light can be minimized by using only the level of light necessary, and by using cutoff type fixtures or shielded light fixtures, or a combination of fixture types.

Glare results when a light source directly in the field of vision is brighter than the eye can comfortably accept. Squinting or turning away from a light source is an indication of glare. The presence of a bright light in an otherwise dark setting may be distracting or annoying, referred to as discomfort glare, or it may diminish the ability to see other objects in the darkened environment, referred to as disability glare. Glare can be reduced by design features that block direct line of sight to the light source and that direct light downward, with little or no light emitted at high (near horizontal) angles, since this light would travel long distances. Cutoff-type light fixtures minimize glare because they emit relatively low-intensity light at these angles.

Current sources of light in the Project area include streetlights, light from the Roosevelt Elementary School, City Park, and Health & Human Services Agency parking area, the vehicles traveling along adjacent roadways, and light from nearby residences. The Project would necessitate street lighting. Such lighting would be subject to the requirements of the City of Lindsay General Plan. Accordingly, the Project would not create substantial new sources of light or glare. Potential impacts are *less than significant*.

Mitigation Measures: None are required.

II. AGRICULTURE AND FOREST RESOURCES

Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Result in the loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

ENVIRONMENTAL SETTING

The proposed Project site is located within the northern boundary of the City of Lindsay. The site is considered Farmland of Local Importance by the State Farmland Mapping and Monitoring Program; however, is not enrolled in Williamson Act contracts. Surrounding land is primarily Urban and Built-Up Land, with some portions of land to the north and the west designated as Farmland of Statewide Importance.

REGULATORY SETTING

Federal

Federal regulations for agriculture and forest resources are not relevant to the proposed Project because it is not a federal undertaking (the Project site is not located on lands administered by a federal agency, and the Project applicant is not requesting federal funding or a federal permit).

State

State regulations for agriculture and forest resources relevant to the proposed Project include the Williamson Act (1965), as the Project site is currently enrolled in a Williamson Act contract and will require cancellation upon Project development.

RESPONSES

- a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?
- b. Conflict with existing zoning for agricultural use, or a Williamson Act contract?
- c. Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?
- d. Result in the loss of forest land or conversion of forest land to non-forest use?
- e. Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?

No Impact. The Project site is considered Farmland of Local Importance by the State Farmland Mapping and Monitoring Program.¹ No *Prime Farmland, Unique Farmland, or Farmland of Statewide Importance* or land under the Williamson Act contracts occurs in the Project area. Therefore, no land conversion from Farmland would occur for the Project. Immediate surrounding land uses include residential, park and recreation, institutional, and public and semi-public facilities. The proposed site is planned for development and as such, the proposed Project does not have the potential to result in the conversion of Farmland to non-agricultural uses or forestland uses to non-forestland. The proposed site is not currently being farmed. The Project is not zoned for forestland and does not propose any zone changes related to forest or timberland. There is *no impact*.

Mitigation Measures: None are required.

¹California Department of Conservation, California Important Farmland Finder. <https://maps.conservation.ca.gov/DLRP/CIFF/>. Accessed April 2022.

III. AIR QUALITY

Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Result in other emissions (such as those leading to odors or adversely affecting a substantial number of people)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

The climate of the San Joaquin Valley is characterized by long, hot summers and stagnant, foggy, winters. Precipitation is low and temperature inversions are common. These characteristics are conducive to the formation and retention of air pollutants and are in part influenced by the surrounding mountains which intercept precipitation and act as a barrier to the passage of cold air and air pollutants.

The proposed Project lies within the San Joaquin Valley Air Basin, which is managed by the San Joaquin Valley Air Pollution Control District (SJVAPCD or Air District). National Ambient Air Quality Standards (NAAQS) and California Ambient Air Quality Standards (CAAQS) have been established for the following criteria pollutants: carbon monoxide (CO), ozone (O₃), sulfur dioxide (SO₂), nitrogen dioxide (NO₂), particulate matter (PM₁₀ and PM_{2.5}), and lead (Pb). The CAAQS also set standards for sulfates, hydrogen sulfide, and visibility.

Air quality plans or attainment plans are used to bring the applicable air basin into attainment with all state and federal ambient air quality standards designed to protect the health and safety of residents within that air basin. Areas are classified under the Federal Clean Air Act as either “attainment”, “non-attainment”, or “extreme non-attainment” areas for each criteria pollutant

based on whether the NAAQS have been achieved or not. Attainment relative to the State standards is determined by the California Air Resources Board (CARB). The San Joaquin Valley is designated as a State and Federal extreme non-attainment area for O₃, a State and Federal non-attainment area for PM_{2.5}, a State non-attainment area for PM₁₀, and Federal and State attainment area for CO, SO₂, NO₂, and Pb.²

REGULATORY SETTING

Federal

Clean Air Act

The federal Clean Air Act of 1970 (as amended in 1990) required the U.S. Environmental Protection Agency (EPA) to develop standards for pollutants considered harmful to public health or the environment. Two types of National Ambient Air Quality Standards (NAAQS) were established. Primary standards protect public health, while secondary standards protect public welfare, by including protection against decreased visibility, and damage to animals, crops, landscaping and vegetation, or buildings. NAAQS have been established for six “criteria” pollutants: carbon monoxide (CO), nitrogen dioxide (NO₂), sulfur dioxide (SO₂), ozone (O₃), particulate matter (PM₁₀ and PM_{2.5}), and lead (Pb).

State

California Air Resources Board

The California Air Resources Board (CARB) is the state agency responsible for implementing the federal and state Clean Air Acts. CARB has established California Ambient Air Quality Standards (CAAQS), which include all criteria pollutants established by the NAAQS, but with additional regulations for Visibility Reducing Particles, sulfates, hydrogen Sulfide (H₂S), and vinyl chloride.

The proposed Project is located within the San Joaquin Valley Air Basin, which includes San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and parts of Kern counties and is managed by the SJVAPCD.

Air basins are classified as attainment, nonattainment, or unclassified. Attainment is achieved when monitored ambient air quality data is in compliance with the standards for a specified pollutant. Non-compliance with an established standard will result in a nonattainment designation and an

² San Joaquin Valley Air Pollution Control District. Ambient Air Quality Standards & Valley Attainment Status. <http://www.valleyair.org/aqinfo/attainment.htm>. Accessed April 2022.

unclassified designation indicates insufficient data is available to determine compliance for that pollutant.

Standards and attainment status for listed pollutants in the Air District can be found in Table 1. Note that both state and federal standards are presented.

**Table 1
Standards and Attainment Status for Listed Pollutants in the Air District³**

	Federal Standard	California Standard
Ozone	0.075 ppm (8-hr avg)	0.07 ppm (8-hr avg)
		0.09 ppm (1-hr avg)
Carbon Monoxide	9.0 ppm (8-hr avg)	9.0 ppm (8-hr avg)
	35.0 ppm (1-hr avg)	20.0 ppm (1-hr avg)
Nitrogen Dioxide	0.053 ppm (annual avg)	0.30 ppm (annual avg)
		0.18 ppm (1-hr avg)
Sulfur Dioxide	0.03 ppm (annual avg)	0.04 ppm (24-hr avg)
	0.14 ppm (24-hr avg)	0.25 ppm (1hr avg)
	0.5 ppm (3-hr avg)	
Lead	1.5 µg/m3 (calendar quarter)	1.5 µg/m3 (30-day avg)
	0.15 µg/m3 (rolling 3-month avg)	
Particulate Matter (PM10)	150 µg/m3 (24-hr avg)	20 µg/m3 (annual avg)
		50 µg/m3 (24-hr avg)
Particulate Matter (PM2.5)	15 µg/m3 (annual avg)	35 µg/m3 (24-hr avg)
		12 µg/m3 (annual avg)

µg/m3 = micrograms per cubic meter

Additional State regulations include:

CARB Portable Equipment Registration Program – This program was designed to allow owners and operators of portable engines and other common construction or farming equipment to register their equipment under a statewide program so they may operate it statewide without the need to obtain a permit from the local air district.

U.S. EPA/CARB Off-Road Mobile Sources Emission Reduction Program – The California Clean Air Act (CCAA) requires CARB to achieve a maximum degree of emissions reductions from off-road mobile

³ San Joaquin Valley Air Pollution Control District. Guide to Assessing and Mitigating Air Quality Impacts. February 19, 2015. Page 28. <https://www.valleyair.org/transportation/GAMAQI-2015/FINAL-DRAFT-GAMAQI.PDF>. Accessed April 2022.

sources to attain State Ambient Air Quality Standards (SAAQS); off-road mobile sources include most construction equipment. Tier 1 standards for large compression-ignition engines used in off-road mobile sources went into effect in California in 1996. These standards, along with ongoing rulemaking, address emissions of nitrogen oxides (NOX) and toxic particulate matter from diesel engines. CARB is currently developing a control measure to reduce diesel PM and NOX emissions from existing off-road diesel equipment throughout the state.

California Global Warming Solutions Act – Established in 2006, Assembly Bill 32 (AB 32) requires that California’s GHG emissions be reduced to 1990 levels by the year 2020. This will be implemented through a statewide cap on GHG emissions, which will be phased in beginning in 2012. AB 32 requires CARB to develop regulations and a mandatory reporting system to monitor global warming emissions levels.

In addition, the proposed Project is being evaluated pursuant to CEQA.

Local

San Joaquin Valley Air Pollution Control District

The San Joaquin Valley Air Pollution Control District (SJVAPCD) is the local agency charged with preparing, adopting, and implementing mobile, stationary, and area air emission control measures and standards. The SJVAPCD has several rules and regulations that may apply to the Project:

Rule 3135 (Dust Control Plan Fees) – This rule requires the project applicant to submit a fee in addition to a Dust Control Plan. The purpose of this rule is to recover the SJVAPCD’s cost for reviewing these plans and conducting compliance inspections.

Rules 4101 (Visible Emissions) and 4102 (Nuisance) – These rules apply to any source of air contaminants and prohibits the visible emissions of air contaminants or any activity which creates a public nuisance.

Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations) – This rule applies to use of asphalt for paving new roadways or restoring existing roadways disturbed by project activities.

Regulation VIII (Fugitive PM₁₀ Prohibitions) – This regulation, a series of eight regulations, is designed to reduce PM₁₀ emissions by reducing fugitive dust. Regulation VIII requires implementation of control measures to ensure that visible dust emissions are substantially reduced. The control measures are summarized in Table 2.

Table 2
San Joaquin Valley Air Pollution Control District
Regulation VIII Control Measures for Construction Related Emissions of PM₁₀⁴

The following are required to be implemented at all construction sites:

All disturbed areas, including storage piles, which are not actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizers/suppressants, covered with a tarp or other similar cover, or vegetative

All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions during construction using water or chemical stabilizer

All land clearing, grubbing, scraping, excavation, land leveling, grading cut and fill, and demolition activities during construction shall be effectively controlled of fugitive dust emissions utilizing application of water or pre-soaking.

When materials are transported off-site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from top of container shall be maintained.

All operations shall limit, or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions. Use of

Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.

Within urban areas, trackout shall be immediately removed when it extends 50 or more feet from the site at the end of each workday.

Any site with 150 or more vehicle trips per day shall prevent carryout and trackout.

RESPONSES

- a. Conflict with or obstruct implementation of the applicable air quality plan?
- b. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?
- c. Expose sensitive receptors to substantial pollutant concentrations?

Less Than Significant Impact. The proposed Project lies within the San Joaquin Valley Air Basin (SJVAB). At the Federal level, the SJVAB is designated as extreme nonattainment for the 8-hour ozone standard, attainment for PM₁₀ and CO, and nonattainment for PM_{2.5}. At the State level, the SJVAB is designated as nonattainment for the 8-hour ozone, PM₁₀, and PM_{2.5} standards. Although the Federal 1-

⁴ San Joaquin Valley Air Pollution Control District. Current District Rules and Regulations. <http://www.valleyair.org/rules/Truleslist.htm#reg8>. Accessed April 2022.

hour ozone standard was revoked in 2005, areas must still attain this standard, and the SJVAPCD recently requested an EPA finding that the SJVAB has attained the standard based on 2011-2013 data.⁵ To meet Federal Clean Air Act (CAA) requirements, the SJVAPCD has multiple air quality attainment plan (AQAP) documents, including:

- Extreme Ozone Attainment Demonstration Plan (EOADP) for attainment of the 1-hour ozone standard (2004);
- 2007 Ozone Plan for attainment of the 8-hour ozone standard;
- 2007 PM₁₀ Maintenance Plan and Request for Redesignation; and
- 2008 PM_{2.5} Plan.

Because of the region's non-attainment status for ozone, PM_{2.5}, and PM₁₀, if the project-generated emissions of either of the ozone precursor pollutants (ROG or NO_x), PM₁₀, or PM_{2.5} were to exceed the SJVAPCD's significance thresholds, then the project uses would be considered to conflict with the attainment plans. In addition, if the project uses were to result in a change in land use and corresponding increases in vehicle miles traveled, they may result in an increase in vehicle miles traveled that is unaccounted for in regional emissions inventories contained in regional air quality control plans.

The annual significance thresholds to be used for the Project for construction and operational emissions are as follows⁶:

- 10 tons per year ROG;
- 10 tons per year NO_x;
- 15 tons per year PM₁₀; and
- 15 tons per year PM_{2.5}.

Project Emissions

Site preparation and Project construction would involve excavation, grading, hauling, and various activities needed to construct the Project. During construction, the Project could generate pollutants such as hydrocarbons, oxides of nitrogen, carbon monoxide, and suspended PM. A major source of PM would be windblown dust generated during construction activities. Sources of fugitive dust would include

⁵ San Joaquin Valley Air Pollution Control District. Guidance to Assessing and Mitigating Air Quality Impacts. February 19, 2015. Page 28. <https://www.valleyair.org/transportation/GAMAQI-2015/FINAL-DRAFT-GAMAQI.PDE>. Accessed June 2022.

⁶ San Joaquin Valley Air Control District – Air Quality Threshold of Significance – Criteria Pollutants. <http://www.valleyair.org/transportation/0714-GAMAQI-Criteria-Pollutant-Thresholds-of-Significance.pdf>. Accessed June 2022.

disturbed soils at the construction site and trucks carrying uncovered loads of soils. Vehicles leaving the site could deposit dirt and mud on local streets, which could be an additional source of airborne dust after it dries. PM₁₀ emissions would vary from day to day, depending on the nature and magnitude of construction activity and local weather conditions. PM₁₀ emissions would depend on soil moisture, the silt content of soil, wind speed, and the amount of operating equipment. Larger dust particles would settle near the source, while fine particles would be dispersed over greater distances from the construction site. These emissions would be temporary and limited to the immediate area surrounding the construction site.

The proposed Project construction schedule would begin in late 2023 and would last through 2024. Emissions were estimated using the California Emissions Estimator Model (CalEEMod), ver. 2020.4.0. Construction related emissions are shown in Table 3. Refer to Appendix A – Air Emissions Output Table for the full emissions output estimates for construction and operational activities.

Table 3
Project Construction and Operational Emissions

	VOC (ROG) (tons/year)	NO _x (tons/year)	PM10* (tons/year)	CO ₂ (MT/year)
2022	0.24	2.33	0.54	342.34
2023	0.23	1.96	0.16	376.11
2024	1.83	0.83	0.07	173.49
Annual Construction Emissions Maximum:	1.83	2.33	0.54	376.11
Annual Operational Emissions:	1.42	1.03	1.07	1226.84
Threshold of Significance	10	10	15	--
Exceed Threshold?	No	No	No	N/A

* Appendix A includes projected emissions from ozone, carbon monoxide, lead, particulate matter (less than 2.5 microns in diameter), but are not included in this table because there is no established threshold of significance for these emissions.

As shown in Table 3, annual construction and operational emissions would be below the SJVAPCD’s significance threshold. Additionally, the SJVAPCD has implemented Regulation VIII measures for dust control related to construction projects, which are applicable to the Project and will be enforced by the City and the City’s contractor, which will further reduce construction PM10 emissions.

As described above, construction/operational emissions would not exceed the SJVAPCD’s significance thresholds for ROG, NO_x, and PM₁₀. As a result, the Project uses would not conflict with emissions inventories contained in regional air quality attainment plans and would not result in a significant

Commented [CM1]: Need to move these into 2023, still LTS

Commented [EB2R1]: We would need to re-run the air modeling to change the dates. These numbers would actually be more conservative than if we re-ran the model.

contribution to the region's air quality non-attainment status⁷. Likewise, the Project would not result in a cumulatively considerable net increase of any criteria pollutant within the SJVAPCD jurisdiction. Finally, the Project would also not expose sensitive receptors to substantial pollutant concentrations. It will not cumulatively increase any criteria pollutant and will not result in substantial pollutant concentrations.

Any impacts to air resources would be considered *less than significant*.

Mitigation Measures: None are required.

- d. Result in other emissions (such as those leading to odors adversely affecting a substantial number of people?

Less than Significant Impact. Land uses that are typically identified as sources of objectionable odors include landfills, transfer stations, sewage treatment plants, wastewater pump stations, composting facilities, feed lots, coffee roasters, asphalt batch plants, and rendering plants. The Project includes a residential development and as such, would not be a source of ongoing objectionable odors.

During construction, the various diesel-powered vehicles and equipment in use on-site would create localized odors. These odors would be temporary and would not likely be noticeable for extended periods of time beyond the Project's site boundaries. The potential for diesel odor impacts would therefore be less than significant. Any impacts would be *less than significant*.

Mitigation Measures: None are required.

⁷ San Joaquin Valley Air Pollution Control District. Guidance to Assessing and Mitigating Air Quality Impacts. February 19, 2015. Page 65. <https://www.valleyair.org/transportation/GAMAQI-2015/FINAL-DRAFT-GAMAQI.PDF>. Accessed June 2022.

IV. BIOLOGICAL RESOURCES

Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Have a substantial adverse effect on federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

- f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

ENVIRONMENTAL SETTING

The proposed Project site is located in a portion of the central San Joaquin Valley that has, for decades, experienced intensive agricultural and urban disturbances. Current agricultural endeavors in the region include orange groves, olive orchards and row crops.

Like most of California, the Central San Joaquin Valley experiences a Mediterranean climate. Warm dry summers are followed by cool moist winters. Summer temperatures usually exceed 90 degrees Fahrenheit, and the relative humidity is generally very low. Winter temperatures rarely raise much above 70 degrees Fahrenheit, with daytime highs often below 60 degrees Fahrenheit. Annual precipitation within the proposed Project site is about 10 inches, almost 85% of which falls between the months of October and March. Nearly all precipitation falls in the form of rain and storm-water readily infiltrates the soils of the surrounding the sites.

Native plant and animal species once abundant in the region have become locally extirpated or have experienced large reductions in their populations due to conversion of upland, riparian, and aquatic habitats to agricultural and urban uses. Remaining native habitats are particularly valuable to native wildlife species including special status species that still persist in the region.

The site currently consists of vacant land with minimal vegetation. The site is bounded to the east by Parkside Avenue, with residential development beyond the roadway. The site is bounded to the south by Ono City Parkway, with Lindsay Wellness Center beyond the roadway. County Health & Human Services Agency office lies to the southwest of the site. The site is bounded by Sequoia Avenue/Road 214 to the west, with residential development and agricultural/vacant land beyond the roadway in that direction. West Hickory Street lies to the north of the site, with Roosevelt Elementary School, agricultural/vacant land, and a rural residence beyond the roadway. No aquatic or wetland features occur on the proposed Project site, therefore jurisdictional waters are considered absent from the site.

REGULATORY SETTING

*Federal***Endangered Species Act**

The USFWS and the National Oceanographic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) enforce the provisions stipulated in the Federal Endangered Species Act of 1973 (FESA, 16 United States Code [USC] § 1531 et seq.). Threatened and endangered species on the federal list (50 Code of Federal Regulations [CFR] 17.11 and 17.12) are protected from take unless a Section 10 permit is granted to an entity other than a federal agency or a Biological Opinion with incidental take provisions is rendered to a federal lead agency via a Section 7 consultation. Take is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct. Pursuant to the requirements of the FESA, an agency reviewing a proposed action within its jurisdiction must determine whether any federally listed species may be present in the proposed action area and determine whether the proposed action may affect such species. Under the FESA, habitat loss is considered an effect to a species. In addition, the agency is required to determine whether the proposed action is likely to jeopardize the continued existence of any species that is listed or proposed for listing under the FESA (16 USC § 1536[3], [4]). Therefore, proposed action-related effects to these species or their habitats would be considered significant and would require mitigation.

Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA) (16 USC § 703, Supp. I, 1989) prohibits killing, possessing, trading, or other forms of take of migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. "Take" is defined as the pursuing, hunting, shooting, capturing, collecting, or killing of birds, their nests, eggs, or young (16 USC § 703 and § 715n). This act encompasses whole birds, parts of birds, and bird nests and eggs. The MBTA specifically protects migratory bird nests from possession, sale, purchase, barter transport, import, and export, and take. For nests, the definition of take per 50 CFR 10.12 is to collect. The MBTA does not include a definition of an "active nest." However, the "Migratory Bird Permit Memorandum" issued by the USFWS in 2003 clarifies the MBTA in that regard and states that the removal of nests, without eggs or birds, is legal under the MBTA, provided no possession (which is interpreted as holding the nest with the intent of retaining it) occurs during the destruction.

U.S. Army Corps of Engineers Jurisdiction

Areas meeting the regulatory definition of "waters of the United States" (jurisdictional waters) are subject to the jurisdiction of the United States Army Corps of Engineers (USACE) under provisions of Section

404 of the Clean Water Act (1972) and Section 10 of the Rivers and Harbors Act (1899). These waters may include all waters used, or potentially used, for interstate commerce, including all waters subject to the ebb and flow of the tide, all interstate waters, all other waters (intrastate lakes, rivers, streams, mudflats, sandflats, playa lakes, natural ponds, etc.), all impoundments of waters otherwise defined as waters of the United States, tributaries of waters otherwise defined as waters of the United States, the territorial seas, and wetlands adjacent to waters of the United States (33 CFR part 328.3). Ditches and drainage canals where water flows intermittently or ephemerally are not regulated as waters of the United States. Wetlands on non-agricultural lands are identified using the *Corps of Engineers Wetlands Delineation Manual* and related Regional Supplement.^{8,9} Construction activities, including direct removal, filling, hydrologic disruption, or other means in jurisdictional waters are regulated by the USACE. The placement of dredged or fill material into such waters must comply with permit requirements of the USACE. No USACE permit will be effective in the absence of state water quality certification pursuant to Section 401 of the Clean Water Act. The State Water Resources Control Board is the state agency (together with the Regional Water Quality Control Boards) charged with implementing water quality certification in California.

State

California Endangered Species Act

The California Endangered Species Act (CESA) of 1970 (Fish and Game Code § 2050 et seq. and California Code of Regulations (CCR) Title 14, Subsection 670.2, 670.51) prohibits the take of species listed under CESA (14 CCR Subsection 670.2, 670.5). Take is defined as hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill. Under CESA, state agencies are required to consult with the California Department of Fish and Wildlife when preparing CEQA documents. Consultation ensures that proposed projects or actions do not have a negative effect on state-listed species. During consultation, CDFW determines whether take would occur and identifies “reasonable and prudent alternatives” for the project and conservation of special-status species. CDFW can authorize take of state-listed species under Sections 2080.1 and 2081(b) of Fish and Game Code in those cases where it is demonstrated that the impacts are minimized and mitigated. Take authorized under section 2081(b) must be minimized and fully mitigated. A CESA permit must be obtained if a project will result in take

⁸ United States Army Corps of Engineers (USACE). 1987. Corps of Engineers Wetlands Delineation Manual. Wetland Research Program Technical Report Y-87-1.

⁹ United States Army Corps of Engineers (USACE). 2008. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0). ERDC/EL TR-08-28. https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1046489.pdf. Accessed April 2022.

of listed species, either during construction or over the life of the project. Under CESA, CDFW is responsible for maintaining a list of threatened and endangered species designated under state law (Fish and Game Code § 2070). CDFW also maintains lists of species of special concern, which serve as “watch lists”. Pursuant to the requirements of CESA, a state or local agency reviewing a proposed project within its jurisdiction must determine whether the proposed project will have a potentially significant impact upon such species. Project-related impacts to species on the CESA list would be considered significant and would require mitigation. Impacts to species of concern or fully protected species would be considered significant under certain circumstances.

Native Plant Protection Act

The California Native Plant Protection Act of 1977 (California Fish and Game Code §§ 1900–1913) requires all state agencies to use their authority to carry out programs to conserve endangered and otherwise rare species of native plants. Provisions of the act prohibit the taking of listed plants from the wild and require the project proponent to notify CDFW at least 10 days in advance of any change in land use, which allows CDFW to salvage listed plants that would otherwise be destroyed.

Nesting Birds

California Fish and Game Code Subsections 3503, 3503.5, and 3800 prohibit the possession, incidental take, or needless destruction of birds, their nests, and eggs. California Fish and Game Code Section 3511 lists birds that are “Fully Protected” as those that may not be taken or possessed except under specific permit.

California Department of Fish and Wildlife Jurisdiction

The CDFW has regulatory jurisdiction over lakes and streams in California. Activities that divert or obstruct the natural flow of a stream; substantially change its bed, channel, or bank; or use any materials (including vegetation) from the streambed, may require that the project applicant enter into a Streambed Alteration Agreement with the CDFW in accordance with California Fish and Game Code Section 1602.

California Environmental Quality Act

The California Environmental Quality Act (CEQA) of 1970 (Subsections 21000–21178) requires that CDFW be consulted during the CEQA review process regarding impacts of proposed projects on special-status species. Special-status species are defined under CEQA Guidelines subsection 15380(b) and (d) as those listed under FESA and CESA and species that are not currently protected by statute or regulation but would be considered rare, threatened, or endangered under these criteria or by the scientific community. Therefore, species considered rare or endangered are addressed in this biological resource evaluation regardless of whether they are afforded protection through any other statute or regulation.

The California Native Plant Society (CNPS) inventories the native flora of California and ranks species according to rarity.¹⁰ Plants with Rare Plant Ranks 1A, 1B, 2A, or 2B are considered special-status species under CEQA.

Although threatened and endangered species are protected by specific federal and state statutes, CEQA Guidelines Section 15380(d) provides that a species not listed on the federal or state list of protected species may be considered rare or endangered if it can be shown to meet certain specified criteria. These criteria have been modeled after the definition in the FESA and the section of the California Fish and Game Code dealing with rare and endangered plants and animals. Section 15380(d) allows a public agency to undertake a review to determine if a significant effect on species that have not yet been listed by either the USFWS or CDFW (i.e., candidate species) would occur. Thus, CEQA provides an agency with the ability to protect a species from the potential impacts of a project until the respective government agency has an opportunity to designate the species as protected, if warranted.

RESPONSES

- a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

Less than Significant Impact. The site is currently fallow and disked for fire safety. The site is in an area that is highly disturbed and lacking in substantial vegetation, such as trees, brush or shrubs. This factor suggests that the Project site is extremely unlikely to serve as nesting habitat for bird species or any animal or plant species. No wetlands or waters of the U.S. or water of the State were found within the Project area.¹¹ According to the City of Lindsay's General Plan states that there are no rare or endangered species of plants located within the urban area. Additionally, there are no known species of rare or endangered wildlife known to inhabit the Lindsay planning area.

Tulare County is considered to be a portion of the larger regional habitat of the San Joaquin Kit Fox, a species whose habitat extends along the Sierra Nevada foothills and down to the Coast.¹² According to the Tulare County Planning Department, kit foxes have been previously observed foraging in orange

¹⁰ California Native Plant Society, Rare Plant Program (CNPS). 2019. Inventory of Rare and Endangered Plants (online edition, v8-03 0.39). California Native Plant Society, Sacramento, CA. <http://www.rareplants.cnps.org/> Accessed April 2022.

¹¹ National Wetlands Inventory. U.S Fish & Wildlife Service. <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>. Accessed April 2022.

¹² Lindsay General Plan, 1989. Biological Resources, page 14.

groves west of Lindsay City Limits. The potential for San Joaquin Kit Fox occurrence in the proposed Project area is considered to be quite low given the highly disturbed and barren nature of the site and precludes the ability of the San Joaquin Kit Fox to be on-site. In the unlikely event that a kit fox is located on-site, Mitigation Measure BIO-1, below, will reduce impacts to the species to *less than significant*.

Mitigation Measures:

BIO-1 The following measures shall be implemented during construction of the Project to reduce potential impacts to San Joaquin Kit Fox. The following mitigation are modified from the USFWS *Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance*.

- a. All food-related trash items such as wrappers, cans, bottles, and food scraps shall be disposed of in securely closed containers and removed at least once a week from the Project site.
- b. Construction-related vehicle traffic shall be restricted to established roads and predetermined ingress and egress corridors, staging, and parking areas. Vehicle speeds shall not exceed 20 miles per hour within the Project site. A ten miles per hour speed limit shall be implemented during night-timer construction activities.
- c. To prevent inadvertent entrapment of kit fox or other animals during construction, the contractor shall cover all excavated, steep-walled holes or trenches more than two feet deep at the close of each workday with plywood or similar materials. If holes or trenches cannot be covered, one or more escape ramps constructed of earthen fill or wooden planks shall be installed in the trench. Before such holes or trenches are filled, the contractor shall thoroughly inspect them for entrapped animals. All construction-related pipes, culverts, or similar structures with a diameter of four inches or greater that are stored on the Project site shall be thoroughly inspected for wildlife before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If at any time an entrapped or injured kit fox is discovered, work in the immediate area shall be temporarily halted, and USFWS and the California Department of Fish and Wildlife (CDFW) shall be consulted for guidance.
- d. Kit foxes are attracted to den-like structures such as pipes and may enter stored pipes and become trapped or injured. All construction pipes, culverts, or similar structures with a diameter of four inches or greater that are stored at a construction site for one or more overnight periods shall be thoroughly inspected for kit foxes before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If a kit fox is discovered inside a pipe, that section of pipe shall not be moved until the USFWS and CDFW have been consulted. If necessary, and under the direct supervision of the biologist, the pipe may be moved only once to remove it from the path of construction activity until the fox has escaped.

- e. No pets, such as dogs or cats, shall be permitted on the Project site during construction to prevent harassment, mortality of kit foxes, or destruction of dens.
- f. Use of anticoagulant rodenticides and herbicides in Project sites shall be restricted. This is necessary to prevent primary or secondary poisoning of kit foxes and the depletion of prey populations on which they depend. All uses of such compounds shall observe labels and other restrictions mandated by the U.S. Environmental Protection Agency, California Department of Food and Agriculture, and other State and Federal legislation, as well as additional Project-related restrictions deemed necessary by the USFWS and CDFW. If rodent control must be conducted, zinc phosphide shall be used because of the proven lower risk to kit foxes.
- g. A representative shall be appointed by the Project proponent, who will be the contact source for any employee or contractor who might inadvertently kill or injure a kit fox or who finds a dead, injured, or entrapped kit fox. The representative shall be identified during the employee education program, and their name and telephone number shall be provided to the USFWS.
- h. The Sacramento Fish and Wildlife Office of USFWS and CDFW shall be notified in writing within three working days of the accidental death or injury to an SJKF during Project-related activities. Notification must include the date, time, and location of the incident or of the finding of a dead or injured animal and any other pertinent information. The USFWS contact is the Chief of the Division of Endangered Species, at the addresses and telephone numbers below. The CDFW contact can be reached at (559) 243-4014 and R4CESA@wildlifeca.gov. The Bureau of Land Management shall also be informed of those wells on Split Estate property
- i. All sightings of the SJKF shall be reported to the California Natural Diversity Database (CNDDDB). A copy of the reporting form and a topographic map clearly marked with the location of where the kit fox was observed shall also be provided to the Service at the address below.
- j. Any Project-related information required by the USFWS or questions concerning the above conditions or their implementation may be directed in writing to the U.S. Fish and Wildlife Service at Endangered Species Division, 2800 Cottage Way, Suite W 2605, Sacramento, California 95825-1846, phone: (916) 414-6620 or (916) 414-6600.
- k. A copy of the preconstruction survey report shall be submitted to the lead agency as evidence of compliance.

- b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?
- c. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

No Impact. There is no riparian habitat or other sensitive natural community on site or adjacent to the Project. According to the National Wetlands Inventory¹³, no wetlands occur in or near the Project site. Impacts would be *less than significant*.

Mitigation Measures: None are required.

- d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

Less than Significant Impact with Mitigation. Common species of birds likely to be found within the urban planning area include morning dove, sparrow, meadowlark, blackbird, robin and scrub jay. Potential for endangered or threatened bird species within the Project area is unlikely. However, in the event that avian species are nesting within or adjacent to the proposed Project area at the time of construction, construction activities could result in nest abandonment and/or direct mortality to individual birds. Project activities that injure or kill native birds or lead to nest abandonment would violate the California Fish and Game Code. As such, implementation of Mitigation Measure BIO-2 will ensure that potential impacts would remain *less than significant*.

Mitigation Measures:

Protecting nesting birds.

BIO-2 Within 30 days prior to ground disturbance activities associated with construction or grading that would occur during the nesting/breeding season of native bird species

¹³ National Wetlands Inventory. U.S Fish & Wildlife Service. <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>. Accessed April 2022.

potentially nesting on the site (typically March through August in the project region, or as determined by a qualified biologist), the applicant shall have weekly surveys conducted by a qualified biologist to determine if active nests of bird species protected by the Migratory Bird Treaty Act and/or the California Fish and Game Code are present in the disturbance zone or within 300 feet (500 feet for raptors and special-status species) of the disturbance zone. The surveys shall continue on a weekly basis with the last survey being conducted no more than seven days prior to initiation of disturbance work. If ground disturbance activities are delayed, then additional pre-disturbance surveys shall be conducted such that no more than seven days will have elapsed between the survey and ground disturbance activities. If active nests are found, clearing and construction within 300 feet of the nest (500 feet for raptors and special-status species) shall be postponed or halted, at the discretion of the biologist, until the nest is vacated and juveniles have fledged, as determined by the biologist, and there is no evidence of a second attempt at nesting. Limits of construction to avoid an active nest shall be established in the field with flagging, fencing, or other appropriate barriers and construction personnel shall be instructed on the sensitivity of nest areas. The biologist shall serve as a construction monitor during those periods when construction activities will occur near active nest areas to ensure that no inadvertent impacts on these nests occur. Results of the surveys shall be provided to CDFG in the Annual Mitigation Status Report.

- e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

Less than Significant Impact. The City of Lindsay's General Plan includes various policies for the protection of biological resources. The proposed Project would not conflict with any of the adopted policies and any impacts would be considered *less than significant*.

Mitigation Measures: None are required.

- f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

Less than Significant Impact. The proposed Project would not conflict with any adopted Habitat Conservation or any Natural Community Conservation Plans. As such, any impacts would be *less than significant*.

Mitigation Measures: None are required.

V. CULTURAL RESOURCES

Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

Archaeological resources are places where human activity has measurably altered the earth or left deposits of physical remains. Archaeological resources may be either prehistoric (before the introduction of writing in a particular area) or historic (after the introduction of writing). The majority of such places in this region are associated with either Native American or Euroamerican occupation of the area. The most frequently encountered prehistoric and early historic Native American archaeological sites are village settlements with residential areas and sometimes cemeteries; temporary camps where food and raw materials were collected; smaller, briefly occupied sites where tools were manufactured or repaired; and special-use areas like caves, rock shelters, and sites of rock art. Historic archaeological sites may include foundations or features such as privies, corrals, and trash dumps.

Tulare County was inhabited by indigenous California Native American groups consisting of the Southern Valley Yokuts, Foothill Yokuts, Monache, and Tubatulabal. Most information regarding these groups is based on Spanish government and Franciscan mission records of the 18th and 19th centuries, and in studies conducted during the 1900s to 1930s by American and British ethnographers. The ethnographic setting presented below is derived from the early works, compiled by W. J. Wallace, Robert F.G. Spier, and Charles R. Smith, with statistical information provided by the California Native American Heritage Commission.

Of the four main groups inhabiting the Tulare County area, the Southern Valley Yokuts occupied the largest territory, which is defined roughly by the crest of the Diablo Range on the west and the foothills of the Sierra Nevada on the east, and from the Kings River on the north, to the Tehachapi Mountains on the south. The Foothill Yokuts inhabited the western slopes of the Sierra Nevada, between the Fresno River and Kern River, with settlements generally occurring between the 2,000 to 4,000-foot elevations. The Tubatulabal inhabited the Sierra Nevada Mountains, at the higher elevations, near Mt. Whitney in the east, extending westward along the drainages of the Kern River, and the Kern River-South Fork. The Monache were comprised of six small groups that lived in the Sierras east of the Foothill Yokuts, in locations ranging between 3,000- to 7,000-foot elevations.

REGULATORY SETTING

Federal

Cultural resources are protected by several federal regulations, none of which are relevant to this proposed Project because it will not be located on lands administered by a federal agency and the Project applicant is not requesting federal funding.

State

The proposed Project is subject to CEQA which requires public or private projects financed or approved by public agencies to assess their effects on historical resources. CEQA uses the term “historical resources” to include buildings, sites, structures, objects or districts, each of which may have historical, prehistoric, architectural, archaeological, cultural, or scientific importance. CEQA states that if implementation of a project results in significant effects on historical resources, then alternative plans or mitigation measures must be considered; however, only significant historical resources need to be addressed (CCR 15064.5, 15126.4). For the purposes of this CEQA document, a significant impact would occur if project implementation:

- Causes a substantial change in the significance of a historical resource
- Causes a substantial adverse change in the significance of an archaeological resource
- Disturbs any human remains, including those interred outside of formal cemeteries

Therefore, before impacts and mitigation measures can be identified, the significance of historical resources must be determined. CEQA guidelines define three ways that a property may qualify as a historical resource for the purposes of CEQA review:

- If the resource is listed in or determined eligible for listing in the California Register of Historical Resources (CRHR)

- If the resource is included in a local register of historical resources, as defined in Section 5020.1(k) of the PRC or identified as significant in an historical resource survey meeting the requirements of Section 5024.1(g) of the PRC unless the preponderance of evidence demonstrates that it is not historically or culturally significant
- The lead agency determines the resource to be significant as supported by substantial evidence in light of the whole record (CCR, Title 14, Division 6, Chapter 3, Section 15064.5(a))

Each of these ways of qualifying as a historical resource for the purpose of CEQA is related to the eligibility criteria for inclusion in the CRHR (PRC 5020.1(k), 5024.1, 5024.1(g)).

A historical resource may be eligible for inclusion in the CRHR if it:

- Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage
- Is associated with the lives of persons important in our past
- Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values
- Has yielded, or may be likely to yield, information important in prehistory or history Properties that area listed in or eligible for listing in the National Register of Historic Places are considered eligible for listing in the CRHR, and thus are significant historical resources for the purpose of CEQA (PRC Section 5024.1(d)(1)).

Public Resources Code §5097.5

California Public Resources Code §5097.5 prohibits excavation or removal of any "vertebrate paleontological site...or any other archaeological, paleontological or historical feature, situated on public lands, except with express permission of the public agency having jurisdiction over such lands." Public lands are defined to include lands owned by or under the jurisdiction of the state or any city, county, district, authority or public corporation, or any agency thereof. Section 5097.5 states that any unauthorized disturbance or removal of archaeological, historical, or paleontological materials or sites located on public lands is a misdemeanor.

Human Remains

Section 7050.5 of the California Health and Safety Code states that in the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further

excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the coroner of the county in which the remains are discovered has determined whether or not the remains are subject to the coroner's authority. If the human remains are of Native American origin, the coroner must notify the Native American Heritage Commission within 24 hours of this identification. The Native American Heritage Commission will identify a Native American Most Likely Descendant (MLD) to inspect the site and provide recommendations for the proper and dignified treatment of the remains and associated grave artifacts.

Local

Lindsay General Plan

No archaeological or cultural resources of significance are known at this time to exist within the planning area. Any evidence of cultural resources that might be unearthed in the process of construction becomes immediate grounds for halting all construction until the extent and significance of any find is properly cataloged and evaluated by archaeological and cultural resource authorities recognized as having competence by the State of California.

RESPONSES

a. Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?

Less than Significant Impact with Mitigation. The records search conducted at the SSJVIC (Appendix B) indicated that there are no recorded cultural resources within the Project area and two recorded resources within the one-half mile: P-54-004626 and -004632, which are historic era railroads still in use. There are no recorded cultural resources studies within the Project area and there have been eight previous resource studies within the one-half mile: TU-00208, 00995, 01103, 01181, 01584, 01687, 01857, and 01889. There are no recorded cultural resources within the Project area or within ½ mile that are listed in the National Register of Historic Places, the California Register of Historical Resources, the California Points of Historical Interest, California Inventory of Historic Resources, or the California State Historic Landmarks.

Subsurface construction activities associated with the proposed Project could potentially damage or destroy previously undiscovered historic resources. This is considered a potentially significant impact; however, implementation of Mitigation Measure CUL-1 will ensure that significant impacts remain *less than significant with mitigation incorporation*.

CUL-1 The following measures shall be implemented:

- Before initiation of construction or ground-disturbing activities associated with the Project, the City shall require all construction personnel to be alerted to the possibility of buried cultural resources, including historic, archeological and paleontological resources;
- The general contractor and its supervisory staff shall be responsible for monitoring the construction Project for disturbance of cultural resources; and
- If a potentially significant historical, archaeological, or paleontological resource, such as structural features, unusual amounts of bone or shell, artifacts, human remains, or architectural remains or trash deposits are encountered during subsurface construction activities (i.e., trenching, grading), all construction activities within a 100-foot radius of the identified potential resource shall cease until a qualified archaeologist evaluates the item for its significance and records the item on the appropriate State Department of Parks and Recreation (DPR) forms. The archaeologist shall determine whether the item requires further study. If, after the qualified archaeologist conducts appropriate technical analyses, the item is determined to be significant under California Environmental Quality Act, the archaeologist shall recommend feasible mitigation measures, which may include avoidance, preservation in place or other appropriate measure, as outlined in Public Resources Code section 21083.2. The City of Lindsay shall implement said measures.

b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?

Less than Significant Impact with Mitigation. The possibility exists that subsurface construction activities may encounter undiscovered archaeological resources. This would be a potentially significant impact. Implementation of Mitigation Measure CUL-1 would require inadvertently discovery practices to be implemented should previously undiscovered archeological resources be located. As such, impacts to undiscovered archeological resources would be *less than significant with mitigation incorporation*.

c. Disturb any human remains, including those interred outside of formal cemeteries?

Less than Significant Impact with Mitigation. There are no unique geological features or known fossil-bearing sediments in the vicinity of the proposed Project site. However, there remains the possibility for previously unknown, buried paleontological resources or unique geological sites to be uncovered during subsurface construction activities. Therefore, this would be a potentially significant impact. Mitigation is proposed requiring standard inadvertent discovery procedures to be implemented to reduce this impact to a level of *less than significant with mitigation incorporation*.

CUL-2 The Project applicant will incorporate into the construction contract(s) a provision that in the event a fossil or fossil formations are discovered during any subsurface construction activities for the proposed Project (i.e., trenching, grading), all excavations within 100 feet of the find shall be temporarily halted until the find is examined by a qualified paleontologist, in accordance with Society of Vertebrate Paleontology standards. The paleontologist shall notify the appropriate representative at the City of Lindsay, who shall coordinate with the paleontologist as to any necessary investigation of the find. If the find is determined to be significant under CEQA, the City shall implement those measures, which may include avoidance, preservation in place, or other appropriate measures, as outlined in Public Resources Code section 21083.2.

VI. ENERGY

Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
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- a. Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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- b. Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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ENVIRONMENTAL SETTING

California’s total energy consumption is second-highest in the nation, but in 2018 the state’s per capita energy consumption ranked the fourth-lowest, due in part to its mild climate and its energy efficiency programs.¹⁴ In 2018, California was the top-ranking producer of electricity from solar, geothermal and biomass energy, and second in the nation in conventional hydroelectric power generation.

Energy usage is typically quantified using the British thermal unit (BTU). As a point of reference, the approximately amounts of energy contained in common energy sources are as follows:

Energy Source	BTUs ¹⁵
Motor Gasoline	120,286 per gallon
Natural Gas	1,037 per cubic foot
Electricity	3,412 per kilowatt-hour

¹⁴ U.S. Energy Information Administration. Independent Statistics and Analysis. California Profile Overview. <https://www.eia.gov/state/?sid=CA>. Accessed April 2022.

¹⁵ U.S. Energy Information Administration. Energy Units and Calculators Explained. <https://www.eia.gov/energyexplained/units-and-calculators/british-thermal-units.php>. Accessed April 2022.

California energy consumption in 2019 was 7788.77 trillion BTU¹⁶, as provided in Table 4.

Table 4
2019 California Energy Consumption Estimates¹⁷

End User	BTU of energy consumed (in trillions)	Percentage of total consumption
Residential	1455.7	18.7
Commercial	1468.1	18.8
Industrial	1805.3	23.2
Transportation	3059.6	39.3
Total	7788.7	--

Total electrical consumption by Tulare County in 2020 was 4642.8 GWh¹⁸, while total Gas consumption was 159.5 million Therms.¹⁹

The California Department of Transportation (Caltrans) reports that approximately 36.4 million vehicles were registered in the state in 2019, while in 2018 a total estimated 347.2 billion vehicle miles were traveled (VMT)²⁰

REGULATORY SETTING

California Energy Code (Title 24, Part 6, Building Energy Efficiency Standards)

California Code of Regulations Title 24, Part 6 comprises the California Energy Code, which was adopted to ensure that building construction, system design and installation achieve energy efficiency. The California Energy Code was first established in 1978 by the CEC in response to a legislative mandate to reduce California’s energy consumption, and apply to energy consumed for heating, cooling, ventilation, water heating, and lighting in new residential and non-residential buildings. The standards are updated periodically to increase the baseline energy efficiency requirements. The 2013 Building Energy Efficiency Standards focus on several key areas to improve the energy efficiency of newly constructed buildings and additions and alterations to existing buildings and include requirements to enable both demand reductions during critical peak periods and future solar electric and thermal system installations.

¹⁶ U.S. Energy Information Administration. Independent Statistics and Analysis. California Profile Overview. <https://www.eia.gov/state/?sid=CA#tabs-2>. Accessed April 2022.

¹⁷Ibid.

¹⁸ California Energy Commission. Electricity Consumption by County. <http://ecdms.energy.ca.gov/elecbycounty.aspx>. Accessed April 2021.

¹⁹ California Energy Commission. Gas Consumption by County. <https://ecdms.energy.ca.gov/gasbycounty.aspx>. Accessed April 2022.

²⁰ Caltrans. 2020. California Transportation Fact Booklet. <https://dot.ca.gov/-/media/dot-media/programs/research-innovation-system-information/documents/caltrans-fact-booklets/2020-cfb-v2-a11y.pdf>. Accessed April 2022.

Although it was not originally intended to reduce greenhouse gas (GHG) emissions, electricity production by fossil fuels results in GHG emissions and energy efficient buildings require less electricity. Therefore, increased energy efficiency results in decreased GHG emissions.

California Green Building Standards Code (Title 24, Part II, CALGreen)

The California Building Standards Commission adopted the California Green Buildings Standards Code (CALGreen in Part 11 of the Title 24 Building Standards Code) for all new construction statewide on July 17, 2008. Originally a volunteer measure, the code became mandatory in 2010 and the most recent update (2019) went on January 1, 2020. CALGreen sets targets for energy efficiency, water consumption, dual plumbing systems for potable and recyclable water, diversion of construction waste from landfills, and use of environmentally sensitive materials in construction and design, including eco-friendly flooring, carpeting, paint, coatings, thermal insulation, and acoustical wall and ceiling panels. The 2019 CALGreen Code includes mandatory measures for non-residential development related to site development; water use; weather resistance and moisture management; construction waste reduction, disposal, and recycling; building maintenance and operation; pollutant control; indoor air quality; environmental comfort; and outdoor air quality. Mandatory measures for residential development pertain to green building; planning and design; energy efficiency; water efficiency and conservation; material conservation and resource efficiency; environmental quality; and installer and special inspector qualifications.

Clean Energy and Pollution Reduction Act (SB 350)

The Clean Energy and Pollution Reduction Act (SB 350) was passed by California Governor Brown on October 7, 2015, and establishes new clean energy, clean air, and greenhouse gas reduction goals for the year 2030 and beyond. SB 350 establishes a greenhouse gas reduction target of 40 percent below 1990 levels for the State of California, further enhancing the ability for the state to meet the goal of reducing greenhouse gas emissions by 80 percent below 1990 levels by the year 2050.

Renewable Portfolio Standard (SB 1078 and SB 107)

Established in 2002 under SB 1078, the state's Renewables Portfolio Standard (RPS) was amended under SB 107 to require accelerated energy reduction goals by requiring that by the year 2010, 20 percent of electricity sales in the state be served by renewable energy resources. In years following its adoption, Executive Order S-14-08 was signed, requiring electricity retail sellers to provide 33 percent of their service loads with renewable energy by the year 2020. In 2011, SB X1-2 was signed, aligning the RPS target with the 33 percent requirement by the year 2020. This new RPS applied to all state electricity retailers, including publicly owned utilities, investor-owned utilities, electrical service providers, and community choice aggregators. All entities included under the RPS were required to adopt the RPS 20

percent by year 2020 reduction goal by the end of 2013, adopt a reduction goal of 25 percent by the end of 2016, and meet the 33 percent reduction goal by the end of 2020. In addition, the Air Resources Board, under Executive Order S-21-09, was required to adopt regulations consistent with these 33 percent renewable energy targets.

RESPONSES

- a. Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?
- b. Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?

Less Than Significant Impact. The proposed Project consists of the development of 31 multi-family units and 85 single-family units for a total of 116 residential units. The Project would introduce energy usage on a site that is currently demanding minimal energy. By comparison, at buildout, the Project would consume amounts of energy in both the short-term during Project construction and in the long-term during Project operation.

During construction, the Project would consume energy in two general forms: (1) the fuel energy consumed by construction vehicles and equipment; and (2) bound energy in construction materials, such as asphalt, steel, concrete, pipes, and manufactured or processed materials such as lumber and glass. Title 24 Building Energy Efficiency Standards provide guidance on construction techniques to maximize energy conservation and it is expected that contractors and owners have a strong financial incentive to use recycled materials and products originating from nearby sources in order to reduce materials costs. As such, it is anticipated that materials used in construction and construction vehicle fuel energy would not involve the wasteful, inefficient, or unnecessary consumption of energy.

Operational Project energy consumption would occur for multiple purposes, including but not limited to, building heating and cooling, refrigeration, lighting and electronics. Operational energy would also be consumed during each vehicle trip associated with the proposed use. CalEEMod was utilized to generate the estimated energy demand of the proposed Project, and the results are provided in Table 5 and in Appendix A.

Table 5
Annual Project Energy Consumption

Land Use	Electricity Use in kWh/year	Natural Gas Use in kBTU/year
Apartments Mid Rise	123,059	468,380

Land Use	Electricity Use in kWh/year	Natural Gas Use in kBTU/year
Single Family Housing	674,811	2,019,860

The proposed Project would be required to comply with Title 24 Building Energy Efficiency Standards, which provide minimum efficiency standards related to various building features, including appliances, water and space heating and cooling equipment, building insulation and roofing, and lighting. Implementation of Title 24 standards significantly increases energy savings, and it is generally assumed that compliance with Title 24 ensures projects will not result in the inefficient, wasteful, or unnecessary consumption of energy.

As discussed in Impact XVII – Transportation/Traffic, the proposed Project at full buildout would generate approximately 1,152 daily vehicle trips. The length of these trips and the individual vehicle fuel efficiencies are not known; therefore, the resulting energy consumption cannot be accurately calculated. Adopted federal vehicle fuel standards have continually improved since their original adoption in 1975 and assists in avoiding the inefficient, wasteful, and unnecessary use of energy by vehicles.

As discussed previously, the proposed Project would be required to implement and be consistent with existing energy design standards at the local and state level. The Project would be subject to energy conservation requirements in the California Energy Code and CALGreen. Adherence to state code requirements would ensure that the Project would not result in wasteful and inefficient use of non-renewable resources due to building operation.

Therefore, any impacts are *less than significant*.

Mitigation Measures: None are required.

VII. GEOLOGY AND SOILS

Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i. Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii. Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iii. Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iv. Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Be located on expansive soil, as defined in Table 18-1-B of the most recently adopted Uniform Building Code	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

creating substantial risks to life or property?

- e. Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?
- f. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

ENVIRONMENTAL SETTING

The City of Lindsay is situated along the western slope of the Sierra Nevada. The Sierra Nevada geomorphic province is primarily composed of cretaceous granitic plutons and remnants of Paleozoic and Mesozoic metavolcanic and metasedimentary rocks, and Cenozoic volcan and sedimentary rocks. The terrain of the City is relatively flat, with slopes falling gently to the west. The elevation of the City is approximately 375 feet above mean sea level. The east side of the Valley floor in Tulare County is a broad plain of low relief, consisting of three large and coalescing alluvial fans and streams draining from the Sierra Nevada. Three creeks -- Cross, Cottonwood and Lewis Creeks -- are intermittent streams in the vicinity.

Faulting and Seismicity

There are no known active earthquake faults in the City of Lindsay. The proposed Project site is not located within an Alquist-Priolo Earthquake Fault Zone and no known faults cut through the local soil at the site. Although there are no active faults in the City, according to the City’s General Plan, the City lies about half-way between the San Andreas and Owens Valley faults which are located about 75 miles to the south and east, respectively. Of the two faults, the San Andreas poses the higher risk, with a potential for an earthquake of magnitude 8.3 or greater on the Richter scale within the next 30 to 50 years. The most significant resulting hazard would be ground shaking. The western half of the community is located within Seismic Zone V-1, which could be impacted by an earthquake along the San Andreas Fault of a magnitude 8.0-8.5. The eastern half of the community is located within Seismic Zone S-1, which could be impacted by an earthquake along the Owens Valley Fault of a magnitude 7.0. Under policies of the Tulare County’s Seismic Safety Element, both zones are classified as requiring Zone II provisions for

construction under requirements of the Uniform Building Code (UBC) for "normal facilities" and Zone 2 x 2 provisions for construction under requirements of the UBC for "critical facilities."

The foothills adjacent to the eastern City limits are of marginal stability characterized by such conditions as dip slopes and moderate fracturing. The Tulare County Seismic Safety Element of the General Plan appraises the landslide risk as moderate, rating the immediate foothills as a 3 on a scale of 1-4, with 1 being the lowest risk.

Soils

According to City of Lindsay's General Plan, soils are permeable, fertile and generally consist of oxidized older alluvium with underlying heavy clay subsoil and hardpan. Soils near Lindsay tend to have a high salt content to as yet undetermined depths. The best local soils can be found along the Lewis Creek drainage, and are dominated by deep and well drained soils.

REGULATORY SETTING

Federal

Federal regulations for geology and soils are not relevant to the proposed Project because it is not a federal undertaking (the Project site is not located on lands administered by a federal agency, and the Project applicant is not requesting federal funding or a federal permit).

State

California Building Code

California law provides a minimum standard for building design through the California Building Code (CBC). The CBC is based on the IBC, with amendments for California conditions. Part 2, Volume 2, Chapter 16 of the CBC contains specific requirements for seismic safety. Part 2, Volume 2, Chapter 18 of the CBC regulates soils and foundations. Part 2, Volume 2, Appendix J of the CBC regulates grading activities. Construction activities also are subject to occupational safety standards for excavation, shoring, and trenching as specified in California Occupational Safety and Health Administration regulations (Title 8 of the California Code of Regulations) and in section A33 of the CBC. About one-third of the text within the California Building Code has been tailored for California earthquake conditions.

Paleontological Resources

Paleontological resources are the fossilized remains of plants and animals and associated deposits. The Society of Vertebrate Paleontology has identified vertebrate fossils, their taphonomic and associated environmental indicators, and fossiliferous deposits as significant nonrenewable paleontological

resources. Botanical and invertebrate fossils and assemblages may also be considered significant resources.

CEQA requires that a determination be made as to whether a project would directly or indirectly destroy a unique paleontological resource or site or unique geological feature (CEQA Appendix G(v)(c)). If an impact is significant, CEQA requires feasible measures to minimize the impact (CCR Title 14(3) §15126.4 (a)(1)). California Public Resources Code §5097.5 (see above) also applies to paleontological resources.

In addition, the proposed Project is being evaluated pursuant to CEQA.

RESPONSES

a-i. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.

No Impact. The proposed Project site is not located within a currently designated Alquist-Priolo Earthquake Fault Zone. There are no active faults in Tulare County. Since no known surface expression of active faults is believed to cross the site, fault rupture through the site is not anticipated. *No impacts* would occur.

Mitigation Measures: None are required.

a-ii. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving strong seismic ground shaking?

Less than Significant Impact. Although the Project area occurs in an area with historically low to moderate level of seismicity, strong ground shaking could occur in the region; however, the Project would be designed to withstand strong ground shaking, in compliance with the California Building Code, to minimize the potential effects of ground shaking and other seismic activity. Impacts from seismic ground shaking would result in *less than significant impacts*.

Mitigation Measures: None are required.

a-iii. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving seismic-related ground failure, including liquefaction?

Less than Significant Impact. See Response a-ii. The Project's Valley location has a low risk of liquefaction. No Subsidence prone soils or oil or gas production is involved with the proposed Project. Therefore, the impact is *less than significant*.

Mitigation Measures: None are required.

a-iv. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving landslides?

Less than Significant Impact. The Project site is located on relatively flat topography and is not located adjacent to any steep slopes or areas that would otherwise be subject to landslides. Therefore, the impact is *less than significant*.

Mitigation Measures: None are required.

b. Result in substantial soil erosion or the loss of topsoil?

Less than Significant Impact. According to the Lindsay General Plan, the City of Lindsay sits on top of three integrations of alluvial fans and streams, which drain from the Sierra Nevada mountain range.²¹ The soils found in Lindsay are variable; most consist of permeable and fertile alluvium with clay subsoil and hardpan. Exeter loam and Honcut loam, are similar to the alluvium except they have a hardpan layer. These soils have excellent drainage and are generally well suited to urban development. The Project site has a primarily flat topography, is in an established urban area and does not include any Project features that would result in soil erosion or loss of topsoil. Therefore, the impact is *less than significant*.

Mitigation Measures: None are required.

²¹ Lindsay General Plan, 1989. Land Resources, page 12.

- c. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?

No Impact. The City of Lindsay sits on top of alluvial fans and streams, including Cross Creek, Cottonwood Creek and Lewis Creek. The soil in the proposed Project area is characterized as moderately deep to a duripan, moderately well drained loam. Adjacent to the eastern edge of the City Limits lie foothills which are known to experience dip slopes and fracturing. This area is at moderate risk for landslides, but is nowhere near the vicinity of the Project site, which is in northern Lindsay. See also Response a-ii. There is *no impact*.

Mitigation Measures: None are required.

- d. Be located on expansive soil, as defined in Table 18-1-B of the most recently adopted Uniform Building Code creating substantial risks to life or property?

Less than Significant Impact. See Responses (c) and (a-ii). The impact is *less than significant*.

Mitigation Measures: None are required.

- e. Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?

No Impact. The Project will tie into the City's existing wastewater system and will not require installation of a septic tank or alternate wastewater disposal system. There is *no impact*.

Mitigation Measures: None are required.

- f. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

Less Than Significant Impact with Mitigation. There are no known paleontological resources on or near the site (See Section V. for more details). Mitigation measures have been added that will protect unknown (buried) resources during construction, including paleontological resources. There are no unique geological features on site or in the area. Mitigation measures CUL-1 and CUL-2 shall be implemented to reduce potential impacts and as such, impacts are considered *less than significant with mitigation incorporation*.

Mitigation Measures: CUL-1 and CUL-2.

VIII. GREENHOUSE GAS EMISSIONS

Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

Various gases in the earth’s atmosphere play an important role in moderating the earth’s surface temperature. Solar radiation enters earth’s atmosphere from space and a portion of the radiation is absorbed by the earth’s surface. The earth emits this radiation back toward space, but the properties of the radiation change from high-frequency solar radiation to lower-frequency infrared radiation. GHGs are transparent to solar radiation, but are effective in absorbing infrared radiation. Consequently, radiation that would otherwise escape back into space is retained, resulting in a warming of the earth’s atmosphere. This phenomenon is known as the greenhouse effect. Scientific research to date indicates that some of the observed climate change is a result of increased GHG emissions associated with human activity. Among the GHGs contributing to the greenhouse effect are water vapor, carbon dioxide (CO₂), methane (CH₄), ozone, Nitrous Oxide (NO_x), and chlorofluorocarbons. Human-caused emissions of these GHGs in excess of natural ambient concentrations are considered responsible for enhancing the greenhouse effect. GHG emissions contributing to global climate change are attributable, in large part, to human activities associated with the industrial/manufacturing, utility, transportation, residential, and agricultural sectors.

In California, the transportation sector is the largest emitter of GHGs, followed by electricity generation. Global climate change is, indeed, a global issue. GHGs are global pollutants, unlike criteria pollutants and TACs (which are pollutants of regional and/or local concern). Global climate change, if it occurs, could potentially affect water resources in California. Rising temperatures could be anticipated to result in sea-level rise (as polar ice caps melt) and possibly change the timing and amount of precipitation, which could alter water quality. According to some, climate change could result in more extreme weather patterns; both heavier precipitation that could lead to flooding, as well as more extended drought

periods. There is uncertainty regarding the timing, magnitude, and nature of the potential changes to water resources as a result of climate change; however, several trends are evident.

Snowpack and snowmelt may also be affected by climate change. Much of California's precipitation falls as snow in the Sierra Nevada and southern Cascades, and snowpack represents approximately 35 percent of the state's useable annual water supply. The snowmelt typically occurs from April through July; it provides natural water flow to streams and reservoirs after the annual rainy season has ended. As air temperatures increase due to climate change, the water stored in California's snowpack could be affected by increasing temperatures resulting in: (1) decreased snowfall, and (2) earlier snowmelt.

Regulatory Setting

Federal

The USEPA Mandatory Reporting Rule (40 CFR Part 98), which became effective December 29, 2009, requires that all facilities that emit more than 25,000 metric tons CO₂-equivalent per year beginning in 2010, report their emissions on an annual basis. On May 13, 2010, the USEPA issued a final rule that established an approach to addressing GHG emissions from stationary sources under the CAA permitting programs. The final rule set thresholds for GHG emissions that define when permits under the New Source Review Prevention of Significant Deterioration and title V Operating Permit programs are required for new and existing industrial facilities.

In addition, the Supreme Court decision in *Massachusetts v. EPA* (Supreme Court Case 05-1120) found that the USEPA has the authority to list GHGs as pollutants and to regulate emissions of GHGs under the CAA. On April 17, 2009, the USEPA found that CO₂, CH₄, NO_x, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride may contribute to air pollution and may endanger public health and welfare. This finding may result in the USEPA regulating GHG emissions; however, to date the USEPA has not proposed regulations based on this finding.

State

California is taking action to reduce GHG emissions. In June 2005, Governor Schwarzenegger signed Executive Order S-3-05 to address climate change and GHG emissions in California. This order sets the following goals for statewide GHG emissions:

- Reduce to 2000 levels by 2010
- Reduce to 1990 levels by 2020
- Reduce to 80 percent below 1990 levels by 2050

In addition, the proposed Project is being evaluated pursuant to CEQA.

Local

San Joaquin Valley Air Pollution Control District (SJVAPCD)

In August 2008, the SJVAPCD adopted the Climate Change Action Plan, which directed the SJVAPCD to develop guidance to assist lead agencies, project proponents, permit applicants, and interested parties in assessing and reducing the impacts of project specific greenhouse gas emissions on global climate change.

In 2009, the SJVAPCD adopted the guidance document: Guidance for Valley Land-Use Agencies in Addressing GHG Emission Impacts for New Projects Under CEQA. This document recommends the usage of performance-based standards, otherwise known as Best Performance Standards (BPS), to assess significance of project-specific greenhouse gas emissions on global climate change during the environmental review process. Projects implementing BPS in accordance with SJVAPCD's guidance would be determined to have a less than significant individual and cumulative impact on greenhouse gas emissions and would not require project specific quantification of greenhouse gas emissions.²²

RESPONSES

a. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

Less Than Significant Impact with Mitigation. Greenhouse gas emissions would generate from long-term area and mobile sources as well as indirectly from energy consumption. Mobile sources would include residential vehicle trips and area source emissions would result from consumption of natural gas and electricity. As discussed above, projects implementing BPS would not require quantification of specific greenhouse gas emissions and such projects would be determined to have a less than significant individual and cumulative impact for greenhouse gas emissions; however, GHG gas emissions are also quantified and provided in Table 3. As such, the proposed Project's greenhouse gas emissions would not be considered a significant impact if the Project would implement BPS strategies, in accordance with

²² SJVAPCD. Guidance for Assessing and Mitigating Air Quality Impacts. March 19, 2015. http://www.valleyair.org/transportation/GAMAQI_3-19-15.pdf. Accessed April 2021. Page 112.

SJVAPCD recommendations. Exact project feature details are not yet available, therefore, the implementation of **GHG-1** would ensure that any impacts remain *less than significant*.

Mitigation Measures:

GHG-1: The project developer shall demonstrate compliance with the applicable BPS strategies to the Planning Division prior to the issuance of a building permit. The following PBS strategies are considered to be applicable, feasible, and effective in reducing greenhouse gas emissions generated by the project:

- The project developer shall provide a pedestrian access network that internally links all residential units and connects to the existing surrounding external streets and pedestrian facilities.
- The project developer shall ensure site design and building placement minimize barriers to pedestrian access and interconnectivity. Physical barriers such as wells, berms, landscaping, and slopes between residential uses that impede bicycle or pedestrian circulation shall be eliminated. In addition, barriers to pedestrian access of neighboring facilities and sites shall be minimized.
- Any transit stops associated with the project shall be provided with safe and convenient bicycle/pedestrian access and provide essential transit stop improvements (i.e., shelters, route information, benches, and lighting).
- The project developer shall install energy efficient roofing materials.
- The project developer shall plant trees to provide shade.
- The project developer shall install only natural gas or electric stoves in residences. The project developer shall install energy efficient heating and cooling systems, appliances and equipment, and control systems.

b. Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?

Less Than Significant Impact. As discussed above, the SJVAPCD adopted guidance that relies on the use of BPS strategies to assess significance of project-specific greenhouse gas emissions impacts. Project implementing BPS strategies in accordance with SJVAPCD's guidance would be determined to have a less than significant impact on greenhouse gas emissions and would not require project specific quantification of greenhouse gas emissions. With implementation of GHG-1, the proposed Project would implement BPS strategies as discussed in the SJVAPCD's Guidance for Valley Land-use Agencies in Addressing GHG Emission Impacts for New Projects under CEQA. Therefore, the proposed Project would not conflict with policies or regulations adopted for the purpose of reducing the emissions of greenhouse gases. Any impacts would be *less than significant*.

Mitigation Measures: None are required.

IX. HAZARDS AND HAZARDOUS MATERIALS

Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. Impair implementation of or physically interfere with an adopted emergency	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

response plan or emergency evacuation plan?

- g. Expose people or structures either directly or indirectly to a significant risk of loss, injury or death involving wildland fires?

ENVIRONMENTAL SETTING

The proposed Project site is located in the northern portion of the City of Lindsay, near primarily residential and recreational/public land uses. The site is currently vacant with minimal vegetation.

Residences exist within a quarter-mile of the Project site on east, south, and west. The Project site is approximately 3.5 miles south of the Thunderhawk Field Airport/Exeter Airport. Fresno-Yosemite International Airport is the closest major airport to the proposed Project site, approximately 52 miles northwest.

REGULATORY SETTING

Federal

The primary federal agencies with responsibility for hazardous materials management include the EPA, U.S. Department of Labor Occupational Safety and Health Administration (OSHA), and the U.S. Department of Transportation (DOT). The Environmental Protection Agency (EPA) was created to protect human health and to safeguard the natural environment – air, water and land – and works closely with other federal agencies, and state and local governments to develop and enforce regulations under existing environmental laws. Where national standards are not met, EPA can issue sanctions and take other steps to assist the states in reaching the desired levels of environmental quality. EPA also works with industries and all levels of government in a wide variety of voluntary pollution prevention programs and energy conservation efforts.

State

The California Department of Industrial Relations, Division of Occupational Safety and Health is the administering agency designed to protect worker health and general facility safety. The California Department of Forestry and Fire Protection has designated the area that includes the proposed Project site as a Local Responsibility Area, defined as an area where the local fire jurisdiction is responsible for emergency fire response.

In addition, the proposed Project is being evaluated pursuant to CEQA.

RESPONSES

a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

Less Than Significant Impact. The proposed Project would include the construction of up to 116 residential homes with the associated improvements. Proposed Project construction activities may involve the use and transport of hazardous materials. These materials may include fuels, oils, mechanical fluids, and other chemicals used during construction. Transportation, storage, use, and disposal of hazardous materials during construction activities would be required to comply with applicable federal, state, and local statutes and regulations. Compliance would ensure that human health and the environment are not exposed to hazardous materials. In addition, the Project would be required to comply with the National Pollutant Discharge Elimination System (NPDES) permit program through the submission and implementation of a Stormwater Pollution Prevention Plan during construction activities to prevent contaminated runoff from leaving the project site. Therefore, no significant impacts would occur during construction activities.

The operational phase of the proposed Project would occur after construction is completed and residents move in to occupy the structures on a day-to-day basis. Upon approval of entitlements proposed as part of the Project, the proposed Project will include land uses that are considered compatible with the surrounding uses. The current land uses are also considered compatible with the surrounding uses. None of these land uses routinely transport, use, or dispose of hazardous materials, or present a reasonably foreseeable release of hazardous materials, with the exception of common residential grade hazardous materials such as household and commercial cleaners, paint, etc. The proposed Project would not create a significant hazard through the routine transport, use, or disposal of hazardous materials, nor would a significant hazard to the public or to the environment through the reasonably foreseeable upset and accidental conditions involving the likely release of hazardous materials into the environment occur. Therefore, the proposed Project will not create a significant hazard to the public or the environment and any impacts would be *less than significant*.

Mitigation Measures: None are required.

b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?

Less than Significant Impact. See Response a. above. Any accumulated hazardous construction or operational wastes will be collected and transported away from the site in compliance with all federal, state and local regulations. Any impacts would be *less than significant*.

Mitigation Measures: None are required.

c. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?

Less Than Significant Impact. Roosevelt Elementary School is located within one-quarter mile of the Project site. As the proposed Project includes the development of single-family and multi-family residences, it is not reasonably foreseeable that the proposed Project will cause a significant impact by emitting hazardous waste or bringing hazardous materials near a proposed or existing school. Residential land uses do not generate, store, or dispose of significant quantities of hazardous materials. Such uses also do not normally involve dangerous activities that could expose persons onsite or in the surrounding areas to large quantities of hazardous materials. See also Responses a. and b. regarding hazardous material handling. The impact is *less than significant*.

Mitigation Measures: None are required.

d. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?

No Impact. The proposed Project site is not located on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 (Geotracker and DTSC Envirostor databases – accessed in April 2022). The nearest Department of Toxic Substances Control listed site is the American Can Company site on North Mount Vernon Avenue, located approximately 0.5-miles south of the proposed Project site. There are no hazardous materials sites that impact the Project.

Mitigation Measures: None are required.

e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?

No Impact. The proposed Project site is approximately 3.5 miles southeast of the Thunderhawk Field Airport/Exeter Airport. Land use controls for this area are provided by the Tulare County General Plan and Zoning Ordinance, Part 77.21 and the Tulare County Comprehensive Airport Land Use Plan, 2012. The Project site is outside the height and safety restriction zones imposed by these plans. There is *no impact*.

Mitigation Measures: None are required.

f. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

No Impact. The Project will not interfere with any adopted emergency response or evacuation plan. There is *no impact*.

Mitigation Measures: None are required.

g. Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

No Impact. There are no wildlands on or near the Project site. There is *no impact*.

Mitigation Measures: None are required.

X. HYDROLOGY AND WATER QUALITY

Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i. Result in substantial erosion or siltation on- or off- site;	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ii. substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite;	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iii. create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iv. impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

X. HYDROLOGY AND WATER QUALITY

Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
d. In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

According to the City of Lindsay’s General Plan, since 1982, the City’s primary source of water has been surface water from the Central Valley Project (CVP) which is transported via the Friant-Kern Canal. This is Class 2 water with an uncertain availability during years of below normal runoff. The need for a more dependable supply of Class 1 water resulted in a contract between the City and the U.S. Bureau of Reclamation in 1985 for the delivery of 2,500 acre-feet of Class 1, CVP entitlement water. Drainage within the urban area is facilitated by a system of curbs and gutters, storm drainage lines and inlets, dry wells, retention basins, a pump lift station and use of Lewis Creek for limited disposal. For purposes of management, surface water drainage is accomplished in four drainage areas - Westwood, Central, Harvard and County. Retention basins include the Mariposa St. basin north of Jefferson School (Westwood), the Sequoia Avenue basin west of the Hospital (Central), and the Harvard basin at Harvard Park (Harvard). The Tulare County drainage area is located in the northeastern part of the urban area and mostly outside of the City.

REGULATORY SETTING

Federal

Clean Water Act

The Clean Water Act (CWA) is intended to restore and maintain the chemical, physical, and biological integrity of the nation’s waters (33 CFR 1251). The regulations implementing the CWA protect waters of the U.S. including streams and wetlands (33 CFR 328.3). The CWA requires states to set standards to protect, maintain, and restore water quality by regulating point source and some non-point source discharges. Under Section 402 of the CWA, the National Pollutant Discharge Elimination System (NPDES) permit process was established to regulate these discharges.

The National Flood Insurance Act (1968) makes available federally subsidized flood insurance to owners of flood-prone properties. To facilitate identifying areas with flood potential, Federal Emergency Management Agency (FEMA) has developed Flood Insurance Rate Maps (FIRM) that can be used for planning purposes.

State

State Water Resources Control Board

The State Water Resources Control Board (SWRCB), located in Sacramento, is the agency with jurisdiction over water quality issues in the State of California. The SWRCB is governed by the Porter-Cologne Water Quality Act (Division 7 of the California Water Code), which establishes the legal framework for water quality control activities by the SWRCB. The intent of the Porter-Cologne Act is to regulate factors which may affect the quality of waters of the State to attain the highest quality which is reasonable, considering a full range of demands and values. Much of the implementation of the SWRCB's responsibilities is delegated to its nine Regional Boards. The proposed Project site is located within the Central Valley Region.

Regional Water Quality Board

The Regional Water Quality Control Board (RWQCB) administers the NPDES storm water-permitting program in the Central Valley region. Construction activities on one acre or more are subject to the permitting requirements of the NPDES General Permit for Discharges of Storm Water Runoff Associated with Construction Activity (General Construction Permit). The General Construction Permit requires the preparation and implementation of a Stormwater Pollution Prevention Plan (SWPPP). The plan will include specifications for Best Management Practices (BMPs) that will be implemented during proposed Project construction to control degradation of surface water by preventing the potential erosion of sediments or discharge of pollutants from the construction area. The General Construction Permit program was established by the RWQCB for the specific purpose of reducing impacts to surface waters that may occur due to construction activities. BMPs have been established by the RWQCB in the California Storm Water Best Management Practice Handbook (2003) and are recognized as effectively reducing degradation of surface waters to an acceptable level. Additionally, the SWPPP will describe measures to prevent or control runoff degradation after construction is complete and identify a plan to inspect and maintain these facilities or project elements.

RESPONSES

- a. Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?

Less than Significant Impact. The State Water Resources Control Board requires any new construction project over an acre to complete a Stormwater Pollution Prevention Plan (SWPPP). A SWPPP involves site planning and scheduling, limiting disturbed soil areas, and determining best management practices to minimize the risk of pollution and sediments being discharged from construction sites. Implementation of the SWPPP will minimize the potential for impacts associated with erosion or siltation onsite or offsite.

The proposed Project will result in wastewater from residential units that will be discharged into the City's existing wastewater treatment system. The wastewater will be typical of other urban/residential developments consisting of bathrooms, kitchen drains and other similar features. The Project will not discharge any unusual or atypical wastewater. At site buildout the Project will be developed with single and multi-family homes. The number of allowable multi-family units will be reflective of the City's anticipated water usage for that designated area. Therefore, the proposed Project will not result in additional production of wastewater that was not already accounted for in the City's infrastructure planning documents.

Additionally, there will be no discharge to any surface or groundwater source. As such, the proposed Project will not violate any water quality standards and will not impact waste discharge requirements. The impact will be *less than significant*.

Mitigation Measures: None are required.

- b. Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?

The City of Lindsay (and proposed Project site) is located the Tulare Lake Basin, in an area managed by the East Kaweah Groundwater Sustainability Agency (EKGSA). The EKGSA is tasked with balancing groundwater levels in the Lindsay area, ensuring the sustainability of the underlying water supply. The proposed project will connect to the City's water system, which is served by a mix of both ground and surface water.

The site is currently mostly vacant land with minimal vegetation. Project demands for groundwater resources in connection with the proposed Project would not substantially deplete groundwater supplies

and/or otherwise interfere with groundwater recharge efforts being implemented by the City of Lindsay. The site has been planned and designated for urban development and while the change in designation from low density residential to medium density residential would slightly increase the water demand, all potential development will be required to adhere to all City and State mandated water conservation measures and regulations. Therefore, the proposed Project would not substantially deplete ground water supplies or interfere substantially with groundwater recharge. As such, there is a *less than significant impact* to this impact area.

Mitigation Measures: None are required.

- c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:
 - i. result in substantial erosion or siltation on- or offsite;
 - ii. substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite;
 - iii. create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or
 - iv. impede or redirect flood flows?

Less than Significant Impact. The Project site is currently vacant. The site will be designed so that during construction storm water is collected in compliance with City of Lindsay standards. At full buildout, the stormwater will tie into the City's existing storm drain system, which has adequate capacity. The storm water collection system design will be subject to review and approval by the City Public Works Department. Storm water during construction will be managed as part of the Storm Water Pollution Prevention Plan (SWPPP). A copy of the SWPPP is retained on-site during construction. All other on-site drainage will be collected and deposited in the City's storm drain system. Impacts regarding the alteration of drainage patterns to increase runoff that will potentially induce flooding have been discussed in the impact analysis for Response IX-c.

Implementation of the proposed Project will not require expansion of the City's existing stormwater system (other than onsite collection system), nor will it result in additional sources of polluted runoff. The Project would not otherwise degrade water quality and therefore the impact is *less than significant*.

Mitigation Measures: None are required.

- d. In flood hazard, tsunami or seiche zones, risk release of pollutants due to project inundation?
- e. Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?

Less than Significant Impact. The Project site is within Zone X, which experiences minimal flood hazards, as indicated by FEMA flood hazard map 06107C1305E, effective 6/16/2009. The site is not within a 100-year flood zone or a 500-year flood zone. The site will be designed for adequate storm drainage.

There are no inland water bodies that could be potentially susceptible to a seiche in the Project vicinity. This precludes the possibility of a seiche inundating the Project site. The Project site is more than 100 miles from the Pacific Ocean, a condition that precludes the possibility of inundation by tsunami. There are no steep slopes that would be susceptible to a mudflow in the Project vicinity, nor are there any volcanically active features that could produce a mudflow in the City of Lindsay. This precludes the possibility of a mudflow inundating the Project site.

As such, impacts related to exposure of people or structures to a risk of loss, injury, or death involving flooding as a result of the failure of a levee or dam would be *less than significant*.

Mitigation Measures: None are required.

XI. LAND USE AND PLANNING

Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

ENVIRONMENTAL SETTING

The Lindsay planning area is dominated by residential, commercial, and industrial use, with supporting public and semi-public facilities such as schools, parks, government offices, churches, hospital and public utilities. The City encompasses an area of approximately 2.33 square miles, or 1,490 gross acres of land including streets. The City is surrounded by agricultural land which is mostly devoted to orange and olive groves, with some irrigated pasture and field crops to the north.

Table 6
Distribution of Urban Land Use Within the Urban Development Boundary²³

²³ City of Lindsay General Plan, Part II Environmental Setting.

Category	Net Acres	% of Total
Very Low Density (Rural Resid.)	59.4	4.67
Low Density Residential (Single-Family)	412.4	32.45
Medium & High Density (Multi-Family)	42.3	3.33
Offices	15.6	1.23
Retail Commercial	25.0	1.96
Highway Commercial	5.2	0.40
Service Commercial	34.8	2.73
Light Industrial	72.2	5.67
Heavy Industrial	39.0	3.06
Parks & Recreation	36.0	2.83
Schools	83.1	6.53
Other public ⁴	80.1	6.30
Vacant land	130.1	10.23
Vacant bldgs.	1.9	0.15
Subtotal: Urban	1,037.1	81.75%
Streets⁵	233.2	18.25%
Total Urban (gross acreage)	1,270.3	100.00%

Additionally, according to the City’s 2019 Housing Element, the City has estimated the following residential development feasibility:

**Table 7
Residential Development Capacity Estimates**

Feasibility	Development Potential		Existing Undeveloped Lots	Acres
	Maximum Units	Likely Units		
Low	285	164	10	26
Medium	399	283	5	57
High	1655	1149	174	215
Total	2339	1596	189	298

The proposed Project site is located in the northern part of the City of Lindsay and is currently vacant. The Project site is bounded to the east by Parkside Avenue, to the north by Hickory Street, to the west by Sequoia Avenue/Road 214 and to the south by Ono City Parkway. Residential subdivisions lie to the east,

southeast, and west. Roosevelt Elementary School lies north of the site across W Hickory Street. The Project consists of development of 85 single-family residential units and 31 multi-family residential housing on approximately on approximately 32 acres.

The site is currently designated as Low Density by the City’s General Plan and zoned as R-1-7 (Single Family Residential). Surrounding General Plan Designation, land use and zoning information is identified in Table 8.

Table 8
Existing Land Use, General Plan Designation and Zoning

Location	Existing Land Use	Current Zoning Classification	General Plan Designation
North	Roosevelt Elementary School, and vacant land.	RCO, R-1-7	Low Density (Reserve).
South	County Health Agency and Lindsay Wellness Center.	PO, RCO	Public & Semi-Public Facility and Park & Recreation.
West	Residential housing.	PO, RCO, R-1-7	Low Density.
East	Existing single-family residence and residential housing.	R-1-7	Very Low and Low Density.

REGULATORY SETTING

Federal

Federal regulations for land use are not relevant to the proposed Project because it is not a federal undertaking (the proposed Project site is not located on lands administered by a federal agency, and the Project applicant is not requesting federal funding or a federal permit).

State

SB 330 Housing Crisis Act of 2019

On October 9, 2019, Gov. Gavin Newsom signed the Housing Crisis Act of 2019 into law, commonly known as Senate Bill 330 (Chapter 654, Statutes of 2019) to respond to the California housing crisis. Effective January 1, 2020, SB330 aims to increase residential unit development, protect existing housing inventory, and expedite permit processing. This new law makes a number of modifications to existing legislation, such as the Permit Streamlining Act and the Housing Accountability Act and institutes the Housing Crisis Act of 2019. Many of the changes proposed last for a 5-year period and sunset on January 1, 2025. Under this legislation, municipal and county agencies are restricted in ordinances and policies that can be applied to residential development. The revised definition of "Housing Development" now contains residential projects of two or more units, mixed-use projects (with two-thirds of the floor area designated for residential use), transitional, supportive, and emergency housing projects.

RESPONSES

- a. Physically divide an established community?
- b. Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the General Plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

No Impact. As noted earlier, the proposed Project is located in the northern portion of the City of Lindsay, in an area of suburban residential and recreational/public land uses. The proposed Project site is currently vacant and has a residential home on the eastern boundary, Lindsay community center on the southeastern boundary, and County Health and Human Services Agency on the southwestern boundary.

The Project includes up to 85 single-family residential units and 31 multi-family residential units on approximately 32 acres of land. As a part of the Project, the Land Use Map of the Lindsay General Plan would be amended to change the land use designation of the southern part of the site to medium density residential and the zone would be changed to RM-3 (multi-family residential), which would be consistent with the General Plan land use designation. The RM-3 zone on approximately 2.5 acres of land would allow for the development of up to 31 multi-family units at full buildout. A Planned Unit Development (PUD) – Overlay will be submitted to the City of Lindsay for review.

Upon approval of the land use change and zone change, the Project will be subject to strict adherence to the Development Policies and Standards for Medium- and High-Density Areas, as outlined by the City

of Lindsay General Plan.²⁴ The proposed project is located in an area that is planned for intense residential development and is located within and near existing communities. The proposed Project will be constructed in an area planned for residential development where existing infrastructure is available, including an elementary school, neighborhood commercial shopping centers and a recreational park, all within one mile radius. It is determined that the proposed Project is consistent with respective general plan objectives and policies and will not significantly conflict with applicable land use plans, policies or regulations of the City of Lindsay.

The Project has no characteristics that would physically divide the City of Lindsay. Access to the existing surrounding areas will be improved with Project implementation. The construction and operation of the Project would not divide an established community.

No impacts would occur as a result of this Project.

Mitigation Measures: None are required.

²⁴ Lindsay General Plan, 1989. Housing Element, page 56.

XII. MINERAL RESOURCES

Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

ENVIRONMENTAL SETTING

The City of Lindsay is situated along the western slope of the Sierra Nevada. The Sierra Nevada geomorphic province is primarily composed of cretaceous granitic plutons and remnants of Paleozoic and Mesozoic metavolcanic and metasedimentary rocks, and Cenozoic volcan and sedimentary rocks. The elevation of the City is approximately 375 feet above mean sea level. The east side of the Valley floor in Tulare County is a broad plain of low relief, consisting of three large and coalescing alluvial fans and streams draining from the Sierra Nevada. Three creeks -- Cross, Cottonwood and Lewis Creeks -- are intermittent streams.

Currently, the most economically significant mineral resources in Tulare County are sand, gravel, and crushed stone, used as sources for aggregate (road materials and other construction). The two major sources of aggregate are alluvial deposits (riverbeds, and floodplains), and hard rock quarries. Consequently, most Tulare County mines are located along rivers at the base of the Sierra foothills. According to the Tulare County General Plan, there are no known mineral resource production sites in the City of Lindsay.

REGULATORY SETTING

There are no federal, state or local regulations pertaining to mineral resources relevant to the proposed Project.

RESPONSES

- a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?

No Impact. As shown in Figure 10-1 of the Tulare County General Plan, the proposed Project area is not included in a classified mineral resource zone. Therefore, there is *no impact*.

Mitigation Measures: None are required.

- b. Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?

No Impact. As shown in Figure 10-1 of the Tulare County General Plan, the proposed Project area is not included in a classified mineral resource zone. Soil disturbance for the proposed Project would be limited site groundwork such as grading, foundations, and installation of infrastructure. Therefore, there is *no impact*.

Mitigation Measures: None are required.

XIII. NOISE

Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

ENVIRONMENTAL SETTING

The Project site is located in the northern part of the City of Lindsay and is currently vacant. The proposed Project site is located in an area that is substantially surrounded by urban uses, with some agricultural/vacant land to the north and west. Roosevelt Elementary School is located to the north of the Project area, and Tulare County’s Health and Human Services office is located to the southwest.

The primary existing noise sources contributing to ambient noise in the proposed Project area are traffic noises and noises associated with neighborhoods and agriculture.

REGULATORY SETTING

Federal

The Federal Railway Administration (FRA) and the Federal Transit Administration (FTA) have published guidance relative to vibration impacts. According to the FRA, fragile buildings can be exposed to ground-borne vibration levels of 0.5 PPV without experiencing structural damage³². The FTA has identified the human annoyance response to vibration levels as 80 RMS.

State

The State Building Code, Title 24, Part 2 of the State of California Code of Regulations establishes uniform minimum noise insulation performance standards to protect persons within new buildings which house people, including hotels, motels, dormitories, apartment houses and dwellings other than single-family dwellings. Title 24 mandates that interior noise levels attributable to exterior sources shall not exceed 45 dB L_{dn} or CNEL in any habitable room.

Title 24 also mandates that for structures containing noise-sensitive uses to be located where the L_{dn} or CNEL exceeds 60 dB, an acoustical analysis must be prepared to identify mechanisms for limiting exterior noise to the prescribed allowable interior levels. If the interior allowable noise levels are met by requiring that windows be kept closed, the design for the structure must also specify a ventilation or air conditioning system to provide a habitable interior environment

Local

Measuring and reporting noise levels involves accounting for variations in sensitivity to noise during the daytime versus nighttime hours. Noise descriptors used for analysis need to factor in human sensitivity to nighttime noise when background noise levels are generally lower than in the daytime and outside noise intrusions are more noticeable. Common descriptors include the Community Noise Equivalent Level (CNEL) and the Day-Night Average Level (L_{dn}). Both reflect noise exposure over an average day with weighting to reflect the increased sensitivity to noise during the evening and night. The two descriptors are roughly equivalent. The CNEL descriptor is used in relation to major continuous noise sources, such as aircraft or traffic, and is the reference level for the Noise Element under State planning law.

RESPONSES

- a. Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?
- b. Generation of excessive groundborne vibration or groundborne noise levels?

Less than Significant Impact. According to the City’s General Plan EIR, the major noise sources in Lindsay are related to roadways and vehicle traffic.²⁵ The most significant source of noise located near the Project site would be railway tracks located less than a quarter-mile to the west. Other noise sources would include traffic on nearby residential roads and the surrounding residences. Noise from the proposed Project will be similar to these existing conditions and will generally include noise from vehicles, air conditioner units and other similar equipment. It is not expected that the proposed Project will result in a discernable increase in noise to surrounding land uses.

Proposed Project construction related activities will involve temporary noise sources. Typical construction related equipment include graders, trenchers, small tractors and excavators. During the proposed Project construction, noise from construction related activities will contribute to the noise environment in the immediate vicinity.

Activities involved in construction will generate maximum noise levels, as indicated in Table 9, ranging from 79 to 91 dBA at a distance of 50 feet, without feasible noise control (e.g., mufflers) and ranging from 75 to 80 dBA at a distance of 50 feet, with feasible noise controls.

**Table 9
Typical Construction Noise Levels**

Type of Equipment	dBA at 50 ft	
	Without Feasible Noise Control	With Feasible Noise
Dozer or Tractor	80	75
Excavator	88	80
Scraper	88	80
Front End Loader	79	75
Backhoe	85	75
Grader	85	75
Truck	91	75

The distinction between short-term construction noise impacts and long-term operational noise impacts is a typical one in both CEQA documents and local noise ordinances, which generally recognize the reality that short-term noise from construction is inevitable and cannot be mitigated beyond a certain level. Thus, local agencies frequently tolerate short-term noise at levels that they would not accept for permanent noise sources. A more severe approach would be impractical and might preclude the kind of

²⁵ Lindsay General Plan, Draft EIR, 1989. The Noise Environment, page 91.

construction activities that are to be expected from time to time in urban environments. Most residents of urban areas recognize this reality and expect to hear construction activities on occasion.

Typical outdoor sources of perceptible ground borne vibration are construction equipment, steel-wheeled trains, and traffic on rough roads. Construction vibrations can be transient, random, or continuous. Construction associated with the proposed Project includes the construction of residences and roadways.

The approximate threshold of vibration perception is 65 VdB, while 85 VdB is the vibration acceptable only if there are an infrequent number of events per day. Table 10 describes the typical construction equipment vibration levels.

**Table 10
Typical Construction Vibration Levels**

Equipment	VdB at 25 ft
Small Bulldozer	58
Jackhammer	79

Vibration from construction activities will be temporary and not exceed the FTA threshold for the nearest residences, which are located approximately 50 feet from the development.

Impacts are *less than significant*.

Mitigation Measures:

None are required.

c. For a project located within the vicinity of a private airstrip or an airport land use plan, or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?

No Impact. The Project is not located within an airport land use plan. Therefore, there is *no impact*.

Mitigation Measures: None are required.

XIV. POPULATION AND HOUSING

Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

The California Department of Finance (DOF) estimated that the City had a population of 13,090 at the beginning of 2021, while in 2014 the population was 12,576, which represents a 4.1% increase.²⁶ According to the Tulare County Regional Housing Needs Assessment (RHNA), the City of Lindsay needs a total 590 net new housing units between 1/1/2014 and 9/30/23.²⁷

REGULATORY SETTING

Federal

The U.S. Department of Housing and Urban Development’s (HUD) mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. HUD is working to strengthen the housing market to bolster the economy and protect consumers; meet the need for quality affordable rental homes; utilize housing as a platform for improving quality of life; build inclusive and sustainable communities free from discrimination; and transform the way HUD does business.²⁸

State

²⁶ State of California Department of Finance. E-5 Population and Housing Estimates for Cities, Counties, and the State – January 2-11-2021. <https://dof.ca.gov/Forecasting/Demographics/Estimates/estimates-e5-2010-2021/>. Accessed April 2022.

²⁷ Tulare County Associated of Governments. Final Regional Housing Needs Plan for Tulare County 2014-2023. June 2014. <https://tularecog.org/tcag/studies/regional-housing-needs-assessment-rhna/>. Accessed April 2022.

²⁸ U.S. Department of Housing and Urban Development, Mission, <https://www.hud.gov/about/mission>. Accessed April 2022.

The California Department of Housing and Community Development (HCD's) mission is to "promote safe, affordable homes and vibrant, inclusive, sustainable communities for all Californians."²⁹ In 1977, the State Department of Housing and Community Development (HCD) adopted regulations under the California Administrative Code, known as the Housing Element Guidelines, which are to be followed by local governments in the preparation of local housing elements. AB 2853, enacted in 1980, further codified housing element requirements. Since that time, new amendments to State Housing Law have been enacted. State Housing Law also mandates that local governments identify existing and future housing needs in a Regional Housing Needs Assessment (RHNA).

Local

California Housing Element law requires every jurisdiction to prepare and adopt a housing element as part of a City's General Plan. State Housing Element requirements are framed in the California Government Code, Sections 65580 through 65589, Chapter 1143, Article 10.6. The law requires the State Department of Housing and Community Development (HCD) to administer the law by reviewing housing elements for compliance with State law and by reporting its written findings to the local jurisdiction. Although State law allows local governments to decide when to update their general plans, State Housing Element law mandates that housing elements be updated every eight years.

According to City of Lindsay's 2019 Housing Element, there is no city program to limit growth. Long-term growth boundaries are established by LAFCO, consistent with county policy and state law. The Housing Element's Zoning and Development Standards also state that as a matter of policy and practice, the City does not use zoning and development standards to constrain or unnecessarily hinder housing development. Such standards are employed to ensure land use compatibility and to provide minimal necessary guidance for new development in order to protect public health, safety, and welfare.

RESPONSES

- a. Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?

Less than Significant Impact. The proposed Project would include the construction of up to 116 residential units (31 multi-family units and 85 single-family units) and internal access roads. At full buildout, the Project which would result in approximately 451 additional residents based on the 3.92

²⁹ California Department of Housing and Community Development, Mission, <https://www.hcd.ca.gov/about/mission.shtml>. Accessed April 2022.

persons per household rate for the City³⁰, resulting in an increase of the City's population by approximately 3.5%. The site is within the City limits and as such, residential site development is expected and has been planned for. The proposed Project would also assist the City in reaching its RHNA goal, therefore impacts are *less than significant*.

Mitigation Measures: None are required.

b. Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?

Less than Significant. There are no residential structures currently on-site. As mentioned earlier, the proposed Project will add single and multi-family residential housing for the community. No houses will be displaced and as such, there will be *no impact*.

Mitigation Measures: None are required.

³⁰ California Department of Housing and Community Development, Mission, <https://www.hcd.ca.gov/about/mission.shtml>. Accessed April 2022.

XV. PUBLIC SERVICES

Would the project:

Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
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a. Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

The proposed Project site is located in the northern part of the City of Lindsay and is in an area already served by public service systems. The Project site consists of development of 116 residential units across multiple land parcels, all zoned as residential. The site is surrounded primarily by residential uses to the east and west, with Roosevelt Elementary School to the north, a Lindsay Wellness Center to the south, and County Health and Human Services Agency to the southwest.

REGULATORY SETTING

Federal

National Fire Protection Association

The National Fire Protection Association (NFPA) is an international nonprofit organization that provides consensus codes and standards, research, training, and education on fire prevention and public safety. The NFPA develops, publishes, and disseminates more than 300 such codes and standards intended to minimize the possibility and effects of fire and other risks. The NFPA publishes the NFPA 1, Uniform Fire Code, which provides requirements to establish a reasonable level of fire safety and property protection in new and existing buildings.

State

California Fire Code and Building Code

The 2007 California Fire Code (Title 24, Part 9 of the California Code of Regulations) establishes regulations to safeguard against hazards of fire, explosion, or dangerous conditions in new and existing buildings, structures, and premises. The Fire Code also establishes requirements intended to provide safety and assistance to fire fighters and emergency responders during emergency operations. The provision of the Fire Code includes regulations regarding fire-resistance rated construction, fire protection systems such as alarm and sprinkler systems, fire service features such as fire apparatus access roads, fire safety during construction and demolition, and wildland urban interface areas.

In addition, the proposed Project is being evaluated pursuant to CEQA.

Local

The City of Lindsay 2019 Housing Element requires for the Project developer to pay the school fees, development impact fees and utility connection fees.

RESPONSES

- a. Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

Fire protection?

Less than Significant Impact. The proposed Project site will continue to be served by the City of Lindsay's combined police/fire facility, located approximately 0.7 miles east of the site at 185 North Gale Hill Avenue. The Project developer would be required to submit plans to the City Fire Department for review and approval prior to the issuance of building permits to ensure the Project would conform to

applicable building codes and would provide an on-site fire hydrant system in the event of an on-site fire. The Project will also include new internal access roads that would provide access to emergency vehicles in the event of a fire and would connect to the larger circulation system to ensure adequate provision of emergency access to the Project site. As such, any impacts would be *less than significant*.

Police Protection?

Less than Significant Impact. The proposed Project includes the construction of 116 single- and multi-family residential units, which will accommodate approximately 451 persons. Protection services would be provided to the Project site from the existing Lindsay Police Department, approximately 0.75 miles to the southeast of the site. As the Project site is located in an area currently served by the Police Department and the site has been designated for urban use by the General Plan, the department would not need to expand its existing service area or construct a new facility to serve the Project site. The impact is *less than significant*.

Schools?

Less than Significant Impact. The proposed Project site is located within the Lindsay Unified School District. Roosevelt Elementary School is located less than a quarter mile north of the Project site. Other elementary schools in the district include Jefferson Elementary, Washington Elementary, Reagan Elementary, Kennedy Elementary (K-8), and Lincoln Elementary. Project site would be served by Lindsay High School or John J. Cairns Continuation High School for upper grades. Pursuant to California Education Code Section 17620(a)(1), the governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district for the purpose of funding the construction or reconstruction of school facilities. The Project applicant would be required to pay such fees to reduce any impacts of new residential development of school services. Payment of the developer fees will offset the addition of school-age children within the district. As such, any impacts would be *less than significant*.

Parks?

Less than Significant Impact. The nearest City park to the proposed Project site is the Lindsay Wellness Center which is located directly south and across the Ono City Parkway. The General Plan of Lindsay states that the community level recreational sites provided by school and park sites in the City ensure recreational opportunity above the maximum level that can be applied under State Law (known as the Quimby Act). This State Law enforces 5.0 developed acres of recreational land per 1,000 residents. Developer impact fees are collected by the City to ensure compliance with the Quimby Act. As such, any impacts would remain *less than significant*.

Other public facilities?

Less than Significant Impact. The proposed Project is within the land use and growth projections identified in the City's General Plan and other infrastructure studies. As such, the Project would not result in increased demand on other public facilities such as library services that has not already been planned for. Any impacts would be *less than significant*.

Mitigation Measures: None are required.

XVI. RECREATION

Would the project:

Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
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- a. Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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- b. Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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ENVIRONMENTAL SETTING

The City of Lindsay provides its residents several types of parks and recreational facilities. Parks are defined as land owned or leased by the City and used for public recreational purposes. The City’s recreational resources consist of Olive Bowl Park and the Lindsay Wellness Center. The Wellness Center offers a variety of services to the residents of Lindsay including eight-lane swimming pool laboratory services, gym equipment and facility, exercise classes, physical therapy (including therapy pool), and special event rental facility.

REGULATORY SETTING

The proposed Project is being evaluated pursuant to CEQA; however, there are no additional federal, state or local regulations, plans, programs, and guidelines associated with recreation that are applicable to the proposed Project.

RESPONSES

- a. Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

Less than Significant Impact. As described in Impact XV(a), the City collects developer impact fees to ensure that any impacts related to recreation remain *less than significant*.

Mitigation Measures: None are required.

b. Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

Less than Significant Impact. The proposed Project does not include the construction of recreation facilities. *Less than significant impacts* would occur.

Mitigation Measures: None are required.

XVII. TRANSPORTATION/TRAFFIC

Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Conflict with a program plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

The proposed development is located on multiple APNs in the City of Lindsay, which lies east of State Route 65. The Project site is bounded to the east by Parkside Avenue, to the north by Hickory Street, to the west by Sequoia Avenue/Road 214 and to the south by Ono City Parkway. Residential subdivisions lie to the east, southeast, and west. Roosevelt Elementary School lies north of the site across W Hickory Street. The nearest airport to the proposed Project site is the Thunderhawk Field Airport/Exeter Airport, a private airport located approximately 3.5 miles northeast of the site.

Regulatory Setting

Federal

Federal Transit Administration.

The Federal Transit Administration (FTA) is an authority that provides financial and technical assistance to local public transit systems, including buses, subways, light rail, commuter rail, trolleys, and ferries. The FTA is funded by Title 49 of the United States Code, which states the FTA’s interest in fostering the development and revitalization of public transportation.

Americans with Disabilities Act of 1990.

Titles I, II, III, IV, and V of the ADA have been codified in Title 42 of the United States Code, beginning at Section 12101. Title III prohibits discrimination on the basis of disability in “places of public accommodation” (businesses and nonprofit agencies that serve the public) and “commercial facilities” (other businesses). The regulation includes Standards for Accessible Design, which establish minimum standards for ensuring accessibility when designing and constructing a new facility or altering an existing facility.

State

Senate Bill (SB) 743.

On September 27, 2013, Governor Jerry Brown signed SB 743 into law and codified a process that changed transportation impact analysis as part of CEQA compliance. SB 743 directs the California Office of Planning and Research (OPR) to administer new CEQA guidance for jurisdictions that removes automobile vehicle delay and LOS or other similar measures of vehicular capacity or traffic congestions from CEQA transportation analysis. Rather, it requires the analysis of VMT or other measures that “promote the reduction of greenhouse gas emissions, the development of multi-modal transportation networks, and a diversity of land uses,” to be used as a basis for determining significant impacts to circulation in California. The goal of SB 743 is to appropriately balance the needs of congestion management with statewide goals related to reducing GHG emissions, encourage infill development, and promote public health through active transportation.

RESPONSES

- a. Conflict with a program plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?

Less Than Significant Impact. The proposed Project includes the development of 116 residential units in the City of Lindsay. Project development would be in accordance with alternative transportation policies included in the City of Lindsay General Plan, the Tulare County Regional Transportation Plan, and any other adopted policies, plans or programs supporting alternative transportation. As such, any impacts are considered *less than significant*.

- b. Would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)?

Less than Significant Impact With Mitigation. The proposed Project consists of development of 116 residential units on approximately 32 acres of land. The Project Developer intends to construct up to

31 multi-family residences and 85 single-family residential homes. Project components will include interior access roads, street lighting and landscaping, as detailed on Figures 3 and 4.

A Vehicle Miles Travelled (VMT) Analysis was conducted by Ruettggers & Schuler Civil Engineers on behalf of the Project. The report can be found in its entirety in Appendix C. The following analysis is taken directly from the report.

Trip Generation

The trip generation volumes shown in Table 11 were calculated using the Institute of Transportation Engineers (ITE) Trip Generation, 11th Edition. The ADT, AM, and PM peak hour rates and the peak hour directional splits for ITE Land Use Codes 210 (Single-Family detached Housing) and 220 (Multifamily Housing – Low Rise) were used to estimate the project traffic volumes.

**Table 11
Trip Generation**

General Information			Daily Trips		AM Peak Hour Trips			PM Peak Hour Trips		
ITE Code	Development Type	Variable	ADT RATE	ADT	Rate	In % Split/ Trips	Out % Split/ Trips	Rate	In % Split/ Trips	Out % Split/ Trips
210	Single-Family detached Housing	86 Dwelling Units	eq	878	eq	26% 17	74% 48	eq	63% 54	37% 32
220	Multifamily Housing (Low Rise)	31 Dwelling Units	eq	274	eq	24% 8	76% 25	eq	62% 30	38% 18
Total				1152		25	73		84	50

The results of the trip generation calculations show that the project would generate approximately 1,152 daily trips, 134 trips during the PM peak hour and 98 trips during the AM peak hour of a typical weekday.

Baseline VMT was determined utilizing data from the California Statewide Travel Demand Model (CSTDm). The proposed residential project is located in Traffic Analysis Zone (TAZ) 2724, which has an average VMT/capita of 11.81 miles. The proposed residential project is considered a typical project within the TAZ and therefore the project would be expected to have the same VMT per capita. There are no special considerations with the project to assume the project would produce a VMT/capita lower than the average for the TAZ. The threshold of significance for residential project VMT/capita

if the project VMT is below the average in the TAZ where the project is located. Since VMT/capita is assumed to be equal to the average for the aforementioned zone, it is anticipated that the proposed project will have a significant transportation impact prior to mitigation.

The Tulare County guidelines include detailed instructions for mitigation if a project has significant impacts. The guidelines state “The preferred method of VMT mitigation in Tulare County is for project applicants to provide transportation improvements that facilitate travel by walking, bicycling, or transit.” In accordance with these guidelines, a survey was conducted within a half mile of the project to determine any pedestrian, bicycle or transit facilities deficiencies exist. After review, additional sidewalk and ADA compliant wheelchair ramps are proposed to be constructed.

The total project mitigation cost is estimated at approximately \$25,773 with a 20% contingency. The guidelines include a minimum cost for mitigation of \$20 per daily trip generated by the project or 0.5% of the total construction cost of the project (not including land acquisition). As shown in Table 11, the project is anticipated to generate 1152 daily trips, which equates to a target value of improvements of \$23,040. At the time of construction should prices fluctuate, an adjustment in the scope of improvements may need to be made.

Pursuant to the guidelines, if a project provides mitigation which meets the minimum threshold listed above, the project can presume a 1% reduction in VMT. The assumed VMT/capita reduction is 1% of 11.81 or 0.11. The resulting VMT/capita after mitigation is 11.70 which is below the average VMT/capita in the TAZ which the project is located.

With these improvements, the project will have a *less than significant transportation impact*.

Mitigation Measures:

TRA-1

The Project developer shall pay a total of \$25,773, with a 20% contingency, in improvement fees, prior to issuance of building permits, to the City of Lindsay to improve the following:

- 285 feet of sidewalk on the north side of Whitney Street between Parkside Avenue and Bond Way.
- Install ADA compliant wheelchair ramps at the following locations:
 - 1 ramp at the NE corner of Hickory Street and Parkside Avenue
 - 2 ramps at the north side of Hickory Street and Gale Hill Avenue

- o 2 ramps at the south side of Hickory Street and Hamlin Way

c. Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

d. Result in inadequate emergency access?

Less Than Significant. The Project will not conflict with any congestion management programs, as none are applicable to the Project. No roadway design features associated with this proposed Project would result in an increase in hazards due to a design feature or be an incompatible use. Any impacts would be considered *less than significant*.

XVIII. TRIBAL CULTURAL RESOURCES

Would the project:

Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
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a. Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

i. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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ii. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code section 5024.1. In applying the criteria set forth in subdivision (c) of the Public Resources Code section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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ENVIRONMENTAL SETTING

Federal

The National Historic Preservation Act

The National Historic Preservation Act of 1966 (NHPA) established federal regulations for the purpose of protecting significant cultural resources. The legislation established the National Register of Historic Places and the National Historic Landmarks Program. It mandated the establishment of the Office of Historic Preservation, responsible for implementing statewide historic preservation programs in each state.

State

California State Office of Historic Preservation (OHP)

The California State Office of Historic Preservation (OHP) is responsible for administering federally and state mandated historic preservation programs to further the identification, evaluation, registration and protection of California's irreplaceable archaeological and historical resources under the direction of the State Historic Preservation Officer (SHPO), appointed by the governor, and the State Historical Resources Commission, a nine-member state review board appointed by the governor.

Among OHP's responsibilities are identifying, evaluating, and registering historic properties; and ensuring compliance with federal and state regulations. The OHP administers the State Register of Historical Resources and maintains the California Historical Resources Information System (CHRIS) database. The CHRIS database includes statewide Historical Resources Inventory (HRI) database. The records are maintained and managed under contract by eleven independent regional Information Centers. Tulare, Fresno, Kern, Kings and Madera counties are served by the Southern San Joaquin Valley Information Center (Center), located in Bakersfield, CA. The Center provides information on known historic and cultural resources to governments, institutions and individuals.³¹

A historical resource may be eligible for inclusion in the California Register of Historical Resources (CRHR) if it:

- Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
- Is associated with the lives of persons important to our past;

³¹ California Office of Historic Preservation, Mission and Responsibilities, https://ohp.parks.ca.gov/?page_id=1066, Accessed April 2022.

- Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
- Has yielded, or may be likely to yield, information important in prehistory or history.³²

Tribal Consultation Requirements: SB 18 (Burton, 2004)³³

On September 29, 2004, Governor Schwarzenegger signed Senate Bill 18, Tribal Consultation Guidelines, into law. This bill amended Section 815.3 of the Civil Code, to amend Sections 65040.2, 65092, 65351, 65352, and 65560 of, and to add Sections 65352.3, 65352.4, and 65562.2 to, the Government Code, relating to traditional tribal cultural Places. SB 18, enacted March 1, 2005, creates a mechanism for California Native American Tribes to identify culturally significant sites that are located within public or private lands within the city or county's jurisdiction. SB 18 requires cities and counties to contact, and offer to consult with, California Native American Tribes before adopting or amending a General Plan, a Specific Plan, or when designating land as Open Space, for the purpose of protecting Native American Cultural Places (PRC 5097.9 and 5097.993). The Native American Heritage Commission (NAHC) provides local governments with a consultation list of tribal governments with traditional lands or cultural places located within the Project Area of Potential Effect. Tribes have 90 days from the date on which they receive notification to request consultation, unless a shorter timeframe has been agreed to by the tribe.

Tribal Consultation Requirements: AB 52 (Gatto, 2014)³⁴

This bill was approved by Governor Brown on September 25, 2014 and became effective July 1, 2015. This bill amended Section 5097.94 of, and to add Sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 21084.3 to, the Public Resources Code, relating to Native Americans. The bill specifies that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource, as defined, is a project that may have a significant effect on the environment. This bill requires a lead agency to begin consultation with a California Native American tribe that is traditionally and culturally affiliated (can be a tribe anywhere within the State of California) with the geographic area of the proposed project, if the tribe requested to the lead agency, in writing, to be informed by the lead agency of proposed projects in that geographic area and the tribe requests consultation, prior to determining whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project.

³² California Office of Historic Preservation, California Register of Historical Resources: Criteria for Designation. https://ohp.parks.ca.gov/?page_id=21238. Accessed April 2022.

³³ Senate Bill No. 18, Chapter 905. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=2003200405B18. Accessed April 2022.

³⁴ Assembly Bill No. 52, Chapter 532. http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB52. Accessed April 2022.

Existing law establishes the Native American Heritage Commission (NAHC) and vests the commission with specified powers and duties. This bill required the NAHC to provide each California Native American tribe, as defined, on or before July 1, 2016, with a list of all public agencies that may be a lead agency within the geographic area in which the tribe is traditionally and culturally affiliated, the contact information of those agencies, and information on how the tribe may request those public agencies to notify the tribe of projects within the jurisdiction of those public agencies for the purposes of requesting consultation.

The NAHC provides protection to Native American burials from vandalism and inadvertent destruction, provides a procedure for the notification of most likely descendants regarding the discovery of Native American human remains and associated grave goods, brings legal action to prevent severe and irreparable damage to sacred shrines, ceremonial sites, sanctified cemeteries and place of worship on public property, and maintains an inventory of sacred places.³⁵

The NAHC performs a Sacred Lands File search for sites located on or near the Project site upon request. The NAHC also provides local governments with a consultation list of tribal governments with traditional lands or cultural places located within the Project Area of Potential Effect. The City sent letters to the tribal governments listed by the NAHC on February 21, 2023 as required by AB 52 to the following Tribes:

- Big Sandy Rancheria of Western Mono Indians
- Tule River Indian Tribe
- Wuksache Indian Tribe/Eshom Valley Band

RESPONSES

- a-i, a-ii. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k) or a resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code section 5024.1. In applying the criteria set forth in subdivision (c) of the Public Resources Code section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe?

³⁵ Native American Heritage Commission, About the Native American Heritage Commission <http://nahc.ca.gov/about/>. Accessed June 2022.

Less than Significant Impact. A Tribal Cultural Resource (TCR) is defined under Public Resources Code section 21074 as a site, feature, place, cultural landscape that is geographically defined in terms of size and scope, sacred place, and object with cultural value to a California Native American tribe that are either included and that is listed or eligible for inclusion in the California Register of Historic Resources or in a local register of historical resources, or if the City of Lindsay, acting as the Lead Agency, supported by substantial evidence, chooses at its discretion to treat the resource as a TCR.

As discussed above, under Section V, Cultural Resources, criteria (b) and (d), no known archeological resources, ethnographic sites or Native American remains are located on the proposed Project site. As discussed under criterion (b) implementation of Mitigation Measure CULT-1 would reduce impacts to unknown archaeological deposits, including TCRs, to a less than significant level. As discussed under criterion (d), compliance with California Health and Safety Code Section 7050.5 would reduce the likelihood of disturbing or discovering human remains, including those of Native Americans. Any impacts to TCR would be considered *less than significant*.

Mitigation Measures: No additional measures are required.

XIX. UTILITIES AND SERVICE SYSTEMS

Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. Comply with federal, state, and local management and reduction statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

Utilities required to serve the proposed Project would include water, sanitary sewer, storm drainage, electricity, and telecommunications infrastructure. Water service, sewage disposal and refuse collection would be provided by the City of Lindsay or its contractors.

REGULATORY SETTING

State

State Water Resources Control Board (SWRCB)

Waste Discharge Requirements Program. State regulations pertaining to the treatment, storage, processing, or disposal of solid waste are found in Title 27, CCR, Section 20005 et seq. (hereafter Title 27). In general, the Waste Discharge Requirements (WDRs) Program (sometimes also referred to as the "Non Chapter 15 (Non 15) Program") regulates point discharges that are exempt pursuant to Subsection 20090 of Title 27 and not subject to the Federal Water Pollution Control Act. Exemptions from Title 27 may be granted for nine categories of discharges (e.g., sewage, wastewater, etc.) that meet, and continue to meet, the preconditions listed for each specific exemption. The scope of the WDRs Program also includes the discharge of wastes classified as inert, pursuant to section 20230 of Title 2744. Several SWRCB programs are administered under the WDR Program, including the Sanitary Sewer Order and recycled water programs.

National Pollutant Discharge Elimination System (NPDES) Permit

As authorized by the Clean Water Act (CWA), the National Pollutant Discharge Elimination System (NPDES) Permit Program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. In California, it is the responsibility of Regional Water Quality Control Boards (RWQCB) to preserve and enhance the quality of the state's waters through the development of water quality control plans and the issuance of waste discharge requirements (WDRs). WDRs for discharges to surface waters also serve as NPDES permits. Tulare County is within the Central Valley RWQCB's jurisdiction.

CalRecycle

Assembly Bill 75 was passed in 1999 and the State Agency Model Integrated Waste Management Act (Chapter 764, Statutes of 1999, Strom-Martin) took effect on Jan 1, 2000. The act mandated that state agencies develop and implement an integrated waste management plan which outlines the steps to be taken to achieve the required waste diversion goals. Legislation enacted in 2011 (AB 341) makes a

legislative declaration that it is the policy goal of the State of California that not less than 75 percent of solid waste generated to be source reduced, recycled, or composted by the year 2020.

In addition, the proposed Project is being evaluated pursuant to CEQA.

RESPONSES

- a. Require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?

Less than Significant Impact. Implementation of the proposed Project would include up to 85 single-family residential units and 31 multi-family residential units on the Project site for a total of 116 units. The Project site is located within the service territory of the City of Lindsay's wastewater treatment plant and the City Services Department regularly monitors the waste discharge to meet City requirements.

As discussed in Section X, Hydrology and Water Quality, with an increase in the area of impervious surfaces on the Project site, an increase in the amount of storm water runoff is anticipated. The site will be designed so that storm water is collected and deposited in the City's existing storm drain system. The storm water collection system design will be subject to review and approval by the City Public Works Department. Storm water during construction will be managed as part of the Storm Water Pollution Prevention Plan (SWPPP). A copy of the SWPPP is retained on-site during construction. Thus, the proposed Project would have a *less than significant impact*.

Mitigation Measures: None are required.

- b. Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?

Less than Significant Impact. The Friant-Kern Canal is the primary source of water for the City of Lindsay. A secondary water supply is drawn from two wells located west of the City, which pull from subsurface aquifers and are primarily used to satisfy peak demands, low system pressures and during times when surface water is not available from the Friant-Kern Canal. Entitlements have been made available with the U.S. Bureau of Reclamation to ensure adequate supply to the City of Lindsay at all times. The City will have sufficient supply to serve the proposed Project with the proposed entitlements. As such, the proposed Project will have a *less than significant impact*.

Mitigation Measures: None are required.

- c. Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?

Less Than Significant Impact. As discussed in Section XVIII(a), implementation of the proposed Project would result in wastewater being discharged to the City's existing wastewater treatment plant, which has sufficient capacity for the proposed development. There will be no need for additional wastewater treatment service. Additionally, the proposed Project applicant would be required to comply with any applicable City and WWTF regulations and would be subject to applicable development impact fees and wastewater connection charges. Therefore, with compliance to applicable standards and payment of required fees and connection charges, the Project would not result in a significant impact related to construction or expansions of existing wastewater treatment facilities.

Mitigation Measures: None are required.

- d. Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?

Less than Significant Impact. Disposal services in the City are provided by Mid Valley Disposal and the City follows all CalRecycle Mandates. Solid waste is anticipated to be delivered to the county landfill site near Woodville. The Project would comply with federal, state and local statutes and regulations related to solid waste.

Implementation of the proposed Project would result in an increase in solid waste disposal needs; however this increase has been anticipated by the City's General Plan, and would be minimal. The proposed Project would result in *less than significant impacts* to solid waste and landfill facilities.

- e. Comply with federal, state, and local statutes and regulations related to solid waste?

Less than Significant Impact. See Response d, above. The proposed Project would be required to comply with all federal, State, and local regulations related to solid waste. Furthermore, the proposed Project would be required to comply with all standards related to solid waste diversion, reduction, and recycling during Project construction and operation. The proposed Project will comply with all federal, state and local statutes and regulations related to solid waste. As such, any impacts would be *less than significant*.

Mitigation Measures: None are required.

XX. WILDFIRE

If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Substantially impair an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

Human activities such as smoking, debris burning, and equipment operation are the major causes of wildland fires. Within Tulare County, over 1,029,130 acres (33% of the total area) are classified as “Very High” fire threat and approximately 454,680 acres (15% of the total area) are classified as “High” fire threat. The portion of the county that transitions from the valley floor into the foothills and mountains is characterized by high to very high threat of wildland fires.³⁶ The majority of the City of Lindsay is

³⁶ Tulare County General Plan Background Report. February 2010. Page 8-21.

developed into urban uses or in active agriculture, severely reducing the risk of wildland fire. According to the Tulare County Background Report Figure 8-2, the majority of the City has no threat of wildfire. The proposed Project site is relatively flat in an area actively utilized with primarily residential and agricultural uses.

RESPONSES

- a. Substantially impair an adopted emergency response plan or emergency evacuation plan?
- b. Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?
- c. Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?
- d. Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?

Less Than Significant Impact. The proposed Project is located in an area developed with primarily residential uses and some agricultural uses, which precludes the risk of wildfire and is not located in a state responsibility area or on lands classified as very high fire hazard severity zones. The area is flat in nature and disked for fire suppression, which would limit the risk of downslope flooding and

As such, any wildfire risk to the project structures or people would be *less than significant*.

Mitigation Measures: None are required.

XXI. MANDATORY FINDINGS OF SIGNIFICANCE

Would the project:

Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
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- a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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- b. Does the project have impacts that are individually limited, but cumulatively considerable? (“Cumulatively considerable” means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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- c. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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RESPONSES

- a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict

the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

Less than Significant Impact With Mitigation. The analyses of environmental issues contained in this Initial Study indicate that the proposed Project is not expected to have substantial impact on the environment or on any resources identified in the Initial Study. Mitigation measures have been incorporated in the project design to reduce all potentially significant impacts to *less than significant*.

- b. Does the project have impacts that are individually limited, but cumulatively considerable? (“Cumulatively considerable” means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?

Less than Significant Impact. CEQA Guidelines Section 15064(i) states that a Lead Agency shall consider whether the cumulative impact of a project is significant and whether the effects of the project are cumulatively considerable. The assessment of the significance of the cumulative effects of a project must, therefore, be conducted in connection with the effects of past projects, other current projects, and probable future projects. Due to the nature of the Project and consistency with environmental policies, incremental contributions to impacts are considered less than cumulatively considerable. The proposed Project would not contribute substantially to adverse cumulative conditions, or create any substantial indirect impacts (i.e., increase in population could lead to an increase need for housing, increase in traffic, air pollutants, etc.). The impact is *less than significant*.

- c. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

Less than Significant Impact With Mitigation. The analyses of environmental issues contained in this Initial Study indicate that the project is not expected to have substantial impact on human beings, either directly or indirectly. Mitigation measures have been incorporated in the Project design to reduce all potentially significant impacts to *less than significant*.

LIST OF PREPARERS

Crawford & Bowen Planning, Inc. – Initial Study

- Emily Bowen, LEED AP, Principal Environmental Planner
- Travis Crawford, AICP, Principal Environmental Planner
- Deepesh Tourani, Environmental Planner

Ruettgers & Schuler Civil Engineering, Inc. – VMT Analysis

Persons and Agencies Consulted

City of Lindsay

- Neyba Amezcua, Director of City Services and Planning

California Historic Resources Information System

- Celeste Thomson, Coordinator



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

NUMBER 23-34

TITLE A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY APPROVING GENERAL PLAN AMENDMENT NO. 23-01, PLANNED UNIT DEVELOPMENT NO. 2023-02, AND ADOPTING AN INITIAL STUDY/MITIGATED NEGATIVE DECLARATION (IS/MND) FOR GENERAL PLAN AMENDMENT NO. 2023-01, ZONE CHANGE NO. 2023-01, AND PLANNED UNIT DEVELOPMENT (PUD) NO. 2023-02, A REQUEST BY FRANCISCO ACEVEDO TO CHANGE THE LAND USE DESIGNATION FROM LOW-DENSITY RESIDENTIAL TO MEDIUM-DENSITY RESIDENTIAL FOR A 2.5-ACRE PORTION OF A SITE BOUND TO THE NORTH BY WEST HICKORY STREET, TO THE EAST BY PARKSIDE AVENUE, TO THE SOUTH BY ONO CITY PARKWAY, AND THE WEST BY SEQUOIA AVENUE/ROAD 214 (APNS 201-230-003 TO -009).

MEETING At a regularly scheduled meeting of the City of Lindsay City Council held on August 08, 2023, at 6:00 PM at 251 E. Honolulu Street, Lindsay, CA 93247

WHEREAS, Mario Valmonte and Associates has requested the approval of General Plan Amendment No. 2023-01 and Planned Unit Development (PUD) No. 2023-02 to change the Land Use Designation from Low-Density Residential to Medium-Density Residential and PUD-Overlay over a 2.5-acre portion of the site to allow for the development of 31 multi-family housing units. The project site is bound to the north by W. Hickory Street, to the east by Parkside Avenue, to the south by Ono City Parkway, and to the west by Sequoia Avenue/Road 214 (APNs 201-230-003 to -009) and;

WHEREAS, an Initial Study was prepared in conformance with the California Environmental Quality Act (CEQA) Guidelines, and it was found that the proposed project could not have a significant effect on the environment, with mitigations. Therefore, a Mitigated Negative Declaration has been prepared for this project; and

WHEREAS, the Lindsay City Council held a duly noticed public hearing at its August 08, 2023, meeting.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LINDSAY DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The project has been reviewed for compliance with the Municipal Code and the Subdivision Map Act and was found to be in compliance with the incorporation of the recommended Conditions of Approval.

RESOLUTION NO. 23-34

Page 1 of 5



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

The amendment is consistent with the goals and policies of the General Plan and the purposes and application intended for the zoning district classification proposed.

SECTION 2. The proposed location of the PUD is in accordance with the objectives of the Zoning Code.

The proposed location of the PUD and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, and welfare or materially injurious to properties or improvements in the vicinity. The proposed PUD will comply with each of the applicable provisions of this section.

The standards of population density, site area and dimensions, site coverage, yard spaces, the height of structures, the distance between structures, off-street parking and off-street loading facilities, landscaped areas, and street design will produce an environment of stable and desirable character consistent with the objectives of the Zoning Code, and will not generate more traffic than the streets in the vicinity can carry without congestion and will not overload utilities.

That the combination of different dwelling types and/or a variety of land uses in the development will complement each other and will harmonize with existing and proposed land uses in the vicinity.

That the proposed PUD will satisfactorily mitigate potential environmental impacts in accordance with the provisions of Section 18.18.070 of this title.

SECTION 3. The City Council of the City of Lindsay approves Planned Unit Development Permit PUD 2023-02 based on the evidence presented subject to the following conditions:

1. The site shall be developed consistent with the exhibits provided and applicable development standards found in the Zoning Ordinance and City Municipal Code.
2. All mitigation measures in the Mitigated Negative Declaration approved with General Plan Amendment No. 2023-01, Zone Change No. 2023-01, and Planned Unit Development No. 2023-02.
3. The project shall be developed and maintained in substantial compliance with the conditions of the Tentative Subdivision Map contained in



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

Resolution 05-36 and Resolution 07-05, except as modified by these conditions of approval.

4. All fences and walls shall be constructed in accordance with Section 18.06.050 Property Development Standards of the City Municipal Code.
5. Construct all frontage improvements along Whitney Street, including curb, gutter, sidewalk, drive approach(es), landscape & irrigation. Whitney Street construction (minimum of 2-12' wide travel lanes, a 4' wide minimum paved shoulder on the north side, and 8' wide parking on the south side) in accordance with the approved plans for Mission Estates Subdivision.
6. Construct Whitney Street to Sequoia Avenue and Parkside Avenue to include a minimum of 2-12' wide travel lanes, a 4' wide minimum paved shoulder on the north side, and 8' wd parking on the south side in accordance with the approved plans for Mission Estates Subdivision.
7. Construct sewer, water, storm drain facilities, and streetlights in accordance with the approved plans for Mission Estates Subdivision and other private utilities (SCE, SoCalGas, AT&T, Comcast, Frontier) in Whitney Street from Sequoia Avenue to Parkside Avenue to serve the development.
8. Vacate the right of way for Napa Boulevard south of Whitney Street. in accordance with the California Streets and Highway Code, the Subdivision Map Act, and the City Municipal Code.
9. The developer shall remove the parks from the subdivision by application for lot line adjustment(s) and/or parcel map(s) in accordance with the Subdivision Map Act and City Municipal Code.
10. Inspect and test existing facilities constructed in Whitney Street for the Mission Estates Subdivision as directed by and to the satisfaction of the City to confirm the adequacy of facilities and/or determine improvements to be constructed.
11. A merger of the lots shall be completed by a licensed surveyor to remove the lines of the seven lots of the PUD and recorded prior to the application for a building permit.
12. Plans for all public and private improvements, including but not limited to water, sewer, storm drainage, road pavement, curb and gutter, sidewalk, streetlights, landscaping, and fire hydrants shall be approved by the City Engineer, and these improvements shall be completed in accordance with the approved plans to the satisfaction of the City Services Department.
13. Parkland in-lieu fees shall be paid to the City for each lot in accordance with the City's Fee Schedule adopted by resolution of the City Council. Fees shall be paid prior to the approval of the Final Map.
14. The project shall be subject to the applicable development impact fees adopted by resolution of the City Council.



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

15. The developer shall comply with the standards, provisions, and requirements of the San Joaquin Valley Air Pollution Control District that relate to the project.
16. Fire hydrant types and locations shall be approved by the Public Safety and City Services Departments.
17. Concrete pads for the installation of mailboxes shall be provided in accordance with determinations made by the Lindsay Postmaster.
18. One tree shall be planted in the front yard of each home prior to the certificate of occupancy being issued.
19. Streetlights shall be provided within the project as per City local street lighting standards.
20. Any existing roadway, sidewalk, or curb and gutter that is damaged during construction shall be repaired or replaced to the satisfaction of the City Services Department.
21. All signs shall require a sign permit separate from the building permit.
22. The PUD approval shall expire within two years; an extension is granted by the City.
23. The City of Lindsay shall not be liable for any damage, loss, or injury to the person, property, or effects of the applicant or of any agent, servant, employee, contracted staff, or volunteer. The applicant agrees to indemnify, protect, and hold harmless the City of Lindsay against any and all such damages, costs, attorney's fees, or employees.

PASSED AND ADOPTED by the City Council of the City of Lindsay as follows:

MEETING DATE	August 08, 2023
MOTION	
SECOND MOTION	
AYES	
ABSENT	
ABSTAIN	
NAYS	



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

CERTIFICATION OF THE FOREGOING RESOLUTION AS FULL, TRUE, PASSED AND
ADOPTED BY THE CITY COUNCIL OF THE CITY OF LINDSAY AS DETAILED.

FRANCESCA QUINTANA
CITY CLERK

HIPOLITO A. CERROS
MAYOR



STAFF REPORT

TO: Lindsay City Council
FROM: Curtis Cannon, Planning Manager
DEPARTMENT: City Services and Planning
ITEM NO.: 13.2
MEETING DATE: August 08, 2023

ACTION & RECOMMENDATION

First Reading of Ordinance No. 612, An Ordinance of the City Council of the City of Lindsay Amending the Zoning Designation From R-1-7 To RM-3 for a 2.5-Acre Portion of a Site Bound to the North By West Hickory Street, to the East by Parkside Avenue, to the South by Ono City Parkway, and the West by Sequoia Avenue/Road 214 (APNs 201-230-003 To -009), and the Lindsay Zoning Map as Adopted by Ordinance 437 of the City of Lindsay and Authorization to Waive Full Reading of Said Ordinance and Authorize Reading by Title Only.

Based on the findings and subject to the conditions of approval within this report, City Staff recommends that Council approve the first reading of Ordinance No. 612 approving Zone Change No. 2023-01.

BACKGROUND | ANALYSIS

Mario Valmonte and Associates filed the application on behalf of Francisco Acevedo for the development of 116 residential units consisting of 85 single-family lots and 31 multi-family housing units. The proposal includes a General Plan Amendment to change the Land Use Designation from Low-Density Residential to Medium-Density Residential and a Zone Change to change the zone from R-1-7 to RM-3 and Planned Unit Development (PUD) Overlay over a 2.5-acre portion of the site to allow for the development of multi-family housing units. The 32-acre project site is bound to the north by W. Hickory Street, to the east by Parkside Avenue, to the south by Ono City Parkway, and to the west by Sequoia Avenue/Road 214 (APNs 201-230-003 to -009).

The proposed project would result in on-site infrastructure improvements, including the construction of interior access roads with five ingress/egress access points; one along Avenue 236, two along Parkside Avenue, and two along Road 214, new lighting and landscaping in accordance with City standards, and connection to existing City utilities, including water, wastewater and stormwater systems.

Change of Zone: Since the General Plan relies on the land use diagram (map) and basic allocations of land areas between various existing and future land uses as a resource in determining land use amendments, the proposed amendment would not be in conflict with the policies, objectives, and standards of the General Plan.

Zoning Ordinance Section 18.22.050.A provides criteria for review of zone changes:

“At the public hearing, the City Council shall review the application or the proposal and may receive pertinent evidence and testimony as to why and how the proposed change is necessary to achieve the objectives of the Zoning Ordinance prescribed in Section 18.01.020, and how or why the proposed change is consistent with the General Plan and the stated purposes and application intended for the zone classification proposed.”

The proposed Land Use Designation of Medium-Density Residential and zoning designation of RM-3 would allow for a 2.5-acre portion of the site to develop with residential uses at a higher density than what is currently planned for. Approval of the project would allow for the development of the site that is consistent with the goals and policies of the General Plan.

Planned Unit Development: The proposed PUD includes the merging of seven existing single-family lots to allow for a 31-unit multi-family development on approximately 2.5 acres. The development will consist of two-story buildings with buildings of six, five, or two units. Each unit includes a single-car garage and a porch and patio. The development will be gated with a six-foot block wall along the perimeter of the project. The site also includes 25 uncovered parking stalls, refuse enclosures, a tot lot, and landscaped common areas.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

As Lead Agency under the California Environmental Quality Act (CEQA), the City staff reviewed the project to determine whether it could have a significant effect on the environment because of its development. In accordance with CEQA Guidelines Section 15382, “[s]ignificant effect on the environment” means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An Initial Study was prepared and found that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project in the form of mitigations have been made by or agreed to by the project proponent. A Mitigated Negative Declaration (MND) for the entire 32-acre site and all its stated uses was prepared and is attached. The 20-day public review period began on July 15 and will end on August 8.

FINDINGS

Amendments to the General Plan Map and Zoning Map may be approved by the Council if the proposed amendment is necessary to achieve the objectives of the Zoning Code described in Chapter 18.01 and if the amendment would be consistent with the goals and policies of the General Plan and the purposes and application intended for the zoning district classification proposed.

1. The project has been reviewed for compliance with the Municipal Code and the Subdivision Map Act and was found to be in compliance with the incorporation of the recommended Conditions of Approval.
2. The amendment is consistent with the goals and policies of the General Plan and the purposes and applications intended for the zoning district classification proposed.

RECOMENDED APPROVAL FINDINGS

1. The amendment is consistent with the goals and policies of the General Plan and the purposes and application intended for the zoning district classification proposed.
2. That the proposed location of the PUD is in accordance with the objectives of the Zoning Code.
3. That the proposed location of the PUD and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, and welfare or materially injurious to properties or improvements in the vicinity.
4. That the proposed PUD will comply with each of the applicable provisions of this section.
5. That the standards of population density, site area and dimensions, site coverage, yard spaces, the height of structures, the distance between structures, off-street parking and off-street loading facilities, landscaped areas, and street design will produce an environment of stable and desirable character consistent with the objectives of the Zoning Code and will not generate more traffic than the streets in the vicinity can carry without congestion and will not overload utilities.
6. That the combination of different dwelling types and/or a variety of land uses in the development will complement each other and will harmonize with existing and proposed land uses in the vicinity.
7. That the proposed PUD will satisfactorily mitigate potential environmental impacts in accordance with the provisions of Section 18.18.070 of this title.

FISCAL IMPACT

No fiscal impact associated with this action. Development impact fees will be paid when the residential units are constructed in accordance with City policy and State law.

ATTACHMENTS

- Proof of Notice of Public Hearing
- Ordinance No. 612

**CITY OF LINDSAY
PUBLIC NOTICE OF AVAILABILITY
NOTICE OF PUBLIC HEARING**

Date: Tuesday, August 8, 2023
Time: 6:00 PM or as soon thereafter
Location: Council Chambers City Hall
251 East Honolulu Street, Lindsay, CA 93247

NOTICE IS HEREBY GIVEN that the City Council of the City of Lindsay, California, will hold a public hearing on August 8, 2023, beginning at 6:00 PM (or as soon thereafter as the matter can be heard) to solicit public comments relating to the following matter:

CONSIDERATION OF GENERAL PLAN AMENDMENT NO. 2023-01, ZONE CHANGE NO. 2023-01, PLANNED UNIT DEVELOPMENT NO. 2023-01 AND THE ACCOMPANYING INITIAL STUDY/MITIGATED NEGATIVE DECLARATION (IS/MND). MARIO VALMONTE AND ASSOCIATES FILED THE APPLICATION FOR GENERAL PLAN AMENDMENT, ZONE CHANGE, AND PUD FOR THE DEVELOPMENT OF 116 RESIDENTIAL UNITS CONSISTING OF 85 SINGLE-FAMILY LOTS AND 31 MULTI-FAMILY HOUSING UNITS. THE PROPOSAL INCLUDES A GENERAL PLAN AMENDMENT TO CHANGE THE LAND USE DESIGNATION FROM LOW-DENSITY RESIDENTIAL TO MEDIUM-DENSITY RESIDENTIAL AND A ZONE CHANGE TO CHANGE THE ZONE FROM R-1-7 TO RM-3 AND PUD-OVERLAY OVER THE SOUTHERN MULTI-FAMILY HOUSING UNITS. THE 32-ACRE PROJECT SITE IS BOUND TO THE NORTH BY W. HICKORY STREET, TO THE EAST BY PARKSIDE AVENUE, TO THE SOUTH BY ONO CITY PARKWAY, AND THE WEST BY SEQUOIA AVENUE/ROAD 214 (APNS 201-230-003 TO -009).

This is to advise that the City of Lindsay has prepared an IS/MND in conformance with the California Environmental Quality Act (CEQA) for the project identified herein. As mandated by State law, the minimum public review period for this document is 20 days.

FURTHER information on this matter and the full text of the proposed documents may be obtained from the City of Lindsay City Services Office, 150 N. Mirage Avenue, Lindsay, CA, from 8:00 a.m. to 5:00 p.m., Monday through Friday of the comment period. Due to the limits mandated by State law, mailed responses must be filed with the City of Lindsay, Planning, P.O. Box 369, Lindsay, CA 93247 no later than August 8, 2023, at 5:00 p.m. Persons having comments or concerns about the proposed project are encouraged to attend and offer their comments at the hearing. Written comments can also be filed in the City of Lindsay City Services Office, 150 N. Mirage Avenue, Lindsay, CA prior to the date of the hearing. If you challenge the proposed action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City at, or prior to, the Public Hearing.

BY ORDER OF THE CITY COUNCIL OF THE CITY OF LINDSAY

Dated: July 13, 2023

ORDINANCE NO. 612

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LINDSAY AMENDING THE ZONING DESIGNATION FROM R-1-7 to RM-3 FOR A 2.5-ACRE PORTION OF A SITE BOUND TO THE NORTH BY W. HICKORY STREET, TO THE EAST BY PARKSIDE AVENUE, TO THE SOUTH BY ONO CITY PARKWAY, AND THE WEST BY SEQUOIA AVENUE/ROAD 214 (APNS 201-230-003 TO -009), AND THE LINDSAY ZONING MAP AS ADOPTED BY ORDINANCE 437 OF THE CITY OF LINDSAY.

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

ARTICLE 1: The real property located in the City of Lindsay and described as follows: APN 201-230-003 to -009 shall be and is hereby designated as RM-3.

ARTICLE 2: The City Planner of the City of Lindsay is hereby authorized, instructed, and directed to make the changes to the official Zoning Map of the City of Lindsay made by Article One of this Ordinance by outlining the boundaries of the described parcel of the Zoning Map adopted by Ordinance 437 of the City of Lindsay.

ARTICLE 3: This Ordinance shall be in full force and effect on and after the 30th day after its adoption by the City Council. Within 15 days after its adoption by the City Council, this Ordinance shall be published in full text or in summary in a newspaper of general circulation in the City of Lindsay.

Section 1. CEQA REVIEW. The City Council hereby finds that this ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15060(c)(2) (The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment).

Section 2. NO LIABILITY. The provisions of this ordinance shall not in any way be construed as imposing any duty of care, liability, or responsibility for damage to person or property upon the City of Lindsay, or any official, employee or agent thereof.

Section 3. PENDING ACTIONS. Nothing in this ordinance or in the codes hereby adopted shall be construed to affect any suit or proceeding pending or impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance or code repealed by this ordinance, nor shall any just or legal right or remedy of any character be lost, impaired, or affected by this ordinance.

Section 4. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Lindsay hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 5. CONSTRUCTION. The City Council intends this ordinance to supplement, not to duplicate, contradict or otherwise conflict with, applicable State and federal law and this ordinance shall be construed in light of that intent. To the extent the provisions of the Lindsay Municipal Code as amended by this ordinance are substantially the same as provisions in the Lindsay Municipal Code existing prior to the effectiveness of this ordinance, then those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

Section 6. EFFECTIVE DATE. The foregoing ordinance shall take effect thirty (30) days from the date of the passage hereof. Prior to the expiration of fifteen (15) days from the enactment hereof a certified copy of this ordinance shall be posted in the office of the City Clerk pursuant to Government Code section 36933(c)(1) and a summary shall be published once in the Porterville Recorder, a newspaper printed and published in the City of Porterville, State of California, together with the names of the Council members voting for and against the same.

THE FOREGOING ORDINANCE, read by title only with waiving of the reading in full, was introduced at a regularly scheduled meeting on the ____th day of _____ 2023.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council held on the ____th day of _____ 2023.

CITY COUNCIL OF THE CITY OF LINDSAY

Hipolito A. Cerros, Mayor

ATTEST:

Francesca Quintana, City Clerk



STAFF REPORT

TO: Lindsay City Council
FROM: Araceli Mejia, Assistant City Planner
DEPARTMENT: City Services and Planning
ITEM NO.: 13.3
MEETING DATE: August 08, 2023

ACTION & RECOMMENDATION

Special Event Permit

- A. Continued First Reading of Ordinance No. 606, An Ordinance of the City Council of the City of Lindsay Amending Titles Five (5), Eight (8), and Eighteen (18) In Regards to the Special Event Permit and Authorization to Waive Full Reading of Said Ordinance and Authorize Reading by Title Only
- B. Continued Public Hearing to Consider the Approval of Resolution No 23-29, A Resolution of the City Council of the City of Lindsay Amending Special Event Permit Fees and Charges and Repealing All Other Resolutions Relative to Special Event Permit Fees and Charges Thereto

Staff recommends that the City Council approve the first reading of Ordinance No. 606 to update the existing code to provide up-to-date and applicable regulation language to the application and process for requesting a Special Event Permit(s).

BACKGROUND | ANALYSIS

The City of Lindsay (“City”) Municipal Code Title 18.17.180 allows nonpermanent, special promotional, or seasonal land uses with the approval of a Special Event Permit (“SEP”). SEP’s are for a fixed period of time and permit each type of event. Ordinance No. 606 (attached to this report) proposes amendments to the current provisions within Title 18.17.180 of the Municipal Code to provide up-to-date and applicable regulation language to the application and process for requesting a Special Event Permit(s).

It is the City’s goal to work closely with applicants to understand the needs of each Special Event and provide applicants with guidance and information relative to the Special Event Permit process. Therefore, City Staff has identified the need to amend the existing provisions of Title 18.17.180.

The recommended amendments clarify the provisions of each class of event as summarized below.

- **Class I:** Temporary Uses of 31 days or Less for Special Occasions as defined as Valentine's Day sales, Easter sales, Mother’s Day sales, Father's Day sales, Graduation Day sales, and Fireworks sales ***only***. Please note that Fireworks sales must also comply with the provisions of chapter 8.22 of the Lindsay Municipal Code.

- Requirements: Special Event Permit Application, Site Plan (if applicable), Business License, and Property Owner's Permission.
 - ***Applications must be submitted at least 15 calendars days prior to the event date. Applications that are not received at least 15 calendar days prior to the event date will be automatically denied.***
- **Class II:** Events involving low impact road closures or on City-owned public property involving low impact to normal operations/use.
 - Requirements: Special Event Permit Application, Site Plan, and Traffic Control/Parking Plan (if applicable only).
 - An event is determined as ‘low impact’ by the City Manager and/or their designee.
 - ***Applications must be submitted at least 15 calendars days prior to the event date. Applications that are not received at least 15 calendar days prior to the event date will be automatically denied.***
- **Class III:** Events involving the sale of alcohol; Events involving high impact street closures; Events that are open to the public on private property; Events charging an entry fee on private property; Events involving the use of public space and/or City-owned public property involving high impact to normal operations/use, Marathons, Cycling Tours, Fairs, Carnivals, Rodeos, Concerts.
 - Requirements: Special Event Permit Application, Site Plan, Traffic Control/Parking Plan (if applicable), Waste Plan (if applicable), ABC License (if applicable), Fire Department Inspection (if applicable), Building and Safety Inspection and Safety Plan (if applicable).
 - Additional requirements may be applicable based on the type of event.
 - An event is determined as ‘high impact’ by the City Manager and/or their designee.
 - ***All Class III applications must be submitted at least 60 calendars days prior to the event date. All Class III applications that are not received at least 60 calendar days prior to the event date will be automatically denied.***

Also reflected in Ordinance No. 606 you will find proposed amendments to the SEP approval process, insurance requirements, and fee waivers. If a structure is not apt for the activity or event, or if it will create parking or circulation disturbances, a Special Event Permit is required in conjunction with proper planning and impact mitigation. Staff will provide guidance in determining the categorization of the event.

Pursuant to California State Law, public notice was provided at least 10 days in advance of the first reading of the Ordinance via publication in the Porterville Recorder.

Should the City Council approve the first reading of Ordinance No. 606, then a second reading will be held at the next regular meeting of the City Council. The Ordinance would take effect 30 days after the adoption of said Ordinance after a duly held second reading. Resolution No. 23-29 attached to this report reflects the amended Special Event Class types and amended fees.

FISCAL IMPACT

No fiscal impact associated with Ordinance No. 606.

Should Ordinance No. 606 be approved after a duly held second reading, as well as Resolution No. 23-29, then the Special Event Permit fees would be amended and charged as follows:

Category I:	<i>\$100.00</i>
Category II:	<i>\$250.00 + Staff Fully Burdened Hourly Rate + Facility Rental Fee (if applicable)</i>
Class III:	<i>\$500.00 + Staff Fully Burdened Hourly Rate + Facility Rental Fee (if applicable)</i>

ATTACHMENTS

- Proof of Public Hearing Notice Publication – Ordinance No. 606
- Ordinance No. 606 – Redline Copy
- Amended Special Event Permit Application
- Proof of Public Hearing Notice Publication – Resolution No. 23-29
- Resolution No. 23-29 with Exhibit

**CITY OF LINDSAY
PUBLIC HEARING NOTICE**

Date: Tuesday, July 25, 2023
Time: 6:00 PM or as soon thereafter
Location: Council Chambers City Hall
251 East Honolulu Street, Lindsay, CA 93247

NOTICE IS HEREBY GIVEN that the City Council of the City of Lindsay, California, will hold a public hearing on Tuesday, July 25, 2023, beginning at 6:00 PM (or as soon thereafter as the matter can be heard) to solicit public comments relating to the following matter:

FIRST READING OF ORDINANCE NO. 606, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LINDSAY
AMENDING TITLES FIVE (5), EIGHT (8), AND EIGHTEEN (18) IN REGARDS TO THE SPECIAL EVENT PERMIT

FURTHER information on this matter and the full text of the proposed documents may be obtained from the City Clerk at 251 East Honolulu Street, Lindsay, CA 93247 during normal business hours 9:00AM-5:00PM Monday through Friday.

ALL INTERESTED PARTIES are encouraged to attend said PUBLIC HEARING to ask questions, express opinions and/or submit evidence for or against the matter. Written comments should be submitted via mail to the City Clerk at P.O. Box 369, Lindsay, CA 93247, or in person at 251 East Honolulu Street, Lindsay, CA 93247, or via email to lindsaycityclerk@lindsay.ca.us at least 24 hours prior to the scheduled public hearing.

BY ORDER OF THE CITY COUNCIL OF THE CITY OF LINDSAY

Dated: JULY 12, 2023

ORDINANCE NO. 606

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LINDSAY
AMENDING TITLES FIVE (5), EIGHT (8), AND EIGHTEEN (18) IN REGARDS TO
THE SPECIAL EVENT PERMIT**

Section 1. PURPOSE. The provisions of this ordinance are intended to amend the Lindsay Municipal Code to provide up-to-date and applicable regulation language to the application and process for requesting a Special Event Permit(s).

Section 2. CODE AMENDMENT. Lindsay Municipal Code Titles Five (5), Eight (8), AND Eighteen (18) are hereby amended to read in their entirety as follows:

Chapter 5.36.030

Sidewalk Vending Activities Prohibited In Designated Areas

Notwithstanding this Chapter and any provisions of the Lindsay Municipal Code, it is unlawful for any person to engage in sidewalk vending activities within the following locations or areas within the City:

- A. Any public property that does not meet the definition of a sidewalk or pathway, including but not limited to, any roadway, street, alley, or parking lot;
- B. Within any area zoned for residential purposes, provided that roaming sidewalk vending activities operated in compliance with this chapter shall not be prohibited;
- C. On any sidewalk or pathway that is not a minimum width of eight (8) feet.
- D. Within 500 feet of the following:
 - 1. An area designated for a special event permit issued in accordance with Section 18.17.180, provided that any notice, business interruption mitigation, or other rights provided to affected businesses or property owners under the City's special event permit are also provided to a sidewalk vendor permitted to operate in the area, if applicable. A prohibition on sidewalk vendor activities pursuant to this paragraph shall only be effective for the duration of the special event permit;

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- 2. Lindsay City Hall, a police station or a fire station;
- 3. Any public or private school, or a child day-care facility, between the hours of 6:00 a.m. and 6:00 p.m.;
- 4. Any place of assembly or worship, between one hour before and one hour after scheduled event or presentation times;
- 5. An area designated for a permitted certified farmers' market during the limited operating hours of that certified farmers' market;
- 6. Any sheriff or police officer, firefighter, or emergency medical personnel who are actively performing their duties or providing services to the public;
- E. Within fifty (50) feet of any public picnic area, playground area, playground equipment, public community center, athletic field or court, or public restroom;
- F. Within fifty (50) feet of another sidewalk vendor;
- G. Within ten (10) feet of a marked crosswalk, a curb return of an unmarked crosswalk, a fire hydrant, a fire call box, a fire department connection, other emergency facility, a bus bench, a transit or bus shelter, a driveway or driveway apron, a curb which has been designated as white, yellow, green, blue, or red zone, an ATM or other vending machine, an entrance or exit to a building, structure or facility, or a bike rack;
- H. Within ten (10) feet ahead, and forty-five (45) feet to the rear, of a sign designating a bus stop;
- I. Within ten (10) feet of a commercial outdoor dining or patio dining area;
- J. At any park, or the sidewalk adjacent to any park, where the City has signed an agreement for concessions that exclusively permits the sale of food or merchandise by a concessionaire;
- K. In or on the median of any street, road, or highway;
- L. In or immediately adjacent to any area designed for parking, bus zones,

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stopping, or loading;

M. In any location where the sidewalk vending activities would block manholes, utility access points, vents, or views through windows;

N. In any location where the operation of sidewalk vending activities would result in or cause a violation of applicable law, including but not limited to the Americans with Disabilities Act; and

O. Notwithstanding any specific prohibition in this chapter, any location or area where the operation of sidewalk vending activities creates a reasonably foreseeable danger to the safety of persons or property.

Chapter 8.22.060

Special Event Permit

Permittees must obtain a special event permit from the Lindsay planning department. Applicants for the special event permit must identify the proposed site and show written permission from the owner authorizing use of said site for the stated purpose.

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Chapter 18.17.180

18.17.180 Special Event Permit

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The 'Special Event Permit' hereby replaces and rescinds any and all 'Temporary Use Permit' provisions within the Lindsay Municipal Code.

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Background

It is the purpose of this section to establish a process for allowing special events to use city streets, sidewalks, facilities, and/or services. The City recognizes the substantial community benefits that may result from special events, they can provide cultural enrichment, promote economic vitality, and enhance community identity. They may also provide funding opportunities for service organizations and communicate a group's message to the public. Special events include temporary outdoor sales activities, retail events, and special activities such as carnivals, fairs, and large

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neighborhood block parties.

Based on the nature and intensity of the event, either City Staff or the City Council will approve or deny the Special Event Permit ("SEP"). A Pre-Application Meeting with Planning Staff will determine the Class of Special Event, the and required materials and documents (site plan, waste plan, Fire Department inspection, etc.), as well as a timeline for all required documents. If City Staff finds that the Special Event Permit appears to be non-confirming with current City Municipal Code, Lindsay Zoning Code or State of California Code, then the Special Event Permit will be subject to approval by the Lindsay City Council, regardless of Event Class Type.

Special Event Classes and Required Materials

- Class I: Temporary Uses of 31 days or Less for Special Occasions as defined as Valentine's Day sales, Easter sales, Mother's Day sales, Father's Day sales, Graduation Day sales, and Fireworks sales only. Please note that Fireworks sales must also comply with the provisions of chapter 8.22 of the Lindsay Municipal Code.
 - Requirements: Special Event Permit Application, Site Plan (if applicable), Business License, and Property Owner's Permission. Verification of insurance must be submitted along with the Special Event Application: 1) Certificate of Insurance documenting General Liability insurance coverage in the amount of not less than \$1 million per occurrence and \$2 million in the Aggregate submitted for the event date and any set-up and/or teardown dates; 2) An Additional Insured Endorsement is required to reflect that the insurance policy has been amended to include the City of Lindsay as an additional insured; 3) Indemnity Letter.
 - Applications must be submitted at least 15 calendar days prior to the event date. Applications that are not received at least 15 calendar days prior to the event date will be automatically denied.
- Class II: Events involving low impact road closures or on City-owned public property involving low impact to normal operations/use.
 - Requirements: Special Event Permit Application, Site Plan, and Traffic Control/Parking Plan (if applicable only). Verification of insurance must

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be submitted along with the Special Event Application: 1) Certificate of Insurance documenting General Liability insurance coverage in the amount of not less than \$1 million per occurrence and \$2 million in the Aggregate submitted for the event date and any set-up and/or teardown dates; 2) An Additional Insured Endorsement is required to reflect that the insurance policy has been amended to include the City of Lindsay as an additional insured; 3) Indemnity Letter

- o An event is determined as 'low impact' by the City Manager and/or their designee.
- o Applications must be submitted at least 15 calendars days prior to the event date. Applications that are not received at least 15 calendar days prior to the event date will be automatically denied.

• Class III: Events involving the sale of alcohol; Events involving high impact street closures; Events that are open to the public on private property; Events charging an entry fee on private property; Events involving the use of public space and/or City-owned public property involving high impact to normal operations/use, Marathons, Cycling Tours, Fairs, Carnivals, Rodeos, Concerts.

- o Requirements: Special Event Permit Application, Site Plan, Traffic Control/Parking Plan (if applicable), Waste Plan (if applicable), ABC License (if applicable), Fire Department Inspection (if applicable), Building and Safety Inspection and Safety Plan (if applicable). Verification of insurance must be submitted along with the Special Event Application: 1) Certificate of Insurance documenting General Liability insurance coverage in the amount of not less than \$2 million per occurrence and \$3 million in the Aggregate submitted for the event date and any set-up and/or teardown dates; 2) An Additional Insured Endorsement is required to reflect that the insurance policy has been amended to include the City of Lindsay as an additional insured; 3) Indemnity Letter. Events classified by Staff as "high risk" require \$3 million General Liability and \$6 million Aggregate insurance.
- o Additional requirements may be applicable based on the type of event.
- o An event is determined as 'high impact' by the City Manager and/or their designee.
- o All Class III applications must be submitted at least 60 calendars days

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prior to the event date. All Class III applications that are not received at least 60 calendar days prior to the event date will be automatically denied.

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Pursuant to the California Department of Alcoholic Beverage Control (ABC), events involving the sale of alcoholic beverages will be required to submit a Special Event Permit Application, regardless of the number of attendees and category Class of the event. Said events will be subject to approval by the Lindsay City Council. An ABC License will only be signed by the Chief of Police after the City Council has approved the SEP application.

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Additional Guidelines

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Approval of the Special Event Permit is subject to the following findings and guidelines:

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A Special Event Permit shall be required for any of the following activities:

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- ~~A. Temporary signs, banners, or balloons that promote an activity or event;~~
- A. Temporary sales such as Valentine's Day sales, Easter sales, Mother's Day sales, Father's Day sales, Graduation Day sales, and Fireworks sales; Valentine's Day flowers or 4th of July fireworks;
- B. Events involving road closures;
- C. Events within the public right of way (sidewalk, public streets, parks, etc.);
- D. Any activity on public or private property that, due to the anticipated number of attendees or nature of the event, is not compatible with the generally intended use of the property.
- E. Any activity on vacant land or commercial property that due to the anticipated number of attendees or nature of the event, is not compatible with the generally intended use of the property.

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Please note that a Special Event Permit will not be issued for an event classified as Class II or III if the event location identified within the application resides in the Single Family Residential (R-1-7) or Multi-Family Residential (RM-3, RM-MH8) zones.

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D. Special Events that do not require a Special Event Permit are:

A. An event hosted by the City.

A.B. An event sponsored by the City.

B.C. An event ~~at~~ a private ~~property~~ residence where no admission is charged, the event is not open or advertised to the public, and it is reasonably foreseeable in the opinion of the Chief of Police that no extraordinary police services are required.

C.D. An event held in a members-only facility at which the only participants are the members (and their invited nonpaying guests), and it is reasonably foreseeable in the opinion of the Chief of Police that no extraordinary police services are required.

D.E. Events sponsored by religious entities held in the religious entity's facility that only members by permission attend and it is reasonably foreseeable in the opinion of the Chief of Police that no extraordinary police services are required.

E.F. Events that are authorized by and consistent with existing use permits and licenses governing the establishment, unless that person, entity, or business holds an event that, in the opinion of the Chief of Police, will foreseeably result in extraordinary police services.

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Approval Process

Events classified as Class I or II events shall be approved administratively by City Staff. City Staff reserves the right to refer applications for events classified as Class I or II to the City Council for consideration if they deem it necessary. Class I or II event applications must be submitted at least 15 calendar days prior to the event.

Events classified as Class III events are subject to approval by the Lindsay City Council.

Applicants for events classified as Class III events must submit a complete SEP application and accompanying materials for the SEP to be brought to the City Council for consideration. *Class III event applications must be submitted at least 60 calendar days prior to the event.*

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Applications requesting the use of Parks for a private event will be subject to City Council approval. Please note that a Park cannot be closed to the public for any event.

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If the applicant cancels or postpones their event, then the applicant forfeits any and all fees paid to the City and will be required to submit a new application for the new event.

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If the applicant cancels or postpones their event due to an event that is deemed uncontrollable by human intervention, then the City will honor the fees paid.

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Additional Requirements

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Special Events are subject to the additional requirements:

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- Adequate and safe ingress and egress shall be provided to the project site. Directional signing, barricades, fences, and landscaping may be required as a condition of permit approval.

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- Private security personnel may also be required for events based on the recommendation of the Lindsay Department of Public Safety.

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- Adequate parking facilities shall be provided for each Special Event.

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- The proposed Special Event will not adversely impact traffic circulation nor result in traffic congestion in the event project area.

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- Upon termination of a Special Event, or abandonment of the site, the applicant shall remove materials and equipment, and restore the premises to its original condition.

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- Reasonable time limits for hours of operation may be set by the city council or City Staff as a condition of permit approval.

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- Applicants for Special Event Permits shall secure all other applicable licenses and permits prior to issuance of a Special Event Permit.

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- Signage for Special Events shall be subject to the approval of the **Planning community development** department.

~~The city council may deny an application for a special event permit if it is determined that conditions exist which would be injurious or detrimental to existing improvements, land uses, or surrounding areas.~~

- A deposit may be required depending on the type and specific circumstances of the event. **The City reserves the right to seek funds from applicant should any damages be incurred by the event.**

~~All SEP applications must be submitted at least 15 days prior to the event date. It is the applicant's responsibility to pass all required inspections, submit all required documentation, and meet all deadlines. Failure to do so may result in denial of the application. The City Reserves the right to deny a Special Event from taking place if the application requirements have not been met, required materials have not been submitted, if fees have not been paid, or if inspections have not been passed.~~

~~The City Council, at their discretion reserves the right to deny any SEP application if they determine that conditions exist which would be injurious or detrimental to existing improvements, land uses, or surrounding areas, or be a significant risk to Public Safety.~~

An assessment of the event and specific circumstances and requirements will be completed to determine the final cost of the Special Event Permit based on the use of City facilities and Staff time and/or extraordinary police costs.

The City Council, City Staff, and/or Chief of Police shall impose conditions to the Special Event Permit that are reasonably required to assure the protection of the public health, the safety of persons attending the event and residents near the event, and the safety of property at or near the event. The conditions shall be in writing and shall be attached to the permit.

Insurance Requirements

Verification of insurance must be submitted along with the Special Event Permit Application and meet the insurance requirements identified within the application. The City Manager, or their designee, reserves the right to modify applicants insurance

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~~requirements as they see fit pursuant to the City's Risk Management Authority. To the extent authorized by law, the permittee shall defend, indemnify, and hold harmless the City, its officers, agents, employees, and volunteers from any and all claims, causes of action, penalties, losses, expenses (including reasonable attorneys' fees) and any other liability for injuries or damage to persons or property resulting from the event that were caused by the omissions or authorized acts of permittee's officers, agents, or employees.~~

Fee Waivers

Fee Waivers are subject to the following requirements:

SEP applicants requesting that SEP associated fees be waived, must submit their fee waiver at time that they submit application. SEP fee waivers are subject to approval by the Lindsay City Council.

Applicants must provide written justification addressed to the Lindsay City Council as well as submit their SEP applications by the deadline for their waiver to be considered.

Please note that the City reserves the right to participate in any special event that is approved and be exempt from the registration fee.

Chapter 18.14.220

Search Lights And Klieg Lights

Search lights and klieg lights are prohibited, except when used for public safety purposes or when specifically approved with a special event permit for a special event.

All other remaining code sections in chapter eighteen of the Lindsay Municipal Code remain unchanged.

Section 3. CEQA REVIEW. The City Council hereby finds that this ordinance is not

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subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15060(c)(2) (The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment).

Section 4. NO LIABILITY. The provisions of this ordinance shall not in any way be construed as imposing any duty of care, liability, or responsibility for damage to person or property upon the City of Lindsay, or any official, employee or agent thereof.

Section 5. PENDING ACTIONS. Nothing in this ordinance or in the codes hereby adopted shall be construed to affect any suit or proceeding pending or impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance or code repealed by this ordinance, nor shall any just or legal right or remedy of any character be lost, impaired, or affected by this ordinance.

Section 6. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Lindsay hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 7. CONSTRUCTION. The City Council intends this ordinance to supplement, not to duplicate, contradict or otherwise conflict with, applicable State and federal law and this ordinance shall be construed in light of that intent. To the extent the provisions of the Lindsay Municipal Code as amended by this ordinance are substantially the same as provisions in the Lindsay Municipal Code existing prior to the effectiveness of this ordinance, then those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

Section 8. EFFECTIVE DATE. The foregoing ordinance shall take effect thirty (30) days from the date of the passage hereof. Prior to the expiration of fifteen (15) days from the enactment hereof a certified copy of this ordinance shall be posted in the office of the City

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Clerk pursuant to Government Code section 36933(c)(1) and a summary shall be published once in the Porterville Recorder, a newspaper printed and published in the City of Porterville, State of California, together with the names of the Council members voting for and against the same.

THE FOREGOING ORDINANCE, read by title only with waiving of the reading in full, was introduced at a regularly scheduled meeting on the _____ th day of _____ 2023.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council held on the _____ th day of _____ 2023.

CITY COUNCIL OF THE CITY OF LINDSAY

Hipolito A. Cerros, Mayor

ATTEST:

Francesca Quintana, City Clerk

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**City of Lindsay
Special Event Permit Application
City Services and Planning Department
150 N Mirage Ave. Lindsay, CA 93247
(559)562-7102 ext. 4**

OFFICE USE ONLY	
Fee Paid: \$	_____
Receipt #:	_____
Accepted by:	_____
Date Received:	_____

Event Details
 Event Name: _____
 Location: _____
 Date: _____
 Hours: _____
 Anticipated Attendance: _____
 Sale of Alcohol: Yes No
 Street Closure: Yes No
 Park Reservation: Yes No

Applicant Information
 Name: _____
 Address: _____
 City, State, Zip: _____
 Phone: _____
 E-mail: _____

Event Organizer/Producer (if different than applicant)
 Name: _____
 Address: _____
 City, State, Zip: _____
 Phone: _____
 E-mail: _____

Sponsoring Organizer/Company
 Company: _____
 Contact Name: _____
 Address: _____
 City, State, Zip: _____
 Phone: _____
 E-mail: _____

Class I: Temporary Uses of 31 days or Less for Special Occasions as defined as Valentine's Day sales, Easter sales, Mother's Day sales, Father's Day sales, Graduation Day sales, and Fireworks sales only. Please note that Fireworks sales must also comply with the provisions of chapter 8.22 of the Lindsay Municipal Code. **Requirements:** Special Event Permit Application, Site Plan (if applicable), Business License, Property Owner's Permission
Fee: \$100.00

Class II: Events involving low impact road closures or on City-owned public property involving low impact to normal operations/use. **Requirements:** Special Event Permit Application, Site Plan, Traffic Control/Parking Plan (if applicable)
Fee: \$250 + Staff Fully Burdened Hourly Rate + Facility Rental Fee (if applicable)

Class III: Events involving the sale of alcohol; Events involving high impact street closures; Events that are open to the public on private property; Events charging an entry fee on private property; Events involving the use of public space and/or City-owned public property involving high impact to normal operations/use, Marathons, Cycling Tours, Fairs, Carnivals, Rodeos, Concerts. **Requirements:** Special Event Permit Application, Site Plan, Traffic Control Plan, Waste Plan, Safety Plan, Insurance Certificate, Letter of Indemnification, ABC (Alcoholic Beverage Control) License, Fire Department Inspection, Building and Safety Inspection. Additional requirements may be applicable depending on specifics of event.
Fee: \$500 + Staff Fully Burdened Hourly Rate + Facility Rental Fee (if applicable)

CHECKLIST FOR OFFICE USE ONLY

	Completed application	Site plan/map	Business license	Permission of property owner	Traffic/parking control plan	Waste plan	ABC license	Security plan	Sign permit	Insurance certificate
Needed										
Submitted										

Purpose

A Special Event Permit Application allows for special events to use city streets, sidewalks, facilities, and/or services. The City Services Department will review the application and evaluate the proposed uses to ensure safety and appropriateness.

Review Process

Prior to applying, the applicant is required to schedule a pre-application meeting with Planning Staff to determine the Class of special use. This will allow Staff to determine what materials and documentation are required and expedite the process. Class I and II may be approved administratively. Class III events must be approved by Lindsay City Council. Class III events cannot be held in a residential zone. Special Events held in Parks cannot charge an entrance fee. Special Events that inquire for a city park to be closed must be brought forth to City Council.

Meeting Information

Date: _____

Time: _____

In attendance: _____

Scheduled by: _____

Instructions

This comprehensive application has been designed to assist you in developing your event plan while also informing you of your responsibilities as an event organizer and the fees, requirements, and other permits that may be required. All sections must be completed. *Incomplete applications will not be accepted.* Applications for Class I and II Events must be submitted no less than 15 calendar days in advance. Class III Event applications must be submitted no less than 60 calendar days in advance. *Applications that do not meet this time frame will not be accepted.*

Additional Event Details

Set-up Date _____ to _____

Set-up Time _____ to _____

Tear-down Date _____ to _____

Tear-down Time _____ to _____

Event Hours (the time the event is open to the public) _____ to _____

Number of Participants (use total number of units/floats for parades) _____

Number of Spectators _____

Total Anticipated Attendance _____

Type of Event:

- Run Walk Cycling Parade Concert Carnival
- Certified Famers Market Street Festival Park Festival
- Fireworks Promotional/Marketing Fundraiser
- Protest/Rally Filming Tournament Rodeo Circus

Open to Public or Private Event

Has this event been produced before? If so, state the previous name, date, and location of event.

Will there be an admission fee? If so, provide a detailed description of your event. Attach additional pages and materials as needed.

Event will occupy:

- One Lane Two Lanes Half a Street Full Street
- Sidewalk Only

Closure Type:

- Rolling Street Closure (Street opens to normal traffic after participants pass)
- Hard Street Closure (Street will be closed for an extended period of time and/or event equipment will be placed in street for the duration of the event, meaning, no vehicle access)

Street Name _____

Between _____ and _____

Start Time _____ End Time _____

Street Name _____

Between _____ and _____

Start Time _____ End Time _____

Alcohol Management Plan

Alcohol services and consumption on public property are allowed by Special Event Permit only. If you are interested in *selling* alcohol at your event, you will need to receive approval and signature from the Director of Public Safety for a California Alcoholic Beverage Control (ABC) license. Commercial enterprises and caterers are subject to different requirements. Please contact ABC's Fresno District Office at (559)225-6334 or visit www.abc.ca.gov for more information.

The following rules apply to alcohol service or sales on City of Lindsay public property:

- All alcohol must be sold and consumed within a fenced venue (ABC license type will dictate the size and type of fencing)
- If the alcohol area is accessible to all ages wishing to purchase or consume alcohol must present a current ID, and if that attendee is 21 years old or older, they must be issued a nontransferable wristband. All attendees must present their wristband to be served or consume alcohol.
- Servers must be 21 years of age or older.
- Servers may not consume alcoholic beverages while serving.
- Attendees may be served no more than two standard drinks at a time. The City of Lindsay defines one standard drink size as:
 - 12 oz. beer
 - 5 oz. of wine
 - 1 oz. of distilled spirit/hard alcohol in a mixed drink
 - Shots are not permitted on public property.
- Alcohol cups must be paper or plastic and be distinguishable from other beverages.
- Service must end a minimum of 30 minutes before the scheduled event's end time.
- City staff may establish a start and end time when alcohol may be served.
- Non-alcoholic beverages and water must be available at the event.

Are you requesting permission to serve alcohol at your event? If so, which kind.

Will the alcohol be *sold* to the attendees?

Yes No

Is the event open to all ages?

Yes No

Explain your sales plan (ticket system, cash at service area, how IDs will be checked, etc.).

Explain who will be serving the alcohol (professional bartenders, volunteers, etc.).

How many alcohol service locations will you have and where will they be located? Please include locations on the site plan/map.

Do you have an alcohol sponsor? If yes, state who.

Amplified Sound/Entertainment Related Activities

The City of Lindsay defines “amplified sound” as speech, music, or other sound projected or transmitted by electronic equipment including amplifiers, loudspeakers, microphones, or similar devices or combinations of devices, which are powered by electricity, battery, or combustible fuel and which are intended to increase the volume, range, distance or intensity of speech, music, or other sound. In accordance with Lindsay Municipal Code 8.20 Noise Control, the following restrictions apply to amplified sound: no person, shall use amplified sound, before 7am and after 10pm unless prior authorization is received, and permission is included in your Special Event Permit.

Will your event include amplified sound?

Yes No

What times are you requesting amplified sound?

_____ to _____

Will sound checks be conducted prior to start time? If yes, state the start time and end time.

_____ to _____

Describe the sound equipment that will be used at the event.

Will there be any musical entertainment related features at your event?

Yes No

Does the entertainment include the use of fireworks, strobes, lasers, or other electrical equipment? If yes, explain.

Does the entertainment include any inflatables (bounce houses)? If yes, explain.

Does the entertainment include any carnival rides? If yes, explain.

Does the entertainment include animals (petting zoo, pony rides, etc.)? If yes, explain.

Does the entertainment include any vehicles (car show, displays, etc.)? If yes, explain.

Stages/Platforms

Stages/platforms may require an inspection by the City Building inspector for a fee. Will your event include the installation of stages or platforms? If yes, indicate the number of stages and their corresponding sizes. Please include it on the site plan/map.

Tents/Canopies/Temporary Structures

The standard canopy allowed at events without a special permit is 10x10. These canopies can be grouped into clusters of no more than seven. There must be a minimum 12-foot space between each cluster of canopies. Tents larger than 200 sq ft must be permitted and inspected by the Lindsay Fire Department.

Will your event include tents or canopies? If yes, indicate the number and their corresponding sizes. Please include it on the site map/plan.

Vendors

The City of Lindsay defines "vendor" as an organization or business that sells or advertises products and/or services to event attendees. Generally, there are three categories of vendors: 1) food/beverage, 2) merchandise and 3) information. A City of Lindsay Business License is required for vendors who wish to sell, expose for sale, or offer for sale any food/beverage or merchandise in the City of Lindsay. Please contact the Lindsay Department of City Services at (559) 562-7102 ext. 4 for business license information. You should require each vendor to provide you, the event organizer, with a copy of their business license (if applicable).

Does your event include food vendors? If yes, how many? _____

Does your event include food trucks? If yes, how many? _____

Will any of the food vendors or food trucks be cooking or heating food on-site? If yes, how many? _____

What method(s) will be used?

Gas Electric Charcoal Other

What is your plan for disposing of grease, charcoal and/or wastewater?

Does your event include merchandise vendors? If yes, how many? _____

Does your event include information vendors? If yes, how many? _____

Will any items or services sold at your event present any unique liability issues (massages, pony rides, tattooing, piercing, etc.)? Please describe the services.

Marketing/Advertisement/Promotions

Please ensure that you have conditional approval *before* you begin to market, advertise, or promote your event. Acceptance of the Special Event Permit Application *does not* guarantee approval of your event. Once you have conditional approval, you may proceed to market, advertise, or promote your event at your

own risk. However, if the permit is not guaranteed and the event is therefore cancelled, **YOU MAY NOT HOLD THE CITY OF LINDSAY RESPONSIBLE OR LIABLE FOR ANY OF THE COSTS INCURRED FROM YOUR MARKETING, ADVERTISING, OR PROMOTIONS.**

Applicants may not use the City of Lindsay’s logo for promotional purposes unless authorized by the City Council.

Do you plan to place signs or hang banners on city property? If yes, please explain and submit conceptual design of proposed signs and a sign permit application.

Insurance

Verification of insurance must be submitted along with the Special Event application. You must submit two documents to satisfy insurance requirements:

1. Certificate of Insurance documenting General Liability insurance coverage in the amount of \$1 million coverage and \$2 million aggregate for Class Events I and II. Class III must provide \$2 million coverage and \$3 million aggregate. The coverage should extend from the event date to any set-up and/or tear down dates. The standard proof of insurance is the ACORD certificate form. The name of the insured, the insurance carrier, the policy number, coverage limits, and effective and expiration dates for the coverage must be stated on the certificate of insurance. If alcohol is to be sold at the event, an additional \$1 million in liquor liability insurance is required. Insurance certificates must be signed by an authorized representative of the insurance carrier. Electronic signatures are acceptable.
2. An additional Insured Endorsement is required to reflect that the insurance policy has been amended to include the City of Lindsay as additional insured. The Additional Endorsement must reference the policy number as it appears on the certificate. “The City of Lindsay, it’s officials, agents, employees and volunteers” must be named as additionally insured on the Additional Insured Endorsement. Your permit will not be issued until both the Certificate of Insurance and Additional Insured Endorsement have been received.

The promoter and/or vendor must agree to indemnify, save, hold harmless, and at City’s request, defend the City, its officers, agents, and employees from any and all costs and expenses (including attorney and legal fees), damages, liabilities, claims, and losses occurring or resulting to the City in connection with the performance, or failure to perform, by Promoter and/or Vendor, its officers, agents, or employees under this agreement arising out of the event.

Form of Payment

Your application is not considered complete until this fee is received. Checks must be payable to “City of Lindsay.”

Please indicate the type of payment method you will be using:

- Cash
- Personal/Business Check
- Money Order
- Visa/MasterCard

- Class I: \$100
- Class III: \$250 + the hourly rate of staff
- Class III: \$500 + the hourly rate of staff to put together documents and present to council.

Signature

I have read the rules and regulations contained in this document and agree to abide by these rules and regulations. I am duly authorized by the Organizer or Sponsoring Company to submit this application on their behalf and agree to be financially responsible for any fees and costs that may be incurred by or on behalf of the event in the City of Lindsay. I certify that the information that I have provided on this application is true and to the best of my knowledge.

Printed Name _____
 Signature _____

By checking this box as an electronic signature, I agree to all the terms and conditions that may apply to the special event permitting process and agree that all information contained in this application is correct and to the best of my knowledge.

Date _____ Driver’s License/ID Number _____

City Use Only

APPROVAL DATES	COMMENTS
Planning:	
Building:	
Other:	
APPROVAL SIGNATURES	
Planning Dept.	Building Dept.

CITY OF LINDSAY PUBLIC HEARING NOTICE

Date: Tuesday, July 25, 2023
Time: 6:00 PM or as soon thereafter
Location: Council Chambers City Hall
251 East Honolulu Street, Lindsay, CA 93247

NOTICE IS HEREBY GIVEN that the City Council of the City of Lindsay, California, will hold a public hearing on July 25, 2023, beginning at 6:00 PM (or as soon thereafter as the matter can be heard) to solicit public comments relating to the following matter:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY AMENDING SPECIAL EVENT PERMIT FEES AND CHARGES THERETO

FURTHER information on this matter and the full text of the proposed documents may be obtained from the City Clerk at 251 East Honolulu Street, Lindsay, CA 93247 during normal business hours 9:00 AM-5:00 PM Monday through Friday.

ALL INTERESTED PARTIES are encouraged to attend said PUBLIC HEARING to ask questions, express opinions and/or submit evidence for or against the matter. Written comments should be submitted via mail to the City Clerk at P.O. Box 369, Lindsay, CA 93247, or in person at 251 East Honolulu Street, Lindsay, CA 93247, or via email to lindsaycityclerk@lindsay.ca.us at least 24 hours prior to the scheduled public hearing.

BY ORDER OF THE CITY COUNCIL OF THE CITY OF LINDSAY

Dated: JULY 12, 2023



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

NUMBER 23-29

TITLE A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY AMENDING SPECIAL EVENT PERMIT FEES AND CHARGES AND REPEALING ALL OTHER RESOLUTIONS RELATIVE TO SPECIAL EVENT PERMIT FEES AND CHARGES THERETO

MEETING At a regularly scheduled meeting of the City of Lindsay City Council held on August 08, 2023, at 6:00 PM at 251 E. Honolulu Street, Lindsay, CA 93247

WHEREAS, pursuant to the provisions of the California Constitution and the laws of the State of California, the City is authorized to adopt and impose user and regulatory fees and charges for the municipal services and activities, it provides (collectively hereinafter “User Fees”); and

WHEREAS, the City last adopted Special Event Permit related fees on December 13, 2022 via Resolution No. 22-65; and

WHEREAS, pursuant to Government Code Section 66016 notice of the proposed adoption of the amended Special Event Permit Fees were provided in the form of a notice mailed to interested parties at least fourteen days prior to the public hearing, and public hearing notices published at least ten (10) days prior to the public hearing, in the Porterville Recorder; and

WHEREAS, City Staff developed an amended fee schedule based upon the recently adopted User Fee Study, Cost Allocation Plan, and needs of the community which identifies all proposed updates to Special Event Permit Fees recommended for adoption by the City Council, attached hereto as ‘Exhibit A’; and

WHEREAS, the City Council conducted a duly noticed public hearing regarding the proposed amendment of the Special Event Permit Fees at its regularly scheduled meeting on July 25, 2023, during which it heard public testimony and comment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LINDSAY DOES HEREBY RESOLVE AS FOLLOWS:

- SECTION 1. The above recitals are true and correct.
- SECTION 2. The City Council has reviewed and hereby approves and adopts the amended Special Event Permit Fee Schedule attached hereto as ‘Exhibit A’.
- SECTION 3. The amended Special Event Permit Fees will become effective forty-five (45) days post public hearing adoption.

RESOLUTION NO. 23-29
Page 1 of 2



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

SECTION 4. This Resolution shall take effect immediately upon its adoption. However, the amended Special Event Permit Fees set forth in the attached Exhibit A shall not be in force or effective until forty-five (45) days post public hearing adoption.

PASSED AND ADOPTED by the City Council of the City of Lindsay as follows:

MEETING DATE	August 08, 2023
MOTION	
SECOND MOTION	
AYES	
ABSENT	
ABSTAIN	
NAYS	

CERTIFICATION OF THE FOREGOING RESOLUTION AS FULL, TRUE, PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF LINDSAY AS DETAILED.

FRANCESCA QUINTANA
CITY CLERK

HIPOLITO A. CERROS
MAYOR

'Exhibit A'

Planning Fees		
Special Event Permit		
Special Event Permit		
	Current Fee	Proposed Fee
Category I; Temporary Uses of 31 days or Less for Special Occasions as defined as Valentine's Day sales, Easter sales, Mother's Day sales, Father's Day sales, Graduation Day sales, and Fireworks sales only. Please note that Fireworks sales must also comply with the provisions of chapter 8.22 of the Lindsay Municipal Code. Temporary Signs, Grand Opening Banners/ Balloons,	\$250.00	\$100.00
Category II; Events involving low impact road closures or on City-owned public property involving low impact to normal operations/use,	\$350.00	\$250.00 + Staff Fully Burdened Hourly Rate + Facility Rental Fee (if applicable).
Temporary Uses Of 3 Days or Less (Valentine's Day Flower Sales, Firework Sales)		
Category III; Events involving the sale of alcohol; Events involving high impact street closures; Events that are open to the public on private property; Events charging an entry fee on private property; Events involving the use of public space and/or City-owned public property involving high impact to normal operations/use, Marathons, Cycling Tours, Fairs, Carnivals, Rodeos, Concerts,	\$450.00	\$500.00 + Staff Fully Burdened Hourly Rate + Facility Rental Fee (if applicable).
Events with Less than 100 Attendees		
Category IV; Events With 100-499 Attendees,	\$800	N/A
	Deposit	
Category V; Events with Greater than 500 Attendees; Events Involving the Sale of Alcohol,	\$1,500	N/A
	Deposit	